ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

For

DARLINGTON REFURBISHMENT STEAM GENERATOR PROJECT

DECEMBER 30, 2013

Between

ONTARIO POWER GENERATION INC.

and

BABCOCK & WILCOX CANADA LTD. and CANDU ENERGY INC.
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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This Agreement is made as of December 30, 2013, between

ONTARIO POWER GENERATION INC., a corporation existing under the laws of Ontario ("OPG"),

and

BABCOCK & WILCOX CANADA LTD., a corporation existing under the laws of Ontario, and CANDU ENERGY INC., a corporation existing under the laws of Canada, acting jointly and severally (collectively, the "Contractor") doing business as a contractual joint venture.

RECITALS

A. OPG is the owner and operator of the Darlington nuclear generating station ("DNGS") in Clarington, Ontario.

B. The DNGS is approaching its mid-life refurbishment. The refurbishment involves outages for the replacement of life limiting components as well as the refurbishment or replacement of other components.

C. The goal of the refurbishment project is to extend the service life of all four units at the DNGS (the "Refurbishment Program").

D. The Project is one of the projects under the Refurbishment Program.

E. OPG is retaining the Contractor to perform the Work and provide the Goods for the Project on the terms and conditions set out in this Agreement.

F. Under this Agreement, OPG will be considered both the "owner" and the "constructor" for the purposes of the Occupational Health and Safety Act (Ontario).

G. This Agreement is a conformed document and all the terms between the parties respecting the Project are set out in this Agreement.

For value received, the Parties agree as follows.
SECTION 1  INTERPRETATION

1.1  Definitions

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

(a) **Affiliate** means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person or any partner of the specified Person. For the purposes of this definition, a Person “controls” another Person if the former directly or indirectly possesses the power to direct or cause the direction of the management and policies of the latter, whether through the ownership of securities, by contract or by any other means, and “controlled by” and “under common control with” have corresponding meanings.

(b) **Agreement** means this engineering, procurement and construction agreement, including any recitals and schedules or attachments thereto as amended or restated from time to time by an Amendment.

(c) **Allowed Costs** means the costs referred to as Allowed Costs in the Cost Allocation Table, plus any cost that OPG and the Contractor agree in writing from time to time to treat as an Allowed Cost, plus any cost determined to be an Allowed Cost through the dispute resolution mechanisms set out in Section 11. For certainty, items referred to as “Disallowed Costs” in the Cost Allocation Table cannot be Allowed Costs.

(d) **Allowed Fee** means the profit and overhead components of the percentage(s) applicable to the relevant cost category as set out in Attachment 7.1(7) - Reimbursable Work Fixed Fee - Primary Side to Schedule 7.1 or in Attachment 7.1(12) - Reimbursable Work Fixed Fee - Secondary Side to Schedule 7.1, as the case may be.

(e) **Amendment** means a written amendment agreement signed by the parties, in the form of document attached as Schedule 1.1(e), which makes any change to this Agreement or an amended and restated agreement.
(f) **Applicable Laws**, in respect of any Person, property, transaction or event, means:

(1) all applicable laws, statutes, regulations and treaties;

(2) Any requirements under or prescribed by applicable common law, judgments and decrees; and

(3) All Codes and Standards, applicable to that Person, property, transaction or event at the applicable time and at the applicable location.

(g) **Application for Payment** means the application for payment delivered by the Contractor to OPG's Representative in accordance with section 7.3, accompanied by completed forms of the documents set out in Schedule 1.1(g) or Schedule 7.10, as applicable.

(h) **Approvals** means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorisations respecting the Work, Goods or Project as may be required from any applicable Governmental Authorities or by this Agreement.

(i) **Available for Service Documentation** means all Submittals required to be delivered to OPG pursuant to this Agreement and any and all additional documentation with respect to the Work that must be completed or held in order for OPG to return a Unit to service.

(j) **B&W** means Babcock & Wilcox Canada Ltd.

(k) **B&W Guarantor** means Babcock & Wilcox Commercial Power, Inc., or any replacement guarantor permitted under section 4.1(b), as the context requires, and each of its successors or permitted assigns.

(l) **Baseline Progress Schedule** means the preliminary Progress Schedule attached as Schedule 2.7(a)(2) as at the date of this Agreement.

(m) **Business Day** means any day other than a Saturday, Sunday, New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas
Day and Boxing Day. Each Business Day will end at 5:00 p.m. on that day.

(n) **Campus Plan** means all buildings and infrastructure required to support the Refurbishment Program and the ongoing operation of the DNGS.

(o) **CEI** means Candu Energy Inc.

(p) **CEI Guarantor** means SNC-Lavalin Group Inc., or any replacement guarantor permitted under section 4.1(b), as the context requires, and each of its successors or permitted assigns.

(q) **Codes and Standards** means all requirements, licences (including power reactor operating licences), requests, directives, rules, guidelines, standards, specifications, codes, instructions, circulars, manuals, and policies and formal interpretations of any applicable technical organization or of any applicable Governmental Authority, whether or not having the force of law.

(r) **COIR** means OPG’s *Steam Generator Project Contractor/Owner Interface Requirements* as set out in the Specifications.

(s) **Contingency Work** means Work performed on a Fixed Price or Firm Price basis for Work packages identified as contingency work packages in Schedule 7.1, the scope of which is more specifically described in the applicable Specifications.

(t) **Contract Price** means, at the relevant time, the total aggregate amount set out on Attachment 7.1(1) – Contract Price (Escalated) to Schedule 7.1 to be paid by OPG under this Agreement, as amended from time to time in accordance with: (i) an Optional Work Notice to Proceed, if OPG elects to proceed with any Optional Work; and/or (ii) an Amendment, if OPG elects to proceed with any Contingency Work or a Project Change Directive.

(u) **Contract Schedule** means Schedule 2.7(a)(1) which sets out the numbers of days and/or the dates to achieve each of the milestones, including the Unit Secondary Side Completion Date, the Unit Primary Side Completion Date and the Final Completion Date, as amended or restated from time to time in accordance with an Amendment.
Contractors Personnel means all personnel, including the Contractor’s Representative, used by the Contractor or assisting the Contractor in the provision of the Work, including any personnel, staff, labour and other employees of the Contractor or a Subcontractor and any Subcontractor who is an individual.

Contractors Property means all Goods that are owned or controlled by a Contractor or a Subcontractor, that are used by the Contractor in the provision of the Work and to which title will not pass to OPG under this Agreement (for example, tools that are owned and used by the Contractor in the provision of the Work).

Contractor’s Representative is defined in section 2.2(c).

Cost Allocation Table means the cost allocation table set out at Attachment 7.1(24) – Cost Allocation Table to Schedule 7.1, which table sets out the Allowed Costs and Disallowed Costs. For certainty, the Cost Allocation Table does not apply to any Fixed Price Work, Firm Price Work or Goods.

CNSC is defined in section 2.8(g)(1).

Defective means:

(1) any part of the Work, Goods or Project that is defective, is inoperative, fails because of any defect in design (to the extent the Contractor supplied such design), workmanship and installation or does not comply with this Agreement, including any failure to comply with any requirement of any Submittal, reference standard, inspection, test or Approval required for the Work or otherwise referred to in this Agreement; or

(2) any part of the Goods or Project that was negligently or intentionally damaged by the Contractor, any of its Subcontractors or the Contractor’s Personnel on or before the Final Completion Date (but excluding damage that was caused by OPG and occurred after Unit Secondary Side Completion or Unit Primary Side Completion, as the case may be, to a part of the Project for which OPG was responsible at the time the damage occurred).

Designated Areas means the refurbishment work areas within the DNGS provided by OPG to the Contractor on a Unit-by-Unit basis and
includes access to and from the work area either through a path or controlled access point(s). The Designated Areas may also include potential laydown areas.

(cc) **Disallowed Costs** means the costs referred to as Disallowed Costs in the Cost Allocation Table, plus any cost determined to be a Disallowed Cost through the dispute resolution mechanisms set out in Section 11.

(dd) **Dispute** is defined in section 11.1.

(ee) **DNNS** is defined in Recital A.

(ff) **Final Completion** is defined in section 7.9(b).

(gg) **Final Completion Date** is defined in section 7.9(b).

(hh) **Firm Price** means a fixed price for an element of the Work which includes the total cost of labour, materials, equipment, supervision, rework, maintenance, storage, overhead and profit for the element of Work (including all contingency). A Firm Price is subject to economic price adjustment calculated in accordance with the indices described in Schedule 5.7 but will otherwise not be adjusted for any reason whatsoever other than through an approved Project Change Directive issued by OPG.

(ii) **Firm Price Work** means all packages of Work and Goods identified as Firm Price Work packages in Schedule 7.1, the scope of which is more specifically described in the applicable Specifications.

(jj) **Fixed Price** means a fixed price for an element of the Work, which includes the total cost of labour, materials, equipment, supervision, rework, maintenance, storage, overhead and profit for the element of work (including all contingency). A Fixed Price will not be adjusted for any reason whatsoever other than through an approved Project Change Directive issued by OPG.

(kk) **Fixed Price Work** means all packages of Work and Goods identified as Fixed Price Work packages in Schedule 7.1, the scope of which is more specifically described in the applicable Specifications. Fixed Price Work includes all preliminary design work at the Contractor's facilities, manufacturing of the components at the Contractor's
facilities, components manufactured by third parties, factory acceptance testing for the controls components and delivery of all components of the Fixed Price Work to Site.

(ii) **Goods** means any goods, materials, instruments, devices, articles, supplies, equipment, machinery, structures and assemblies, or components of any of them, delivered or required to be delivered to the Site, to OPG or to such place or Person as OPG may direct, under this Agreement, whether or not incorporated into the Project.

(mm) **Governmental Authority** means any domestic or foreign government, including, any federal, provincial, state, territorial, municipal or local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government.

(nn) **Guarantee** is defined in section 4.1(b) and includes any replacement guarantee provided in accordance with section 4.1(b).

(oo) **Guaranteed Final Completion Date** means the milestone date for Final Completion as set out in the Contract Schedule.

(pp) **Guaranteed Unit Documentation Completion Date** means, in respect of a Unit, the milestone date for Unit Documentation Completion for such Unit as set out in the Contract Schedule.

(qq) **Guaranteed Unit Primary Side Material Delivery Completion Date** means, in respect of a Unit, the milestone date for Unit Primary Side Material Delivery Completion for such Unit as set out in the Contract Schedule.

(rr) **Guaranteed Unit Primary Side Completion Date** means, in respect of a Unit, the milestone date for Unit Primary Side Unit Completion for such Unit as set out in the Contract Schedule.

(ss) **Guaranteed Unit Primary Side Tooling Detailed Design Completion Date** means, in respect of a Unit, the milestone date for Unit Primary Side Tooling Detailed Design Completion for such Unit as set out in the Contract Schedule.
(tt) **Guaranteed Unit Secondary Side Material Delivery Completion Date** means, in respect of a Unit, the milestone date for Unit Secondary Side Material Delivery Completion for such Unit as set out in the Contract Schedule.

(uu) **Guaranteed Unit Secondary Side Tooling Detailed Design Completion Date** means, in respect of a Unit, the milestone date for Unit Secondary Side Tooling Detailed Design Completion for such Unit as set out in the Contract Schedule.

(vv) **Guaranteed Unit Secondary Side Completion Date** means, in respect of a Unit, the milestone date for Unit Secondary Side Completion for such Unit as set out in the Contract Schedule.

(ww) **Guaranteed Unit Site Requirement Modifications Detailed Design Completion Date** means, in respect of a Unit, the milestone date for Unit Site Requirement Modifications Detailed Design Completion for such Unit as set out in the Contract Schedule.

(xx) **Guarantor** means the CEI Guarantor and the B&W Guarantor, as the context requires.

(yy) **Key Personnel** is defined in section 2.2(b).

.zz) **Lien** means any:

(1) lien, charge, attachment, security interest, mortgage, hypothec, claim, deemed trust or other encumbrance, whether fixed or floating, including any lien arising in respect of the *Construction Lien Act* (Ontario);

(2) pledge or hypothecation; or

(3) deposit arrangement, priority, conditional sale agreement or other title retention agreement, equipment trust, capital lease or other security arrangement of any kind, respecting any property, whether real, personal or mixed, tangible or intangible.

(aaa) **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 and charges), whether incurred through settlement or otherwise, together with interest at a chartered Canadian bank prime rate plus 2% annually, compounded monthly, and calculated from the date that the Losses were suffered or incurred, in each case whether arising before or after the termination of this Agreement.


(ccc) **Notice** means any notice, approval, demand, direction, instruction, consent, designation, request, document, instrument, certificate or other communication required or permitted to be given under this Agreement.

(ddd) **OPG Group** means OPG, each of OPG’s wholly-owned subsidiaries and each of OPG’s and each such subsidiary’s shareholder, directors, officers, employees, representatives, agents and advisors, including OPG’s Representative and OPG’s Designated Delegates, but, for certainty, excluding the Contractor, each Subcontractor and each of the Contractor’s and each Subcontractor’s shareholders, directors, officers, partners, members, employees, representatives, agents, advisors, the Contractor’s Personnel and any other Person for whom the Contractor or any Subcontractor is responsible at law.

(eee) **OPG’s Designated Delegates** means Persons, who may or may not be employees of OPG, who have been designated, from time to time, in writing by OPG’s Representative, in a Notice in the form of document attached as Schedule 1.1(eee), as delegates of OPG, within a specified scope and limits of authority, by OPG’s Representative or are otherwise named as OPG’s delegates in this Agreement.
(fff) **OPG’s Representative** means the individual designated in writing by OPG from time to time to act as OPG’s Representative in dealings with the Contractor under this Agreement.

(ggg) **Optional Work** means all Fixed Price or Firm Price Work packages identified as optional work packages in Schedule 7.1, the scope of which is more specifically described in the applicable Specifications.

(hhh) **Optional Work Notice to Proceed** means the Notice to proceed with the Optional Work issued to the Contractor by OPG substantially in the form of Schedule 2.10(a).

(iii) **Other OPG Contractors** is defined in section 2.1(c).

(jj) **Parties** means OPG and the Contractor and each of their successors or permitted assigns; and **Party** means either one of them.

(kkk) **Person** means any individual, sole proprietorship, partnership, corporation or company, with or without share capital, trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.

(lll) **Professional** means a licensed professional, including engineers and architects, duly licensed in Ontario, and designated by the Contractor, to provide, in whole or in part, any of the Professional Work.

(mmm) **Professional Work** means all the services in respect of this Agreement, including respecting documents, designs, drawings (not including as built drawings, unless specifically provided for under the Specifications), diagrams, illustrations, schedules, performance charts, brochures, specifications, plans, progress photographs, reports, manuals (including operating and maintenance manuals), information, data or other deliverables, models or samples whether in a written, graphic, physical, electronic or other format provided, or required to be provided, by the Contractor to OPG under this Agreement, that are:

(1) required under Applicable Laws or any Approvals to be provided by a Professional;

(2) required by this Agreement to be provided by a Professional; or
(3) provided by a Professional retained by the Contractor, including by the Contractor’s Personnel.

(nn) **Progress Schedule** means the progress schedule referred to in section 2.7(a)(2); as finalised by the Contractor and submitted to OPG’s Representative in accordance with section 2.7(a).

(oo) **Project** means the DNGS refurbishment steam generator project. The Contractor will provide the engineering, procurement, construction, commissioning and training designed, constructed and guaranteed by the Contractor in accordance with this Agreement.

(pp) **Project Change Directive** means a written directive or consent signed by OPG’s Representative, in the form of document attached as Schedule 1.1(ppp).

(qq) **Project Representative** means either OPG’s Representative or the Contractor’s Representative, as the context requires; and **Project Representatives** means both of them.

(rr) **Prudent Practices** means the practices, methods and activities adopted by a significant number of Persons who provide engineering, procurement and construction services to the nuclear industry in North America as good practices applicable to construction or refurbishment projects for nuclear generating facilities or to the DNGS, as well as the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent contractor or a prudent Person who provides engineering, procurement and construction services to a nuclear operator, as applicable in light of the facts known, or ought to have been known by such prudent contractor or prudent Person, at the time the decision was made, could have been expected to be applied to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Laws. Prudent Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate good practices, methods, or acts generally accepted in the nuclear industry. Prudent Practices include, but are not limited to, practices that are recommended by international nuclear agencies, such as CANDU Owners Group Inc. (COG), the International Atomic Energy...
Agency (IAEA) and Institute of Nuclear Power Operations (INPO), to the extent applicable to CANDU reactors. Prudent Practices include, but are not limited to, the Contractor’s compliance with its quality management or quality assurance plan required to be developed and maintained by the Contractor pursuant to this Agreement.

(sss) **Recovery Plan** is defined in section 8.6.

(ttt) **Refurbishment Program** is defined in Recital C.

(uuu) **Reimbursable Costs** means actual costs that are determined to be Reimbursable Costs pursuant to section 7.1(a), which will be payable by OPG to the Contractor. For certainty any Disallowed Costs, Fixed Price Work, Firm Price Work, any costs of Goods, or any cost that is compensated for through a Fixed Fee cannot be a Reimbursable Cost.


(www) **Reimbursable Work** means all Work packages identified as reimbursable work packages in Schedule 7.1, the scope of which is more specifically described in the applicable Specifications, but excluding the Fixed Price Work or Firm Price Work. Reimbursable Work includes all field engineering, analysis and engineering support during installation, simulator testing at Site, removal of components from Site, installation and repair activities, static commissioning, and oversight and project management activities.

(xxx) **Reimbursable Work Cost Disincentive** is defined in section 8.1(d).

(yyy) **Reimbursable Work Cost Incentive** is defined in section 8.1(c).

(zzz) **Reimbursable Work Fixed Fee** means the fixed fee set out in Schedule 7.1 payable to the Contractor for the performance of the Reimbursable Work, which fixed fee will be the only amount payable for all of the Contractor’s costs that are not included in Reimbursable Costs for the Reimbursable Work, including all Contractor risks, profit and overhead (other than overhead that is specifically identified as an Allowed Cost in accordance with this Agreement), as adjusted in accordance with this Agreement.
(aaaa) **Reimbursable Work Target Cost** means the target cost for all Reimbursable Work as set out in Schedule 7.1, as adjusted in accordance with this Agreement.

(bbbb) **Resource Management Plan** means the resource management plan referred to in section 2.2(b); as finalised by the Contractor and submitted to OPG's Representative in accordance with the Submittal Schedule, as amended from time to time in accordance with an Amendment.

(cccc) **Senior Management Representative** means an individual who occupies a senior management position within a Party and who has direct responsibility for the Project. Each Party will appoint an appropriate individual as its Senior Management Representative promptly following execution of the Agreement, and may replace such Senior Management Representative from time to time.

(dddd) **Site** means the Campus Plan or the DNGS, as the context requires; and **Sites** means the Campus Plan and the DNGS.

(eeee) **Specifications** means the terms, designs, drawings, technical specifications, performance specifications and other written or graphic information set out in Schedule 1.1(eeee), as amended or restated from time to time in accordance with an Amendment.

(ffff) **SS&E or Support Services & Equipment** means only those Goods required to support the Work and expressly identified as being on a Reimbursable Costs basis by a check-mark under the column heading “Allowed Cost in Support Services & Equipment” in the Cost Allocation Table. For certainty, the SS&E will not include any support services, tooling or equipment required to be delivered under or in connection with the performance of any Fixed Price Work or Firm Price Work.

(gggg) **SS&E Cost Disincentive** is defined in section 8.2(d).

(hhhh) **SS&E Cost Incentive** is defined in section 8.2(c).

(iii) **SS&E Fixed Fee** means the amount set out in Schedule 7.1, as adjusted in accordance with this Agreement.
(jjjj) SS&E Target Cost means the amount set out in Schedule 7.1, as adjusted in accordance with this Agreement.

(kkkk) Steering Committee is defined in section 2.3(c).

(llll) Subcontractor means a Person (including the Person’s successors and permitted assigns) who supplies Work or Goods under an agreement with the Contractor, another Subcontractor or a combination of the Contractor and another Subcontractor.

(mmmm) Submittal means:

(1) a document, design, drawing (not including as built drawings, unless specifically provided for under the Specifications), diagram, illustration, schedule, performance chart, brochure, specification, plan, progress photograph, report or manual (including operating and maintenance manuals);

(2) information, data or other deliverable;

(3) plan, schedule, communication plan or work instruction; or

(4) model or sample,

whether in a written, graphic, physical, electronic or other format, prepared by or for the Contractor which illustrates details of a portion of the Work, the Goods, the Project or is otherwise required by this Agreement, or is reasonably requested by OPG, and is to be submitted by the Contractor to OPG, or as OPG directs, under this Agreement.

(nnmm) Submittal Schedule means the Submittal schedule referred to in section 2.7(a)(3); as finalised by the Contractor and submitted to OPG’s Representative in accordance with section 2.7(a).

(oooo) Tax means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital, gross receipts, consumption, sales, use, transfer, goods and services or other value-added, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan,
workers' compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest, penalties in respect thereof, or in lieu of or for non-collection thereof.

(zzzz) **Tooling and Materials Management Plan** means the tooling and materials management plan referred to in section 2.13; as finalised by the Contractor and submitted to OPG's Representative in accordance with the Submittal Schedule, as amended from time to time in accordance with an Amendment.

(qqqq) **Unit** means an assembly of equipment at the DNGS, the function of which is the generation of electricity, consisting of one nuclear reactor, the associated steam generators and turbine generators, together with all buildings, accessories, auxiliaries and services, and all facilities used in common with other Units.

(rrrr) **Unit Breaker Open Date** means the date the Unit is disconnected from the grid that starts the Unit refurbishment outage.

(ssss) **Unit Documentation Completion Date** means, in respect of a Unit, the date on which Unit Documentation Completion is achieved for such Unit, as determined by OPG.

(tttt) **Unit Documentation Completion** means the completion of all requirements for “Unit Documentation Completion” set out in the Contract Schedule.

(uuuu) **Unit In-Service Date** is defined in section 9.8(a).

(vvvv) **Unit Primary Side** means, with respect to a Unit, the nuclear side of the steam generator.

(wwww) **Unit Primary Side Completion** has the meaning set out in section 7.8(a) and includes the completion of all requirements for “Completion of Primary Side Execution Window” set out in the Contract Schedule.
(xxx) **Unit Primary Side Completion Date** means, in respect of a Unit, the date on which Unit Primary Side Completion is achieved for such Unit in accordance with section 7.8.

(yyyy) **Unit Primary Side Completion of Construction Declaration** has the meaning set out in section 7.8(a).

(zzzz) **Unit Primary Side Material Delivery Completion** means the completion of all requirements for “Primary Side Material Delivery Complete” set out in the Contract Schedule.

(aaaaa) **Unit Primary Side Material Delivery Completion Date** means, in respect of a Unit, the date on which Unit Primary Side Material Delivery Completion is achieved for such Unit, as determined by OPG.

(bbbbbb) **Unit Primary Side Tooling Detailed Design Completion** means the completion of all requirements for “Primary Side Tooling Detailed Design Complete” set out in the Contract Schedule.

(ccccc) **Unit Primary Side Tooling Detailed Design Completion Date** means, in respect of a Unit, the date on which Unit Primary Side Detailed Design Completion is achieved for such Unit, as determined by OPG.

(ddddd) **Unit Secondary Side** means, with respect to a Unit, the conventional side of the steam generator.

(eeeeee) **Unit Secondary Side Completion** has the meaning set out in section 7.7(a) and includes the completion of all requirements for “Completion of Secondary Side Execution Window” set out in the Contract Schedule.

(ffffff) **Unit Secondary Side Completion Date** means, in respect of a Unit, the date on which Unit Secondary Side Completion is achieved for such Unit in accordance with section 7.7.

(gggggg) **Unit Secondary Side Completion of Construction Declaration** has the meaning set out in section 7.7(a).

(yyyyyy) **Unit Secondary Side Material Delivery Completion** means the completion of all requirements for “Secondary Side Material Delivery Complete” set out in the Contract Schedule.
(iii) **Unit Secondary Side Material Delivery Completion Date** means, in respect of a Unit, the date on which Unit Secondary Side Material Delivery Completion is achieved for such Unit, as determined by OPG.

(jjjj) **Unit Secondary Side Tooling Detailed Design Completion** means the completion of all requirements for “Secondary Side Tooling Detailed Design Complete” set out in the Contract Schedule.

(kkkkk) **Unit Secondary Side Tooling Detailed Design Completion Date** means, in respect of a Unit, the date on which Unit Secondary Side Tooling Detailed Design Completion is achieved for such Unit, as determined by OPG.

LLLL) **Unit Site Requirement Modification Detailed Design Completion** means the completion of all requirements for “Site Requirement Modification Detailed Design Complete” set out in the Contract Schedule.

(mmmmm) **Unit Site Requirement Modification Detailed Design Completion Date** means, in respect of a Unit, the date on which Unit Site Requirement Modification Detailed Design Completion is achieved for such Unit, as determined by OPG.

(nnnn) **Warranty Period** is defined in section 9.8(a).

(oooo) **Work** means providing to OPG all maintenance, design and construction activities required to entirely finish the Project in accordance with this Agreement, including the Specifications, and including:

1. providing the Professional Work, Reimbursable Work, Fixed Price Work, and Firm Price Work;

2. providing, manufacturing, supplying, procuring, factory testing, transporting, delivering, inspecting, receiving, erecting, constructing, assembling, installing, connecting, applying, using, field testing, calibrating, adjusting, conditioning, cleaning, training, commissioning, providing commissioning support (including support from Subcontractors), performance testing and cleaning up as required with respect to the Goods and Project;
(3) providing any rework, repairs or replacements of anything that is Defective;

(4) providing labour, mobilising, de-mobilising, management, supervision and administration;

(5) providing maintenance and construction equipment and tools, including scaffolding, mobile cranes, air compressors and welding sets;

(6) using any goods of any kind in respect of the Project;

(7) providing the design and delivery of any documents, designs, drawings (not including as built drawings, unless specifically provided for under the Specifications), diagrams, illustrations, schedules, performance charts, brochures, specifications, plans, progress photographs, reports, manuals (including operating and maintenance manuals), information, data or other deliverables, or models or samples, whether in a written, graphic, physical, electronic or other format, software, computer programs and source codes (including in each case each of their components) necessary for the operation and maintenance of the Project or otherwise required to be delivered to OPG under this Agreement;

(8) providing any other services required by, and performing its obligations under, this Agreement, including the services referred to in section 2.1(c) and the obligations set out in section 2.4; and

(9) Optional Work and/or Contingency Work if OPG proceeds with such Work under an Optional Work Notice to Proceed and/or an Amendment respectively.

(ppppp) Work Breakdown Structure (WBS) means the Work broken down by major activities as set out in Schedule 1.1(ppppp).

(qqqqq) Work Notice to Proceed means the Notice to proceed with the Work issued to the Contractor by OPG substantially in the form of Schedule 2.7(e)(1).
1.2 **Headings and Table of Contents**

The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

1.3 **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”. The terms “hereof”, “herein”, “hereto” and “hereunder” are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole. Any reference in this Agreement to any other agreement, is deemed to include a reference to that other agreement, as amended or restated from time to time. When words that have a well-known technical, construction industry or trade meaning are used in this Agreement to describe any Work or Goods, such words will be interpreted in accordance with that meaning. 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 Specifications and the needs of the Refurbishment Program.

1.4 **Time of Day**

Unless otherwise specified, references to time of day or date mean the local time or date in Clarington, Ontario. When any period of time is referred to in this Agreement by days, it will be computed to exclude the first and include the last day of such period. A day is 24 hours measured from midnight to the next midnight.

1.5 **Business Days**

If under this Agreement any payment or calculation is to be made on or as of a day which is not a Business Day, that payment or calculation is to be made on or as of the next day that is a Business Day.

1.6 **Governing Law**

This Agreement and each of the documents contemplated by this Agreement 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. Each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario. No Party will oppose
the enforcement against it in any other jurisdiction of any judgement or order duly obtained from an Ontario court respecting this Agreement. A Party may effect service of summons or any other legal process that may be served in any action, suit or other proceeding by delivering any such process to another Party in accordance with section 13.3. Nothing in this section 1.6 will affect the rights of a Party to serve legal process in any other manner permitted by law.

1.7 Conflict

If there is a conflict between any term in one part of this Agreement and any term in another part of this Agreement, the relevant term in the part of this Agreement or other document listed first in this section 1.7 is to prevail:

(a) Amendments, excluding any part of an Amendment that applies to a Schedule;
(b) this Agreement, excluding the Schedules;
(c) Amendments to a Schedule;
(d) the Specifications;
(e) any other Schedule; and
(f) Submittals.

1.8 Severability

If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of that term will not affect the legality, validity or enforceability of the remaining terms of this Agreement and the Parties will, if necessary, amend this Agreement to accomplish the intent of the Parties as originally set out in this Agreement to the maximum extent allowed by Applicable Laws.

1.9 Statutory and Technical References

Each reference to a statute in this Agreement is deemed to be a reference to that statute, and to the regulations made under that statute, all as amended or re-enacted from time to time. Each reference, whether express or implied, to Codes and Standards is deemed to be a reference to such Codes and Standards as amended or re-published from time to time.
1.10 Entire Agreement

This Agreement constitutes the entire agreement between the Parties regarding the subject matter and, except for any Amendment or Project Change Directive, supersedes all other agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal, including any OPG request for proposals, any Contractor proposal and any amendments or restatements of any such request or proposal. Specifically, except as expressly provided in this Agreement, OPG has not made any representations, warranties or guarantees whatsoever respecting the Project or this Agreement, including any minimum or maximum hours of employment or respecting any statements or other information previously provided to the Contractor or respecting any physical conditions, labour conditions or scheduling.

1.11 Schedules

All schedules attached to or referred to in this Agreement form part of this Agreement.

1.12 References to "Contractor's Costs" or Contractor's "Own Cost"

Costs, charges or expenses referred to in this Agreement as being at the Contractor's "own cost" or the "Contractor's cost" will, to the extent referable to the performance of Reimbursable Work (but not, for certainty, Fixed Price Work or Firm Price Work), be Reimbursable Costs if such costs, charges and expenses are Allowed Costs and not Disallowed Costs.

SECTION 2 CONTRACTOR'S OBLIGATIONS

2.1 Intent

(a) General. The Contractor will, safely and diligently, provide and entirely finish the Work in an organised and timely manner and in accordance with this Agreement and, to the extent not inconsistent with this Agreement, with the Prudent Practices. The Contractor will ensure that all Work is performed in accordance with the Specifications and the other terms of this Agreement.

(b) Bargain. This Agreement contains certain allocations of risk which reflect an informed and voluntary allocation of risk between OPG and the Contractor. This allocation represents a material part of this Agreement.
(c) Intent. The Contractor will provide all services and goods of any kind (which are deemed to be part of the Work and Goods, as applicable), whether or not specifically required under this Agreement, which are evidently necessary, usually provided by prevailing custom or trade usage, or can be reasonably implied for the proper performance of the Work and the safe and proper operation of the Project.

The Contractor acknowledges that OPG has entered into or currently intends to enter into other contracts with other contractors (the "Other OPG Contractors") to provide services in connection with or relating to the Refurbishment Program, and that it is currently intended that the Work will need to be performed in a manner that facilitates satisfactory coordination and timely completion of the Work, the work by the Other OPG Contractors and the Refurbishment Program. In determining whether OPG and the Contractor have performed their respective obligations under this Agreement, the need for such coordination and timely completion of the Work, the work by the Other OPG Contractors and the Refurbishment Program will be taken into account.

(d) Cooperation.

(1) General. The Parties will act in accordance with the terms of this Agreement and in a spirit of mutual trust and cooperation.

(2) Cooperation on Project Risks. The Parties will cooperate with each other and closely collaborate on the monitoring of all risks associated with the Project.

(3) Cooperation on Costs. The Parties will cooperate with each other in the discharge of their respective obligations under this Agreement. The Contractor will maintain complete, accurate and up-to-date books and records to provide full transparency, and will maintain an open book policy regarding all components of its costs and the Work to OPG in accordance with requirements set out in section 2.19. The Contractor will provide value for money, will ensure that all costs are prudently incurred, and will minimize all costs while completing the Work in accordance with this Agreement.

(4) Disclosure. Subject to any confidentiality agreements, each Party will disclose information which the other might reasonably need in
order to exercise its rights and perform its obligations under this Agreement. The Parties will work together in a manner consistent with their respective obligations under this Agreement to resolve or mitigate any issues relating to the Project.

(e) **Representations Regarding the Project.** The Contractor represents and warrants to OPG that the Contractor:

(1) is sufficiently experienced and properly qualified (including being listed on OPG’s “Approved Supplier List” for all quality assurance program approvals required for each component (engineering, procurement and construction) of the Project), staffed, licensed, equipped, organized and financed, and has the necessary material, labour, supervisory personnel and other personnel, necessary to perform, or cause to be performed, the Work;

(2) has engaged only Subcontractors that are competent, sufficiently experienced and properly qualified (including being listed on OPG’s and/or the Contractor’s “Approved Supplier List” for all quality assurance program approvals required for each component (engineering, procurement and construction) of the Project that is relevant to the scope of work to be performed by the Subcontractor, or have been otherwise approved by OPG), staffed, licensed, equipped, organized and financed, and have the necessary material, labour, supervisory personnel and other personnel necessary to perform, or cause to be performed, the Work;

(3) has examined and has satisfied itself in respect of all matters respecting the Work, Goods and Project, including:

(A) the feasibility of the Project in accordance with the terms of this Agreement;

(B) all necessary information respecting the risks, contingencies and other circumstances which may affect the Progress Schedule, the Contract Schedule, the Contract Price, the Work, the Goods or the Project;

(C) the current versions of all documents issued by a standards, regulatory or other organisation referred to in this Agreement and all collective agreements applicable to the
Work, the Goods or the Project. Specifically, the Contractor acknowledges and agrees that OPG may be required to obtain a Purchased Services Agreement ("PSA") with its union(s) with respect to some or all of the Work, and that, if OPG is unable to obtain such PSA, OPG may terminate the Work, in whole or in part, in accordance with section 12.2;

(D) the nature, location and physical conditions of the Site, including, surface and subsurface conditions and the location of all above and below surface buildings, utilities, structures, pipes, conduits and works;

(E) working and storage space, transportation (including any load or speed restrictions), delivery, construction facilities, uncertainties of weather and other work being carried out on, or in the vicinity of, the Site;

(F) the general and local conditions, particularly those respecting labour, health and safety, Site access (including traffic and parking) and other administrative practices and normal working hours;

(G) Site access restrictions, including restrictions inherent in the refurbishment of an operating nuclear power generating station, and, to the extent disclosed to the Contractor by OPG, restrictions imposed by OPG in connection with the Refurbishment Program and the required interfaces between the Work and other refurbishment activities, and restrictions required in connection with work to be performed by Other OPG Contractors at the Site;

(H) the sufficiency, reliability and availability of suppliers and Subcontractors to provide the Work and any Goods necessary to perform the Work;

(I) the availability and productivity of trades, labour, supervisory personnel and other personnel required to complete the Work;

(J) all Applicable Laws, including any restrictions on hours of work, and any required Approvals; and
(K) the goods, equipment and facilities needed to provide the Work;

(4) except with respect to the items listed in Schedule 2.1(g), has relied solely on the Contractor's findings, conclusions, interpretations and other opinions in evaluating the risks, contingencies and other circumstances that may be encountered in carrying out all the requirements of this Agreement;

(5) has reviewed the Contract Schedule and the Work Breakdown Structure and is satisfied that it can provide and entirely finish the Work in accordance with the Contract Schedule and the Work Breakdown Structure;

(6) has thoroughly familiarized itself with this Agreement, including the Schedules, and has thoroughly reviewed the OPG policies and procedures referred to in this Agreement and the Specifications, as amended from time to time, as they relate to the Work;

(7) is not aware of any error, inconsistency or omission in the Specifications;

(8) has disclosed in writing to OPG the names of each of the Contractor's Personnel who will be providing Work at the Site continuously, who is a former OPG employee and who received a severance package from OPG, is receiving pension payments from OPG or is receiving a non-working pension bridge from OPG;

(9) is not aware of any legal action instituted, threatened or pending against the Contractor that could have a material adverse effect on its ability to perform its obligations under this Agreement; and

(10) has made due allowance, including by way of pricing, for all the matters referred to in this section 2.1(e).

(f) Financial Information.

(1) Financial Information Respecting B&W. B&W authorises OPG to make credit enquiries about B&W or the B&W Guarantor or any of B&W's Affiliates, from time to time and to receive and exchange credit information from credit reporting agencies or other Persons with which B&W, the B&W Guarantor or any of B&W's Affiliates has
or may expect to have financial dealings. B&W has provided OPG with B&W’s and the B&W Guarantor’s audited financial statements for the last three financial years. Such financial statements have been prepared in accordance with Canadian or US generally accepted accounting practices, as applicable, consistently applied. Such financial statements fairly reflect the financial position and results of operations of B&W and the B&W Guarantor as at the dates and for the periods set out in such statements. B&W will provide OPG with: (i) its audited financial statements and with unaudited financial statements of the B&W Guarantor within 150 days of each year end; and (ii) the B&W Guarantor’s audited financial statements within 250 days of each year end. Where unaudited financial statements are provided, such financial statements will be accompanied by a certificate from an officer of B&W and the B&W Guarantor verifying that the financial statements are materially correct and prepared in accordance with Canadian or US generally accepted accounting practices, as applicable, consistently applied. B&W will also provide OPG with any other financial information respecting B&W, any of its Affiliates or the B&W Guarantor that OPG may reasonably request to assist OPG in its ongoing evaluation of the value of the indemnifications and other rights provided to OPG by the Contractor under this Agreement.

(2) Financial Information Respecting CEI. CEI authorizes OPG to make credit enquiries about CEI and the CEI Guarantor, from time to time and to receive and exchange credit information from credit reporting agencies or other Persons with which CEI or the CEI Guarantor has or may expect to have financial dealings. CEI has made available to OPG the consolidated audited financial statements of the CEI Guarantor for the last three financial years. Such financial statements are available in such Guarantor’s website at www.snclavalin.com. CEI has also made available to OPG the consolidated audited financial statements of CEI. CEI represents and warrants that such financial statements have been prepared in accordance with International Financial Reporting Standards, consistently applied, and that such financial statements fairly reflect the consolidated financial position and results of operations of CEI and the CEI Guarantor as at the dates and for the periods set out in such statements. CEI will also provide OPG with any other financial information respecting CEI or the CEI Guarantor that OPG
may reasonably request to assist OPG in its ongoing evaluation of
the value of the indemnifications and other rights provided to OPG
by the Contractor under this Agreement.

(g) **Information Waiver.** Except with respect to items listed in Schedule
2.1(g), the Contractor expressly waives all claims for Losses
attributable to errors and/or omissions in information,
representations or estimates provided by OPG or any Person acting
on behalf of OPG whenever or however made, relative to any
physical conditions at the Site, the labour conditions affecting the
Work, the quantities of Work to be provided or Work scheduling.

### 2.2 Project Organisation

(a) **Contractor's Personnel.** The Contractor acknowledges and agrees
that the personnel, and particularly the senior Project team
members, that the Contractor assigns to the Project and the
continuity of qualified personnel throughout the life of the Project
are critical to the success of the Project and to OPG’s reliance upon
the Contractor’s ability to complete the Work in accordance with
this Agreement. Schedule 2.2(a) sets out an organisational chart
identifying the Contractor’s Personnel by name, title and contact
information, who will be involved in any material way in providing
the Work. At OPG’s request, the Contractor will provide OPG with
résumés for any such personnel indicating his or her qualifications
for the performance of the Work.

(b) **Key Personnel.** The Contractor’s Personnel whose names appear in
Schedule 2.2(a) as holding the positions identified in Table 1 – Key
Personnel below, or are subsequently identified as such, will be
considered key personnel (the “**Key Personnel**”). Unless OPG has
provided prior written approval to the Contractor of a specified
deviation from the following time and attention requirements, the
Contractor will ensure that, during the relevant Work windows, the
Contractor’s Personnel identified as Key Personnel in Table 1 - Key
Personnel below are engaged to work on the Project and will devote
sufficient amount of time and attention to the Work during each
Work window in order to ensure compliance with requirements
under this Agreement. The Contractor will not remove any such Key
Personnel from the provision of the Work, or materially reduce the
responsibilities respecting the provision of the Work unless:
(1) OPG's Representative consents in writing to such removal or reduction; 

(2) any such Person: (i) leaves the employ of the Contractor (and all its Affiliates) or the applicable Subcontractor (and all its Affiliates) for any reason; (ii) suffers a long-term illness or dies; or (iii) is promoted or applies for and is offered alternate employment within the Contractor or any of its Affiliates or the applicable Subcontractor or any of its Affiliates (provided such Person's replacement is appropriately qualified, trained and agreed to by OPG in accordance with the Contractor's Resource Management Plan and the Contractor delivers a Notice to OPG regarding such departure and the reasons for such departure, subject to any restrictions under applicable privacy laws or the Contractor's Code of Business Conduct). The Contractor will also promptly deliver a Notice to OPG with the name of the proposed replacement individual and résumé. OPG may, acting reasonably, accept or reject the proposed replacement. The Contractor will revise Schedule 2.2(a) from time to time or at any time on request by OPG and immediately on the change of any Key Personnel; or

(3) OPG has suspended the Work in accordance with section 12.1 or delayed the start date for Work on a Unit in accordance with section 2.7(e), in either case for a period of 30 Business Days or longer, provided that the Contractor engaged in reasonable consultation with OPG prior to such removal or reduction of responsibilities.

Except as set out in (1), (2) and (3) above, if the Contractor removes any Key Personnel in relation to the provision of the Work or materially reduces such Person's responsibilities in relation to the provision of the Work, the Contractor will pay to OPG the amount set out in Table 1 – Key Personnel below as compensation for OPG's administrative costs in relation to the departure and the loss of efficiency resulting from a requirement to replace such Person.
Table 1 – Key Personnel

<table>
<thead>
<tr>
<th>Level</th>
<th>Reimbursement to OPG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Director</td>
<td>$200,000</td>
</tr>
<tr>
<td>Site Manager</td>
<td>$100,000</td>
</tr>
<tr>
<td>Technical Site Lead - Primary Side</td>
<td></td>
</tr>
<tr>
<td>Technical Site Lead (Project Engineer) - Secondary Side</td>
<td></td>
</tr>
<tr>
<td>Field Supervisor (General Foreman) (if a member of the Contractor’s staff)</td>
<td></td>
</tr>
<tr>
<td>Engineering Manager</td>
<td></td>
</tr>
</tbody>
</table>

The amounts set out in Table 1 - Key Personnel will also apply if the Contractor, a Key Subcontractor (for purposes of this section 2.2(b), a "Key Subcontractor" means any Subcontractor that: (i) provides engineering services, construction management services or craft labour; or (ii) is designated as such by OPG, from time to time, acting reasonably, provided that, in each case of (i) and (ii), the aggregate value of all Work performed and/or Goods supplied by such Subcontractor equals or exceeds $1,000,000) or any of the Contractor’s respective North American Affiliates, without the prior written consent of OPG rehires any such Person who has left the employ of the Contractor, a Key Subcontractor or any of the Contractor’s respective North American Affiliates (either voluntarily or as a result of termination) within 12 months of his or her departure.

(c) **Contractor’s Representative.** The Contractor’s project director identified in Schedule 2.2(a) will be the “Contractor’s Representative” at the Site and will have authority to act on behalf of the Contractor. The Contractor’s Representative may delegate duties to superintendents, health and safety supervisors, account managers, records managers and other Persons designated by name and shown on Schedule 2.2(a) or as otherwise approved in writing by OPG. The Contractor’s Representative will specify in writing, in
the form of document attached as Schedule 2.2(c) the scope and the limits of authority of each of his or her designated delegates. Any changes to or revocation of any delegations will also be specified by the Contractor's Representative in writing to OPG's Representative in the form of documents attached as Schedule 2.2(c). All Notices delivered to the Contractor's Representative, or, in OPG's sole and absolute discretion, to his or her designated delegates (provided that the Notice relates to a matter within the designated delegate's scope of authority), by OPG will be as binding on the Contractor as if given to the Contractor under section 13.3. OPG may rely on any written instructions, directions or approvals provided by the Contractor's Representative or his or her designated delegates (provided that such instructions, directions or approvals are within the designated delegate's scope of authority). OPG's determination as to whether or not a matter is within the scope of authority of a designated delegate of the Contractor's Representative will be conclusive, so long as OPG has acted in good faith and does not have actual Notice that the matter is not within the designated delegate's scope of authority. The Contractor will take all reasonable steps to ensure that the Contractor's Representative and all designated delegates are accessible to OPG during the performance of the Work (including outside of normal working hours in cases of emergencies) and are available to render any necessary decisions or instructions promptly to avoid delays to the Progress Schedule.

2.3 Kick off and Subsequent Meetings

(a) Preparation Phase. Within 10 Business Days of the date of this Agreement, the Contractor will:

(1) meet with all appropriate Persons, including OPG's Representative to confirm, among the Parties and such Persons, the manner and approach in fulfilling the requirements of this Agreement;

(2) meet with individuals designated by OPG's Representative to confirm design requirements and approach;

(3) identify and analyse requirements of applicable Governmental Authorities with whom consultation is to be undertaken in respect of the Work or the Project; and
(4) obtain such additional information that it deems necessary for providing all Work.

(b) **Kick-Off Meeting.** Within 10 Business Days of the date of this Agreement, OPG’s Representative will arrange a kick-off meeting. The Contractor will ensure attendance by its authorised representatives and any representatives of Subcontractors, including senior management, as required by OPG. At this meeting the Parties will discuss safety and environmental protection programs (including those of Subcontractors) and requirements, the hazards associated with the Work, labour matters, design concepts, schedules, procedures for handling Submittals, communication protocols, procedures for processing each Application for Payment, delivery procedures for the Site, records maintenance, Site security and any other matter raised by a Party.

(c) **Steering Committee.** The Senior Management Representatives of each Party will convene a steering committee (the “Steering Committee”) promptly after execution of this Agreement. The Steering Committee will be composed of the Senior Management Representatives of each Party. The expectation is that the Senior Management Representatives will attend and will only use delegates of equal seniority occasionally. The Steering Committee will meet at any time at the request of OPG, and will otherwise meet at least quarterly. The Steering Committee will resolve outstanding Disputes, review progress reports and address issues which affect or could affect the Contract Schedule or the Reimbursable Work Target Cost.

(d) **Subteams.** Where the Contractor has established subteams responsible for designated aspects of the Work, each such subteam will hold a kick-off meeting promptly.

(e) **Meetings.** In addition to the kick-off meeting, the Contractor will schedule, attend and conduct such other pre-construction, construction, pre-job mark up (including resolution of jurisdictional issues), hazard review, site co-ordination, weekly (or daily as required by OPG) progress review meetings and commissioning meetings as are requested by OPG or are otherwise desirable, including any meetings required by the Specifications. The Contractor will include in the agenda of any such meeting any issue
requested by OPG. Progress review meetings will usually focus on safety, environmental matters, labour requirements, procedures, progress, clarifications of the requirements of this Agreement and scheduling (including interfaces between Persons providing services at the generating station). The Contractor will ensure that all Subcontractors and other Persons requested by OPG will attend these meetings. The Contractor will ensure that each representative of the Contractor and any Subcontractor attending meetings will be qualified and authorised to act on behalf of the Party each represents. The Contractor will provide the space for the meeting. The Contractor will prepare and distribute minutes of each meeting within three Business Days thereafter.

2.4 Safety

(a) Primary Goal.

(1) Safety is the core value of the Project. The safety of OPG’s personnel, the Contractor’s Personnel, individuals at or near the Sites, and the public is of paramount concern to OPG. In providing the Work, the Contractor will not in any manner endanger the safety of, or unlawfully interfere with the Contractor’s Personnel, members of the OPG Group or any other Persons on or off the Sites, including the public. In accordance with N-GUID-09701-10011: Safety Management Essentials for Nuclear Refurbishment as amended from time to time (the “Safety Management Essentials”), as described in section 2.4(c), the Contractor is required to demonstrate that continuous improvement is a key component of its health and safety managed system. The Contractor is expected to apply the “Plan, Do, Check, Act and Re-Direct” steps of the continual improvement process to support the achievement of world class safety for the Refurbishment Program.

(2) The Contractor acknowledges that during the Refurbishment Program, OPG will be generating power and operating some of the Units at the DNGS that are outside of the construction island of the Refurbishment Program. As such, the Contractor will strictly adhere to the construction islands established by OPG and OPG’s Contractor Access Request Protocol for Darlington Refurbishment as amended from time to time (the “Access Request Protocol”), as per sections 2.4(j)(2) and 2.15. Further, as the refurbishment of the
Units is completed, the other Units will be taken offline and the construction islands will be re-established to accommodate the progress in the Refurbishment Program. The Contractor also acknowledges that Other OPG Contractors are also required to work on the Refurbishment Program and the Contractor will cooperate with OPG and such Other OPG Contractors to complete the Project.

(3) The Contractor and its Subcontractors will maintain a level of safety equivalent to that of OPG employees while getting to and from the Sites, as well as when working at the Sites. OPG will require that the Contractor's safety programs have been submitted for compliance review within the last 3 years. If they have not been submitted, the Contractor will submit its safety programs at least 30 days prior to the execution of this Agreement. The Contractor will also prequalify safety program of all of its Subcontractors to a level equivalent to that of OPG contractor pre-qualification process. The Contractor will work collaboratively with OPG and Other OPG Contractors to prevent the occurrence of injury, illness or damage related to the Project, and will accept nothing short of zero incidents as the goal of the Project.

(b) **Constructor.** OPG will be the “constructor” in respect of the Refurbishment Program, which includes the Work at the Sites, for the purposes of the *Occupational Health and Safety Act* (Ontario). OPG will submit the required notice of the Project and registration form to the applicable Governmental Authority. The Contractor acknowledges that OPG has provided to the Contractor a list of all the designated substance reports for the Sites attached as Schedule 2.4(b).

(c) **Safety Management Essentials Framework.** There will be one overarching health and safety performance specification set out in the Safety Management Essentials issued by OPG to the Contractor and Other OPG Contractors performing work under the Refurbishment Program, establishing one common core value of safety, one common safety policy, one common set of safety rules, one common safety agreement, an integrated set of specific safety principles, objectives, responsibilities, expectations, measures (metrics and targets), evaluations and verifications for the management of safety
by OPG and all contractors working on the Refurbishment Program. The Safety Management Essentials will apply to both OPG and the Contractor and its Subcontractors, and will be integrated into all workplace Parties’ management systems, goals and processes (i.e. policies, rules, leadership, specific Project safety plans, procedures, training, communications, quality control, work direction, etc.) for all phases of the Project. The Contractor and all Other OPG Contractors are required to work collaboratively to implement the Safety Management Essentials.

(d) Deliverables. Based on the Safety Management Essentials, the Contractor will develop a health and safety program for the Project (the “H&S Program”) that will meet or exceed the requirements of OPG as described in the Safety Management Essentials. The H&S Program will include a specific Contractor-developed safety plan associated with managing safety risks for every major Project phase (the “Site Specific Safety Plan” or “SSSP”), which will be developed in accordance with Schedule 2.4(d), as applicable. The Contractor’s H&S Program and SSSP will be submitted to OPG for review 30 days prior to the commencement of the Work. Associated work tasks will be identified by the Contractor, assessed for health and safety risks and planning of the Work will be based on a graduated risk approach. The Contractor will ensure that all Subcontractors work to the same standards for safety as those that apply to the Contractor. The Contractor will develop the H&S Program and the SSSP that:

(1) are in compliance with all Applicable Laws;

(2) to the extent not inconsistent with section 2.4(d)(1), meet or exceed the Safety Management Essentials and any additional safety requirements established by OPG, all of which may be amended from time to time;

(3) to the extent not inconsistent with sections 2.4(d)(1) and 2.4(d)(2), promote best practices respecting health and safety in a manner that recognizes and minimizes the risks to Contractor’s Personnel, members of the OPG Group and any other Persons on or off the Sites, including the public and the property of any Person including members of the OPG Group, the Contractor or any of its Subcontractors.
The Contractor will also be responsible for developing and issuing compliance plans to the Ministry of Labour for any Ministry of Labour orders received.

(e) **Revisions to the H&S Program and Site Specific Safety Plan.** No later than 30 days prior to commencing any Work at any Site, the Contractor will amend and supplement its initial safety plan described in the H&S Program and provide to OPG, for its review, a more detailed SSSP, which will continue to meet the requirements of section 2.4(d). The Contractor will provide OPG’s Representative or OPG’s Designated Delegate with written Notice and will forward to OPG for OPG’s review, within one Business Day of making the same, any changes made to its H&S Program or the SSSP during the course of providing the Work. To the extent not inconsistent with section 2.4(d), the Contractor will amend the SSSP in accordance with any OPG instruction.

(f) **Monitoring.** OPG will monitor the Contractor’s and Subcontractor’s compliance with the requirements of this section 2.4 through field inspections. The Contractor will rectify any deficiencies immediately upon written or verbal direction from OPG’s Representative. OPG undertakes to confirm in writing any verbal direction from OPG’s Representative within 24 hours. OPG may also have any aspect of the SSSP reviewed by a third-party expert or advisor designated by OPG. The Contractor will provide these Persons with prompt access to the Sites and all premises and documents required for such review. The Contractor will forward to OPG, without delay, any change to the Workplace Injury Summary report rating of the Contractor or of any Subcontractor providing the Work at the Sites.

(g) **Effect of Review.** If OPG reviews, comments on, accepts, rejects or fails to review, comment on, accept or reject any aspect of the Contractor’s H&S Program and/or SSSP for phases and/or specific Project tasks (including at a meeting or as part of OPG’s inspections or reviews), or if the Contractor or a Subcontractor satisfies or fails to satisfy any comments or concerns of OPG, such action or failure to act will not in any way relieve the Contractor from any of its safety obligations under this Agreement.

(h) **Joint Health and Safety Committee.** The Contractor will be responsible for participating on the Joint Health and Safety
Committee (the “JHSC”) for the Refurbishment Program, which will include OPG’s Representative as a member and representation from Other OPG Contractors. The JHSC will establish a trades committee for the Refurbishment Program.

(i) **Safety Representative.** The Contractor will provide a qualified and experienced full time health and safety representative for the Project to act as the single point of contact for the Contractor with respect to health and safety on the Site/Project. The Contractor will ensure that this representative’s obligations include: ensuring that the Contractor and the Contractor’s Personnel comply with all Applicable Laws and obligations under this Agreement as they relate to health and safety of workers in regard to the Work, the training of the Contractor’s Personnel and other Persons on the Sites at any time in safety and the safety requirements of this Agreement or ensuring that such Persons are properly trained to undertake the applicable Work; prevention of accidents; the maintaining, reviewing and revising of the H&S Program and SSSP; and the maintaining and rolling up of safety performance and trend data for the Project for all trades. The Contractor will provide to OPG’s Representative routine reports of safety quality and performance on a prescribed basis.

(j) **Safety Precautions and Remedies.**

(1) **Protection.** Subject to a written or verbal direction from OPG’s Representative to the Contractor, the Contractor will be solely responsible for initiating, maintaining, reviewing, revising and supervising all safety precautions and programs in respect of the Work. The Contractor will take all necessary precautions (including ensuring that all of the Contractor’s Personnel are equipped with, and properly use, all safeguards and personal protective equipment necessary for the provision of the Work) for the safety of, and will provide the necessary protection to prevent damage, injury or loss resulting from the provision of the Work, to:

(A) each Person who is on the Sites or who may otherwise be affected by the provision of the Work, including the Contractor’s Personnel, members of the OPG Group, inspectors, visitors and members of the public;

(B) any of the Goods, whether in storage on or off the Sites;
(C) the Project; and

(D) any other property on, under, over or near the Sites, whether belonging to OPG or to any other Person, including buildings and other structures, facilities, fences, gates, pavements, roadways, sidewalks, walks, vegetation and utilities that are not designated for removal and disposal in the course of providing the Work.

(2) **Access Protocol.** The Contractor will cooperate with OPG to establish procedures for admitting OPG’s Representative and/or any other Person designated by OPG to the Sites/Project. The Contractor will submit these procedures to OPG’s Representative for review no later than 30 days prior to the Contractor commencing any Work on the Sites. As provided for in sections 2.4(a)(2) and 2.15, the Contractor will comply with the Access Request Protocol when requesting access to an Other OPG Contractor’s project/site or when accommodating Other OPG Contractors access to the Site/Project.

(3) **Work Protection.** The Contractor will perform all Work under work protection ensuring that equipment being worked on is safely isolated and de-energized. Generally, OPG will provide isolation and de-energization, although the Contractor is responsible for coordinating all work protection with OPG’s Representative. Under special circumstances, suitably trained and qualified members of the Contractor’s Personnel may be permitted to apply trades administered work protection in accordance with OPG’s work protection code. Unless the Contractor has elected otherwise in its SSSP, OPG’s work protection code will be deemed to have been approved by the Contractor for the Goods and Work.

(4) **Repair of Damage.** To the extent that any third party, such as a utility, owner of underground facilities or owner of property (excluding OPG and its subsidiaries) on, under, over or near the Sites suffers or incurs any Losses to any property caused by the Contractor or a Subcontractor, the Contractor will remedy such Losses in a timely manner and at the Contractor’s expense. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or
proceedings for Losses made against any member of the OPG Group by any Person in respect of any breach by the Contractor of its obligations under this section 2.4. For certainty, the Contractor’s obligations to indemnify OPG under this section 2.4(j)(4) will not extend to Losses for which the Contractor or a Subcontractor is not liable pursuant to section 4.6(b).

(5) Safety Reports. During the performance of the Work, the Contractor will report all safety incidents described in the table attached as Schedule 2.4(j)(5) to OPG’s Representative within the specified times listed in the table, such reporting to include but not being limited to the following:

(A) an immediate oral report by a senior executive of the Contractor to OPG’s Representative of all Occupational Health and Safety Act (Ontario) reportable accidents and occurrences, incidents of a serious nature (actual injuries and near misses) which are defined to be incidents that result in, or could reasonably be expected to result in, death from either immediate or delayed effects or permanent total and/or partial disability; that is, where an individual is disabled to the point where maintaining gainful employment is unlikely, or where an individual sustains a critical or serious injury, including any serious incident requiring medical attention off of the Sites or “near miss” incidents which do or could have resulted in the death of, or serious injury to, the Contractor’s Personnel or another Person on or off the Sites or an incident which has resulted in the death of or serious injury to the Contractor’s Personnel or another Person on or off the Sites; and which could or does result in external agency and public/media attention or presence;

(B) within 24 hours of an accident, construction occurrence or incident report, a copy of all accident, construction occurrence and incident reports which the Contractor or any Subcontractor, is required to submit in respect of the Work under the Occupational Health and Safety Act (Ontario) or the Workplace Safety and Insurance Act, 1997 (Ontario);

(C) within 24 hours of an accident, construction occurrence or incident report, the entering by the Contractor of any
applicable reporting documentation into the OPG Station Condition Reporting Database in the form of OPG's approved Station Condition Report;

(D) within 24 hours of a visit by representatives of the Ontario Ministry of Labour, notice of that visit conspicuously posted in the workplace and copies of any reports, orders to comply, charges, stop work orders, and notices of compliance under the Occupational Health and Safety Act (Ontario) or other Applicable Laws;

(E) a copy of the minutes of each meeting of the JHSC posted to the Health and Safety bulletin boards in the workplace; and

(F) as part of each progress report, a report of safety statistics for the previous month for the Contractor and all Subcontractors providing Work at the Sites. The Contractor will include in this report:

(i) a brief description of each incident and injury;

(ii) the number of injuries resulting in a member of the Contractor’s Personnel or another Person requiring medical aid/attention;

(iii) the number of “near miss” incidents which could have resulted in the death of, or serious injury to, a member of the Contractor’s Personnel or another Person including the public;

(iv) the number of injuries resulting in a member of the Contractor’s Personnel’s absence from one or more complete shifts;

(v) the time off/days lost each member of the Contractor’s Personnel takes off from work for each injury;

(vi) the number of Ontario Ministry of Labour Orders to Comply received by the Contractor or a Subcontractor; and
(vii) the total number of person hours worked by the Contractor’s Personnel at the Sites broken down between the Contractor and each Subcontractor.

(6) **Stop Work Orders.** The Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation and/or claims for losses or damages where an order to comply, stop work order or any similar order or notice respecting the Work is issued by the Ontario Ministry of Labour or any other Governmental Authority or OPG (by OPG’s Representative), or in respect of a stop work order or any similar order issued on a unilateral or bilateral basis by the JHSC, where in OPG’s opinion, acting reasonably, the stoppage is necessary to protect the safety of Persons or property, or is required to investigate safety incidents, except to the extent that an action of OPG or another member of the OPG Group or an Other OPG Contractor has resulted in such order or notice. For certainty, the Contractor will not be entitled to make any claims against OPG for extensions of time, additional compensation, and/or claims for losses or damages in respect of any time during which any investigation pertaining to an existing or potential stop work order was ongoing, except as otherwise expressly set out in this section 2.4(j)(6). To the extent OPG or another member of the OPG Group or an Other OPG Contractor was responsible for such order or notice, this situation will be deemed to constitute an excusable delay for the purposes of section 6.2(a). The Contractor will promptly deliver to OPG’s Representative a copy of any such order or notice, along with a description of the Contractor’s plan in respect of how to address such order or notice. The Contractor will not recommence any Work that has been stopped or suspended without the prior written approval of OPG’s Representative.

(7) **Project Hazard Analysis.** As part of the development of the SSSP and in accordance with the Safety Management Essentials, the Contractor will perform a safety hazard analysis to identify all significant Project safety hazards for each phase of the Project. Based on this analysis, the Contractor will prepare the SSSP which will document how the Contractor will address all significant safety hazards identified in each phase of the Project. The Contractor will conduct all the Work at the Sites in accordance with the SSSP.
Contractor will provide a copy of the SSSP to OPG’s Representative 30 days prior to the commencement of the Work. The Contractor will promptly provide a copy of any revised SSSP made during the course of providing the Work to OPG’s Representative or OPG’s Designated Delegate. The Contractor will make changes to its SSSP as required by OPG to the extent not inconsistent with Applicable Laws.

(8) **Job Safety Analysis.** The Contractor will prepare a detailed job safety analysis in a form substantially similar to the form attached as Schedule 2.4(j)(8) for each sequential job step in the provision of the Work on the Sites and in accordance with the Safety Management Essentials. The Contractor will provide an authorized copy of each job safety analysis to OPG’s Representative or OPG’s Designated Delegate before the provision of any of the Work to which a job safety analysis relates/is required. The Contractor will revise and resubmit a job safety analysis, where required, to account for any changes to the Work made in accordance with this Agreement or the Contractor’s planned work methods. The Contractor will promptly deliver to OPG’s Representative or OPG’s Designated Delegate any job safety analysis requested by any such individual. The Contractor will identify in each job safety analysis the actual and potential hazards associated with each job step in the provision of the Work and will develop controls and barriers for each actual and potential hazard. The Contractor will clearly communicate to all applicable Contractor’s Personnel the contents of each job safety analysis, as revised, before such Persons commence their applicable part of the Work. The Contractor will make changes to any job safety analysis as required by OPG to the extent not inconsistent with Applicable Laws.

(9) **Investigations.** The Contractor is required to investigate all safety incidents as prescribed in sections 2.4(j)(5)(A)-(D) and Schedule 2.4(j)(5) and, where prescribed, will participate and cooperate with OPG, and any Governmental Authority acting within its legal authority, in reporting and investigating safety violations caused by any act or failure to act of the Contractor or any Subcontractor. The Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation and/or claims for losses or damages where the Contractor is required to
investigate safety incidents caused by any act or failure to act of the Contractor or any of its Subcontractors. Except to the extent the Contractor or any of its Subcontractors is not responsible for the circumstances giving rise to a safety violation, the Contractor will pay OPG for the portion of the reasonable costs and expenses incurred by OPG in respect of steps taken by OPG to investigate, report and/or alleviate the safety situation.

(10) **Emergencies.** Included in the SSSP will be written procedures developed by the Contractor to be followed in the event of an emergency involving an entity not part of the OPG Group, a copy of which will be provided to OPG upon request. In emergencies affecting the safety or protection of individuals, the Goods, Work or Project or property on, under, over or near the Sites, the Contractor, without the express consent of OPG, will take reasonable actions to prevent or minimize all threatened or actual damage, injury and loss. Subject to section 6.2(a), the Contractor may not make, and expressly waives, any claims against OPG for extensions of time, additional compensation and/or claims for losses or damages where the Contractor is required to evacuate or assemble in the event of a response to an emergency. The Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of any emergency medical treatment provided by any member of the OPG Group to any of the Contractor’s Personnel or any invitee of the Contractor or any Subcontractor, except to the extent arising out of gross negligence or wilful misconduct of such member of the OPG Group.

(11) **Requirement to Leave.** In the case of an emergency requiring the Contractor to leave the Sites at the direction of OPG, the Contractor will put all equipment and the affected Sites in a safe state in accordance with the *Occupational Health and Safety Act* (Ontario) and leave the affected Sites in an orderly fashion pending further instructions from OPG’s Representative.
(12) **Hazard Communication Programs.** The Contractor will co-ordinate all exchanges of material safety data sheets and other hazard communication information respecting the Work required by the *Occupational Health and Safety Act* (Ontario), *Technical Standards and Safety Act* (Ontario), Ontario Fire Code, Construction Regulation O.Reg. 213/91, and WHMIS O.Reg. 860, and any other Applicable Laws, to be made available to, or exchanged between or among, Persons at the Sites.

### 2.5 Environment

(a) **Compliance and Protection.** In addition to the Contractor’s obligation to comply with all Applicable Laws, the Contractor will perform the Work in a manner that:

1. protects health and the environment;
2. complies with the requirements of environmental assessments, environmental assessment approvals required for the Project, if any, and the Approvals;
3. complies with the Contractor’s Environmental Management Program (as defined in section 2.5(c)), which will be developed as described in section 2.5(c);
4. adequately anticipates, protects and plans for impacts to the environment, including spills, erosion and sedimentation, waste disposal and the use, storage and disposal of hazardous materials (as regulated under the *Environmental Protection Act* (Ontario)) and designated substances (as defined in the *Occupational Health and Safety Act* (Ontario)); and
5. uses all commercially reasonable efforts to reduce, reuse and recycle non-hazardous and non-radioactive waste.

(b) **Environmental Guideline Framework.** There will be one overarching environmental performance specification set out in N-SUID-09701-10013: Nuclear Projects – Environmental Requirements Guideline as amended from time to time (the “Environmental Guideline”), issued by OPG to the Contractor and Other OPG Contractors performing work under the Refurbishment Program. The Environmental Guideline will apply to the Contractor and its
Subcontractors, and will be integrated into all workplace parties’ management systems.

(c) **The Contractor’s Environmental Management Program.** Based on the Environmental Guideline, the Contractor will develop and maintain an environmental management program, which will include specific environmental protection plans, that will meet or exceed the requirements as described in the Environmental Guideline (the “Contractor’s Environmental Management Program” or “CEMP”). The Contractor will submit the CEMP to OPG for review 30 days prior to the commencement of the Work. OPG will review and accept the CEMP in accordance with the process as described in the Environmental Guideline.

(d) **Permission.** The Contractor will obtain the prior written consent of OPG’s Representative, in the form attached as Schedule 2.5(d) before:

1. discharging, releasing, emitting or depositing; or
2. disturbing any vegetation or wildlife on the Sites through discharging, releasing, emitting or depositing any substance, material, solid, liquid, gas, odor, heat, sound, vibration or radiation exposure which is prohibited, limited or regulated by Applicable Laws, or the CEMP. Under no circumstances is OPG capable of consenting to any action that would be in breach of Applicable Laws.

(e) **Notices.** The Contractor will immediately provide OPG’s Representative with written Notice in the form attached as Schedule 2.5(e):

1. of any changes to the CEMP and any additional plans made during the course of providing the Work for OPG’s review and prior acceptance;
2. of any discharges, spills, releases, emissions, deposits or leaks of:
   
   (A) fuels, oils, hydraulic fluid, herbicides; or
(B) any substance, material, solid, liquid, gas, odor, heat, sound, vibration or radiation exposure which is prohibited, limited or regulated by any Applicable Law, or the CEMP, that occur at or near the Sites or that occur with materials owned or controlled by the Contractor or a Subcontractor;

(3) upon receipt of any order, directive, written notice or other communication whatsoever received from any Governmental Authority respecting any substance, material, solid, liquid, gas, odor, heat, sound, vibration or radiation exposure to which is prohibited, limited or regulated by any Applicable Law, together with a copy of such order, directive, written notice or other communication; and

(4) upon receipt or issuance of any reporting or communication whatsoever from or to any Governmental Authority, together with a copy of such reporting or communication, in respect of the Work.

(f) Clean up. The Contractor will be responsible for the lawful transport, receipt, inspection, use, storage and disposal of any substance, material, solid, liquid, gas, odor, heat, sound, vibration or, subject to section 3.4, radiation that is brought on to the Sites by the Contractor or any of its Subcontractors or created at the Sites during the provision of the Work. The Contractor will, to the satisfaction of all applicable Governmental Authorities and OPG, in a timely manner, prevent all discharges, spills, releases, emissions, deposits or leaks contrary to, and clean up, dispose of and otherwise comply with all requirements of:

(1) Applicable Laws;

(2) to the extent not inconsistent with section 2.5(f)(1), OPG’s current policies, procedures and programs applicable to the Sites or to the Work or Goods; or

(3) to the extent not inconsistent with sections 2.5(f)(1) and 2.5(f)(2), the CEMP, as amended in accordance with section 2.5(e)(1), respecting all discharges, spills, releases, emissions, deposits or leaks of any substances, materials, solids, liquids, gas, odor, heat, sound, vibration or radiation whatsoever that are caused by the Contractor or any of its
Subcontractors and that occur at or near the Sites or that occur with materials owned or controlled by the Contractor or any of its Subcontractors.

(g) **Disposal of Hazardous Waste.** Unless otherwise specified in this Agreement, the Contractor may not dispose of any waste, including any hazardous waste (as that term is defined in the regulations to the *Environmental Protection Act* (Ontario)) and any designated substances (as that term is defined in the *Occupational Health and Safety Act* (Ontario)), or disturb any vegetation, on, under, over or near any property owned, leased or licensed 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 the Sites. The Contractor will not incorporate any designated substances in the Project.

(h) **Remedy for Breach.** The Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person in respect of any breach by the Contractor of any of its obligations under sections 2.5(a) to 2.5(g) inclusive. For certainty, the Contractor’s obligations to indemnify OPG under this section 2.5(h) will not extend to Losses for which the Contractor or a Subcontractor is not liable pursuant to section 4.6(b).

2.6 **Applicable Laws and Approvals**

(a) **Applicable Laws.** The Contractor will comply with all Applicable Laws and all Codes and Standards and, to the extent not inconsistent with Applicable Laws or applicable Codes and Standards, the Prudent Practices, in respect of the Work. OPG will not be responsible for monitoring the Contractor’s compliance with any Applicable Laws, standards, specifications, manuals or codes of any technical organisation or Governmental Authority or Prudent Practices. Except as expressly set out in this Agreement, the Contractor will submit, and provide a copy to OPG of, all notices, requests, documents, instruments and certificates to all applicable Governmental Authorities as may be required in respect of the Work.
(b) **Approvals.** Except as expressly set out in section 3.4(c) and except for the Approvals in respect of: (i) the Unit Primary Side cleaning process classification for penetration (if required); and (ii) Unit Secondary Side cleaning process classification for system diagram, both of which will be obtained by OPG from the Canadian Nuclear Safety Commission, the Contractor will obtain and pay for all Approvals. The Contractor will provide technical criteria, written descriptions and design data required for obtaining all such Approvals. OPG will assist the Contractor upon request to obtain such Approvals. All fees and other charges respecting all such Approvals will be at the Contractor’s own cost.

(c) **Codes and Standards.**

(1) The Contractor will, in applying Codes and Standards in the performance of the Work and provision of the Goods:

(A) apply any Codes and Standards to the extent required by the Specifications; and

(B) to the extent the Specifications do not specify Codes and Standards that are required for an aspect of the Work or Goods, apply such Codes and Standards as the Prudent Practices would make applicable in the circumstances, provided that such Codes and Standards are not inconsistent with this Agreement and that such Codes and Standards permit the Contractor and OPG to comply with their respective obligations under this Agreement.

(2) If newer Codes and Standards become effective after the date of this Agreement, OPG and the Contractor will consult as to the application of the newer Codes and Standards to the Work or the Goods. Notwithstanding such consultation:

(A) if the newer Codes and Standards are required by Applicable Laws, the Contractor will, subject to section 5.4, apply the newer Codes and Standards to the Work and the Goods; and

(B) if the newer Codes and Standards are not required to be applied by Applicable Laws, OPG may, in its sole discretion, require, by providing 30 days prior written Notice to the
Contractor, that the Contractor apply the newer Codes or Standards to the Work and the Goods. For certainty, the Contractor will not apply newer Codes and Standards not required by Applicable Laws to the Work and the Goods until the Contractor receives such prior written Notice from OPG. Any such Notice will be deemed to be a Project Change Directive pursuant to section 5.2.

(3) If the Contractor becomes aware of an actual or proposed revision to any Codes and Standards applicable to the Work or Goods, the Contractor will provide OPG with prompt Notice of the actual or proposed revision.

(d) **OPG Code of Conduct.** The Contractor will 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, as amended from time to time. The current copy of the code is located at [www.opg.com](http://www.opg.com) and has been reviewed by the Contractor.

### 2.7 Schedules

(a) **Schedules.** The Work will be governed by the following schedules:

1. the Contract Schedule, which sets out the high level milestones for the Work and which fixes the dates by which the Contractor commits to complete specified aspects of the Work;

2. the Progress Schedule, which sets out the detailed Contract Schedule for completion of the Work, indicating the dates for starting and entirely completing each component of the Work, and including a reference to each milestone set out in the Contract Schedule and each Submittal set out in the Submittal Schedule. The Baseline Progress Schedule will be updated in accordance with the Submittal Schedule (such schedule, as updated from time to time, the “Progress Schedule”); and

3. the Submittal Schedule, which sets out the dates and/or permitted time periods for delivery of all Submittals required for the Work. The Contractor will ensure that the Submittal Schedule provides for sufficient time for review of Submittals by OPG (or OPG’s Designated Delegates) and for the Contractor to revise Submittals.
in accordance with the terms of this Agreement. The preliminary Submittal Schedule attached as Schedule 2.7(a)(3) will be updated as set out therein (such schedule, as updated from time to time, the "Submittal Schedule").

(b) Initially Acceptable Schedules. Any review, comment, acceptance, rejection or failure to review, comment, accept or reject by OPG of the Progress Schedule, in whole or in part, will not:

(1) impose on OPG responsibility for the sequencing, scheduling or progress of the Work;

(2) be deemed to confirm that any schedule is a reasonable plan for providing the Work in accordance with the Progress Schedule;

(3) affect or change the Contractor’s obligation to provide the Work in accordance with this Agreement; or

(4) otherwise have the effect of transferring any obligation under this Agreement from the Contractor to OPG or otherwise have the effect of amending this Agreement.

(c) Adherence to Schedules. The Contractor will adhere to the Progress Schedule. The Contractor will provide OPG with a progress report, in the form attached as Schedule 2.7(c), setting out the status and progress of the Work and any deviations or anticipated deviations from the Progress Schedule. All progress reports will be prepared by the Contractor using accurate and validated data. All progress reports will be prepared and submitted by the Contractor to OPG weekly, bi-weekly, monthly, quarterly or otherwise, depending on OPG’s requirements. Frequency of progress reports will increase as necessary during times when a high degree of interface and co-ordination is required between OPG and the Contractor, or to resolve any matters that may impact upon the Contractor’s ability to complete the Work in accordance with this Agreement. To the extent that the Progress Schedule has not been, or is anticipated not to be, satisfied, the Contractor will indicate the total number of days set aside for contingencies that will be used and will provide OPG with satisfactory assurances, including, at the Contractor’s cost, recovery plans, involving all necessary additional resources, acceptable to OPG, that progress will be made to restore the
Progress Schedule. Any changes to the Contract Schedule require OPG’s prior written approval. Except for changes under Section 5, OPG may refuse to approve any changes to the Contract Schedule in its sole and absolute discretion. Any such refusal to approve any such change by OPG will not be subject to the dispute resolution procedures under Section 11 or any other claim by the Contractor.

(d) Continuing the Work. Notwithstanding any term in this Agreement (but provided that OPG continues to pay all undisputed amounts due and owing to the Contractor in accordance with the payment provisions under this Agreement and subject to section 13.5): (i) the Contractor will not stop or delay the provision of Work, in whole or in part, on account of any Dispute between the Contractor and OPG or between the Contractor and any other Person; and (ii) continue to provide all Work and Goods in a timely manner and continue to adhere to the Progress Schedule during any such Dispute, except to the extent, in respect of (i) and (ii) above, expressly directed to do so by OPG in a Project Change Directive, if any. Notwithstanding any term in this Agreement, the Contractor will, except to the extent, if any, expressly directed to suspend performance of the Work by OPG in a Project Change Directive, continue to provide all Work in a timely manner and continue to adhere to the Progress Schedule during any such Dispute.

(e) Work Notice to Proceed & Change to Start Date.

(1) Work Notice to Proceed. OPG, in its sole discretion, will issue a Work Notice to Proceed to the Contractor prior to the commencement of the Work before the scheduled Project launch date under this Agreement. No Work will be conducted under this Agreement prior to the scheduled Project launch date, unless OPG has issued such Work Notice to Proceed.

(2) Change to Start Date. OPG will have the right to change the start date for Work on each Unit in order to ensure that the start date meets OPG’s business objectives (including maximization of the useful life of each Unit). The Contractor may not dispute any such change, but may be entitled to compensation: (i) in accordance with section 2.7(e)(3) below, in the case of an earlier start date for any Unit; (ii) in accordance with sections 2.7(e)(4), 2.7(e)(5) and 2.7(e)(6) below, in the case of a delay to the start date of the first
Unit; and (iii) in accordance with section 12.1, in the case of a delay
to the start date of any subsequent Unit, which change to the start
date will be treated as a suspension for purposes of section 12.1.

(3) Early Start Costs. If OPG provides the Contractor with written
Notice of OPG’s decision to advance the start date for Work on a
Unit: (i) at least six months in advance of the Unit Breaker Open
Date, for the first Unit to be refurbished; or (ii) at least six months
in advance of the start date for Work, for any subsequent Unit, the
Contractor will not be entitled to any costs incurred by the
Contractor to commence Work on such earlier start date. If OPG
provides less than six months advance written Notice of such
change in accordance with the foregoing (but in any event OPG will
not provide less than 60 days advance written Notice), OPG will
compensate the Contractor for any reasonable extra direct costs (on
a Reimbursable Cost basis (for all applicable Work packages,
including Fixed Price Work and Firm Price Work) together with the
applicable Allowed Fee on such Reimbursable Costs, provided that
such Reimbursable Cost will not be taken into account for purposes
of calculating incentives and disincentives pursuant to section 8)
incurred by the Contractor to commence Work on the earlier start
date. Notwithstanding the foregoing, OPG will not advance the
start date for Work on the first Unit to be refurbished earlier than
60 days following the originally scheduled (as at the date of this
Agreement) Unit Breaker Open Date for such Unit.

(4) Standby Costs. If OPG provides the Contractor with at least six
months advance written Notice of OPG’s decision to delay the start
date for Work on the first Unit, the Contractor will not be entitled
to any costs incurred by the Contractor in standing by, except in
accordance with section 2.7(e)(6). If OPG provides less than six
months advance written Notice of such change, OPG will
compensate the Contractor for any reasonable extra direct costs (on
a Reimbursable Cost basis (for all applicable Work packages,
including Fixed Price Work and Firm Price Work) together with the
applicable Allowed Fee on such Reimbursable Costs, provided that
such Reimbursable Cost will not be taken into account for purposes
of calculating incentives and disincentives pursuant to section 8)
incurred by the Contractor during any period in which the
Contractor: (i) is standing by to commence Work on the first Unit; and (ii) cannot perform any other Work.

(5) **Demobilization and Remobilization Costs.** If OPG delays the start date for Work on the first Unit, the Contractor may propose a demobilization. If OPG approves such demobilization, OPG will compensate the Contractor for any reasonable extra direct costs (on a Reimbursable Cost basis (for all applicable Work packages, including Fixed Price Work and Firm Price Work) together with the applicable Allowed Fee on such Reimbursable Costs, provided that such Reimbursable Cost will not be taken into account for purposes of calculating incentives and disincentives pursuant to section 8) incurred by the Contractor in connection with such demobilization. If OPG disapproves of such demobilization, such Dispute will be resolved in accordance with Section 11. OPG will also compensate the Contractor for any reasonable extra direct costs (on a Reimbursable Cost basis (for all applicable Work packages, including Fixed Price Work and Firm Price Work) together with the applicable Allowed Fee on such Reimbursable Costs, provided that such Reimbursable Cost will not be taken into account for purposes of calculating incentives and disincentives pursuant to section 8) incurred by the Contractor for any subsequent remobilization that is approved by OPG.

(6) **Adjustment of Fixed Price Work.** If OPG delays the start date for Work on the first Unit for more than: (i) 3 months if the delay extends the start date until the next calendar year, or (ii) 6 months if the delay does not extend the start date until the next calendar year, then any portion of the Work that is Fixed Price Work will be deemed to be Firm Price Work and subject to economic cost adjustment as described in Schedule 5.7 in the same manner as applicable to Firm Price Work.

(7) **Adjustments.** OPG will issue a Project Change Directive reflecting the required adjustments, if any, to the Reimbursable Work Target Cost and/or the Contract Schedule resulting from a change made to the start date of a Unit pursuant to this section 2.7(e). If the Contractor does not agree with the adjustments set out in the Project Change Directive issued by OPG, such Dispute will be resolved in accordance with Section 11. Any adjustment to the
Reimbursable Work Target Cost will result in an adjustment to the Reimbursable Work Fixed Fee.

### 2.8 Submittals

(a) **Schedule for Submittals**

1. **The Submittal Schedule** will provide for a progressive and orderly flow of Submittals from the Contractor to OPG’s Representative to allow sufficient time for review of each Submittal by OPG’s Representative, taking into account both the resources available to OPG’s Representative to conduct such review and whether delay in the review of the subject matter of the Submittal will have a material impact on the Contractor’s ability to progress future anticipated Submittals and the Work in accordance with the Submittal Schedule.

2. The Submittal Schedule, and any amendment to the Submittal Schedule, will comply with the review period set out in Schedule 2.8(a), from the date of receipt for review of and response to each Submittal, provided that if the Contractor has made major changes to the grouping and volume of Submittals, such period of time will be adjusted by the Contractor, acting reasonably, taking into account the factors set forth in this section 2.8(a).

3. The Contractor will, in scheduling Submittals and in the performance of the Work, allow adequate time prior to performing the Work that are the subject of the Submittals, for review of the Submittals and for the Contractor to make changes to Submittals that may be required if comments are received on the Submittals, and such review and required changes will be in accordance with this section 2.8.

4. If the Submittal Schedule indicates that a large number of Submittals will be made at one time, OPG’s Representative may, at OPG’s Representative’s sole discretion, request a longer period for review or a staggering of the Submittals, and the Contractor will review and revise the Submittal Schedule accordingly, taking into account both the resources available to OPG’s Representative to conduct such review and whether delay in the review of the subject matter of the Submittals will have a material impact on the
Contractor's ability to progress future anticipated Submittals and the Work in accordance with the Submittal Schedule (provided that, with respect to any Fixed Price Work or Firm Price Work, any such delay will be the responsibility of the Contractor and will not be treated as an excusable delay pursuant to section 6.2(a) and the Contractor will not be permitted to propose a Project Change Directive and any costs incurred by the Contractor associated therewith will be borne by the Contractor).

(5) Notwithstanding the foregoing, OPG will utilize commercially reasonable efforts to provide final responses, in accordance with this section 2.8, subject to the terms of the agreed Submittal Schedule. The ordering and timing for the submittal of the foregoing documents will be developed and managed jointly by the Parties, acting reasonably. The Contractor will submit all Submittals to OPG in accordance with the Submittal Schedule.

(6) OPG will use commercially reasonable efforts to provide all of its substantive comments to the Contractor in OPG’s first review of a Submittal. The Parties acknowledge that it is their intention to minimize the number of review cycles for Submittals.

(b) General Requirements for Submittals

(1) The Contractor will ensure that any Submittals that are referred to in Schedule 2.8(b)(1) contain, at a minimum, the concepts or information as set forth in Schedule 2.8(b)(1).

(2) Except as otherwise specified in this Agreement or by OPG's Representative, the Contractor will issue all Submittals to OPG in a format acceptable to OPG. OPG may request that the Contractor (and the Contractor will) issue Submittals through OPG's “Nuclear Refurbishment Supplier Document Hub Website” or another similar website, as may be determined by OPG.

(3) The Contractor will compile and maintain a register of the date and contents of the submission of all Submittals and the date of receipt and content of all returned Submittals and comments thereon.

(4) All Submittals will be in English.
(5) All Submittals required by this Agreement or by Applicable Laws to be signed or sealed by Professionals will, where applicable, be so signed and sealed.

(6) All Submittals will include copies of all documents to be reviewed and will clearly identify the purpose of the Submittal and the Contractor's proposed course of action relating to the Submittal and the Work that is the subject of the Submittal.

(7) All Submittals will, where applicable, refer to the relevant provisions of this Agreement, including the Specifications and Submittals that have previously been subject to review.

(8) All Submittals will be clearly identified as a Submittal and will be delivered with appropriate covering documentation, which will include a list of all attached Submittals and for each Submittal, will include:

(A) the document number(s) or drawing number(s);
(B) the revision number(s) (if applicable);
(C) the document or drawing title(s);
(D) the name of the entity or entities that prepared the Submittal;
(E) the Submittal history showing date and delivery information and the log number(s) of any and all previous submissions of that Submittal; and
(F) identification of any previous Submittal(s) superseded by the current Submittal.

(9) The Contractor will perform the Work and will prepare all Submittals in accordance with all Applicable Laws, and, to the extent not inconsistent with Applicable Laws, Prudent Practices.

(10) With respect to all Submittals, the Contractor will report to OPG's Representative any error, inconsistency, omission or deviation from the requirements of this Agreement of which the Contractor becomes aware. OPG's Representative will discuss the error,
inconsistency, omission or deviation with the Contractor and the Contractor will propose and implement a solution satisfactory to OPG’s Representative.

(11) The Contractor will deliver each Submittal to OPG’s Representative in accordance with and in order to meet the Contract Schedule and, without limiting the foregoing, in a timely manner and orderly sequence, so as not to cause any delay in the Work. The Contractor will ensure that all Submittals comply with the requirements for Submittals set out in this Agreement, including the Specifications.

(12) The Contractor will review all Submittals before submitting them to OPG’s Representative. The Contractor’s review of each Submittal will be indicated by a stamp, seal (if applicable), date and the signature of the responsible and qualified member of the Contractor’s Personnel who conducted the review. Any Submittals not stamped, sealed (if applicable), dated and signed may be returned to the Contractor without being examined and will be considered not to have been submitted. For each Submittal, the Contractor will be deemed to represent that it has determined and verified all necessary requirements for such Submittal at such stage, including field measurements, field construction criteria, materials, catalogue numbers and similar data, and has checked and coordinated all Submittals with the requirements of the Specifications and the remainder of this Agreement. Together with any Submittal, the Contractor will notify OPG’s Representative or OPG’s Designated Delegates, as the case may be, of, and clearly show or describe, any deviation of that Submittal from any requirement under this Agreement.

(c) Comments

(1) OPG’s Representative or OPG’s Designated Delegates will review and respond to each Submittal in accordance with the review periods specified in Schedule 2.8(a). OPG’s Representative will return Submittals to the Contractor and assign one of the following three comments:

(A) “REVIEWED”;

(B) “REVIEWED AS NOTED”; or
(C) **"REJECTED"**.

(2) The comment **"REVIEWED"** will be assigned to those Submittals that, in the opinion of OPG’s Representative or OPG’s Designated Delegates, conform to the requirements of this Agreement. The Contractor will comply with and implement such Submittals.

(3) The comment **"REVIEWED AS NOTED"** will be assigned to those Submittals that, in the opinion of OPG’s Representative or OPG’s Designated Delegates, generally conform to the requirements of this Agreement, but in which immaterial deficiencies have been found by OPG’s Representative’s review. The Contractor will correct these Submittals and provide a copy of each corrected Submittal to OPG’s Representative or OPG’s Designated Delegates, provided that the Contractor may carry on the Work associated with such Submittals while such deficiencies are being corrected. The Contractor will comply with and implement such Submittals after correction, including in accordance with the comments, if any, provided by OPG’s Representative or OPG’s Designated Delegates. If at any time it is discovered that the Contractor has not corrected the deficiencies on Submittals stamped **"REVIEWED AS NOTED"**, then the Contractor will be required to modify the Submittals and Work, as required to ensure that the Work complies with this Agreement and the Contractor may be required, at OPG’s Representative’s or OPG’s Designated Delegates’ discretion, to resubmit relevant Submittals. In such circumstances OPG’s Representative or OPG’s Designated Delegates will act promptly in considering whether such deficiencies have been corrected.

(4) The comment **"REJECTED"** will be assigned to those Submittals that, in the opinion of OPG’s Representative, do not conform with the requirements of this Agreement. The Contractor will correct and re-submit these Submittals within 10 Business Days after the comment has been provided to the Contractor, or such longer period as the Contractor may reasonably require, and (unless the Submittals are re-submitted within five Business Days) will give OPG’s Representative or OPG’s Designated Delegates not less than five Business Days’ Notice of when the Submittals will be resubmitted. OPG’s Representative or OPG’s Designated Delegates will then review such re-submitted Submittals and assign a comment to the
corrected Submittals. The Submittals will be corrected, revised and resubmitted as often as may be required to obtain a comment that permits the Contractor to proceed and the Work associated with such Submittals may not be carried on until that time.

(5) Where OPG's Representative or OPG's Designated Delegates issue the comment "REVIEWED AS NOTED" or "REJECTED", OPG's Representative will provide reasons for the comment, referencing the particulars of the section(s) of this Agreement that the Submittal fails to satisfy, and, if requested by the Contractor's Representative, OPG's Representative will meet with the Contractor's Representative to discuss the reasons for the comment.

(6) If, at any time after assigning any comment to a Submittal, OPG's Representative, OPG's Designated Delegates or the Contractor discovers any significant deficiencies or any failure to conform to the requirements of this Agreement, OPG's Representative or OPG's Designated Delegates may revise the comment assigned to any Submittal. If the Parties agree or it is determined in accordance with section 2.8(d) that the revised comment is correct, the Contractor will make all such corrections to the Submittals and the Work.

(7) For the purpose of facilitating and expediting the review and correction of Submittals, OPG's Representative and the Contractor's Representative will meet as may be mutually agreed to discuss and review any outstanding Submittals and any comments thereon.

(8) Where a Submittal is voluminous, OPG's Representative or OPG's Designated Delegates at his or her discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to the Contractor the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to the Contractor. Any pages returned without such an explanation as to their status will be deemed to be "REVIEWED" by OPG's Representative or OPG's Designated Delegates.
(9) In lieu of returning a Submittal, OPG’s Representative or OPG’s Designated Delegates may by letter or e-mail notify the Contractor of the comment assigned to the Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter or e-mail will contain comments in sufficient detail for the Contractor to identify the correction sought.

(10) The Contractor will ensure that all Work is performed in accordance with each applicable finalized Submittal.

(11) Subject to section 6.2(a)(1) and section 2.8(a)(5), the Contractor will be responsible for recovering any time lost in the review process by reason of any error, inconsistency, omission or deviation from the requirements of this Agreement in the Submittals and, in any event, the Contractor will maintain the dates set out in the Progress Schedule.

(12) Unless otherwise agreed between the Parties in writing, where a Submittal is required by this Agreement or by the Progress Schedule, any Goods, or Work relating to that Submittal that are provided before OPG’s Representative or OPG’s Designated Delegates have completed their review of the Submittal (including any required revisions to the Submittal), will be at the sole risk, responsibility and expense of the Contractor.

(d) Disputes

(1) If the Contractor disputes any act of OPG’s Representative or OPG’s Designated Delegates in respect of a Submittal under this section 2.8, the Contractor will promptly notify OPG’s Representative of the details of such Dispute and will submit the reasons why the Contractor believes a different comment should be assigned, together with appropriate supporting documentation. OPG’s Representative will review the Submittal, the reasons and supporting documentation and within five Business Days after receipt thereof will either confirm the original comment or notify the Contractor of a revised comment.

(2) If either Party is not satisfied, acting reasonably, with the resolution pursuant to this section 2.8(d), either Party may refer the matter for determination in accordance with Section 11.
Any review and comment by OPG’s Representative or OPG’s Designated Delegates of any Submittal will be for conformity to the requirements of this section 2.8 and, as applicable, other requirements set out in this Agreement, and any such review and comment will not relieve the Contractor of the risk and responsibility for the Work and for meeting all of its obligations under and requirements of this section 2.8, and, as applicable, other requirements set out in this Agreement, and will not create any new or additional obligations or liabilities for OPG. Without limiting the generality of the foregoing any and all errors or omissions in Submittals or of any review or comment will not exclude or limit the Contractor’s obligations or liabilities in respect of the Work under this Agreement or exclude or limit OPG’s rights in respect of the Work under this Agreement. Unless otherwise agreed by the Parties, the Contractor acknowledges and agrees that any compliance with OPG’s Representative’s or OPG’s Designated Delegates’ comments will be without change to the Reimbursable Work Target Cost or Progress Schedule or the cost or schedule for Fixed Price Work or Firm Price Work, as applicable.

Submittal Explanation. At any time, OPG’s Representative may, acting reasonably, require the Contractor, at no additional cost to OPG, to explain to OPG’s Representative and OPG’s Designated Delegates the intent of the Contractor’s Submittals, including in relation to any Professional Work and any associated documentation.

Revisions

The Contractor will ensure that each Submittal keeps the same, unique reference number throughout the review process, and that subsequent revisions of the same Submittal are identified by a sequential revision number. Correspondence related to such Submittal will reference the reference number and revision number.

Re-submittals will clearly show all revisions from the previous Submittal. Bound documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be
used (for example, deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing.

(3) All revisions on print media will be initialed by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and will identify the persons who initialed the Submittal. Electronic versions of the Submittal will identify the persons who initialed the revisions to the printed version of the Submittal. All such revisions must be able to be integrated into the design.

(4) The Contractor will keep the Professional Work current. If any Professional Work work-product is revised as part of a Submittal, the designs relying on or based on those Professional Work will also be revised accordingly. All such revised work will also be submitted with the Submittal to which it relates.

(g) Audit by OPG’s Representative

(1) Without limiting any other right under this section 2.8 or section 2.19, OPG’s Representative and the Canadian Nuclear Safety Commission ("CNSC"), the Technical Standards & Safety Authority ("TSSA") or other Governmental Authority will have the right to audit all Submittals, including comparing all Submittals to previous Submittals.

(2) If during an audit or at any other time it is discovered by OPG, the CNSC, the TSSA or other Governmental Authority or the Contractor (or resolved pursuant to section 2.8(g)(3)) that any Submittals were not correctly implemented, the Contractor will at its sole cost immediately take all necessary steps to correct and modify the applicable Submittals and the Work to which they relate and will advise OPG’s Representative of all such corrections and modifications.
(3) Any Dispute concerning the implementation of a Submittal, subject to section 2.8(d)(1), may be referred by either Party for determination in accordance with Section 11.

(h) CNSC Review. Where a review of any Submittal by the CNSC is required by Applicable Laws or OPG’s Power Reactor Operating License, or is necessary or desirable in order to obtain any CNSC license, then, OPG will coordinate such review by the CNSC and in addition to comments from OPG pursuant to section 2.8(c), the Contractor will reflect any comments on the Submittal provided to OPG by the CNSC, and on such timetable for review as OPG determines and on such timetable to reflect compliance with such comments.

(i) Effect on Cost and Schedule.

(1) With respect to any Fixed Price Work and Firm Price Work, with reference to sections 2.8(c)(3), 2.8(c)(4) and 2.8(c)(6), no extension of time will be given or additional compensation paid in respect of any such modification or re-submittal and any costs incurred by the Contractor associated therewith will be borne by the Contractor.

(2) With respect to Reimbursable Work, with reference to sections 2.8(c)(3), 2.8(c)(4) and 2.8(c)(6), no change to the Reimbursable Work Target Cost or Progress Schedule will be made in respect of any such modification or re-submittal, but any costs incurred by the Contractor associated therewith will be Allowed Costs, provided that the Contractor has not been negligent and has followed its quality management plan.

2.9 Professional Work

(a) Provision. The Contractor will provide all the Professional Work necessary or desirable to provide the Work.

(b) Specifications. The Contractor will promptly provide Notice, in the form of document attached as Schedule 2.9(b), to OPG’s Representative of any error, deficiency, defect, inconsistency, discrepancy, omission or deviation from the requirements of this Agreement in the Specifications of which the Contractor becomes aware, including with respect to the items listed in Schedule 2.1(g).
After the Contractor provides OPG’s Representative with all information reasonably requested by him or her, OPG’s Representative will discuss the error, deficiency, defect, inconsistency, discrepancy, omission or deviation and provide a prompt direction to the Contractor resolving the issue by way of a Project Change Directive. Except with respect to the items listed in Schedule 2.1(g), if the Specifications, or any portion of them, are found to be in error, deficient, defective, inconsistent, incomplete or deviate from the requirements of this Agreement in any way, the Contractor will perform, at its cost, any corrective work to remedy the erroneous, deficient, defective, inconsistent or incomplete part of the Specifications and take any other remedial action with respect to the Work or Goods arising in respect of such error, deficiency, defect, inconsistency, discrepancy, omission or deviation. All Work provided after the Contractor became aware of such error, deficiency, defect, inconsistency, discrepancy, omission or deviation from the requirements of this Agreement will be at the Contractor’s sole risk until OPG’s Representative makes a decision as to how to reconcile or fix the error, deficiency, defect, inconsistency, discrepancy, omission or deviation. If the Contractor fails to so provide Notice to OPG’s Representative under this section 2.9(b) respecting any such error, deficiency, defect, inconsistency, discrepancy, omission or deviation, the Contractor may not make any claim whatsoever against OPG respecting such error, deficiency, defect, inconsistency, discrepancy, omission or deviation.

2.10 Optional Work and Contingency Work

(a) **Optional Work.** In the event that OPG elects to proceed with Optional Work on any Unit, OPG will issue an Optional Work Notice to Proceed to the Contractor for such Unit no later than 45 Business Days prior to the scheduled commencement date for such Optional Work. No Optional Work will be conducted on a Unit prior to the issuance of an Optional Work Notice to Proceed for that portion of Work by OPG.

(b) **Contingency Work.** In the event that Contingency Work is required pursuant to the Specifications, the Contractor will, in good faith and consistent with the terms and conditions of this Agreement, prepare, with the assistance and input of OPG, draft specifications.
(based where applicable on the relevant Specifications) for the performance of such Contingency Work (the "Contingency Work Specifications"). If OPG and the Contractor reach agreement on all components of the Contingency Work Specifications together with any required changes to the Contract Schedule, the Submittal Schedule, the Progress Schedule or the Contract Price, as the case may be, OPG and the Contractor will promptly execute an Amendment to this Agreement reflecting the agreed changes. Such Amendment will attach the Contingency Work Specifications together with updated versions of the Contract Schedule, Submittal Schedule, Progress Schedule and the Contract Price, as the case may be. For certainty, any required changes to the Contract Price will be developed in a manner consistent with the pricing principles reflected in Schedule 7.1. No Contingency Work will be conducted on a Unit prior to the execution of an Amendment for that portion of Work by OPG.

2.11 Procurement, Warranty on Goods, Quality Assurance and Expediting

(a) **Procurement.** Except to the extent otherwise expressly provided in this Agreement, the Contractor will be responsible, at its cost, for manufacturing, supplying or procuring, factory testing, transporting, delivering, inspecting, receiving and installing all Goods and providing all services reasonably required in respect of the Work. The Contractor will conduct all these activities in accordance with this Agreement, including Schedule 2.11.

(b) **Intentionally Deleted.**

(c) **Quality Assurance.**

(1) **Quality Assurance Program.** The Contractor will implement, maintain and comply with an OPG-approved auditable quality assurance program in accordance with its own internal program and the requirements, if any, set out in the Specifications. If there are any conflicts between the Contractor's internal program and the Specifications, the Specifications will prevail. Compliance with these quality assurance requirements will not relieve the Contractor from any of its obligations or liabilities under this Agreement. The Contractor will ensure that all of the Work is provided in accordance with the applicable quality assurance
program. OPG may have any aspect of the quality assurance program of the Contractor reviewed by any auditors designated by OPG. The Contractor will, at its expense, provide such auditors prompt access to all premises and documents required for such review. The Contractor's quality assurance program will:

(A) ensure the workmanship used to perform the Work will fully meet the requirements of this Agreement, including the Specifications;

(B) meet applicable elements for design (engineering), procurement and construction services of CSA N286-05, Management System Requirements for Nuclear Power Plants, as amended, restated or replaced from time to time; (as a guideline with respect to applicable elements of CSA N286-05 for EPC Services, refer to memo N-CORR-01930-0387907 P dated July 11, 2011);

(C) conform with the requirements of CSA Quality Standard Z299.1 or such equivalent quality standard agreed to by OPG that may replace said standard;

(D) meet applicable elements for design software (use, modification or development) of CSA N286.7, Quality Assurance of Analytical, Scientific and Design Computer Programs for Nuclear Power Plants;

(E) meet the requirements of CSA N285.0, General Requirements for Pressure Retaining Systems and Components in CANDU Nuclear Power Plants, as amended, restated or replaced from time to time. All pressure boundary activities will be carried out in compliance with CSA N285.0 and where required under a "Certificate of Authorization" issued by the Technical Standards and Safety Authority;

(F) meet the Electric Power Research Institute guidelines with respect to the prevention and detection of Counterfeit, Fraudulent and Suspect Items (CFSI); and
(G) ensure that Subcontractor evaluation and selection is performed in compliance with the requirements of the applicable elements of CSA N286-05 and CSA Z299 series of quality standards or such equivalent quality standard agreed to by OPG that may replace said standards.

(2) **Quality Documents.** The Contractor will provide OPG with signed and dated legible copies or originals of all inspection documents pertaining to the Work or Goods, including their installation and testing. The Contractor will retain all quality assurance documentation and records for seven years after the Final Completion Date or for any longer period specified in the Specifications.

(3) **Effects of Non-Conformance.** If the Contractor or OPG identifies anything which does not conform to the quality assurance program set out in section 2.11(c)(1), the Contractor will promptly correct such non-conformance (unless the Contractor proposes to “use as is”) and deliver a Notice in the form of Schedule 2.11(c)(3) to OPG’s Representative reporting the corrective action proposed to be taken by the Contractor, or that the Contractor proposes to “use as is”, describing such proposal in Appendix A to such Notice (which Appendix A will detail all assumptions, the validation of such assumptions and any supporting calculations, studies or reports). OPG’s Representative will review the Contractor’s Notice within the review period set out in Schedule 2.8(a), sign it and send it back to the Contractor: (i) indicating OPG’s agreement with the proposed disposition on the terms set out in Appendix B of the Contractor’s Notice; or (ii) directing the Contractor to comply with the Specifications and the quality assurance program, such agreement and direction being in OPG’s sole discretion. A copy of any Notice delivered to OPG under this section 2.11(c)(3) will be retained and properly archived by the Contractor.

(4) **Quality Assurance Plan.** The Contractor will provide OPG with its quality assurance plan which will be submitted as a Submittal in accordance with the Submittal Schedule. The quality assurance plan will govern the provision of all Work including the Work of all Subcontractors. The Contractor represents and warrants that the quality assurance plan:
(A) complies with all Applicable Laws and is consistent with the requirements of this Agreement; and

(B) includes provision for audits by OPG (or OPG’s Representative) of the scope and nature contemplated by the quality assurance plan and the Contractor’s compliance with the quality assurance plan regarding any aspects of the Work.

(d) **Expediting Work.** If in OPG’s sole and absolute discretion the Contractor is not providing the Work in accordance with the Contract Schedule, or the quality of Work or Goods does not meet the requirements of this Agreement, OPG may take any steps to expedite any Work that OPG’s Representative believes requires expediting. The Contractor will, at the Contractor’s own cost, promptly following receipt of Notice, in the form of Schedule 2.11(d) from OPG’s Representative make such changes as are, in the opinion of OPG’s Representative, necessary to provide the Work in accordance with the Contract Schedule.

2.12 **Construction**

(a) **Direction and Competent Supervision.** The Contractor will provide (including all direction, supervision and inspection of) the Work competently and efficiently, devoting such attention and applying such skills and expertise, as may be necessary to provide the Work in accordance with this Agreement. The Contractor will at all times maintain good discipline and order at the Site. The Contractor will be solely responsible for the means, methods, techniques, sequences and procedures used to provide the Work. The Contractor will ensure that the Work complies with this Agreement. The Contractor will keep OPG advised as to the quality and progress of the Work and the Project in such manner and at such times as OPG may request from time to time. Unless OPG agrees otherwise in writing, the Contractor will follow the Oral Review Board process detailed in Schedule 2.12(a) to evaluate the suitability of all Persons who are to be appointed to supervisory positions.

(b) **Temporary Structures and Facilities.** The Contractor will have the sole responsibility for:
(1) the design, erection, operation, maintenance and removal of all
temporary structures and facilities at the Site; and

(2) the design and execution of construction methods required in the
use of such structures and facilities.

(c) **Time for Provision of Work.** Except:

(1) to the extent reasonably required for the safety or protection of
any individual, the Work, Goods, Project or property on, under,
over or near the Site;

(2) to the extent otherwise provided in this Agreement, including the
Specifications and the Contract Schedule;

(3) where OPG's Representative provided his or her prior written
consent; or

(4) as required by the Refurbishment Program schedule,

the Contractor will ensure that all Work at the Site will be provided
between 7 a.m. and 6 p.m. on Business Days.

2.13 **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 Work at the Site, including the responsibilities
described in the Tooling and Materials Management Plan together with all work
protection in respect of such Contractor's Property. OPG assumes no responsibility or
liability for the Contractor's Property and no act or inaction of OPG will result in a
transfer of such responsibility or liability. Notwithstanding the foregoing, OPG will take
reasonable care of any of the Contractor's Property that is in OPG's possession or
control only if OPG's Representative has accepted responsibility in writing for such part
of the Contractor's Property prior to possession or control being transferred to OPG. In
such event, the Contractor will ensure that it has provided such accountable or more
senior person with appropriate shipping, handling, storage or other instructions and will
ensure that such accountable or more senior person has agreed in writing to take
reasonable steps to comply with such instructions. The Contractor will be responsible to
commission its tooling. Any permanent and temporary modifications to systems,
structures and components will be commissioned by the Contractor as per OPG
governance.
2.14 Labour and Subcontractors

(a) **Competent Workers.** The Contractor will ensure all of the Contractor’s Personnel assigned to the Work or the Site, including the Contractor’s Representative and his or her delegates, are:

(1) qualified because of knowledge, training and experience to organise the Work and its performance;

(2) familiar with the *Occupational Health and Safety Act* (Ontario) provisions that apply to the Work;

(3) understand, and have the necessary skills to perform, their roles and obligations under this Agreement including those relating to safety, the environment, quality assurance, labour requirements, nuclear safety requirements and Site rules and procedures; and

(4) have knowledge of any potential or actual danger to health or safety in the workplace.

(b) **Apprentices.** The Contractor will work with local unions representing trades required for the Work to develop an apprenticeship methodology for such trades, with the intention that such apprenticeship methodology will result in 20 percent or greater of such personnel in apprenticeship roles for the Project.

(c) **Contractor Fully Responsible for Workers and Subcontractors.** The Contractor will be solely responsible for providing, scheduling and co-ordinating the Subcontractors and the Contractor’s Personnel. The Contractor will co-operate with Other OPG Contractors in all matters of common interest pertaining to services being provided under agreements between OPG and such Other OPG Contractors, and ensure that the Work being provided on the Site does not obstruct the operations of OPG or Other OPG Contractors providing services at or near the Site, subject to section 2.15(h). Except where OPG’s Representative requests in writing a specified form of communication, the Contractor will communicate with OPG and all such Other OPG Contractors solely through OPG’s Representative. Except where OPG’s Representative requests in writing a specified form of communication, the Contractor will ensure that all Subcontractors communicate with OPG solely through the
Contractor. The Contractor will be fully responsible for all acts and omissions of each member of the Contractor's Personnel and each of the Subcontractors and any such acts and omissions will be deemed to be those of the Contractor. Accordingly, respecting each obligation of the Contractor under this Agreement, the Contractor will ensure that no worker of the Contractor, no Subcontractor and no worker of any Subcontractor will breach any such obligation. In addition, respecting each action which the Contractor is not permitted to take under this Agreement, the Contractor will ensure that no worker of the Contractor, no Subcontractor and no worker of any Subcontractor will take any such action that is not permitted. Where any Subcontractor provides any of the Work or Goods, the Contractor will ensure that the Subcontractor names OPG as a beneficiary under any performance, labour and material payment or lien bond posted in respect of those Work or Goods.

(d) Identity of Subcontractors. Set out in Schedule 2.14(d) is a list of each Subcontractor providing any of the Work, where the value of all contracts with that Subcontractor, on a Unit-by-Unit basis, exceeds $250,000, together with a summary of the Work to be provided by each such Subcontractor. The Contractor will not:

1. change any such Subcontractor;
2. change in a material manner the Work provided by any such Subcontractor; or
3. add any new Subcontractor who will be providing any material amount of the Work or Goods,

unless OPG's Representative consents in writing to such change or addition.

(e) Subcontracts. The Contractor will ensure that all Subcontractors and all Contractor's Personnel comply with the terms of this Agreement as are applicable to them, including the terms relating to safety, environment, quality assurance, labour requirements, nuclear safety requirements, OPG's audit rights and step-in rights, and Site rules and procedures. The Contractor will enter into a written contract with each Subcontractor providing any of the Work that specifically binds the Subcontractor to the applicable terms of
this Agreement, including the terms relating to safety, environment, quality assurance, labour requirements, nuclear safety requirements, OPG’s audit rights and step-in rights and Site rules and procedures and this section 2.14, for the benefit of OPG. The Contractor will use commercially reasonable efforts to ensure that:

(1) each such contract contains a term stating: “Notwithstanding any term in this Agreement, the Parties commit to each other and to Ontario Power Generation Inc. that each party will comply in all respects with section 2.14(e) of the engineering, procurement and construction agreement dated as of December 30, 2013 between Ontario Power Generation Inc. and Babcock & Wilcox Canada Ltd. and Candu Energy Inc.”; and

(2) each such contract with a Subcontractor respecting the Work or Project will give OPG or OPG’s Designated Delegate the right to continue the contract with the Subcontractor in the place of the Contractor if OPG decides to entirely finish the Work in accordance with sections 9.8(c) or 10.3. In the case of assumption of a subcontract by OPG, all invoices submitted by the Subcontractor will be in the name of OPG,

provided that: (i) the Contractor will provide OPG with a written Notice of any failure to obtain such terms and conditions from any Subcontractors; (ii) notwithstanding the foregoing, the Contractor will specifically bind Key Subcontractors (as defined in section 2.2(b)) or any successor thereto or replacement thereof, to the foregoing terms; and (iii) nothing in this section 2.14(e) will relieve the Contractor of its obligation and liabilities under this Agreement and the Contractor will remain fully responsible for all acts and omissions of its Subcontractors. At the request of OPG, the Contractor will provide copies (unpriced in the case of subcontracts for Fixed Price Work or Firm Price Work) of any subcontract (or evidence otherwise acceptable to OPG) that such subcontract complies with this section 2.14(e).

(f) **Labour Obligations.** The Contractor will comply with all obligations set out in Schedule 2.14(f) including those set out in the “Labour Requirements Clause – Form 1” attached to Schedule 2.14(f). The Contractor will indemnify and save harmless OPG from and against any and all Losses suffered or incurred by OPG on account of claims made or grievances filed by any unions on account of any breach by
the Contractor of the obligations set out in Schedule 2.14(f) in the course of providing the Work or on account of other non-unionized labourers providing portions of the Work.

(g) **WSIB.** The Contractor’s Workplace Safety and Insurance Board (“WSIB”) account number is [redacted] (for B&W) and [redacted] (for CEI). The Contractor will be and remain at all times in good standing with the WSIB. Upon initial arrival on the Site, and from time to time at the request of OPG, the Contractor will submit a certificate of compliance from the WSIB as to the Contractor’s status and that of all Subcontractors that will be providing Work at the Site. Together with the letter, the Contractor will submit a list of the WSIB registration numbers of each of the Contractor’s Personnel who will be employed at the Site, and will thereafter update the list as the Work progresses.

(h) **Foreign Nationals.** The Contractor will obtain at its own cost all Approvals from all applicable Governmental Authorities respecting all foreign nationals who may be engaged in providing the Work in Canada.

(i) **Reasonable Objections by OPG.** The Contractor will not use, as part of the Contractor’s Personnel, any individual against whom OPG has a reasonable objection. The Contractor will promptly remove from the Site any such Person whom OPG’s Representative does not consider competent or otherwise considers unsuitable for providing the applicable Work, including for failure to comply with any applicable health or safety obligations or any other obligations under this Agreement.

(j) **Payment of Subcontractors.** The Contractor will pay in a timely manner all costs (including Taxes) respecting Work provided or caused to be provided by a Subcontractor on the Site which could result in any Lien being filed under the *Construction Lien Act* (Ontario) or otherwise against any property owned, leased or licensed 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 the Site. If the Contractor fails to make any such payment in a timely manner that is properly due and owing, OPG may make payment directly to the applicable Subcontractor. At the request of OPG, the Contractor will cause the Subcontractor to issue any unpaid invoice directly to
OPG. Section 7.6(d) will apply in respect of any such payment. Where OPG makes any such payment, OPG may set off the full amount of any such payment against any amount otherwise owing by OPG to the Contractor and OPG may withhold any amount required by Applicable Laws.

(k) **Liens.** Subject to Liens filed by the Contractor acting reasonably, the Contractor will keep title to the Site and every part of the Site free and clear of all Liens respecting the provision of the Work. The Contractor will indemnify and hold harmless OPG from and against all Losses suffered or incurred by OPG and all claims, demands, actions, suits or proceedings for Losses made against OPG by any Person in respect of any Liens registered by a Subcontractor against any property owned, leased or licensed 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 the Site. The Contractor will immediately notify OPG of any such Lien, claim of Lien or other action of which it has knowledge and which affects the title to any property owned, leased or licensed 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 the Site. If any Lien is registered against any such property, in whole or in part, including the Site, by a Subcontractor, the Contractor will cause the Lien to be vacated or discharged from title as soon as possible and in any case within five Business Days of registration. If the Contractor fails to vacate or discharge any such Lien in a timely manner, OPG may vacate or discharge that Lien by paying into court any sum or providing such security as may be necessary to vacate or discharge the Lien. In addition, the Contractor will immediately reimburse OPG on demand for all OPG’s costs and expenses respecting the discharge, including the amount of the payment into court, the cost of any such security, OPG’s legal fees and expenses and a reasonable charge for time spent by OPG personnel. OPG may set off the full amount of any such reimbursement obligation against any amount otherwise owing by OPG to the Contractor.

(l) **Security Checks.** OPG will perform an employment suitability check for each of the Contractor’s Personnel from time to time. Upon request by OPG, the Contractor will, at its own cost, submit to OPG’s Representative the information required by OPG for each of the OPG
identified Contractor’s Personnel. The information that OPG requires, such as photographic identification, birth certificate and citizenship card, may vary from individual to individual, depending on the individual’s background and circumstances. OPG may require, from time to time, that any of the Contractor’s Personnel complete OPG forms for security clearance. These forms may include a five year, or more, residence and work history. If any of the Contractor’s Personnel have not resided in Canada for more than five years, OPG will require that such Contractor’s Personnel provide further information, including references, education credentials and criminal record checks. OPG may require any supporting documentation to be verified in a manner established by OPG, including by notarising. If OPG determines that any of the Contractor’s Personnel is unsuitable for any reason, or if OPG is not satisfied with the timeliness, accuracy, validity, adequacy or completeness of any of the information received by OPG, then the Contractor will ensure that the applicable Contractor’s Personnel is replaced immediately, at its own cost. OPG will maintain all the information submitted to OPG under this section 2.14(1) in accordance with Applicable Laws.

2.15 Use of Site and Other Areas

(a) **Documents to be Maintained on Site.** The Contractor will maintain in a safe place on the Site one record copy of this Agreement (including all Amendments), Submittals, Project Change Directives and quality assurance documentation, in good order and annotated to show all changes made during the provision of the Work. The Contractor will make all these documents available to OPG at any time for reference at the Site. On Unit Primary Side Completion for each Unit, the Contractor will deliver those documents requested by OPG to OPG at the time and place designated by OPG.

(b) **Access to Areas.** If the Contractor requires access to any area outside of the Site, the Contractor will obtain, at its own cost, such access for such purposes as the Contractor requires.

(c) **Designated Areas.** The Contractor will ensure that:

(1) all Goods, construction equipment, tools, fuel and temporary structures and facilities, including for offices, lunchrooms, canteens,
sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal, whether in use or in storage; and

the operations of the Contractor and all Subcontractors will be restricted only to the Designated Areas and any other areas outside of the Site permitted by Applicable Laws. The Contractor will ensure that all such temporary structures and facilities will be of metal construction and will be removed from OPG’s property when any such structure or facility is no longer needed, and in any event, within 60 days of the Final Completion Date. If the Contractor does not so remove any such structure or facility, OPG may remove such structure or facility at the Contractor’s cost. The Contractor will conduct all activities in the Designated Areas in accordance with this Agreement.

(d) **Site Conditions.** The Contractor will keep all of the Contractor’s Personnel fully informed in a timely manner of all Site rules and conditions and any changes to such rules and conditions.

(e) **Contractor Responsibility for Damages.** The Contractor will have exclusive responsibility for any damage, injury or loss caused by the Contractor to any area on the Site, including street curbs and sidewalks, or to OPG or any other occupant of the Site or to any adjacent area, respecting the providing of the Work. The Contractor will make good any such damage, injury or loss. If any claim, demand, action, suit or proceeding is made against OPG by any Person for any Losses arising in respect of the Work or Goods, the Contractor will promptly resolve the claim. The Contractor will indemnify and hold harmless OPG, from and against all Losses suffered or incurred by OPG and all claims, demands, actions, suits or proceedings for Losses made against OPG by any Person, to the extent arising in respect of the Work or Goods, including in respect of any breach of any Applicable Laws. For certainty, the Contractor’s obligations to indemnify OPG under this section 2.15(e) will not extend to Losses for which the Contractor or a Subcontractor is not liable pursuant to section 4.6(b).

(f) **Clean Site.** During the providing of the Work on the Site, the Contractor will keep the Site, and any roads and sidewalks used in the course of providing the Work, free from accumulations of rubbish, debris and other waste materials (OPG will be providing
common services at the Sites for snow and ice removal, landscaping, roadways maintenance, garbage disposal and security). The Contractor will implement a housekeeping program to ensure that, in the course of providing the Work, all rubbish and debris is kept to a minimum and cleared away daily and that all materials are stored in a safe manner. Promptly following Unit Secondary Side Completion or Unit Primary Side Completion, as the case may be, for each Unit, the Contractor will remove all rubbish, debris and other waste or surplus Goods from and about the Site as well as all applicable construction equipment, tools, fuel, temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal, and all other Goods not otherwise necessary to complete punch list items, all in accordance with the Specifications. Except as set out in section 2.15(c), any materials remaining to complete punch list items will be removed by no later than the Unit Primary Side Completion Date for each Unit. The Contractor will leave the Sites clean, safe and ready for use and occupancy by OPG as of the Unit Secondary Side Completion or Unit Primary Side Completion, as the case may be. The Contractor will restore to original condition, as at the date of this Agreement, reasonable wear and tear excepted, all property altered by the Contractor, its Subcontractors or the Contractor’s Personnel that was not designated for alteration by this Agreement. In addition, the Contractor will provide any other cleaning activities required as part of this Agreement. For certainty, nothing in this section 2.15(f) will require the Contractor to remove any rubbish, debris and other waste from and about the Site, if such rubbish, debris and other waste were accumulated or brought to the Site by Persons other than the Contractor, its Subcontractors or the Contractor’s Personnel.

(g) **Load Limits.** The Contractor will not load the Project or the Site and will ensure that no part of the Project or Site will be loaded in any manner that will endanger the Project or Site. The Contractor will not subject any part of the Project or any property on, under, over or near the Site to unsafe stresses or pressures.
Access by Other OPG Contractors and OPG Personnel.

(1) The Contractor acknowledges that the Refurbishment Program will require OPG to grant Other OPG Contractors and OPG personnel access to all or parts of the Project and/or Sites or that the Contractor may require access to Other OPG Contractors’ projects and/or sites.

(2) The Contractor, in performing the Work, will do so in a manner that complies with contractor access and exit locations, boundaries, physical separations, designated aisle ways, etc. and in accordance with the Access Request Protocol (as defined in section 2.4(a)(2)). Other OPG Contractors will also be required to perform their work in accordance with the Access Request Protocol.

(3) The Contractor, in performing the Work, will do so in a manner that does not materially interfere with access by Other OPG Contractors and OPG personnel during performance of the Work, and the Contractor, the Contractor’s Personnel and all Subcontractors will comply with the Access Request Protocol and will not materially interfere with the work of Other OPG Contractors when having to access the project and/or site of an Other OPG Contractor. The Contractor will work co-operatively with each Other OPG Contractor and OPG to prevent material adverse interference with access to or the work taking place on any of the project(s)/sites by any of them.

(4) Without limiting the foregoing, the Contractor will, with such Other OPG Contractors, and OPG will so direct such Other OPG Contractors and OPG personnel to, cooperate and coordinate in a commercially reasonable manner all concurrent Project/Site activities and access to the Project/Sites. It is expressly acknowledged that neither Contractor nor such Other OPG Contractors has, or will have any presumptive rights over the Sites, and accordingly each will be required to interact in a commercially reasonable manner in the circumstances.

(5) In addition, the Contractor acknowledges that the interaction with such Other OPG Contractors and OPG personnel as contemplated by the foregoing provisions under this section 2.15(h) will not, in any event, be cause for excusable delay by the Contractor in
performance hereunder pursuant to section 6.2(a), nor support any claim for additional compensation, unless: (i) the Contractor has fully performed its obligations under this section 2.15(h) and such Other OPG Contractors have failed to meet their obligations as per the Access Request Protocol; or (ii) both the Contractor and such Other OPG Contractors have fully performed their obligations under this section 2.15(h) and met their obligations as per the Access Request Protocol, and OPG has made a determination to deny the Contractor’s request under the Access Request Protocol resulting in an extension of the Baseline Progress Schedule, provided that the Contractor’s request under the Access Request Protocol identifies whether such request may have an impact on the Baseline Progress Schedule.

2.16 Intellectual Property

(a) Grant of Intellectual Property Rights.

(1) Subject to section 2.16(c), the Contractor grants to OPG all rights (including ownership of the physical property) in the Work, Goods, Project, Submittals, results of the Work, and all other documents of any kind, designs, drawings (not including as built drawings, unless specifically provided for under the Specifications), diagrams, illustrations, schedules, performance charts, brochures, specifications, plans, photographs and other recordings, reports, manuals (including operating and maintenance manuals), information, data, models, samples and other deliverables, provided or required to be provided by the Contractor to OPG under this Agreement (collectively, the “Property”). Without limiting the foregoing but subject to section 2.16(c), this grant includes all intellectual property rights (including all trade secrets, confidential information, patents, patent applications, rights to file patents, trade-marks, trade-mark applications, rights to file trademarks, copyrights, industrial and similar designs, rights to file for industrial and similar designs, know-how, inventions, ideas, concepts, works, processes, discoveries, and techniques) (collectively, the “Intellectual Property”) in the Property relating to the physical plant modifications (or the operation thereof) at the DNGS to the extent contained, embedded or disclosed in or otherwise incorporated in design drawings, design calculations,
spare parts lists, operating and maintenance manuals (if required), maintenance, inspection and test results, non-conformance dispositions, training records, commissioning specifications, certified material test reports (CMTRs), as low as reasonably achievable plan (ALARAs), job safety analysis (JSA), and any other relevant designs, drawings or documents relating to physical plant modifications (or the operation thereof) (collectively, the “Station Modification Intellectual Property”). This grant of rights becomes effective in respect of each item of the Property on the completion of each such item. Effective on the date of each such grant, each such item becomes OPG’s Confidential Information.

(2) OPG grants to the Contractor a non-exclusive, irrevocable, perpetual, royalty free and fully paid up right to use, including the right to sublicense, the Station Modification Intellectual Property (collectively, the “Licence Back”) for any purpose. For certainty, the Contractor will not have any rights of ownership in the Station Modification Intellectual Property, and the Licence Back will be subject to the Contractor’s obligations under section 2.17, as well as security and nuclear safety and control restrictions under Applicable Laws, if any. OPG will have no liability whatsoever arising out of or in connection with the Contractor exercising its rights under the Licence Back.

(b) No Diminishing of Intellectual Property Rights. The Contractor will not take any action that may compromise or diminish the grant to OPG of rights in the Property. The Contractor will perform any acts required to confirm or document OPG’s rights in the Property. These acts include obtaining, at the request of OPG and at the Contractor’s expense, assignments of rights from the Contractor’s Personnel, as applicable, any applicable Subcontractor’s employees and any applicable Subcontractor. These acts also include providing, at OPG’s expense, access to the Contractor’s Personnel, as applicable, and any applicable Subcontractor to assist OPG to protect fully its rights in the Station Modification Intellectual Property.

(c) Exception. Notwithstanding any term in this section 2.16, the Contractor and each Subcontractor retains its rights, titles, interests,
benefits and privileges in its part of the following Intellectual Property:

(1) all Intellectual Property that can be established by the Contractor or the applicable Subcontractor through written records to: (i) have existed before the earlier of, the date of this Agreement or the date that the Contractor commenced the Work; or (ii) have been developed independent of the Work (the "Retained Intellectual Property"); and

(2) all Intellectual Property relating to the processes, methodologies and know-how of Contractor and its Subcontractors, including incremental improvements thereto, used to enable the fulfillment of this Agreement (the "Means & Methods IP").

(d) Licence. In respect of all such Retained Intellectual Property and Means & Methods IP in the Property (collectively, the "Contractor IP"), the Contractor grants to OPG, or, in the case of a Subcontractor, the Contractor will provide to OPG, at the Contractor’s cost, a perpetual, irrevocable, royalty-free, non-exclusive, fully paid up, non-transferrable (except as otherwise set out in this section 2.16(d)) licence, to:

(1) use all such Contractor IP in respect of the operation and maintenance, construction, commissioning, refurbishment, replacement, alteration, relocation, decommissioning, dismantling or demolition of the DNGS, in whole or in part;

(2) use all such Contractor IP in respect of any transaction relating to the financing, sale, lease or other transfer of rights to a successor in interest involving the generating station, in whole or in part, to which the Contractor IP applies;

(3) disclose any Retained Intellectual Property (but not Means & Methods IP) relating to the Station Modification Intellectual Property to any Person who requires such Retained Intellectual Property in respect of any of the actions referred to in sections 2.16(d)(1) or 2.16(d)(2), provided that such Person will be bound by confidentiality obligations substantially similar to those set out herein;
(4) use, reproduce, copy, transmit, modify and create derivative works from any Retained Intellectual Property (but not Means & Methods IP) for the purposes specified in sections 2.16(d)(1), 2.16(d)(2) or 2.16(d)(3); and

(5) sublicence any or all rights granted to OPG under this section 2.16(d) to an Affiliate of OPG or, with respect to Retained Intellectual Property relating to the Station Modification Intellectual Property (but excluding Means & Methods IP), to any Person who provides goods or services to OPG, to the extent required for provision of such goods or services in respect of any of the actions referred to in sections 2.16(d)(1) or 2.16(d)(2) and subject to confidentiality obligations substantially similar to those set out herein.

With respect to the rights granted under this section 2.16(d), OPG hereby acknowledges that any modification of any Contractor IP by OPG, any Affiliate of OPG or any Person who develops or provides goods or services to OPG (other than the Contractor and its Subcontractors) is at OPG's own risk.

(e) **Representation and Warranty.** The Contractor represents and warrants to OPG as follows.

(1) **No Suits.** There is no claim, demand or suit respecting any part of the Property, the Station Modification Intellectual Property or the Contractor IP.

(2) **No Potential Claims.** There is no potential claim, demand or suit that the Contractor is aware of respecting the Property, the Station Modification Intellectual Property, or the Contractor IP, in whole or in part, that could affect the performance, function or use of the Property, Station Modification Intellectual Property or Contractor IP, in whole or in part, as intended by this Agreement.

(3) **Ownership.** Before transferring ownership in the Property (including the Station Modification Intellectual Property but excluding the Contractor IP) to OPG, the Contractor is the exclusive owner of, and has good and marketable title to, all the Property. Except in regard to the Contractor IP, there is no ownership interest, agreement option or other right, title, benefit, interest or
privilege outstanding in favour of any Person for the purchase or licence from the Contractor of, or any Lien in favour of any other Person in, any of the Property.

(4) **Right to Grant Licence.** The Contractor has the right to grant the licence rights in the Contractor IP and will obtain such rights from Subcontractors as contemplated by this Agreement.

(f) **OPG’s Remedy for Breach.** The Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person arising in respect of any breach or infringement or alleged breach or infringement by any member of the OPG Group of any right of any third party in any of the Property, the Station Modification Intellectual Property or the Contractor IP, except to the extent that any such claims, demands, actions, suits or proceedings are based on: (i) a specific design, specific design change or a change in a specific arrangement of the Work, or a part or parts thereof, that OPG has directed the Contractor to perform pursuant to a Project Change Directive and such specific design, specific design change or change in a specific arrangement of the Work actually or allegedly infringes or violates such Person’s intellectual property rights, provided that the applicable Project Change Directive includes the following statement: “IT IS ACKNOWLEDGED AND CONFIRMED THAT OPG HAS DIRECTED THE CONTRACTOR TO PERFORM THE FOLLOWING SPECIFIC DESIGN, SPECIFIC DESIGN CHANGE OR CHANGE IN A SPECIFIC ARRANGEMENT OF THE WORK, OR A PART OR PARTS THEREOF: [INSERT SPECIFIC DESCRIPTION] AND, THEREFORE, THE PROVISIONS OF SECTION 2.16(f) OF THE AGREEMENT WILL APPLY”; or (ii) use of the Contractor IP other than as permitted under section 2.16(d). If any such claim, demand, action, suit or proceeding arises, the Contractor will, at its own cost:

1. obtain the right for OPG to continue using the Property, the Station Modification Intellectual Property and the Contractor IP in the manner intended by this Agreement;

2. make such modifications to the Property, the Station Modification Intellectual Property and the Contractor IP so that it becomes non-
infringing, without incurring any diminution in the performance, function or use of the Property, the Station Modification Intellectual Property or the Contractor IP, as intended by this Agreement; or

(3) replace the Property, the Station Modification Intellectual Property and the Contractor IP to the extent necessary with non-infringing substitutes, so long as such substitutes do not result in a diminution in the performance, function or use of the Property, the Station Modification Intellectual Property or the Contractor IP as intended by this Agreement.

2.17 Confidential Information

(a) Definition of Confidential Information. In preparation for, and in the course of, providing the Work, OPG and OPG’s Designated Delegates or the Contractor (each, a “Disclosing Party”) will disclose to the other Party (each, a “Receiving Party”) certain information which is confidential, a trade secret or otherwise proprietary to a Disclosing Party, including this Agreement and the fact that the Contractor is providing the Work (collectively, the “Confidential Information”). For certainty, when the Receiving Party is the Contractor, the Contractor will be fully responsible for any disclosure of OPG Confidential Information to or by any of its Subcontractors. Confidential Information does not include, however, information that a Receiving Party is able to demonstrate to a Disclosing Party’s satisfaction, acting reasonably:

(1) was or becomes generally known to the public through no fault of such Receiving Party, a Subcontractor or their respective shareholders, directors, officers, partners, members, representatives, agents, advisors or any of such Receiving Party’s personnel or any other Person for whom such Receiving Party or any Subcontractor is responsible at law; or

(2) was specifically known by such Receiving Party before disclosure by such Disclosing Party and was not subject to any confidentiality obligation.

(b) Ownership and Treatment of Confidential Information. All Confidential Information remains, at all times, the exclusive property
of a respective Disclosing Party. Except as expressly set out in this section 2.17(b) and in section 2.16(d), 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 Subcontractor’s 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 2.17(b) or in section 2.16(d).

(c) Return of Confidential Information. At any time, at a Disclosing Party’s request, a respective Receiving Party will deliver promptly to such Disclosing Party all, or such Disclosing Party-specified portion of, the Confidential Information, together with all copies, extracts or other reproductions in whole or in part of such Confidential Information. In addition, at any time, at such Disclosing Party’s request, such Receiving Party will destroy, demonstrably, promptly and irrevocably:

(1) all such copies, extracts or other reproductions of Confidential Information, or a Disclosing Party-specified portion of Confidential Information, which cannot, because of the device on which such Confidential Information is stored, be removed from the possession of such Receiving Party by delivery to such Disclosing Party; and

(2) all documents, designs, drawings, specifications, plans, reports, information and other deliverables or data whatsoever (regardless of the form, medium or device on which such Confidential Information is written, recorded, stored or reproduced) prepared in respect of the Work and which is based on any of the Confidential Information.

Notwithstanding the foregoing, (i) OPG may keep one copy of the Contractor’s Confidential Information for purposes of section 2.16(d) or to the extent consistent with good professional practice for a nuclear operator for legal purposes or for the purposes of submitting such Confidential Information to a Governmental Authority; (ii) the Contractor
may keep one copy of OPG’s Confidential Information to the extent required to satisfy its obligations under the Professional Engineers Act (Ontario) or to the extent consistent with Prudent Practices for legal purposes; and (iii) each Receiving Party will not be obligated to erase or destroy the Disclosing Party’s Confidential Information that is contained in an archived computer system back-up system, provided that in respect of (i), (ii) and (iii) above, such retained copies of Confidential Information will: (iv) continue to be considered Confidential Information and continue to be subject to the provisions of this section 2.17 for the duration of their retention; (v) be retained and destroyed in accordance with the Receiving Party’s standard retention, security or disaster recovery procedures, and (vi) with respect to (iii) above, be subject to restricted access, with no attempts being made to recover such retained copies of Confidential Information from such archived computer system back-up system.

Following such delivery and destruction, such Receiving Party will promptly provide such Disclosing Party with written confirmation of completion. In any event, Receiving Party will complete all such actions within 10 Business Days of receipt of such Disclosing Party’s initial request.

(d) Remedies. Each Receiving Party acknowledges that each Disclosing Party would not have an adequate remedy at law for money damages if the Receiving Party fails to fulfil any of its obligations under this section 2.17. Accordingly, in addition to any other remedies under this Agreement, each Disclosing Party will be entitled to any injunction, specific performance or other remedy in law or equity (without being required to post a bond or other security), in respect of any breach or threatened breach of this section 2.17 and in which case, each Receiving Party consents to any such injunction, specific performance or other remedy in law or equity. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of the Contractor’s breach or threatened breach of this section 2.17. OPG will indemnify and hold harmless the Contractor from and against all Losses suffered or incurred by the Contractor and all claims, demands, suits or proceedings for Losses made against the
Contractor by any Person, to the extent arising in respect of OPG’s breach or threatened breach of this section 2.17.

(e) **Application of Freedom of Information and Protection of Privacy Act (Ontario).** The Contractor acknowledges and agrees that OPG is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) (“FIPPA”). FIPPA applies to all Confidential Information in the custody or control of OPG and may require the disclosure of some or all of such Confidential Information to third parties. The confidentiality provisions in this Agreement are expressly subject to FIPPA. OPG will provide the Contractor, to the extent legally permissible, with Notice prior to such disclosure, so that the Contractor may take such action as may be deemed advisable.

(f) **AECL Confidential Information.** The Contractor acknowledges that the Confidential Information may include certain confidential information, including intellectual property and related documentation, that was created by Atomic Energy of Canada Limited (“AECL”) pursuant to one or more contracts between AECL and OPG (the “AECL Confidential Information”). The Contractor hereby covenants and agrees that it will use the AECL Confidential Information only in respect of the preparation for, and the providing of, Goods and the Work. The Contractor agrees that each of AECL and Her Majesty the Queen in Right of Canada are third party beneficiaries of the Contractor’s covenants in this section 2.17(f) with respect to the AECL Confidential Information and will be entitled to enforce the Contractor’s confidentiality obligations with respect to the AECL Confidential Information against the Contractor as though each was a party to this Agreement. The Contractor will ensure that, before disclosing any AECL Confidential Information to any Person, it will obtain from that Person in writing the same covenants that the Contractor is providing to OPG and the third party beneficiaries under this section 2.17(f) with respect to the AECL Confidential Information. Except as expressly set out in this section 2.17(f), the Contractor has no right to use or disclose any AECL Confidential Information for any other purpose whatsoever.

2.18 **Language and Units of Measure**

(a) **Use of English Language.** The Contractor will ensure that all communication between OPG and the Contractor and between the
Contractor and each of the Subcontractors respecting the Work will be in English, including all drawings, notes on drawings and Submittals.

(b) **Units of Measurement.** Except as expressly set out in this Agreement to the contrary, the Contractor will ensure that the International System of Units (SI) will be used for all purposes respecting the Work, including the calibration of any Goods.

### 2.19 Records and Audits

(a) **Records.** The Contractor will compile and maintain at the Site and/or provide electronic access from the Site or as otherwise reasonably requested by OPG, in accordance with this Agreement and Applicable Laws, detailed, itemized records of all items covered by each Application for Payment, including all Work (including documents, designs, drawings, specifications, plans, reports, information and other deliverables and data) and Goods. On an ongoing basis, the Contractor will provide such records in a useable format to OPG. The Contractor will maintain these records for the period expiring on the latest of:

1. seven years following expiration or termination of this Agreement;
2. the period of time as may be specified in the Specifications;
3. the period of time as may be required by Applicable Laws; and
4. such other period as OPG may set out in a Notice to the Contractor, having regard to OPG policies and/or applicable regulatory requirements.

(b) **Audits.**

1. OPG may, at any time during the term of this Agreement and within two years of the Final Completion Date, require from the Contractor satisfactory evidence of any aspect of the Contractor's compliance with the Contractor's obligations under this Agreement (including, for certainty, any satisfactory evidence of the calculation or substantiation of any cost figures supplied by the Contractor) in accordance with this section 2.19(b). OPG may, through its own auditors or auditors designated by OPG, inspect, audit and copy all
records and other information, and interview all relevant Contractor’s Personnel, respecting such evidence and compliance, in accordance with this section 2.19(b). The Contractor will ensure that, for all Work performed on a Reimbursable Costs basis (which, for certainty, includes Work performed under any fixed/firm price subcontracts), each B&W, CEI and the Subcontractors retain all such records and documents, on a “single set of books” basis (which, for certainty, means a separate set of books kept specifically for the Project that includes all required records and documents from the Contractor and Subcontractors) for the Project, including all records and documents from Subcontractors, as may be reasonably requested by OPG on an ongoing basis, which will include without limitation, proper timesheets, equipment-related records, accounts, invoices, payroll records and bank records (for transactions relating to the Project) which are necessary for OPG to verify the nature and quality of such Reimbursable Work and the accuracy of invoices for actual costs incurred by the Contractor hereunder for the Work performed. Timesheets will identify the provider of the Reimbursable Work, the Work performed, the location of the Work, the relevant period of time during which the Work was performed and the hours incurred. The Contractor’s actual costs, including actual labour rates, for all Work performed on a Reimbursable Costs basis will be “open book” and will be subject to audit by OPG on an ongoing basis during the term of this Agreement. Actual costs will only be reimbursed if they are capable of being fully audited from source documents and if OPG is reasonably satisfied, on the basis of documentation provided to OPG by the Contractor, that such costs are not Disallowed Costs. The Contractor’s completion of milestones will also be subject to audit by OPG on an ongoing basis during the term of this Agreement. The Contractor will, and will cause its Subcontractors to, maintain all such records for seven years following the Final Completion Date and such records will remain available, upon reasonable written Notice by OPG, for review and inspection by OPG or its designates. In addition to the Contractor’s obligations under section 2.19(a) above, the Contractor and any Subcontractor will provide copies of any or all such records to OPG upon request. For certainty, (i) OPG will not audit cost inputs for Fixed Price Work and Firm Price Work or the makeup of the agreed to Reimbursable Work Fixed Fee, (ii) OPG will audit fixed price work and firm price work performed on a
Reimbursable Costs basis under a fixed/firm price subcontract for compliance with this Agreement (but, for certainty, not the cost inputs for such fixed price work and firm price work under such fixed/firm subcontracts), except that OPG will have full audit rights with respect to all fixed price work and firm price work performed on a Reimbursable Costs basis under a fixed/firm price subcontract entered into with a Subcontractor that is an Affiliate of the Contractor, or in which the Contractor or any of its Affiliates has a direct or indirect beneficial interest of ten per cent (10%) or greater. Any Dispute between the Contractor and OPG with respect to the scope of any such audit will be referred to the Steering Committee.

(2) The Contractor and Subcontractors will fully cooperate with OPG in respect of any audits conducted by OPG, through its own auditors or auditors designated by OPG, under this section 2.19, provided that any such auditors will be bound by confidentiality obligations substantially similar to those set out in this Agreement. Subject to section 2.19(b)(1), the Contractor will provide such auditors prompt and unrestricted access to all premises, the Contractor's Personnel, books, records and other documents, whether in written, electronic or other format, required to substantiate any calculations or compliance with this Agreement. The Contractor will provide OPG's auditors with reasonable work space at the Contractor's facilities to conduct any inspection, audit, copying and interviews. If the Contractor or any Subcontractor fails to provide any such records or other information, OPG may make any reasonable assumptions in the absence of such records. The Contractor will correct or remedy, and will cause any Subcontractor to correct or remedy, any errors or discrepancies identified during OPG's audit. The incremental cost to the Contractor of providing such cooperation, information and assistance will be a Reimbursable Cost, provided that such Reimbursable Cost will not be taken into account for purposes of calculating incentives and disincentives pursuant to section 8.

(3) All payments made by OPG are subject to readjustment based on any such audit at any time before the expiry of the 26th month after the Final Completion Date. If any audit reveals that OPG was overcharged for any reason (including because costs charged to OPG are inadequately calculated or substantiated), the Contractor
will (i) promptly pay OPG the amount of such overcharge(s), and (ii) if the aggregate amount of overcharge(s) in relation to any Unit exceeds $50,000, promptly reimburse OPG for all of OPG’s audit costs (such audit costs not to exceed $10,000 per Unit). For certainty, OPG may set off any such amounts as provided for in section 13.5. If any audit reveals that OPG was undercharged for any reason, OPG will promptly pay the Contractor the amount of such undercharge net of any audit costs incurred by OPG reasonably related to the audit of the undercharged part of the Work (such audit costs not to exceed the lesser of $10,000 per Unit and the undercharged amount).

(c) Access to Information by Governmental Authorities

(1) The Contractor acknowledges that OPG is subject to supervision and regulation by Governmental Authorities, including, for certainty, and without limiting the foregoing, the Canadian Nuclear Safety Commission, the Ontario Energy Board and the Independent Electricity System Operator, and is required to comply with Applicable Laws and that OPG may take additional steps or actions to provide Governmental Authorities with explanations or information that is supplemental to the information that OPG is required to provide under Applicable Laws. Accordingly, the Contractor agrees that OPG will have the right to:

(A) provide a Governmental Authority with access to and copies of any documents (including Confidential Information) prepared by or for the Contractor, a Subcontractor or OPG in respect of the Goods or Work, including audit reports and associated working papers and recommendations; and

(B) with respect to any audit, monitoring or inspection rights of OPG under this section 2.19 or elsewhere in this Agreement, permit a Governmental Authority to attend with OPG or, at the request of OPG, attend independently.

2.20 Scorecard Assessment Program

OPG may also institute a scorecard assessment program with the Contractor. The objective of this program is to provide a periodic (such as weekly or monthly)
assessment of the Work provided at the Site. The program may review some or all of the following criteria, to the extent applicable to the provision of the Work:

1. safety performance;
2. Contract Schedule and Progress Schedule adherence;
3. scope control;
4. budget adherence;
5. quality performance;
6. deliverable acceptability;
7. interface effectiveness;
8. environmental performance;
9. contingency plan effectiveness; and
10. project risks.

If OPG elects to institute such a program, the Contractor will, at its expense, co-operate with OPG and provide OPG with the necessary information to develop the scorecards and participate as necessary in meetings to review and discuss performance.

SECTION 3 OPG'S OBLIGATIONS

3.1 Take Actions Promptly

OPG will take each of the following actions in a responsible manner so as not to materially delay the Contractor:

(a) designate in writing from time to time an individual to act as OPG’s Representative to observe and report on the provision of specific parts of the Work;

(b) provide access to Site, subject to any restrictions set out respecting the Designated Areas or otherwise set out in this Agreement;

(c) in accordance with and subject to section 2.8, review Submittals submitted by the Contractor within the review period for such Submittal set out in Schedule 2.8(a);
(d) provide information known to OPG relating to the presence on the Site of asbestos, hazardous waste, polychlorinated biphenyls, petroleum products or radioactive materials, in addition to those described in the Specifications, in such quantities or circumstances that there is a material danger to any Person providing the Work;

(e) provide any OPG Equipment (as defined in section 3.5) expressly referred to in this Agreement in good working order;

(f) obtain the Approvals to be obtained by OPG from the Canadian Nuclear Safety Commission in accordance with section 2.6(b); and

(g) perform those activities expressly identified as OPG responsibilities in the Specifications.

3.2 OPG’s Representative

OPG will designate in writing an individual to act as OPG’s Representative. OPG may from time to time change this designation, or delegate duties to OPG’s Designated Delegates, by delivering a Notice in the form of Schedule 1.1(eee) to this effect to the Contractor. OPG’s Representative will specify the scope and the limits of authority of each of OPG’s Designated Delegates. Any changes to or revocations of any delegations will also be specified by OPG’s Representative in writing in a Notice delivered to the Contractor. All Notices delivered to OPG’s Representative, or OPG’s Designated Delegates (provided that the Notice relates to a matter within OPG’s Designated Delegate’s scope of authority), by the Contractor will be as binding on OPG as if given to OPG under section 13.3. The Contractor may rely on any written instructions, directions or approvals provided by OPG’s Representative or OPG’s Designated Delegates (provided such instructions, directions or approvals are within OPG’s Designated Delegate’s scope of authority). OPG will take all reasonable steps to ensure that OPG’s Representative and all of OPG’s Designated Delegates are accessible to the Contractor during the performance of the Work (including outside of normal working hours in cases of emergencies) and are available to render any necessary decisions or instructions promptly to avoid delays to the Progress Schedule. OPG’s Representative may interpret and define OPG’s policies and procedures expressly referred to in this Agreement and make decisions with respect to providing the Work.

3.3 No OPG Control Over Work

OPG will not supervise, direct, have control or authority over, or otherwise be responsible for:
(a) the Contractor’s means, methods, techniques, sequences or procedures respecting the Work; or

(b) the safety programs and precautions used in respect of the Work, subject to OPG’s rights and obligations under the *Occupational Health and Safety Act* (Ontario).

OPG will not be responsible for any failure of the Contractor to comply with any Applicable Laws, Approvals or this Agreement in providing the Work or the Goods.

### 3.4 Hazardous Conditions

#### (a) Division of Responsibility.

OPG will be responsible for the costs of dealing with any asbestos, hazardous waste (as that term is defined in the regulations to the *Environmental Protection Act* (Ontario)), polychlorinated biphenyls, petroleum products or radioactive materials to the extent such quantities or circumstances present a material danger to any Person providing the Work (a "Hazardous Condition") encountered at the Site that was not generally or specifically identified in this Agreement to be part of the Work. The Contractor will be responsible for: (i) dealing with (but, for certainty, not for any costs of dealing with) any Hazardous Condition that was not generally or specifically identified in this Agreement to be part of the Work; (ii) costs of and for dealing with any Hazardous Condition that was generally or specifically identified in this Agreement to be part of the Work; and (iii) costs of and for dealing with any Hazardous Condition that was brought to the Site by the Contractor, any of its Subcontractors or the Contractor’s Personnel. For certainty, nothing in this section 3.4 will require: (i) the Contractor or its Subcontractors to take ownership of any radioactive waste created at the Site as part of providing the Work; or (ii) OPG to take ownership of any equipment (in whatever condition) owned by the Contractor or any radioactive materials or other Hazardous Conditions brought to the Site by the Contractor, any of its Subcontractors or the Contractor’s Personnel.

#### (b) Actions on Discovery.

Immediately on the discovery of a Hazardous Condition on the Site, the Contractor will:
(1) in accordance with Prudent Practice, act to contain the Hazardous Condition in order to minimise the impact of the Hazardous Condition;

(2) stop all Work in the area that could reasonably be affected by the Hazardous Condition, subject to section 2.4(j)(10); and

(3) verbally notify OPG of the discovery and confirm by Notice within 48 hours of the discovery.

(c) **Corrective Action Plan.** OPG will promptly determine whether it is necessary or desirable to retain a qualified expert to evaluate the Hazardous Condition. The Party that is responsible for the Hazardous Condition under section 3.4(a) will be responsible for establishing a corrective action plan and for obtaining any required Approvals from any applicable Governmental Authorities. Any corrective action plan developed by the Contractor will be in accordance with Prudent Practice and will minimise the impact on the Contract Price and Contract Schedule. The Contractor will advise OPG of any proposed change to the Contract Price and of any proposed changes to the Progress Schedule and/or the Contract Schedule that the Contractor estimates will occur as a result of its corrective action plan. The Contractor will not resume Work in the area that could reasonably be affected by the Hazardous Condition until the corrective action plan has been established and any such required Approvals have been obtained.

### 3.5 OPG Equipment

(a) **Use of OPG Equipment.** OPG may provide the Contractor with the use of the OPG equipment (the “OPG Equipment”) to facilitate performance of the Work. In such case, the Contractor will store, operate and maintain the OPG Equipment prudently at all times until returned to OPG, by suitably qualified and experienced Contractor’s Personnel only, and in compliance with this Agreement.

(b) **Conditions Governing Use and Return of OPG Equipment.** If OPG provides the Contractor with the OPG Equipment under section 3.5(a):
(1) the Contractor will ensure that the OPG Equipment will, at all times until returned to OPG be located only at the Designated Areas and not elsewhere without prior written consent form OPG.

(2) the Contractor will maintain the OPG Equipment in a state of good repair, condition and working order (reasonable wear and tear excepted) by suitably qualified and experienced Contractor’s Personnel only. Further, the Contractor will document such maintenance in maintenance records which will be available to OPG at any time upon request. The Contractor will not, without the prior consent of OPG, make any alterations, additions or improvement to the OPG Equipment.

(3) in emergency situations and planned or forced outages, the Contractor will promptly upon request give priority use of the OPG Equipment to OPG.

(4) upon prior Notice to the Contractor, from time to time and at any time, OPG, OPG’s Representative and OPG’s Designated Delegates will have access to the OPG Equipment for the purpose of its inspection or testing and the purpose of verifying records and auditing inventories of all OPG Equipment.

(5) promptly following the earlier of the completion of the Work involving the OPG Equipment or the suspension or termination of this Agreement, on a Unit-by-Unit basis, the Contractor will, unless otherwise directed by OPG: (i) decontaminate all OPG Equipment; and (ii) return all OPG Equipment to OPG, in a working condition at least as good as the condition that the OPG Equipment was in at the time it was made available to the Contractor (reasonable wear and tear excepted).

SECTION 4 SECURITY DOCUMENTS, INSURANCE, INDEMNITY AND NUCLEAR LIABILITY

4.1 Security Documents

(a) Letters of Credit.

(1) On the date of this Agreement, the Contractor will deliver to OPG a letter of credit acceptable to OPG in the form set out in Schedule 4.1(a) and in an amount that is equal to 6% of the Contract Price
(the “Interim Project LC”). On the Unit Breaker Open Date for the first Unit, the Contractor will deliver to OPG an amended letter of credit acceptable to OPG in the form set out in Schedule 4.1(a) and in an amount that is equal to 10% of Contract Price (the “Project LC”). On the Final Completion Date, the Contractor will deliver to OPG an amended letter of credit acceptable to OPG in the form set out in Schedule 4.1(a) and in an amount that is equal to 2% of the Contract Price (the “Warranty LC”). OPG may apply any amount drawn under the foregoing letters of credit to remedy any failure of the Contractor to satisfy any obligation under this Agreement. The bank issuing the letter of credit must:

(A) be acceptable to OPG;

(B) be set out in Schedule I of the Bank Act (Canada); and

(C) have and maintain a senior, unsecured long-term credit rating of not less than A- or equivalent from any one of Standard & Poor’s, Moody’s, DBRS or Fitch (unless otherwise agreed by OPG in writing).

Notwithstanding any other term in this Agreement, OPG will not be obligated to make any payment to the Contractor under this Agreement until the Contractor has delivered the Interim Project LC to OPG.

(2) The Contractor will maintain the Interim Project LC with a face amount equal to 6% of Contract Price until delivery of the Project LC with a face amount equal to 10% of Contract Price, and will maintain the Project LC in its original face amount until delivery of the Warranty LC. The Contractor will maintain the Warranty LC with a face amount equal to 2% of Contract Price until the expiry of the Warranty Period for the fourth Unit. Upon the expiry of the initial Warranty Period for the fourth Unit, OPG may agree to reduce the face amount of the Warranty LC to reflect the value of the corrected work to which any extended Warranty Period then applies.

(3) In the event that OPG proceeds with any Optional Work and/or Contingency Work (under an Optional Work Notice to Proceed and/or an Amendment respectively) and the Contract Price is
adjusted accordingly, then, provided that the Contract Price is increased by more than $1,000,000 in the aggregate on a cumulative basis (being a threshold and not a deductible), the Contractor will increase the amount of the Interim LC, the Project LC and/or the Warranty LC, as the case may be, as required to maintain the percentages set out in section 4.1(a)(1).

(4) Notwithstanding OPG’s payment obligations under Section 7 and without limitation to any other right or remedy of OPG under this Agreement, if the Contractor fails to deliver the Project LC as required by sections 4.1(a)(2) or 4.1(a)(3), OPG may hold back payments to the Contractor until OPG has retained cash collateral in an amount equal to 10% of Contract Price to secure the performance of the Contractor’s obligations. If the Contractor subsequently delivers the Project LC to OPG, OPG will forthwith release the cash collateral it is holding to the Contractor.

(5) OPG may require the Contractor to issue, re-issue or amend the Interim Project LC, the Project LC or the Warranty LC, as applicable, in the name of an assignee of OPG’s rights under this Agreement.

(6) If the issuing bank for the Interim Project LC, the Project LC or the Warranty LC fails to maintain the credit rating specified in section 4.1(a)(1)(C), becomes insolvent, or otherwise indicates that it will not honour such letter of credit, the Contractor will immediately cause another issuing bank that meets the criteria listed in section 4.1(a)(1) to issue replacement letters of credit having the same terms and conditions as the original Interim Project LC, Project LC or Warranty LC, as applicable (a “Replacement LC”). Following receipt of a Replacement LC acceptable to OPG, acting reasonably, OPG will promptly and in any event within 5 Business Days of such receipt return the original Interim Project LC, Project LC or Warranty LC, as the case may be, along with all amendments thereto, as applicable, to the original issuing bank for full and irrevocable cancellation along with a letter acceptable to the original issuing bank confirming such cancellation.

(b) Parental Indemnity.

(1) On the date of this Agreement, each B&W and CEI will provide to OPG a parental indemnity from their respective Guarantors (the
"Guarantee") in the form set out in Schedule 4.1(b)(1). Each of B&W and CEI acknowledge that, in order to induce OPG to enter into this Agreement, their respective Guarantors have agreed to provide the Guarantee.

(2) B&W represents and warrants to OPG that as of the date of this Agreement: (i) The B&W Guarantor is a majority owned subsidiary of The Babcock & Wilcox Company; (ii) B&W is a majority owned subsidiary of the B&W Guarantor; (iii) the B&W Guarantor has minimum shareholder equity of not less than $200,000,000 USD; and (iv) The Babcock & Wilcox Company has a credit rating on its senior unsecured indebtedness of not less than BB or equivalent from anyone of Standard & Poor's, Moody's, DBRS or Fitch at any time (collectively, the "B&W Representations"). B&W will obtain and deliver to OPG within 15 Business Days of the date of this Agreement and within 15 Business Days of the end of each calendar year thereafter a letter confirming the B&W Representations, substantially in the form attached hereto as Schedule 4.1(b)(2), from the Assistant Treasurer or more senior officer of the B&W Guarantor.

(3) If, at any time, a change occurs such that the B&W Representations are not true or accurate, B&W will obtain and provide to OPG within 10 Business Days of such change a guarantee substantially in the form of the Guarantee provided by the B&W Guarantor from a substantially equivalent entity to the B&W Guarantor having regard to equity, debt and creditworthiness, together with an undertaking to provide: (i) its un-audited financial statements within 150 days of the end of each fiscal year; and (ii) its audited financial statements within 270 days of the end of the then current fiscal year and within 250 days of the end of each fiscal year thereafter, which financial statements must demonstrate the continuing equivalent equity, debt and creditworthiness of such entity. Where un-audited financial statements are provided, such financial statements will be accompanied by a certificate from an officer of such entity verifying that the financial statements are materially correct and prepared in accordance with Canadian or US generally accepted accounting practices, as applicable, consistently applied.
(4) In respect of B&W, if B&W fails to provide a replacement guarantee in accordance with section 4.1(b)(3), the sole remedy will be that there will not be any step down in the amount of the Project LC pursuant to section 4.1(a). In respect of CEI, if the CEI Guarantor fails to maintain a credit rating on its senior unsecured indebtedness of not less than BBB- or equivalent from at least one of Standard & Poor's, Moody's, DBRS or Fitch at any time, there will not be any step down in the amount of the Project LC pursuant to section 4.1(a). If: (i) in respect of B&W, such replacement guarantee is provided thereafter in accordance with section 4.1(b)(3); or (ii) in respect of CEI, such Guarantor thereafter satisfies such rating test, the amount of the Project LC may, at OPG's sole discretion, be reduced pursuant to section 4.1(a).

(5) If, at any time, a change of ownership of either B&W or CEI occurs, such that: (i) in respect of CEI, the CEI Guarantor is no longer the ultimate owner of CEI; or (ii) in respect of B&W, B&W is no longer a majority owned subsidiary of the B&W Guarantor, B&W or CEI, as applicable, will immediately obtain a guarantee, substantially in the form of the Guarantee provided by their respective Guarantors and otherwise satisfactory to OPG, acting reasonably, from the new ultimate owner (in the case of CEI) or new parent (in the case of B&W) (a "Replacement Guarantee"). Following receipt of a Replacement Guarantee acceptable to OPG, acting reasonably, OPG will promptly and in any event within 5 Business Days of such receipt return the original B&W Guarantee or CEI Guarantee, as the case may be, together with a letter acknowledging that the original Guarantee is cancelled and that the original Guarantor is released from any and all obligations under such Guarantee.

(c) Treatment of Subcontracts.

(1) Assignment and Creation of Security Interest in Subcontracts. As general and continuing collateral security for the timely performance of all of the Contractor's obligations under this Agreement, the Contractor assigns and transfers to OPG, and grants to OPG a security interest in, the Work, the Goods and each contract between the Contractor and a Subcontractor. If, however, the assignment, transfer or creation of any security interest under this section 4.1(c)(1) in respect of any Work, Goods or contract
between the Contractor and a Subcontractor would result in the termination or breach of any applicable contract, or would require a consent which has not yet been obtained, then the applicable Goods or contract will not be subject to such assignment, transfer or security interest but will be held in trust by the Contractor for the exclusive benefit of OPG and, on the exercise of any of OPG's rights under section 10.3(d), will be dealt with by the Contractor, at its own cost, as directed by OPG in writing from time to time. The Contractor confirms that OPG has given value to the Contractor for the granting of the security interest contemplated in this section 4.1(c)(1). The Parties have not agreed to postpone the time for attachment of the security interest contemplated in this section 4.1(c)(1), except for contracts with Subcontractors that are entered into after the date of this Agreement, the attachment for which will occur immediately following the Contractor entering into each such contract and for Goods delivered after the date of this Agreement, the attachment for which will occur immediately following delivery of the Goods to the custody or control of the Contractor. OPG may register a financing statement or effect such other registration as may be necessary or desirable to perfect the security interest contemplated in this section 4.1(c)(1).

(2) **Contractor Remains Liable.** Notwithstanding any term in this Agreement, the Contractor will be exclusively responsible for all obligations of the Contractor under each contract with a Subcontractor. Until such time as OPG exercises its rights under section 10.3(d) in respect of any such contract, no term contained in this section 4.1(c) will render OPG liable to the applicable Subcontractor for the performance or non-performance of any obligation of the Contractor under such contract.

(3) **Enforcement by OPG.** Subject to section 2.14(e), the Contractor will ensure that each contract with a Subcontractor permits the Contractor to freely assign, transfer and grant a security interest in that contract to OPG or as OPG may direct. The Contractor will also ensure that each Subcontractor agrees that:

(A) OPG may, on delivering a Notice (the "OPG Enforcement Notice") to the Subcontractor under section 10.3(d), indicating that OPG is enforcing its rights against the
Contractor under this section 4.1(c) and any other applicable terms in this Agreement, either:

(i) proceed in place of the Contractor, whether by OPG itself or by a receiver or receiver and manager, and enjoy all of the rights of the Contractor under the applicable contract; or

(ii) assign that contract to a replacement contractor appointed by OPG, so long as this replacement contractor has executed an agreement in favour of the Subcontractor agreeing to perform all of the obligations to be performed by the Contractor under that contract;

and following receipt of the OPG Enforcement Notice, the Subcontractor will disregard any Notices or instructions from the Contractor;

(B) the Subcontractor will:

(i) give OPG a copy of the applicable contract, as amended, and any Notice of default or claim under any bond given by the Subcontractor to the Contractor under the contract with the Contractor; and

(ii) not terminate the contract with the Contractor as a result of default by the Contractor (assuming that the default would allow the Subcontractor to terminate the contract with the Contractor) without first giving OPG a period of 30 days from receipt of a Notice from the Subcontractor to OPG regarding the defaults of the Contractor or such longer period as is reasonably necessary to remedy such default, except that if any such default is not curable (such as the bankruptcy or insolvency of the Contractor), the Subcontractor will not terminate the contract so long as all curable defaults are cured;
(C) OPG will only be responsible for the obligations of the Contractor under the contract with the Subcontractor which accrue from the date of receipt by the Subcontractor of the OPG Enforcement Notice until the date of receipt by the Subcontractor of a further Notice that OPG is no longer enforcing its rights under the contract or that OPG has further assigned the contract; and

(D) from time to time on request from OPG, the Subcontractor will provide a written statement to OPG with respect to the status of the contract with the Subcontractor.

4.2 Contractor Required Insurance

The Contractor will procure and maintain by annual policy renewals as applicable, in full force with financially responsible insurance carriers (with A.M. Best ratings of at least A- or a Standard & Poor’s rating of at least BBB) of recognized standing reasonably acceptable to OPG, or with the appropriate Governmental Authorities, all coverages referred to in this section 4.2. The Contractor represents to OPG that each of these coverages is currently in full force. The Contractor will ensure that all these coverages will be required of all Subcontractors, as applicable, and that all insurance coverages applicable in Ontario will be obtained from insurance carriers that are duly licensed in Ontario to issue insurance policies for the limits and coverages under sections 4.2(a) to 4.2(f).

(a) **Workers’ Compensation.** The Contractor will maintain or cause to be maintained workers’ compensation coverage as required by the *Workplace Safety and Insurance Act, 1997* (Ontario) and any other Applicable Laws respecting all of the Contractor’s Personnel to the extent they are performing the Work at the Site.

(b) **Additional US Requirements (as required).** In respect of all of the Contractor’s Personnel whose domicile of hire is the United States, the Contractor will maintain or cause to be maintained workers’ compensation coverage in each applicable state while any such Person is engaged in performing the Work at the Site. The Contractor will also ensure that any such coverage includes employer’s liability with a limit of US$1,000,000 and, to the extent applicable, a foreign coverage endorsement, *Merchant Marine Act* (United States), *Longshore and Harbor Workers’ Compensation Act*
(United States) and Federal Employers’ Liability Act (United States) coverage.

(c) Commercial General and Excess or Umbrella Liability Insurance (as required for services rendered off OPG sites). The Contractor will maintain commercial general liability and excess or umbrella liability insurance, on an occurrence or claims-made basis, in an amount of $10,000,000 (commercial general liability coverage and excess or umbrella liability coverage) inclusive for bodily injury, including death, personal injury and damage to property. The Contractor will ensure that the excess or umbrella liability insurance is in excess of the coverages under sections 4.2(a) and 4.2(b) (to the extent the coverages under those sections include employer’s liability). The Contractor will also ensure that the commercial general liability and excess or umbrella liability coverage specifically includes the following:

1. blanket contractual liability;
2. damage to property;
3. pollution liability coverage on sudden and accidental, time element basis for resultant bodily injury and property damage liability;
4. blasting, pile driving, caisson services, underground services;
5. products and completed operations (such coverage will be maintained, by annual policy renewal, throughout the Warranty Period);
6. cross liability;
7. severability of interests;
8. employer’s liability;
9. non-owned automobile liability (may be provided under motor vehicle liability insurance);
10. broad form property damage; and
11. hook liability, if applicable, will be provided by the relevant Subcontractor.
(d) **Motor Vehicle Liability Insurance.** The Contractor will maintain or cause to be maintained motor vehicle liability insurance on licensed motor vehicles owned, non-owned, rented or leased by the Contractor and Subcontractors providing services at the Site and used in connection with the Work to be performed under this Agreement covering bodily injury and property damage liability to a combined inclusive limit of $2,000,000 per occurrence and mandatory accident benefits, continuously by annual policy renewals as applicable, from the date of this Agreement until the expiry of the Warranty Period.

(e) **Construction Equipment Insurance.** The Contractor will maintain and require its Subcontractors to maintain the Contractor’s equipment insurance covering all construction equipment and tools owned, rented or leased by the Contractor or a Subcontractor and used in respect of the Work. The Contractor will ensure that this coverage will cover the full replacement cost of such construction equipment and tools on an “all risks” basis, including marine-based risk, subject to normal exclusions. The Contractor retains the option to self-insure all or part of such Contractor first party property exposure.

(f) **Other.** The Contractor will maintain, at OPG’s expense, any other form of insurance for such risks and in such amounts as OPG may reasonably require and subject to market availability, from time to time.

### 4.3 OPG Provided Insurance

Without limitation to the Contractor’s obligations and liabilities hereunder, OPG will procure and maintain in full force and effect with financially responsible insurance carriers (with A.M. Best ratings of at least A- or a Standard & Poor’s rating of at least BBB) of recognized standing, all coverages referred to in sections 4.3(a) to (f). OPG will ensure that the coverage referred to in sections 4.3(a) and 4.3(b) will be maintained in force continuously from: (i) the date the Contractor starts any Work at the Site until 60 days after the Final Completion Date; or (ii) such other date as OPG may designate. OPG will ensure that all such coverages include as named insureds the Contractor and all Subcontractors, subject to the terms and conditions of the relevant policy, and that all insurance coverages applicable in Ontario will be obtained from insurance carriers that are duly licensed in Ontario to issue insurance policies for the limits and coverages required.
(a) **Builders’ All Risks Insurance.** OPG will maintain builders’ all risks insurance (a “Builders’ All Risks Insurance Policy”) on a repair or replacement cost basis up to a minimum of $1,000,000,000, including OPG, any applicable subsidiary of OPG, OPG’s Designated Delegate, the Contractor and the Subcontractors as named insureds, as their interests may appear, covering physical loss or damage to the Work, the materials, operating equipment, and supplies for incorporation therein, expendable construction tools, and all temporary structures used in the performance of the Work or for which OPG is responsible, including property while in transit or elsewhere (except property insured under section 4.2(e)) before and during erection and until completed and while awaiting tests and during tests and until the Final Completion Date. This insurance will be subject to a minimum of LEG 2/96 (The London Engineering Group Model “Consequences” Defect Wording) defects exclusion or equivalent and will include a minimum 24 month maintenance period unless similar coverage for the maintenance period is included under the wrap-up liability insurance described in section 4.3(b) below in which case OPG may elect to maintain coverage during the maintenance period under either the Builders’ All Risk Insurance Policy or a Wrap-Up Liability Insurance Policy. This insurance will be primary to and non-contributory with any other insurance available to the insureds (including the Contractor and Subcontractors).

(b) **Wrap-Up Liability Insurance.** OPG will maintain wrap-up liability insurance (a “Wrap-Up Liability Insurance Policy”) on an occurrence basis in the joint names of OPG, any applicable subsidiary of OPG, OPG’s Designated Delegate, the Contractor and the Subcontractors as named insureds, subject to the terms and conditions of the policy. This coverage will include limits of no less than $25,000,000 inclusive per occurrence for bodily injury, death and damage to property and, with respect to on-Site risks, will be primary to and non-contributory with any other insurance available to the insureds (including the Contractor and Subcontractors) other than the insurance specified in section 4.2(c), which will be primary to and non-contributory with any other insurance available to the insureds with respect to off-Site risks. OPG will also ensure that this coverage specifically includes:

1. blanket contractual liability;
(2) pollution liability coverage on at least a sudden and accidental basis;

(3) damage to property of OPG or any of its subsidiaries, excluding damage to the Project;

(4) blasting, pile driving, caisson services, underground services;

(5) products and completed operations, including a term that such coverage will be maintained throughout the Warranty Period;

(6) cross liability;

(7) severability of interests;

(8) employer’s liability;

(9) non-owned automobile liability; and

(10) broad form property damage.

If the Wrap-Up Liability Insurance Policy provides coverage for a minimum 24-month maintenance period and such coverage is similar to the coverage provided for such maintenance period under the Builders’ All Risks Insurance Policy described in section 4.3(a) above, OPG may elect to maintain coverage during the maintenance period under either the Builders’ All Risks Insurance Policy or the Wrap-Up Liability Insurance Policy.

(c) **Marine Cargo Insurance (as required).** OPG will maintain marine cargo insurance for all Goods while in the course of marine transit. Marine cargo insurance may also include, at OPG’s option, inland transit. The Contractor will be an additional insured, as its interests may appear, under the marine cargo insurance. OPG will ensure that this coverage will be in force from the time that such insured property leaves the last factory or warehouse of the Contractor or a Subcontractor, or in the case of bulk raw materials, the port of loading for shipment, including any temporary storage while in the normal course of transit, and terminates after discharge at the Sites. If OPG designates as Site any location or facility receiving, manufacturing, or storing material (including transhipment between “Sites”) to which OPG has title, and the insurer has been notified of
same, such materials will be covered under the insurance program provided by OPG.

(d) **Nuclear Energy Physical Damage Insurance.** OPG, as named insured, at its own expense, will obtain and maintain, or cause to be obtained and maintained, nuclear energy physical damage insurance, insuring as insureds, as their interests may appear, OPG, any applicable subsidiary of OPG, OPG’s Designated Delegate, the Contractor and the Subcontractors, subject to the terms and conditions of the policy, and all of their successors and assigns against all risk of direct physical loss to the DNGS and all other property at the Site (including, subject to section 4.7(c), property of the Contractor and Subcontractors) and any nuclear material in transit to the Site. Any other Persons that OPG approves may be added from time to time as insured parties, and all their successors and assigns will be included as insureds.

(1) This insurance will provide primary coverage with respect to the Project without right of contribution of any insurance carried by OPG, any applicable subsidiary of OPG, or OPG’s Designated Delegate.

(2) The policy limit will not be less than $1,000,000,000 per occurrence and in the aggregate.

(3) This insurance will include a maximum deductible of $50,000,000 per occurrence.

(4) Coverage under this insurance will be in force continuously throughout the term of this Agreement to the Final Completion Date.

(e) **Nuclear Energy Liability.** OPG, as named insured, will, at its own expense, obtain and maintain, or cause to be obtained and maintained, nuclear energy liability insurance, in compliance with the Nuclear Liability Act (Canada) or such other applicable law insuring OPG and any other person or organization with respect to their legal liability for damages because of bodily injury (including death) or property damage caused by a nuclear incident arising from the Project or use of the Site.
(1) This insurance will provide primary coverage with respect to the Project without right of contribution of any insurance carried by OPG, any applicable subsidiary of OPG, OPG’s Designated Delegate, the Contractor or Subcontractors, subject to the terms and conditions of the policy.

(2) The policy limit will not be less than $75,000,000 per occurrence or such other amount as may be required by the Applicable Laws.

(3) Coverage under this insurance will be in force prior to the date of this Agreement and continuously throughout the term of this Agreement and thereafter as may be required by the Applicable Laws.

(f) Other. OPG will maintain, at OPG’s expense, any other form of insurance for such risks and in such amounts as OPG may require from time to time.

4.4 General Insurance Terms

(a) Certificates of Insurance. Before starting any Work at the Site, the Contractor will deliver to OPG certificates of insurance completed by a duly authorized representative of each of the Contractor’s insurers certifying that the coverages required under section 4.2 are in effect, as applicable. The Contractor will ensure that the coverages will not be cancelled, will not fail to be renewed and will not be materially changed, except in accordance with policy provisions, and the Contractor will provide written Notice to OPG in such event. Notice will be given to OPG’s Representative, with a copy delivered by fax as follows:

Ontario Power Generation Inc.
Risk Management & Insurance – Treasury
700 University Avenue H18-J18
Toronto, Ontario, Canada M5G 1X6

Attention: Director, Risk Management & Insurance
Fax: 416-592-4775

To the extent that the Contractor is required to maintain any coverages under section 4.2 in force after final payment of the Contract Price, the Contractor will deliver to OPG, at the time that the Contractor submits its
final Application for Payment for the Contract Price, a certificate of insurance completed by a duly authorized representative of such Person’s insurer certifying that such insurance is currently in force and the Contractor will thereafter for the period of time required under section 4.2, deliver to OPG annual certificate of insurance renewals. Within 30 days after the Contractor starts any Work at the Site, OPG will deliver to the Contractor a certificate of insurance completed by a duly authorized representative of OPG’s insurers certifying that at least the coverages required under section 4.3(b) are in effect.

(b) **No Waiver by OPG.** If OPG fails to demand any certificate for insurance referred to in section 4.2 or otherwise fails to demand other evidence of full compliance with section 4.2 or fails to identify a defect from evidence provided, OPG has not waived, and OPG will not be deemed to have waived, any of the Contractor’s obligations. The Contractor’s obligation to purchase and maintain insurance under this Agreement will in no way limit or otherwise qualify the liabilities or obligations of the Contractor under this Agreement.

(c) **No Approval by OPG.** If OPG receives, reviews and accepts any certificate or other evidence for insurance referred to under section 4.2, OPG has not approved or agreed, and OPG will not be deemed to have approved or agreed, that the Contractor has satisfied any of its obligations under sections 4.2 or 4.4.

(d) **OPG May Purchase Insurance.** If the Contractor fails to maintain any insurance required under section 4.2 or any such insurance is inadequate in its scope, OPG may purchase any such insurance. In the event that OPG must purchase insurance under this section 4.4(d), OPG may upon presentation to the Contractor of the policy so purchased as well as proof of payment thereof, set off the costs thereof against any monies then or thereafter due, owing or payable to the Contractor and may set off and retain, in addition, and in consideration for its services in procuring such insurance, an amount equal to the cost thereof, in addition to the cost of such insurance.

(e) **Deductibles.** The Contractor and OPG agree to pay the deductibles payable as a result of an insured event under sections 4.3(a) to 4.3(d), to the extent of their responsibility, up to the following limits: $100,000 under wrap-up liability insurance, $1,500,000 under builders’ all risks insurance, and $10,000,000 under nuclear energy
physical damage insurance. To the extent OPG elects to have deductibles in excess of these limits, then OPG will be solely responsible for any deductible amounts over and above these limits.

(f) Subrogation. The Contractor will ensure that each insurer which provides insurance under sections 4.2(b) and 4.2(e) will provide a waiver of subrogation to OPG, any applicable subsidiary of OPG, OPG’s Representative, OPG’s directors, officers and employees, and OPG’s Designated Delegates.

(g) OPG as Additional Insured. The Contractor will ensure that each insurer that provides insurance under section 4.2(c) will include OPG, any applicable subsidiary of OPG, OPG’s Representative, OPG’s directors, officers and employees, and OPG’s Designated Delegates as an additional insured only with respect to the Work being performed by the Contractor and, where applicable, as a loss payee, under such insurance, but only to the extent of the insured contractual indemnity obligations expressly assumed by the Contractor in this Agreement. OPG and the Contractor agree that OPG’s rights as an additional insured are not intended to and will not derogate from the division of risk and indemnity obligations set out under this Agreement. All claims brought under insurance provided by the Contractor will be handled exclusively through the Contractor or its designated representative. Except as specifically provided under this Agreement, OPG will not be entitled to assert a claim against the Contractor’s insurance with respect to liabilities and losses that: (i) result from the negligence of OPG; (ii) are assumed by OPG under this Agreement; or (iii) as to which OPG indemnifies the Contractor under this Agreement.

(h) No Invalidation by the Contractor. The Contractor (including any applicable subsidiary of the Contractor, the Contractor’s Representative or the Contractor’s Personnel) will neither take nor fail to take any action to cause the insurance referred to in section 4.2 to be invalidated or vitiated.

(i) Notice and Processing of Claims. The Contractor will process all proper claims under policies of insurance hereunder in accordance with this section 4.4(i) and ooth the Contractor and OPG will use best efforts to recover under such policies. Insurance claims will be asserted and processed on the following basis:
(1) In connection with the insurance described in sections 4.2(a) to 4.2(f), the Contractor will be solely responsible to process and settle all such claims directly with the insurer. In the case of a claim related to this Agreement, under the insurance described in sections 4.3(a) to 4.3(e), the Contractor will deliver a written Notice to OPG’s Representative detailing the claim at least five Business Days prior to asserting such a claim. The Contractor will include in any written Notice provided under this section 4.4(i) the date of the events giving rise to the claim, a summary of the circumstances respecting the claim and the estimated amount of the claim. The Contractor will provide OPG any reasonable additional information respecting the incident giving rise to the claim that OPG’s Representative may request.

(2) In connection with the insurance described in sections 4.3(a) to 4.3(e), OPG will be solely responsible to process and settle all such claims directly with the insurer.

(3) In connection with the insurance described in section 4.3(b), the Contractor will assert all of its claims through OPG who will notify the insurer which provides such insurance within five Business Days after the Contractor has delivered written Notice to OPG’s Representative detailing the claim. The Contractor will not be permitted to assert any claim under any insurance referred to in section 4.3(b) until OPG has completed its review and verification of such claim, which will be completed within the time period required under the applicable policy to assert the claim, after which the Contractor will be responsible to further process and settle all claims directly with the insurer.

(j) Cooperation on Insurance Claims. The Parties will fully cooperate with each other to investigate, pursue and settle all claims against insurers. For certainty, the Party processing the claim against the insurer will have sole and absolute discretion in the settlement of the claim.

4.5 Contractor’s Property

In respect of each member of the OPG Group, the Contractor waives all Losses whatsoever arising in respect of loss of, loss of use of, or damage to any Contractor’s Property, including for offices, lunchrooms, canteens, sanitation, showers, change
rooms, accommodations, shops, warehouses and garbage disposal of the Contractor or any of its Subcontractors.

4.6 Risk and Indemnity

(a) Risk of Loss. The Work, Goods and Project will remain at the sole risk of the Contractor against loss or damage up to the applicable actual date of the demobilization of Unit Primary Side execution crew or Unit Secondary Side Site execution crew, as the case may be, on a Unit-by-Unit basis.

(b) Indemnity. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against:

(1) all Losses, liabilities, costs and expenses, including legal fees, 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; and

(2) all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person (other than a member of the OPG Group),

but (except as otherwise provided in this section 4.6(b)) only, in each case, to the extent such Losses are caused by a breach of this Agreement by the Contractor or by any negligent act or omission or willful misconduct of the Contractor, Subcontractor or any of the Contractor’s Personnel providing any of the Work. Notwithstanding the foregoing, the Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person arising out of any assistance provided by the Contractor’s Personnel to any member of the OPG Group or any invitee of the OPG Group in relation to a medical emergency, but only to the extent caused by the gross negligence or wilful misconduct of Contractor’s Personnel in respect of any such assistance. The Contractor acknowledges that nothing in the preceding sentence is intended to relieve the Contractor of its obligations to comply with requirements under section 2.4 and Schedule 2.14(f). The obligations of the Contractor under this section 4.6(b) 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 Agreement, including any act by OPG or OPG’s Designated Delegates referred to in sections 9.1(c)(1) to 9.1(c)(6) inclusive.

### 4.7 Nuclear Liability

(a) **Definitions.** The federal Government of Canada has established a nuclear liability regime pursuant to the *Nuclear Liability Act* (Canada). In this section 4.7, notwithstanding any provision in this Agreement to the contrary: (i) “Act” means the *Nuclear Liability Act* (Canada), as such statute may be amended or replaced from time to time; (ii) “Contractor” means the party providing goods, materials or services to OPG under this Agreement and includes B&W and CEI, including its directors, officers, employees and agents; (iii) “Nuclear Incident” has the meaning set out in the Act; (iv) “Nuclear Installation” has the meaning set out in the Act; and (v) “Subcontractor” means any party that directly or indirectly provides goods, materials or services to the Contractor with respect to this Agreement.

(b) **OPG Waiver of Liability.** OPG will not hold the Contractor or any Subcontractor liable for damage to, loss of, or loss of use of, property of OPG resulting from a Nuclear Incident at OPG’s Nuclear Installation at the Site, except for such loss or damage that is caused by the unlawful act or omission of the Contractor or any Subcontractor done or omitted to be done with the intent to cause damage.

(c) **OPG Indemnity.** OPG will indemnify and hold harmless the Contractor and each Subcontractor for:

1. damage to the Contractor’s Property located at the OPG Nuclear Installation at the Site resulting from a Nuclear Incident at such Nuclear Installation; and

2. liability for damage to property of any Person other than OPG, the Contractor or a Subcontractor, if such property was located at the OPG Nuclear Installation at the Site and damage resulted from a Nuclear Incident at such Nuclear Installation,
but excluding any damage or liability for damage that is caused by an unlawful act or omission of the Contractor or any Subcontractor done or omitted to be done with the intent to cause damage.

(d) **Sole and Exclusive Remedy for a Nuclear Incident at a Nuclear Installation.** Except as provided in the Act, OPG’s commitments and obligations under this section 4.7 are the sole and exclusive remedies available to the Contractor and any Subcontractor as a result of a Nuclear Incident at the OPG Nuclear Installation at the Site, whether pursuant to contract, statute or tort. The Contractor waives and will cause each Subcontractor to waive any other claim it may have against OPG resulting from a Nuclear Incident at the OPG Nuclear Installation at the Site.

(e) **Indemnity for Damage outside Canada.** In addition to the rights exercised by the Contractor pursuant to the Act, OPG will indemnify, defend and save harmless the Contractor and its Affiliates and Subcontractors against any Liability imposed by a court in the United States (including any settlements made with the reasonable prior consent of OPG), where such Injury or Damage resulted from a Nuclear Incident at the Site. Notwithstanding anything in the Act or any of the foregoing provisions of this section 4.7(e), OPG will not indemnify the Contractor or any of its affiliates, Subcontractors or parent corporations:

1. against Injury or Damage occurring wholly or partly as a result of the unlawful act or omission of the Contractor or any of its Subcontractors, done or omitted to be done with intent to cause Injury or Damage; or

2. in the event that the Contractor’s parent corporation or other entity with carriage of the defence will fail to use all commercially reasonable efforts to defend against all claims asserting liability for Injury or Damage resulting from a Nuclear Incident at the Site, or if the Contractor or its parent corporation will fail to procure for OPG, the right to conduct the defence of the Contractor’s parent corporation or such other entity having had carriage of the defence against any such claim.

If OPG may become obligated to indemnify hereunder, the Contractor or its affiliates, Subcontractors, or other entity with carriage of the defence,
will deliver written notice to OPG which will specify in materially complete
detail, the Injury or Damage respecting which any claim is made.
Indemnification by OPG pursuant to this section 4.7(e) will include,
without limitation, prompt reimbursement of reasonable legal costs and
expenses incurred by the indemnitee, whether or not the claim upon
which said indemnification is based ultimately succeeds. OPG will have
the right, but not the obligation, to participate at its own expense in the
defence of any such claim made. If the Contractor or any of its affiliates or
Subcontractors, fail timely to defend, contest or otherwise protect against
such claim, OPG will have the right to do so, including, without limitation,
the right to make any compromise or settlement thereof. In the
alternative, at any time OPG may elect to conduct such defence through
counsel selected by OPG at its own expense and the Contractor and its
affiliates will fully and promptly comply with all reasonable requests for
cooperation received from such counsel.

(f) **Representations and Warranties.** OPG represents and warrants that
it is currently the "operator" as that term is defined in the Act.

(g) **Continuing Protection.** If the Act is amended, replaced or repealed
resulting in reduced protection for the Contractor, its Affiliates and
Subcontractors in respect of a Nuclear Incident at the Site, OPG will
provide either through insurance or indemnity, the same level of
protection afforded to the Contractor, its Affiliates and
Subcontractors by the Act prior to its amendment, replacement or
repeal and this Section 4.7.

(h) **Precedence.** This section 4.7 will take precedence over all other
provisions of the Agreement.

4.8 **Holdback Indemnity.**

The Contractor has requested that OPG not hold back those amounts
contemplated by the *Construction Lien Act* (Ontario) from the payments to be
made under this Agreement and hereby agrees to indemnify and save harmless
OPG from any losses, damages and costs arising from or in connection with any
claims which may be asserted against OPG as a result of OPG not holding back
amounts contemplated by the *Construction Lien Act* (Ontario). In conducting the
Work, the Contractor will comply with the provisions of the *Construction Lien Act*
(Ontario) and all other laws relating to the construction of any improvements,
including maintaining any required statutory holdbacks. The Contractor will, in
respect of any Liens filed or preserved by a Subcontractor, at its expense, comply with the provisions of Section 2.14(k).

SECTION 5 CHANGES IN WORK, GOODS OR PROJECT

5.1 Project Change Directives

(a) Contractor Acknowledgement. The Contractor acknowledges and confirms that:

(1) the Contractor has thoroughly reviewed the Specifications;

(2) the Specifications are a functional scope of work and the Contractor has satisfied itself that the Specifications describe all of the Work and Goods that will be required to complete the Project in a safe, organized and timely manner and in accordance with this Agreement;

(3) the Specifications clearly indicate which portions of the Work will be performed by OPG and the Parties agree all other Work will be performed by the Contractor;

(4) the Contractor has advised OPG of all errors, inconsistencies or omissions in the Specifications of which the Contractor is aware;

(5) the Contractor has developed the Progress Schedule and the Reimbursable Work Target Cost; and

(6) the Contractor has reviewed and accepted the risk allocation model contained in this Agreement (including with respect to the Reimbursable Work, Reimbursable Work Target Cost and Contract Schedule structure, the neutral bands and OPG's obligation to pay Reimbursable Costs) which model does not permit changes to the Reimbursable Work Target Cost or Progress Schedule except in the circumstances expressly specified herein.

(b) Reasons for Project Change Directive. The Contractor and OPG agree that there will be no Project Change Directives that will increase any of the Firm Price, Fixed Price, Reimbursable Work Target Cost, the Reimbursable Work Fixed Fee, or amend the schedules, except as a result of:
(1) an amendment to the Specifications initiated by OPG, including if required further to section 2.9(b) to address any errors in the items listed in Schedule 2.1(g) (in accordance with section 5.2);

(2) a change in Applicable Laws (in accordance with section 5.4);

(3) an excusable delay or force majeure delay (in accordance with section 6.2);

(4) an economic cost adjustment (in accordance with section 5.7);

(5) a Contractor-initiated change (in accordance with section 5.3);

(6) a change to the start date for Work on a Unit (in accordance with section 2.7(e)); or

(7) a suspension of the Work (in accordance with section 12.1).

### 5.2 Changes Requested by OPG

(a) **Issue Project Change Directive.** OPG may, without invalidating this Agreement, direct the Contractor to make changes in the Work, including by suspending the provision of the Work in whole or in part, by issuing a Project Change Directive. OPG may include in any Project Change Directive, OPG’s expectations as to the changes, if any, that the changes in the Work will cause to the Contract Price and Contract Schedule.

(b) **Review of Project Change Directive.** At OPG’s request, the Contractor will review the Project Change Directive before making the changes and advise OPG as to the Contractor’s views as to:

1. any proposed change to the Contract Price; and

2. any proposed changes to the Contract Schedule and/or material changes to the Progress Schedule that the Contractor estimates will occur as a result of such changes, as well as any operational risks, monitoring requirements or probability of failures that may be related to any such changes.

The Contractor will co-operate with OPG and will use all reasonable efforts to carry out each Project Change Directive in such a manner so as to avoid
or minimise any additions to the Contract Price and changes to the Contract Schedule.

(c) **Obligation to Implement Project Change Directive.** OPG may require, in any Project Change Directive, that the Contractor proceed with the Project Change Directive before the Parties have agreed on the terms of an Amendment. Upon receipt of any such Project Change Directive, the Contractor will comply with the applicable Project Change Directive and any Dispute will be resolved in accordance with Section 11.

5.3 **Changes Requested by the Contractor**

The Contractor will not make any change in the Work except in accordance with this Section 5. The Contractor will ensure that no changes are made in the Work without the prior written consent of OPG’s Representative. The Contractor may request that OPG issue a Project Change Directive only for the reasons set forth in section 5.1. If the Contractor desires to make any such proposal, the Contractor must first advise OPG in a written Notice and obtain the prior written consent of OPG’s Representative in a Project Change Directive prior to implementing such proposal. Nothing in this Agreement obliges OPG to agree to any Contractor proposal and OPG may in its sole and absolute discretion refuse to agree to any such proposal. Without limiting the foregoing, if any Contractor-initiated change arising pursuant to section 6.2 is expected to cost less than:

(i) $25,000 (without aggregation) on a Unit-by-Unit basis; or

(ii) $25,000 in the aggregate on a Unit-by-Unit basis if related to three or more separate occurrences of a similar excusable delay under section 6.2(a) (together (i) and (ii) being the “PCD Cost Threshold”) or to result in an extension of the Baseline Progress Schedule by less than:

(iii) 10 hours (without aggregation) on a Unit-by-Unit basis; or

(iv) 10 hours in the aggregate on a Unit-by-Unit basis if related to three or more separate occurrences of a similar excusable delay under section 6.2(a) (together (iii) and (iv) being the “PCD Schedule Threshold”), then a Project Change Directive will not be issued by OPG. For certainty, the foregoing PCD Cost Threshold and PCD Schedule Threshold are thresholds and not deductibles.

5.4 **Changes in Applicable Laws**

If, after the date of this Agreement, there is any:

(a) change in Applicable Laws (except those that relate to Taxes); or
(b) new Canadian federal or provincial sales, use or excise taxes, duties or similar Taxes or any changes in the rates or applicability of such Taxes (but no other Taxes),

which directly and materially impacts on the Work or Contract Schedule that is neither known nor foreseeable on the date of this Agreement and that has the effect of materially increasing or decreasing the cost or time of providing the Work, then such change will be treated as a Project Change Directive issued by OPG under section 5.2. The Contractor will promptly provide OPG’s Representative with a Notice in the form of Schedule 5.4 detailing the impact of a change contemplated by (a) or (b) above has on the Work and Contract Schedule or the Contract Price. OPG’s Representative will discuss the impact and provide a prompt direction to the Contractor resolving the issue by way of a Project Change Directive. Any dispute relating to changes to the Contract Schedule or Contract Price will be resolved in accordance with Section 11. Any other disputes relating to the impact of the change contemplated by (a) or (b) above will be resolved in accordance with Section 11.

5.5 Execution of Amendments for Project Change Directives

OPG will not be deemed to have agreed to, or be required to pay for, any changes to the Work, Contract Price or the Contract Schedule, until the Parties have executed an Amendment evidencing the Project Change Directive. Once the changes resulting from a Project Change Directive have been agreed to or resolved in accordance with section 5.2, the Parties will execute an Amendment covering the applicable changes to the Work, Contract Price and Contract Schedule.

5.6 Adjustment to Reimbursable Work Fixed Fee

Except for economic cost adjustments made in accordance with section 5.7, the Reimbursable Work Fixed Fee is a fixed amount, and is only subject to adjustment, up or down, in the event of an Amendment.
5.7 Economic Cost Adjustment

Economic cost adjustments will be made to the Reimbursable Costs, Reimbursable Work Target Cost (as modified from time to time by Project Change Directives) and the Reimbursable Work Fixed Fee in respect of the Reimbursable Work, and to the Firm Price in respect of any Firm Price Work, in accordance with the methodology described in Schedule 5.7. For certainty, no economic cost adjustments will be made to other components of the Contract Price, or to the incentive and disincentive amounts set out in Section 8.

SECTION 6 CHANGES TO CONTRACT SCHEDULE

6.1 Changes to Contract Schedule

The Contract Schedule may only be changed by an Amendment made in accordance with Section 5. No other purported change to the Contract Schedule will be valid. Except as set out in this Agreement, nothing in this Agreement obliges OPG to agree to any change to the Contract Schedule.

6.2 Time Extensions

(a) **Excusable Delays.** Subject to this section 6.2, to the extent that a delay extends the Baseline Progress Schedule by more than the PCD Schedule Threshold (as defined in section 5.3) and is caused by:

(1) OPG, another member of the OPG Group or an Other OPG Contractor being responsible for a stop work order or similar notice under section 2.4(j)(6);

(2) a state of emergency requiring the Contractor or Subcontractor to leave the Site at the direction of OPG under section 2.4(j)(11) (except to the extent that any act or failure to act of the Contractor or a Subcontractor led to the evacuation);

(3) a corrective action plan, as described in section 3.4(c), to deal with a Hazardous Condition for which OPG, another member of the OPG Group or an Other OPG Contractor is responsible;
(4) OPG’s failure to perform its obligations under sections 3.1(b), 3.1(c), 3.1(e), 3.1(f), or 3.1(g);

(5) an Other OPG Contractor (provided that the Contractor is in compliance with sections 2.15(h) and 2.15(i)); or

(6) OPG’s request for the Contractor to give priority use of OPG Equipment, as defined in section 3.5, to OPG in accordance with section 3.5(b)(3),

the Contractor will be entitled to relief as follows:

(7) with respect to Firm Price Work or Fixed Price Work, the Contractor will be entitled to schedule relief in accordance with section 6.2(f) and an increase in the applicable Firm Price or Fixed Price in accordance with section 6.2(g).

(8) with respect to Reimbursable Work, the Contractor will be entitled to schedule relief in accordance with section 6.2(f), to Reimbursable Work Target Cost relief in accordance with section 6.2(g), and its actual costs resulting from a delay, together with the profit and overhead component of the percentage(s) applicable to the relevant cost categories set out in the worksheet used to determine the Reimbursable Work Fixed Fee and Reimbursable Work Target Cost of such actual costs, will be an Allowed Cost. For certainty, such actual costs may not include any costs identified in the Cost Allocation Table as Disallowed Costs.

For certainty, other than the obligation to provide such relief as provided for in this section 6.2(a), OPG will have no liability to the Contractor, any Subcontractor or any other Person for any delay that is referred to in this section 6.2(a).

(b) **Force Majeure Delays.** Subject to this section 6.2, neither Party will be responsible for any delay in fulfilling any obligation under this Agreement to the extent that such delay is material and is caused by fire, flood, tidal wave, lightning, earthquake, cyclone, tornado, hurricane, explosion, severe ice storm, epidemic or pandemic disease, embargo, sanction, boycott, legal strike (excluding work to rule activities) or lock-out (other than (i) a lock-out initiated solely by the Contractor or a Subcontractor of its employees, or (ii) work to
rule activities), war, riot or act of public enemies, including terrorists, or site-related blockades (other than labour-related events). If such a force majeure event occurs the Contractor will be entitled to relief as follows:

(1) with respect to Firm Price Work or Fixed Price Work, the Contractor will be entitled to schedule relief in accordance with section 6.2(f), but will not be entitled to an increase in the applicable Firm Price or Fixed Price; and

(2) with respect to Reimbursable Work, the Contractor will be entitled to schedule relief in accordance with section 6.2(f), but not Reimbursable Work Target Cost relief. For certainty, nothing in this section 6.2(b) is intended to limit Contractor’s entitlement to Allowed Costs incurred in connection with such force majeure event provided that such costs may not include any costs identified in the Cost Allocation Table as Disallowed Costs.

(c) Exceptions to Excusable Delays and Force Majeure Delays. Sections 6.2(a) or 6.2(b) will not apply: (i) to the extent the Party seeking relief on account of the delay caused or contributed to the delay, or
(ii) if the Party seeking relief on account of the delay fails, within three Business Days of its becoming aware of the commencement of any such delay, to give written Notice to the other Party describing the event under section 6.2(a) or 6.2(b) giving rise to the delay and the anticipated period of the delay in substantially the form set out at Schedule 6.2(c). Failure by the Contractor to give such Notice within such three Business Day period is sufficient reason for denial by OPG of any extension of time or payments of costs or increase in the Reimbursable Work Target Cost.

(d) Actions During Delay. During any period of delay excused under section 6.2(a) or 6.2(b), the Party that delivered the Notice under section 6.2(c) will:

(1) act prudently in all respects to mitigate the impact of the delay on the Contract Schedule; and

(2) keep the other Party informed in a timely manner of the status of the event under section 6.2(a) or 6.2(b) giving rise to the delay and of the actions being taken to mitigate the impact of such delay.
(e) **Steps After Delay Ends.** Within three Business Days after cessation of the period of delay excused under section 6.2(a) or 6.2(b), the Party that delivered the Notice under section 6.2(c) will deliver an updated Notice in the form attached as Schedule 6.2(c) to the other Party specifying the alleged duration of the excused delay and its impact, if any, on the Contract Schedule. The Party receiving such Notice will review such Notice and provide for an equitable change, if any, to the Contract Schedule in an Amendment made in accordance with Section 5.

(f) **Schedule Relief.** Subject to compliance with sections 6.2(c), 6.2(d), and 6.2(e), the Contractor will be entitled to reasonable schedule relief for an excusable delay described in section 6.2(a) or for a force majeure delay described in section 6.2(b), provided that the dates in the Contract Schedule may not be extended by more than the delay reasonably attributable to the event causing the delay.

(g) **Cost Relief.** Subject to compliance with sections 6.2(c), 6.2(d), and 6.2(e), the Contractor will be entitled to an increase in the Reimbursable Work Target Cost or the applicable Fixed Price or Firm Price, as the case may be, for an excusable delay described in section 6.2(a), provided that the Reimbursable Work Target Cost or the applicable Fixed Price or Firm Price, as the case may be, may not be increased by an amount that is more than is reasonably attributable to the event that caused such delay.

(h) **Dispute Resolution.** If the Parties are unable to agree on the amount of schedule relief and/or Fixed Price/Firm Price/Reimbursable Work Target Cost relief to be provided in accordance with sections 6.2(f) and 6.2(g), the dispute resolution mechanism in Section 11 will apply.

(i) **Procurement Matters.** With respect to the procurement by the Contractor of Work or Goods: (i) in the event of a delay, loss or damage to the Work or Goods while in transit, other than due to a force majeure event set out in section 6.2(b) or to the extent caused by an excusable delay referred to in section 6.2(a); or (ii) in the event of financial distress or other failure (including bankruptcy or insolvency) of a Subcontractor providing Work or Goods; the Contractor will not be entitled to any schedule or cost relief and any
costs incurred by the Contractor for Reimbursable Work in connection with such events will be Disallowed Costs.

SECTION 7 CONTRACT PRICE AND PAYMENT OF CONTRACT PRICE

7.1 Contract Price

(a) Reimbursable Work. OPG will pay the Contractor its Reimbursable Costs incurred in connection with the Reimbursable Work, together with the applicable portion of the Reimbursable Work Fixed Fee that is payable for the performance of such Reimbursable Work. Notwithstanding the foregoing, the Contractor acknowledges and agrees that:

(1) the costs of Goods will not be included in the Reimbursable Costs for Reimbursable Work;

(2) the Contractor will use personnel of the appropriate seniority level for each task in order to ensure the Contractor does not claim Reimbursable Costs for work which should have been performed by senior personnel whose time is paid for as part of the applicable Reimbursable Work Fixed Fee;

(3) any unrecovered and unrecoverable Canadian harmonized sales tax and goods and services tax will be reimbursed to the Contractor without mark up, and will not be included in Reimbursable Costs; and

(4) all (i) discounts, rebates and refunds obtained by the Contractor during the course of the Work, (ii) amounts received by the Contractor from sales of surplus materials and equipment, and (iii) usage, rental or similar charges levied on any Subcontractor by the Contractor, in each case in relation to Work that is compensated on a Reimbursable Costs basis, will accrue to OPG. The Contractor will take all necessary steps to obtain, secure and pass on the benefit of all such amounts to OPG, and all such amounts will be fully reflected by the Contractor in each Application for Payment

(b) Fixed Price Work. OPG will pay the Contractor the applicable portion of the Fixed Price for milestones achieved for the Fixed Price Work in accordance with the Milestone Payment Schedule.
(c) **Firm Price Work.** OPG will pay the Contractor the applicable portion of the Firm Price for milestones achieved for the Firm Price Work in accordance with the Milestone Payment Schedule.

(d) **Contingency Work.** OPG will pay the Contractor the applicable portion of the Fixed Price or Firm Price, as the case may be, for milestones achieved in accordance with the Milestone Payment Schedule for Contingency Work authorized by OPG in accordance with section 2.10(b).

(e) **Optional Work.** OPG will pay the Contractor the applicable portion of the Fixed Price or Firm Price, as the case may be, for milestones achieved in accordance with the Milestone Payment Schedule for Optional Work authorized by an Optional Work Notice to Proceed.

(f) **Reimbursable Goods.** OPG will pay the Contractor, without fee or mark-up by the Contractor, the actual costs of the Reimbursable Goods purchased by the Contractor or a Subcontractor, net of all discounts, rebates, and refund.

Subject to changes in the Contract Price made in accordance with Section 5, the Contract Price is fixed and constitutes the total compensation payable to the Contractor for providing and entirely finishing the Work. In particular, the Contract Price includes all Work (including all costs respecting the provision of labour and benefits, construction equipment and tools), Goods, freight (delivered duty paid, as that term is defined in the Incoterms 2010), Taxes (except for Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada)), insurance required to be provided by the Contractor and all other costs and expenses of every kind respecting the Work and Goods under this Agreement. For certainty, the Fixed Price and Firm Price portions of the Work are inclusive of duties levied under the *Customs Tariff*.

The Contract Price does not include, however, Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada), the carrying costs of the Interim Project LC, the Project LC or the Warranty LC ("LC Costs"), or daily travel and subsistence allowances payable under, as applicable, the terms of: (i) any collective agreements applicable to the Work, Goods or the Project and referred to in Schedule 2.14(f); or (ii) OPG’s Standard Form Business Expense Schedule (a copy of which is attached as Attachment 7.1(25) – Business Expense Schedule ("Travel & Subsistence Costs"). OPG will reimburse the Contractor,
7.2 Draft of Application for Payment

(a) Submission of Draft Application for Payment. The Contractor will submit to OPG, prior to submission under section 7.3, a draft Application for Payment which includes:

(1) a summary of all of its actual costs for the Reimbursable Work incurred in the previous month that the Contractor considers to be Allowed Costs;

(2) a statement of the portion of the Reimbursable Work Fixed Fee that is payable for milestones achieved in accordance with the Milestone Payment Schedule;

(3) a statement of the portion of the Fixed Price Work or Firm Price Work, as the case may be, that is payable for milestones achieved in accordance with the Milestone Payment Schedule; and

(4) a summary of all of its actual costs for the Reimbursable Goods incurred in the previous month, net of all discounts, rebates, and refunds.

(b) Review of Draft Application for Payment. OPG will review (and, at its option, audit) the submitted actual costs, including against the Cost Allocation Table and the other Attachments to Schedule 7.1, as applicable. OPG may also request additional detail on, or supporting documentation for, each cost item for actual costs. OPG will, within 15 Business Days following receipt of the Contractor’s draft Application for Payment, provide written Notice to the Contractor as to the submitted costs, the portion of the Reimbursable Work Fixed Fee amount, the portion of any Fixed Price or Firm Price amount, that OPG has approved for payment or, alternatively, return the draft Application for Payment to the Contractor indicating in writing OPG’s reasons for rejection, provided that:

(1) if OPG disputes any of the actual costs for Reimbursable Goods, considers that any of the actual costs for Reimbursable Work submitted are Disallowed Costs, disagrees with the Contractor’s calculation of the portion of the Reimbursable Work Fixed Fee that
is payable, the portion of any Fixed Price or Firm Price that is
payable and/or disagrees with the Contractor’s calculation, OPG
and the Contractor will work cooperatively to resolve the issue and
if OPG and the Contractor cannot reach agreement with regard to
the foregoing, OPG will pay the undisputed amounts in the
Application for Payment submitted in accordance with section 7.3
in full, and such dispute will be resolved in accordance with Section
11. For certainty, the foregoing process will not affect the ability of
the Contractor to submit an Application for Payment in accordance
with section 7.3 for all amounts that OPG has pre-approved
pursuant to this section 7.2; and

(2) if OPG and the Contractor thereafter agree that an actual cost is an
Allowed Cost, or if such actual cost is determined to be an Allowed
Cost pursuant to the dispute resolution mechanisms set out in
Section 11, such actual cost will be deemed to be a Reimbursable
Cost and may be included in the next Application for Payment
submitted to OPG. Similarly, if OPG and the Contractor thereafter
agree that a portion of the Reimbursable Work Fixed Fee, Fixed
Price or Firm Price, as the case may be, has been earned, or if such
portion of the Reimbursable Work Fixed Fee, Fixed Price or Firm
Price, as the case may be, is determined to have been earned
pursuant to the dispute resolution mechanisms set out in Section
11, such amount may be included in the next Application for
Payment submitted to OPG.

7.3 Application for Payment

(a) ONCORE.

(1) The Contractor acknowledges that OPG has implemented an
electronic invoicing system (“ONCORE”) and the timely payment of
amounts owing to the Contractor requires that the Contractor
provide invoicing information in accordance with this system.

(2) OPG will pay the license fees for ONCORE for two employees of the
Contractor. OPG will not pay additional license or configuration fees
for the integration and implementation of ONCORE with the
Contractor’s payroll system.
(3) Prior to the Contractor being obligated to provide invoicing information for ONCORE, OPG will provide the Contractor with the following:

(A) access to a secure information channel via the internet;

(B) ONCORE training for one or two of the Contractor’s employees;

(C) any unique hardware or software that is required to access ONCORE;

(D) written instructions on how to access and use ONCORE; and,

(E) access during normal business hours on Business Days to OPG employees, contractors or representatives who are knowledgeable with respect to the access and usage requirements of ONCORE and who will provide a reasonable amount of support if the Contractor’s trained employees are having problems using or accessing ONCORE for a 3 month period.

(4) OPG will set up the preliminary invoicing information on ONCORE promptly following the date of this Agreement.

(5) The Contractor will be responsible for maintaining access to the internet. The Contractor will be responsible for the accuracy and timeliness of the data entered into ONCORE. OPG will not be responsible for any delays to payments as a result of the Contractor’s errors and omissions arising from the misuse of ONCORE.

(6) The Parties agree to work co-operatively to minimize each other’s costs associated with the implementation and ongoing access and use of ONCORE.

(7) The Contractor is aware and accepts that OPG will review, accept and approve of the Contractor’s data submitted via ONCORE prior to any issuance of payment. Nothing in this section 7.3(a) diminishes or amends OPG’s rights set out in the remainder of this Agreement.
(b) **Application for Payment.** OPG will pay the Contractor in accordance with the Milestone Payment Schedule and in accordance with this Section 7. The Contractor will submit each draft Application for Payment to OPG’s Representative or OPG’s Designated Delegates for acceptance in accordance with section 7.2. After receiving OPG’s Representative’s or OPG’s Designated Delegates’ acceptance, the Contractor will electronically deliver to OPG via ONCORE a complete Application for Payment after provision of all Work respecting any milestone. The Contractor will not submit to OPG any Application for Payment in respect of any milestone unless: (i) all Work required to be provided in respect of that milestone (and all previous milestones) has been entirely provided; and (ii) OPG’s Representative has accepted such Work as entirely finished. The Contractor will not, without OPG’s prior written approval, submit to OPG any Application for Payment in respect of a milestone prior to the scheduled payment date for such milestone set out in the Milestone Payment Schedule. As part of each Application for Payment, OPG may direct the Contractor to submit to OPG:

1. **an invoice containing:**

   (A) the total amount owing by OPG for completion of the applicable milestone (showing separately all amounts due as Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) and expressly stating any amounts invoiced in a currency other than Canadian dollars), including: (i) for Reimbursable Costs, the amounts that have been approved for payment as Reimbursable Costs and Fixed Fee by OPG as described in section 7.1 above, including written confirmation of OPG’s approval; (ii) for Fixed Price Work and Firm Price Work, (iii) for Reimbursable Goods, the Contractor will include copies of invoices for all Reimbursable Goods expressly setting out the actual costs of the Reimbursable Goods purchased by the Contractor net of all discounts, rebates, and refunds;

   (B) the OPG purchase order number;

   (C) the Contractor’s full name and address;
(D) the name of a contact individual at the Contractor, with a telephone number;

(E) electronic transfer instructions;

(F) the Contractor’s invoice number (which must be unique for each invoice);

(G) the invoice date (which must be the date the invoice is delivered);

(H) the Contractor’s 15 digit registration number for the purposes of Part IX of the Excise Tax Act (Canada);

(I) as a credit to OPG, the amount of any discounts, rebates, refunds or Subcontractor rental payments required to be passed on to OPG in accordance with section 7.1(a)(4) and received in the month prior to the month in which the Application for Payment is submitted by the Contractor; and

(J) as a credit to OPG, the amount of proceeds of insurance received by the Contractor in respect of Reimbursable Costs in the month prior to the month in which the Application for Payment is submitted by the Contractor;

(2) a statutory declaration in the form set out in Schedule 1.1(g) signed by a director or officer of the Contractor declaring that:

(A) all payments due to Subcontractors, all wages and benefit payments due to any of the Contractor’s Personnel, and all contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement, have been paid on or before the date of the Application for Payment in a timely manner, subject to any withholdings or holdbacks required by Applicable Laws; and

(B) title to the applicable part of the Project will pass to OPG in accordance with section 7.5 no later than the date of OPG’s payment;
(3) a certificate in the form set out in Schedule 1.1(g) signed by an officer of the Contractor certifying:

(A) that the insurance coverages that the Contractor is obliged to maintain under section 4.2 remain in full force;

(B) that the Contractor has paid in a timely manner all amounts payable under the Workplace Safety and Insurance Act, 1997 (Ontario);

(C) that the Contractor remains in compliance with all its other obligations under the Workplace Safety and Insurance Act, 1997 (Ontario); and

(D) that the Contractor has provided OPG with the Workplace Safety and Insurance Board registration number for each member of the Contractor’s Personnel providing Work at the Site for the period covered by the certificate;

(4) a certificate in the form set out in Schedule 1.1(g) signed by an officer of the Contractor respecting outstanding claims; and

(5) 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 Work at the Site.

7.4 Payment Terms

(a) **Payment Terms.** OPG will aggregate all outstanding Applications for Payment received and approved by OPG for payment before the 25th of each month. Subject to sections 7.4(c) and 7.6(d), OPG will pay the Contractor this aggregate amount on the 25th of the following month. All payments are conditional, however, on the Contractor fulfilling its obligations and making satisfactory progress in providing the Work before the date payment is made. OPG’s Representative will determine whether or not such obligations have been fulfilled and progress is satisfactory.

(b) **No Deemed Acceptance.** No payment made by OPG under this Agreement and no use or occupancy of the Project, in whole or in part, by OPG will constitute acceptance of any part of the Work or Goods that is not in accordance with this Agreement.
Refusal of Payment. Notwithstanding any term in this Agreement, OPG may refuse to make any payment, in whole or in part, or set off from any payment, otherwise payable to the Contractor under this Agreement, an amount to be determined by OPG on account of:

1. with respect to Fixed Price Work or Firm Price Work, failure by the Contractor to perform all Work required to achieve the applicable milestone;

2. with respect to Reimbursable Work, the current or any previous Application for Payment containing Disallowed Costs;

3. with respect to Reimbursable Work, the current or any previous Application for Payment including an amount for a portion of the Fixed Fee that has not been earned or properly substantiated;

4. Work, Goods or the Project being Defective, in whole or in part;

5. OPG having corrected or replaced a Defective part of the Work, Goods or Project in accordance with this Agreement;

6. Losses suffered or incurred by any member of the OPG Group or claims, demands, actions, suits or proceedings for Losses having been made against a member of the OPG Group by any Person in respect of which the Contractor is required to indemnify under this Agreement;

7. a Lien having been filed in respect of the Work or Goods contrary to the provisions of section 2.14(k) (unless such Lien has since been vacated or otherwise dealt with to the satisfaction of OPG);

8. the Contract Price having been reduced; or

9. any other terms of this Agreement or rights under Applicable Law entitling OPG to a set off against the amount for which Application for Payment was made.

Irrevocable Direction. B&W and CEI hereby irrevocably and unconditionally authorize and direct OPG, directly or indirectly, to pay all amounts payable to the Contractor hereunder into such bank account or bank accounts as may be designated by the Contractor from time to time in writing and such payment will be in satisfaction
of OPG’s payment obligations in respect of such payment to the Contractor hereunder. This will be OPG’s good and sufficient authority to do so.

7.5 Title Warranty

The Contractor represents and warrants to OPG that title to all Work (including documents, designs, drawings, specifications, plans, reports, information and other deliverables and data) and Goods covered by any Application for Payment, whether used or incorporated in the Project or not and wherever situate, will pass to OPG no later than the time of payment, free and clear of all Liens. OPG’s retention of any amount under sections 7.4(c) or 7.6(d) will in no way affect the Contractor’s representation and warranty in this section 7.5.

7.6 Taxes

(a) **Goods and Services Tax/Harmonized Sales Tax.** The Contractor represents and warrants to OPG that the Contractor is duly registered for the purposes of Part IX of the Excise Tax Act (Canada) and that the Contractor’s 15 digit registration number is [number hidden] (for B&W) and [number hidden] (for CEI). The Contractor will deduct all Canadian goods and services tax or any harmonized sales tax levied under the Excise Tax Act (Canada) recovered or recoverable by the Contractor on the payment of expenses before submitting any Application for Payment to OPG covering any such expenses. The Contractor will ensure that each Application for Payment (and any other invoice submitted to OPG under this Agreement) will separately set out all Canadian goods and services tax/harmonized sales tax levied under the Excise Tax Act (Canada) and payable by OPG under this Agreement. The Contractor is solely responsible for any Taxes levied in respect of any Goods, construction equipment or tools brought into Ontario for temporary use in respect of the Work.

(b) **The Contractor’s Income Taxes and Withholdings.** OPG will have no liability for:

1. any of the Contractor’s income or capital taxes imposed by any Governmental Authority respecting this Agreement; or
(2) any withholding (except for any amount withheld by OPG under section 7.6(d)), collection, payment, remitting or reporting of any Taxes paid or payable by the Contractor in respect of this Agreement, including in respect of any of the Contractor’s Personnel or any of the Subcontractors.

(c) **Refund of Taxes.** All remissions or refunds of any Taxes (other than income or capital) paid or payable by any Governmental Authority in respect of the Work or Goods, in whole or in part, are the exclusive property of the Contractor, unless such amounts have been included in the Contract Price for Reimbursable Work, in which case such amounts will be the exclusive property of OPG. All such amounts received by the Contractor or a Subcontractor by way of a remission or refund of any Taxes will constitute trust monies to which OPG is exclusively entitled. The Contractor will promptly forward all such applicable amounts to OPG. The Parties will co-operate with each other and take all actions required or desirable to apply for any applicable remission or refund of Taxes. Upon request by OPG, the Contractor will execute, or cause any Subcontractor to execute, all required or desirable documentation to allow OPG to act in the name of the Contractor or a Subcontractor, as the case may be, to apply for and receive any such remission or refund.

(d) **Withholding for Non-residents.** Notwithstanding any term in this Agreement, OPG may withhold any amount that is required to be withheld by any Applicable Laws respecting Taxes. OPG will have no obligation to gross up or otherwise increase payments made to the Contractor or any Subcontractor because OPG withheld any amount in respect of Taxes. Where OPG so withholds any amount, OPG will remit such amount to the applicable Governmental Authority. If OPG is entitled to set off an amount owing by OPG under this Agreement against an amount owing to OPG under this Agreement and OPG is also required to withhold an amount under any Applicable Laws respecting Taxes, then OPG will set off an amount owing by OPG against an equal amount owing to OPG. For example, if OPG owes the Contractor $100 and of that amount OPG is required to withhold and remit to the Canada Revenue Agency $15, and the Contractor owes OPG $95, then:
(1) OPG would withhold and remit to the Canada Revenue Agency $15; and

(2) the Contractor would pay OPG $10.

These payments would thus entirely extinguish both OPG's obligation to the Contractor and the Contractor's obligation to OPG.

(e) Importer of Record. If any portion of the Goods is to be manufactured or fabricated outside Canada, the Contractor will ensure that either the Contractor or its agent will be the importer of record for customs purposes.

(f) Scientific Research and Experimental Development (“SR&ED”).

(1) OPG and the Contractor acknowledge and agree that this Agreement may require the performance of SR&ED as defined in subsection 248(1) of the Income Tax Act (Canada) (the “ITA”). OPG and the Contractor further agree that to the extent that this is the case, the SR&ED will be performed by the Contractor on behalf of OPG and/or a portion of each relevant payment to be made by OPG will be for SR&ED performed by the Contractor that is related to a business of OPG (which SR&ED OPG is entitled to exploit in the manner set out in this Agreement), and OPG will be entitled to include certain amounts paid for SR&ED in computing the amounts described in Subsections 37(1) or 37(2) of the ITA.

(2) As such, it is agreed that OPG will be entitled to claim all “investment tax credits” (as defined in subsection 127(9) of the ITA) and all similar provincial equivalents (“Investment Tax Credits”) that arise from the activities of the Contractor under this Agreement for which OPG has made payments, and the Contractor is not entitled to claim such Investment Tax Credits. OPG may require the Contractor to provide satisfactory evidence that it has not claimed such Investment Tax Credits.

(3) The Contractor will cooperate fully with, provide scientific, technical and financial information to, and assist OPG (in accordance with the detailed procedures to be developed in good faith by the Contractor and OPG (the “SR&ED Procedures”)) to determine what activities of the Contractor under this Agreement qualify as SR&ED
and what expenditures qualify for deductions and for the Investment Tax Credits and to allow OPG and its tax advisors to complete OPG's claims for deductions and for the Investment Tax Credits. The Contractor will not be entitled to any separate or additional fee or compensation for such cooperation, information and assistance. The incremental cost to the Contractor of providing such cooperation, information and assistance will be a Reimbursable Cost, provided that such Reimbursable Cost will not be taken into account for purposes of calculating incentives or disincentives pursuant to Section 8. Except as provided in the foregoing sentence, the Contractor will not be entitled to any separate or additional fee or compensation for such cooperation, information and assistance. Each payment invoiced by the Contractor under this Agreement will be clearly allocated in the invoice between the portion of the payment that is for qualifying SR&ED expenditures and the remainder of the payment, such allocation to be completed in accordance with the agreed methodology set out in the SR&ED Procedures.

(4) If OPG is subject to an income tax audit by any Government Authority relating to a SR&ED tax credit, the Contractor will provide to OPG such reasonable support and additional documentation and access to the Contractor’s cost data as OPG may request at any time during an income tax audit.

7.7 Unit Secondary Side Completion

(a) Notice of Unit Secondary Side Completion. The Contractor will, on a Unit-by-Unit basis, deliver a Notice in the form attached as Schedule 7.7(a) to OPG (a “Unit Secondary Side Completion of Construction Declaration”) when the Unit Secondary Side is turned over to OPG subject to OPG acceptance, after all the following criteria have been satisfied:

(1) all modification and refurbishment activities to permanent plant equipment have been performed and the Unit Secondary Side has been completely refurbished in compliance with the Specifications and accepted by OPG, including that:
(A) all modifications to permanent plant equipment that cannot be commissioned have been performed in accordance with OPG N-PROC-MA-0090 during design and installation phases;

(B) all temporarily removed interferences and temporary modifications are restored to the original configuration;

(C) quality assurance/quality control acceptance of the Work is complete;

(D) all non-conformances are dispositioned and processed;

(E) all documentation required in support of processing CNSC submissions and approvals is submitted;

(F) provide support to OPG in the commissioning of the systems as directed by OPG;

(G) all open items completed, except for non-critical punch list items with an aggregate cost not to exceed a total of $50,000, which punch list items do not represent a source of danger to personnel or to the equipment of any kind;

(H) milestone achievement updated;

(I) risk assessment accuracy review completed;

(J) records update received by OPG and input into controlled documents;

(K) "lessons learned" report submitted; and

(L) all required information for post-implementation review submitted; and

(2) a plan and schedule to correct identified punch list items has been prepared and agreed upon by the Parties; and

(3) the Unit Secondary Side can be returned to OPG for commissioning and restart activities.
When OPG has confirmed that all of the terms in this section 7.7(a) have been complied with, then “Unit Secondary Side Completion” has occurred.

(b) **Unit Secondary Side Completion.** Within a reasonable time after receipt of the Notice under section 7.7(a), the Parties will make a joint inspection of the Unit Secondary Side to determine the status of the Unit and each outstanding item, including each item set out in the Notice delivered under section 7.7(a). If OPG determines that Unit Secondary Side Completion has not occurred in accordance with section 7.7(a), OPG will deliver a Notice in the form of document attached as Schedule 7.7(b) to this effect to the Contractor, giving reasons. If OPG determines that Unit Secondary Side Completion has occurred in accordance with section 7.7(a), OPG will deliver a Notice in the form of document attached as Schedule 7.7(b) containing a certificate of Unit Secondary Side Completion. This certificate will fix the date of Unit Secondary Side Completion as the date of the written Notice delivered by the Contractor pursuant to section 7.7(a) (the “Unit Secondary Side Completion Date”).

(c) **Secondary Side Punch List.** OPG will accept, in whole or in part, the punch list as part of the process of confirming Unit Secondary Side Completion. Thereafter, the Contractor will provide a weekly written report to OPG on the status of completion of each punch list item.

(d) **Access to Perform Remaining Obligations.** OPG may exclude the Contractor from the Unit Secondary Side, in whole or in part, after the date of Unit Secondary Side Completion. OPG will, however, allow the Contractor reasonable access to such parts of the Unit Secondary Side as are required to permit the Contractor to finish entirely or correct all items on the punch list.

### 7.8 Unit Primary Side Completion

(a) **Notice of Unit Primary Side Completion.** The Contractor will on a Unit-by-Unit basis, deliver a Notice in the form attached as Schedule 7.8(a) to OPG (a “Unit Primary Side Completion of Construction Declaration”) when Unit Primary Side is turned over to OPG subject
to OPG acceptance, after all the following criteria have been satisfied:

(1) all modification and refurbishment activities to permanent plant equipment have been performed and the Unit Primary Side has been completely refurbished in compliance with the Specifications and accepted by OPG, including that:

(A) all temporarily removed interferences and temporary modifications are restored to the original configuration;
(B) quality assurance/quality control acceptance of the Work is complete;
(C) all non-conformances are dispositioned and processed;
(D) all documentation required in support of processing CNSC submissions and approvals is submitted;
(E) provide support to OPG in the commissioning of the systems as directed by OPG;
(F) all open items completed, except for non-critical punch list items with an aggregate cost not to exceed a total of $50,000, which punch list items do not represent a source of danger to personnel or to the equipment of any kind;
(G) milestone achievement updated;
(H) risk assessment accuracy review completed;
(I) records update received by OPG and input into controlled documents;
(J) "lessons learned" report submitted; and
(K) all required information for post-implementation review submitted; and

(2) a plan and schedule to correct identified punch list items has been prepared and agreed upon by the Parties; and
(3) the Unit Primary Side can be returned to OPG for commissioning and restart activities.

When OPG has confirmed that all of the terms in this section 7.8(a) have been complied with, then “Unit Primary Side Completion” has occurred.

(b) Unit Primary Side Completion. If OPG determines that Unit Primary Side Completion has not occurred in accordance with section 7.8(a), OPG will deliver a Notice in the form of document attached as Schedule 7.8(b) to this effect to the Contractor, giving reasons. If OPG determines that Unit Primary Side Completion has occurred in accordance with section 7.8(a), OPG will deliver a Notice in the form of document attached as Schedule 7.8(b) containing a certificate of Unit Primary Side Completion. This certificate will fix the date of Unit Primary Side Completion as the date of the written Notice delivered by the Contractor pursuant to section 7.8(a) (the “Unit Primary Side Completion Date”). The Parties will then sign a certificate of substantial completion as contemplated by section 32(1)1 of the Construction Lien Act (Ontario). The Contractor will then promptly publish the notice in accordance with the Construction Lien Act (Ontario) and deliver proof of publication to OPG’s Representative.

(c) Primary Side Punch List. OPG will accept, in whole or in part, the punch list as part of the process of confirming Unit Primary Side Completion. Thereafter, the Contractor will provide a weekly written report to OPG on the status of completion of each punch list item.

(d) Access to Perform Remaining Obligations. OPG may exclude the Contractor from the Unit Primary Side, in whole or in part, after the date of Unit Primary Side Completion. OPG will, however, allow the Contractor reasonable access to such parts of the Unit Primary Side as are required to permit the Contractor to finish entirely or correct all items on the punch list.

7.9 Final Completion

(a) Notice of Final Completion. When the Contractor determines that it has entirely completed the Work, the Contractor will deliver to OPG
a written Notice thereof in the form of Schedule 7.9(a). OPG will then deliver a written Notice to the Contractor stating either:

(1) that OPG accepts the Work as being entirely completed, and acknowledges that the Contractor has delivered to OPG all Approvals, all Available for Service Documentation, complete as-builds and all other written or graphic documents, designs, drawings, specifications, plans, reports, information and other deliverables or data required to be provided by the Contractor to OPG under this Agreement; or

(2) that there are items remaining to be entirely completed or that are Defective and must be corrected, repaired or replaced by the Contractor.

If OPG provides a written Notice pursuant to section 7.9(a)(2), the Contractor will promptly take such actions as are necessary to entirely complete, correct, repair or replace all such items. Once the Contractor has completed all such actions, the Contractor will deliver another written Notice to OPG in accordance with this section 7.9.

(b) **Final Completion.** “Final Completion” will occur when OPG delivers the written Notice referred to in section 7.9(a)(1) (the “Final Completion Date”). For certainty, Final Completion will not have been achieved until, in addition to OPG’s acceptance of the Work as being entirely completed, OPG has received any disincentive payments owing to OPG in accordance with Section 8.

(c) **Final Completion Holdback.** OPG will be entitled to hold back payment from the final payments to the Contractor of an additional $2,500,000 of the Reimbursable Work Fixed Fee and the Reimbursable Costs until OPG has determined that all Work has been completed and all Submittals required to be submitted to OPG under this Agreement have been submitted.

### 7.10 Final Application for Payment

After OPG has accepted the Work as being entirely finished under section 7.9(b), the Contractor may make a final Application for Payment in accordance with section 7.3. The Contractor will submit with the Final Application for Payment (except to the extent
previously delivered by the Contractor and accepted by OPG as satisfactory), the following:

(a) as built drawings (to the extent provided for under the Specifications), maintenance instructions, security documents, certificates of insurance, certificates of inspection, all documents required to be maintained at the Site in accordance with section 2.15(a) and all other documents required by this Agreement to be delivered to OPG on the entire finishing of the Project;

(b) the required consent of any surety, if any, to the final payment made under section 7.11;

(c) a certificate of good standing from the Workers’ Safety and Insurance Board or successor organisation;

(d) releases in the form set out in Schedule 7.10, from the Contractor and each Subcontractor who provided Work in respect of the Project, respecting all Liens and other claims filed or otherwise arising in respect of the Work, Goods or Project; and

(e) statutory declarations in the form set out in Schedule 7.10, signed by a director or officer of the Contractor, and each Subcontractor who has provided Work at the Site, declaring that all payments due to Subcontractors, all wages and benefit payments due to any of the Contractor’s Personnel, and all contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement, have been paid in a timely manner.

If the Contractor is unable to deliver to OPG any release or statutory declaration referred to in sections 7.10(d) and 7.10(e) from a Subcontractor, the Contractor will deliver to OPG collateral or security satisfactory to OPG to indemnify OPG against any Lien or other claim until such time that any Lien or claim would expire by operation of Applicable Laws.

7.11 Final Payment and Acceptance

On receipt of the Application for Payment under section 7.10, OPG will review the Application for Payment within 10 Business Days of receipt and deliver a Notice in the form attached as Schedule 7.11 to the Contractor stating either that:
where OPG makes the final payment to the Contractor under this section 7.11, such payment will not relieve the Contractor from any of its obligations or liabilities under this Agreement or otherwise. The Contractor will maintain the applicable records, including time sheets, accounts and invoices, for seven years following expiration or termination of this Agreement, or for such other period as OPG may set out in a Notice to the Contractor. On request by OPG, the Contractor will promptly provide OPG access to such records for review and copying.

SECTION 8 INCENTIVES AND DISINCENTIVES

8.1 Incentives and Disincentives - Reimbursable Work Target Cost

(a) General. This section 8.1 sets out how OPG and the Contractor will share in both cost savings and cost overruns in relation to the Reimbursable Work Target Cost, on a Unit-by-Unit basis.

(b) Neutral Band. There will be a neutral band of 2% above and below the Reimbursable Work Target Cost, outside of which incentive and disincentive amounts will be calculated in accordance with sections 8.1(c) and 8.1(d). OPG and the Contractor will share in variances from the Reimbursable Work Target Cost outside of the neutral band.

(c) Calculation of Reimbursable Work Cost Incentives. Subject to sections 8.4(a) and 8.4(c) and to the limit set out in section 8.5, if the aggregate amount of all Reimbursable Costs incurred in connection with the Reimbursable Work is less than the Reimbursable Work Target Cost by more than 2% of the Reimbursable Work Target Cost, OPG will pay to the Contractor an amount determined in accordance with the table below (the “Reimbursable Work Cost Incentive”):
Amount by which the aggregate Reimbursable Costs are lower than the Reimbursable Work Target Cost ("Cost Savings") expressed as a percentage

<table>
<thead>
<tr>
<th>Amount by which the aggregate Reimbursable Costs are lower than the Reimbursable Work Target Cost (&quot;Cost Savings&quot;)</th>
<th>Reimbursable Work Cost Incentive as a percentage of Cost Savings*</th>
</tr>
</thead>
<tbody>
<tr>
<td>0% to 2% below</td>
<td>0%</td>
</tr>
<tr>
<td>2% to 4% below</td>
<td>25%</td>
</tr>
<tr>
<td>4% to 6% below</td>
<td>30%</td>
</tr>
<tr>
<td>6% to 8% below</td>
<td>35%</td>
</tr>
<tr>
<td>8% to 10% below</td>
<td>40%</td>
</tr>
<tr>
<td>10% to 12% below</td>
<td>45%</td>
</tr>
<tr>
<td>more than 12% below</td>
<td>50%</td>
</tr>
</tbody>
</table>

* The percentages in the table above are applicable to the incremental amounts falling within the applicable range only.

(d) Calculation of Reimbursable Work Cost Disincentives. Subject to sections 8.4(a) and 8.4(c) and to the limit set out in section 8.5 if the aggregate amount of all Reimbursable Costs incurred in connection with the Reimbursable Work is greater than the Reimbursable Work Target Cost by more than 2% of the Reimbursable Work Target Cost, the Contractor will pay to OPG an amount determined in accordance with the table below (the “Reimbursable Work Cost Disincentive”):

<table>
<thead>
<tr>
<th>Amount by which the aggregate Reimbursable Costs are higher than the Reimbursable Work Target Cost (&quot;Cost Overruns&quot;)</th>
<th>Reimbursable Work Cost Disincentive as a percentage of Cost Overruns*</th>
</tr>
</thead>
<tbody>
<tr>
<td>0% to 2% above</td>
<td>0%</td>
</tr>
<tr>
<td>2% to 4% above</td>
<td>25%</td>
</tr>
</tbody>
</table>
### Table: Incentives and Disincentives - SS&E Target Cost

<table>
<thead>
<tr>
<th>Amount by which the aggregate Reimbursable Costs are higher than the Reimbursable Work Target Cost (&quot;Cost Overruns&quot;) expressed as a percentage</th>
<th>Reimbursable Work Cost Disincentive as a percentage of Cost Overruns*</th>
</tr>
</thead>
<tbody>
<tr>
<td>4% to 6% above</td>
<td>30%</td>
</tr>
<tr>
<td>6% to 8% above</td>
<td>35%</td>
</tr>
<tr>
<td>8% to 10% above</td>
<td>40%</td>
</tr>
<tr>
<td>10% to 12% above</td>
<td>45%</td>
</tr>
<tr>
<td>more than 12% above</td>
<td>50%</td>
</tr>
</tbody>
</table>

* The percentages in the table above are applicable to the incremental amounts falling within the applicable range only.

#### 8.2 Incentives and Disincentives – SS&E Target Cost

(a) **General.** This section 8.2 sets out how OPG and the Contractor will share in both cost savings and cost overruns in relation to the SS&E Target Cost, on a Unit-by-Unit basis.

(b) **Neutral Band.** There will be a neutral band of 10% above and below the SS&E Target Cost, outside of which incentive and disincentive amounts will be calculated in accordance with sections 8.2(c) and 8.2(d). OPG and the Contractor will share in variances from the SS&E Target Cost outside of the neutral band.

(c) **Calculation of SS&E Cost Incentives.** Subject section 8.4(d) and to the limit set out in section 8.5, if the aggregate amount of all Reimbursable Costs incurred in connection with the SS&E is less than the SS&E Target Cost by more than 10% of the SS&E Target Cost OPG will pay to the Contractor an amount determined in accordance with the table below (the "SS&E Cost Incentive"): 
Amount by which the aggregate Reimbursable Costs for SS&E are lower than the SS&E Target Cost ("SS&E Cost Savings") expressed as a percentage

<table>
<thead>
<tr>
<th>Amount by which the aggregate Reimbursable Costs for SS&amp;E are lower than the SS&amp;E Target Cost</th>
<th>SS&amp;E Cost Incentive as a percentage of SS&amp;E Cost Savings*</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to –10% below</td>
<td>0%</td>
</tr>
<tr>
<td>more than –10% below</td>
<td>50%</td>
</tr>
</tbody>
</table>

* The percentages in the table above are applicable to the incremental amounts falling within the applicable range only.

(d) Calculation of SS&E Cost Disincentives. Subject to section 8.4(d) and to the limit set out in section 8.5 if the aggregate amount of all Reimbursable Costs incurred in connection with the SS&E is greater than the SS&E Target Cost by more than 10% of the SS&E Target Cost, the Contractor will pay to OPG an amount determined in accordance with the table below (the "SS&E Cost Disincentive"):

<table>
<thead>
<tr>
<th>Amount by which the aggregate Reimbursable Costs for SS&amp;E are higher than the SS&amp;E Target Cost (&quot;SS&amp;E Cost Overruns&quot;) expressed as a percentage</th>
<th>SS&amp;E Cost Disincentive as a percentage of SS&amp;E Cost Overruns*</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to +10% above</td>
<td>0%</td>
</tr>
<tr>
<td>more than +10% above</td>
<td>50%</td>
</tr>
</tbody>
</table>

* The percentages in the table above are applicable to the incremental amounts falling within the applicable range only.

8.3 Incentives and Disincentives – Schedule

(a) Calculation of Schedule Incentives. Subject to section 8.4(b) and to the limit set out in section 8.5, OPG will pay the Contractor schedule incentive amounts calculated by determining the number of full calendar days by which, on a Unit-by-Unit basis, the Unit Primary Side Completion Date for the applicable Unit is less than the Guaranteed Unit Primary Side Completion Date for such Unit, and
multiplying the number of calendar days by $5,000, up to an aggregate maximum amount equal to $50,000.

(b) **Calculation of Schedule Disincentives.** Subject to section 8.4(b) and to the limit set out in section 8.5, the Contractor will pay OPG a disincentive amount on a Unit-by-Unit basis calculated by determining the number of full calendar days by which the date of the event identified in column A in the table below exceeds the date in column B in the table below and multiplying the number of calendar days by the amount in column C in the table below:

8.4 **Timing for Calculation and Payment of Incentives and Disincentives.**

(a) **Payment of Cost Incentives & Disincentives.** The calculation and payment of the cost incentive or disincentive amount for the Reimbursable Work referred to in section 8.1 will be deferred until the earlier of: (i) termination of this Agreement in accordance with Section 10 or Section 12; and (ii) the applicable Unit Primary Side Completion Date.
(b) Payment of Schedule Incentives & Disincentives. The calculation and payment of the schedule incentive or disincentive amount referred to in sections 8.3(a) and 8.3(b) will be deferred until the earlier of: (i) termination of this Agreement in accordance with Section 10 or Section 12; and (ii) the applicable Unit Primary Side Completion Date.

(c) Payment of Incentives & Disincentives (Early Termination). If this Agreement is terminated in accordance with Section 10 or Section 12 prior to the occurrence of Unit Primary Side Completion for a Unit, then the cost incentives and disincentives described in this Section 8 with respect to such Unit will not be payable.

(d) Payment of SS&E Cost Incentives & Disincentives. The cost incentive and disincentive amounts for the SS&E referred to in section 8.2 will be calculated and paid on the earlier of: (i) the Final Completion Date, and (ii) the date on which the aggregate amount of disincentives for the SS&E incurred by the Contractor exceeds the overall limit on disincentives specified in section 8.5.

(e) Accrual of Incentives & Disincentives. For certainty, the disincentives described in this Section 8 will continue to accrue up to the date this Agreement is terminated, notwithstanding the occurrence of any event of default under section 10.1.

8.5 Sub-Caps and Overall Limits on Incentives and Disincentives

The amount of all cost and schedule incentives and disincentives under this Section 8 will be calculated in accordance with this Section 8. The net amount derived from each such calculation will be payable by OPG to the Contractor, or by the Contractor to OPG, as the case may be, but will be subject to the following overall limits:

(a) if the net amount is payable by the Contractor to OPG pursuant to sections 8.1(d), 8.2(d), 8.3(b)(6) or 8.3(b)(7), such amount will be limited to an amount equal to 100% of the aggregate Reimbursable Work Fixed Fee;

(b) if the net amount is payable by the Contractor to OPG pursuant to sections 8.3(b)(1) to 8.3(b)(5) or 8.3(b)(8), such amount will be limited an amount equal to 10% of the aggregate cost of all Fixed Price Work and Firm Price Work; or
(c) if the net amount is payable by OPG to the Contractor pursuant to sections 8.1(c), 8.2(c) or 8.3(a), such amount will be limited to an amount equal to 50% of the aggregate Reimbursable Work Fixed Fee.

However, in making each such calculation: (i) the amount of all cost disincentives for Reimbursable Work will be sub-capped at an amount equal to 60% of the aggregate Reimbursable Work Fixed Fee, and (ii) the amount of all cost incentives for Reimbursable Work will be subcapped at an amount equal to 30% of the aggregate Reimbursable Work Fixed Fee.

8.6 Recovery Plan

At any time after the Contractor accrues any cost and/or schedule disincentives with respect to a Unit, OPG may, in its sole discretion, request that the Contractor deliver to OPG within two Business Days a remedial plan, including supporting documentation, acceptable to OPG, acting reasonably, which will specify the steps that the Contractor intends to take to complete the remaining Works for such Unit so as to achieve the Contract Schedule (a “Recovery Plan”). Upon acceptance by OPG, the Contractor will promptly and continuously implement the Recovery Plan.

8.7 Disincentives are not Penalties

The Contractor and OPG acknowledge and agree that the precise amount of OPG’s actual damages that would result from the failure of the Contractor to achieve the Reimbursable Work Target Cost, or to meet a schedule, would be extremely difficult to calculate. The Contractor and OPG acknowledge and agree that the disincentives provided for in this Section 8 would be an amount substantially below any reasonable and genuine pre-estimate of the actual damages that would be suffered by OPG as a result of the Contractor failing to achieve the Reimbursable Work Target Cost or to meet a schedule, and OPG agrees that it will not make any claim against the Contractor arising from such failures in excess of the aggregate amount of the disincentives payable under this Section 8.

SECTION 9 ACCEPTANCE OF PROJECT AND CORRECTION OF DEFECTS

9.1 Warranty

(a) Basic Warranty. The Contractor warrants and guarantees to OPG that, for the duration of the Warranty Period:
(1) notwithstanding anything else in this Agreement, the Work will in all respects not be Defective; and

(2) all Work and Goods will be provided in accordance with this Agreement.

(3) all Goods will be new, unused, not Defective and free from all Liens, of good quality and comply with all requirements under this Agreement.

All warranties and guarantees set out in this Agreement are for the benefit of OPG. If required by OPG, the Contractor will provide satisfactory evidence (including reports of required inspections, tests and approvals) as to the kind and quality of all Goods. The Contractor will ensure that all Goods will be constructed, applied, assembled, erected, installed, used, connected, adjusted, field tested, conditioned, cleaned, commissioned and cleaned up in accordance with instructions of the applicable Subcontractor, except to the extent as may otherwise be provided in this Agreement. The Contractor will not disregard the written requirements of its specialist Subcontractors in respect to their Work or Goods, unless such decision is dispositioned under and in accordance with the Contractor’s quality assurance program.

(b) **Exclusions.** The Contractor’s warranties and guarantees in section 9.1(a) do not apply to the extent that any breach of the warranty or guarantee is due to:

(1) maintenance or operation by OPG contrary to any maintenance or operating instructions delivered by the Contractor to OPG;

(2) conditions of operation materially more severe than those specified for the Project;

(3) the negligence of OPG or any Person providing services to OPG, other than the Contractor or a Subcontractor; or

(4) the effects of reasonable wear and tear under normal usage by OPG.

(c) **No Deemed Acceptance.** The Contractor’s obligations under section 9.1(a) are absolute. These warranties and guarantees 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 Agreement. For certainty, none of the following actions will constitute any acceptance of the Work, Goods or Project by OPG in whole or in part or will constitute a waiver or release of any of the Contractor’s obligations under this Agreement:

1. any review, comment, acceptance, rejections or failure to review, comment, accept or reject by OPG of a Submittal or other document under this Agreement;

2. any inspection, test or approval by OPG or any third party;

3. any payment under this Agreement;

4. any certificate of Unit Secondary Side Completion issued under section 7.7(b) or Unit Primary Side Completion issued under section 7.8(b);

5. any use or occupancy of the Project in whole or in part by OPG; or

6. any correction or replacement of a Defective part of the Work, Goods or Project by, or at the request of, the Contractor, OPG or OPG’s Designated Delegates.

9.2 Access to Project

The Contractor will provide access to the Project, the Site and, subject to the Contractor’s policies governing its premises’ security and the terms and conditions required by the Contractor to ensure confidentiality, the premises of the Contractor and Subcontractors, at all reasonable times and from time to time, to OPG’s Representative, and at the request of OPG’s Representative, to OPG’s Designated Delegates or any Governmental Authority, for the purposes of viewing, performing surveillance on, inspecting, witnessing, testing and/or accepting the Work, Goods and/or Project, in whole or in part, including to monitor compliance with the Specifications and any applicable quality assurance program. In particular, the Contractor will deliver a Notice to OPG’s Representative providing OPG with Notice of at least two Business Days before OPG is required to inspect any Work or Goods at any hold point in any inspection plan. At the request of OPG’s Representative, the Contractor will promptly provide to OPG’s Representative and/or OPG’s Designated Delegates a copy of all the documents (unpriced in the case of subcontracts for Fixed Price Work or Firm Price Work) respecting any subcontract for Work subject to viewing, performing surveillance, inspecting, witnessing, testing and/or accepting. No such viewing, performing
surveillance, inspecting, witnessing, testing and/or accepting by OPG will relieve the Contractor of any of its obligations under this Agreement. The Contractor will advise each applicable representative of OPG of the Contractor’s or Subcontractor’s applicable site safety procedures and policies. The Contractor will provide each such representative with proper and safe transportation and conditions for such access.

9.3 Inspections, Tests and Approvals

The Contractor will with promptness and in an orderly sequence so as not to cause any delay to the Work arrange for and obtain all inspections, tests and approvals required for the acceptance of Work or Goods that are to be incorporated or used in the Project. The Contractor will ensure that each inspection, test or approval that is required to be carried out, in whole or in part, by a Professional, is so carried out by a Professional. The Contractor will pay all costs respecting such inspections, tests and approvals. If this Agreement, the applicable quality assurance program or any Applicable Laws or Approvals require any part of the Work, Goods or the Project to be inspected, tested or approved, in whole or in part, the Contractor will arrange for and obtain all such inspections, tests and approvals. The Contractor will pay all costs respecting such inspections, tests and approvals. The Contractor will deliver to OPG all certificates, reports and other documents respecting any inspections, tests and approvals made in accordance with this section 9.3 or the Specifications. The Contractor will give OPG reasonable Notice of the date, time and location for all inspections, tests or approvals carried out under this section 9.3 so that OPG and OPG’s Designated Delegates can attend. If Notice is not given, OPG may require the inspection, test or approval to be redone. If any such approval is to be issued in the name of OPG or that will affect the operation of the Project following the Final Completion Date, the Contractor will submit the draft approval to OPG’s Representative or OPG’s Designated Delegates for acceptance, before the Contractor obtains this approval. The Contractor will only obtain any such approval following receipt of the written acceptance of OPG’s Representative or OPG’s Designated Delegates of the draft approval.

9.4 Uncovering Project

(a) **Covered Without OPG’s Consent.** If, without the prior written consent of OPG, the Contractor covers any part of the Project (or the construction work of any Person) that is required under this Agreement or Applicable Laws or Approval to be inspected, tested or approved, the Contractor will, at its cost, uncover and recover such part of the Project or construction work. If, however, the Contractor has given OPG timely Notice of the Contractor’s intention to cover such part of the Project or the construction work and OPG has not
acted within five Business Days in response to such Notice, OPG will be responsible for the cost of uncovering and recovering such part of the Project or the construction work.

(b) **Covered Contrary to OPG’s Request.** If the Contractor covers any part of the Project (or the construction work of any Person) contrary to the request of OPG, the Contractor will, at its cost, if requested by OPG, uncover and recover such part of the Project or construction work.

(c) **OPG’s Request to Uncover.** If, for any reason not set out in sections 9.4(a) or 9.4(b), OPG wishes, after the applicable Unit Secondary Side Completion Date or Unit Primary Side Completion Date, as the case may be, to have part of the Project uncovered to be inspected, tested or approved by any Person designated by OPG, the Contractor will, at OPG’s request, uncover the requested part of the Project for inspection, testing, approval and providing all necessary Work. If it is determined that any part of the Project uncovered under this section 9.4(c) is Defective, the Contractor will:

1. pay all costs for uncovering and recovering the part of the Project requested by OPG to be uncovered on a scope of Work by scope of Work basis (with scopes of Work being as set out in Schedule 1.1(eee));
2. pay all of OPG’s reasonable costs of inspection, testing and approval; and
3. correct or replace the Defective part of the Project in accordance with this Section 9.

If, however, it is determined that none of the Project uncovered under this section 9.4(c) is Defective, OPG will pay all the Contractor’s reasonable costs for uncovering and recovering the part of the Project requested by OPG to be uncovered (such reasonable costs for uncovering and recovering will not be taken into account for purposes of calculating incentives and disincentives pursuant to section 8).

### 9.5 Notice of Defective Project

OPG will, within a reasonable period of time after having actual knowledge of a Defective part of the Work or Goods, deliver Notice to the Contractor of the Defective part, but OPG’s failure to do so will not impose any liability on OPG and the Contractor.
will be estopped from making any claim against OPG for failure to do so. In addition, OPG’s failure to do so will not:

(a) have the effect of transferring any obligation under this Agreement from the Contractor to OPG or otherwise have the effect of amending this Agreement; or

(b) affect or change in any way the Contractor’s,

(1) obligation to entirely finish the Work and provide the Goods in accordance with this Agreement, or

(2) responsibility for repairing, replacing or re-providing any Defective part of the Work, Goods or Project.

9.6 OPG May Stop Work

OPG may at any time and from time to time, by delivering a Notice to the Contractor, direct the Contractor to stop the provision of Work or delivery of the Goods, in whole or in part, if:

(a) the Work, Goods, or the Project is Defective, in whole or in part;

(b) the Contractor fails to supply sufficient competent and skilled workers, in whole or in part;

(c) the Contractor fails to provide the Work, in whole or in part, in a manner that ensures that the entirely finished Project will conform to this Agreement; or

(d) the Contractor has breached any term of this Agreement, including due to any act or omission of a Subcontractor that breaches a term of this Agreement.

The Contractor may only resume the stopped Work to which OPG’s direction applies once the Contractor has remedied the issue that was the cause for OPG to deliver such Notice and OPG has issued a further written Notice to the Contractor directing the Contractor to resume the stopped Work. The Contractor will not be entitled to any cost adjustment for any stopped Work or delivery of Goods due to OPG’s direction to stop Work pursuant to this section 9.6.
9.7 Correction or Removal of Defective Part of Project – Before Warranty Period

(a) Work Required. Before the Warranty Period for a Unit commences, OPG may accept or reject any Defective parts of the Work, Goods or the Project, whether or not such part has been incorporated into the Project, on delivery of Notice to this effect to the Contractor. The Contractor will promptly correct all Defective parts of the Work, Goods and the Project either upon discovery or upon rejection by OPG under this section 9.7. If reasonably requested by OPG, the Contractor will remove any and all non-contaminated Defective parts of the Project from the Site, whether or not such parts have been incorporated into the Project, and replace such parts with parts that are not Defective and that comply with this Agreement.

(b) Cost to Correct or Remove. The Contractor will pay all costs respecting the correction of a Defective part of the Work, Goods or the Project that is Fixed Price Work or Firm Price Work or warranty work pursuant to section 9.8(b) ("Correction Costs"), including:

1. all costs of the corrective services, including, as may be required for disassembly, removal, re-installation, re-erection, re-assembly, transportation, insurance and any applicable Taxes; and

2. all costs and charges respecting correction or replacement of any Defective part of the Work, Goods or the Project, including any part of the Work, Goods or Project that was rendered Defective because of the Defective part of the Work, Goods or Project, including in respect of any damage or loss to the Work, Goods or the Project arising in respect of such correction or replacement or in respect of any inspections conducted to determine whether any such correction or replacement was required.

9.8 Correction or Removal of Defective Part of Project – Warranty Period

(a) Warranty Period. In this Agreement, "Warranty Period" means with respect to all Work and Goods relating to a Unit, the date commencing on the date such Unit is declared in-service by OPG (the "Unit In-Service Date") and ending on the earlier of: (i) the date that is three months after the actual end date of the first planned outage where inspections take place for such Unit, (ii) the date that is four years from the Unit In-Service Date for such Unit; or (iii) the
date that is five years from the date when all Work related to such Unit has been completed by the Contractor.

(b) **Obligation to Correct.** If at any time and from time to time before the expiration of the relevant Warranty Period the Work, Goods or the Project, in whole or in part, including any part of the Work, Goods or Project that was rendered Defective because of the Defective part of the Work, Goods or Project, becomes or is determined to be Defective or fails because of any defect, the Contractor will promptly, at the Contractor’s cost and in accordance with OPG’s instructions and at times and within the period of time reasonably specified by OPG:

1. satisfactorily correct such Defective part of the Work, Goods and Project, or, to the extent reasonably requested by OPG, remove such non-contaminated Defective part of the Project from the Site and replace such Defective part with parts which are not Defective and which comply with this Agreement;

2. satisfactorily correct or replace any other damage to the Work, Goods or the Project arising in respect of the actions taken in respect of section 9.8(b)(1) or in respect of any inspections conducted to determine whether any actions were required in respect of section 9.8(b)(1); and

3. The Contractor will pay all Correction Costs as described in section 9.7. In providing any corrective services under this section 9.8(b), the Contractor will comply with all applicable terms of this Agreement and will endeavour to minimise interference with, and impact on, OPG’s operations.

OPG will allow the Contractor such reasonable access to the Unit as may be required to permit the Contractor to entirely complete or correct all Defective Work and items on the punch list in accordance with an access schedule to be developed jointly by OPG and Contractor, including any decontamination or shielding necessary to reduce radiation to required levels, provided that after the date of Unit Primary Side Completion or Unit Secondary Side Completion, as the case may be, OPG will only be required to provide reasonable access to a Unit in accordance with OPG’s schedule.
(c) **Failure to Comply.** If the Contractor fails to comply with its obligations under section 9.8(b) or any other term in this Agreement as expeditiously as is commercially reasonable and within the time period reasonably specified by OPG, or if there is an emergency that poses a significant risk of loss or damage to the Project or any Person, OPG may take, directly or indirectly, any of the actions contemplated under section 9.8(b) or such other actions as are reasonable in the circumstances, without affecting any other rights or remedies OPG may have against the Contractor under this Agreement. The Contractor will pay all Correction Costs as described in section 9.7 respecting all such actions, plus a fee of 15%. The Contractor will not be responsible for defects in work performed by Persons other than the Contractor, any of its Subcontractors or the Contractor's Personnel under this section 9.8. In respect of any action taken by OPG, directly or indirectly, under this section 9.8(c), OPG may without terminating this Agreement:

1. eject and exclude from the Site the Contractor, any Subcontractor and any of the Contractor’s Personnel;

2. suspend the Contractor’s provision of Work under this Agreement to the extent of such actions;

3. take possession of the Site, work in progress, Goods, Contractor’s construction equipment, tools, fuel and temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal, at the Site (and at no additional charge for the retention and use thereof);

4. assume any and all subcontracts with Subcontractors;

5. avail itself of any performance bond, letter of credit, guarantee or other security provided by the Contractor or a Subcontractor with respect to the applicable Work or Goods;

6. incorporate or use in the Project all Goods stored at the Site or for which OPG has paid the Contractor but which are stored elsewhere; and/or
(7) withhold, without interest, all payments to the Contractor under any agreement between OPG and the Contractor until the Contractor’s liability to OPG is determined.

The Contractor will allow all members of the OPG Group and Other OPG Contractors access to the Site to enable OPG to exercise its rights under this section 9.8(c). The Progress Schedule will not be changed for any reason relating to any actions taken by OPG, directly or indirectly, under this section 9.8(c).

(d) **Extension of Correction Period.** Where any correction or replacement of any Defective part of the Work, Goods or Project, including any part of the Work, Goods or Project that ceases to be used in commercial operations because of the Defective part of the Work, Goods or Project, including in respect of any damage or loss arising in respect of such correction or replacement, is carried out under this section 9.8, then the Warranty Period will:

(1) recommence at the beginning of the Warranty Period under section 9.8(a) respecting the part of the Work, Goods or Project that was corrected or replaced, commencing on the date that such corrected or replaced part re-enters commercial operation; and

(2) respecting the part of the Work, Goods or Project that ceases to be used in commercial operations because of the Defective part of the Work, Goods or Project, be suspended as at the date that such Work, Goods or Project were taken out of commercial operation and will recommence on the date that such Work, Goods or Project re-enter commercial operation,

provided that in no event will the Warranty Period with respect to a Unit, as extended pursuant to this section 9.8(d), exceed the earlier of: (i) the date that is three months after the actual end date of the second planned outage where inspections take place for such Unit; or (ii) nine years from the date when all Work related to such Unit has been completed by the Contractor.

9.9 **Acceptance of Defective Part of Project**

If any part of the Work, Goods or the Project becomes or is determined to be Defective or fails because of any defect before the expiration of the relevant Warranty Period (as
that period may be extended under section 9.8(d)), OPG may deliver a Notice to the Contractor directing the Contractor not to correct or replace the Defective part of the Work, Goods or the Project in whole or in part. To the extent OPG accepts any such Defective part of the Work, Goods or the Project before OPG makes the final payment under section 7.11, the Parties will reduce the Contract Price under an Amendment made in accordance with Section 5 to reflect an equitable reduction in the Contract Price for the Defective part of the Work, Goods or the Project. To the extent OPG accepts any such Defective part of the Work, Goods or Project after OPG makes the final payment under section 7.11, the Contractor will pay OPG an agreed amount that reflects an equitable reduction in the Contract Price for the Defective part of the Work or Goods and OPG is unconditionally and irrevocably directed to apply the Final Completion holdback, if any, to this amount (although, if such Final Completion holdback is exhausted, this situation in no way limits the Contractor’s obligations to OPG under this Agreement).

9.10 Other Warranties Excluded

In consideration of the warranties and guarantees in section 9.1(a), all other warranties with respect to the Work, Goods or Project, either express or implied, whether arising at law, in equity, by statute, custom of trade or otherwise, including merchantability and fitness for a particular purpose, are excluded.

9.11 Sole Remedy

If at any time and from time to time following Unit Primary Side Completion or Unit Secondary Side Completion, as applicable, (for the applicable Unit), any part of the Work or Goods are found to be Defective, the sole liability of the Contractor and the exclusive remedy of OPG with respect to the correction of such Defective part, will be limited to the warranty remedies set out in section 9.8, provided that nothing in this section 9.11 will serve to limit the Contractor’s liabilities or OPG’s remedies otherwise provided for under this Agreement that do not pertain to the correction of such Defective part.

SECTION 10 DEFAULT

10.1 Events of Default

Each of the following events and circumstances constitutes an event of default by the Contractor under this Agreement:

(a) the Contractor or the Guarantor has been dissolved or has had a resolution passed for its winding-up or liquidation, other than in respect of an amalgamation, merger or consolidation;
(b) the Contractor or the Guarantor has made a general assignment, arrangement, composition or proposal with, or for the benefit of, its creditors;

(c) the Contractor or the Guarantor ceases to be, or admits that it is no longer, able to satisfy its obligations as they become due;

(d) the Contractor or the Guarantor has instituted, or has had instituted against it, a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or similar Applicable Laws affecting creditor’s rights, or a petition is presented for its winding-up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:

(1) is instituted by or consented to by the Contractor or the Guarantor;

(2) results in a judgement of insolvency or bankruptcy, the entry of an order for relief or the making of an order for its winding-up or liquidation and any such judgement or order has not been stayed pending an appeal; or

(3) if instituted against the Contractor or the Guarantor, is not stayed pending an appeal and dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof;

(e) the Contractor or the Guarantor has filed a petition, answer or consent seeking reorganisation, readjustment, arrangement, composition or similar relief under any Applicable Law;

(f) the Contractor or the Guarantor has consented or becomes subject to the appointment of a receiver, liquidator or trustee or assignee in bankruptcy in respect of all or a substantial part of its assets and in the case that any such process, if instituted against the Contractor, has been instituted or presented against the Contractor, any such process has not been stayed pending an appeal and dismissed, discharged, stayed or restrained within 30 days thereafter;

(g) the Contractor or the Guarantor had a secured party take possession of all or a substantial part of its assets;
(h) the Contractor or the Guarantor has a distress, execution, attachment, or sequestration enforced or sued on or against all or a substantial part of its assets;

(i) the Contractor breaches any of its obligations (including any representations, warranties, guaranties and indemnities) under this Agreement, or under any document delivered under this Agreement, and fails to remedy the breach to the satisfaction of OPG within 7 Business Days following receipt of Notice from OPG specifying the breach, or if the breach cannot be cured within such 7 Business Day period, after such longer period of time as is reasonably required to cure the breach (but no longer than 60 days in any circumstances), so long as the Contractor diligently and constantly endeavours to cure the breach during such extended period;

(j) the Contractor, the Guarantor or any Subcontractor, any of their shareholders, directors, officers, partners, members, representatives, agents or any of the Contractor's Personnel gives or offers to give (directly or indirectly) to any Person, a bribe, gift, gratuity, commission or other thing of note, as an inducement or reward;

(1) for doing or forbearing to do any action in relation to this Agreement; or

(2) for showing favour or disfavour to any Person in relation to this Agreement;

(k) the Contractor assigns or attempts to assign this Agreement, in whole or in part, except in a manner expressly permitted in section 13.1;

(l) [Intentionally Deleted];

(m) the Contractor achieves liabilities equal to or in excess of the limit of liability set out in section 10.7;

(n) the Contractor fails to deliver a Recovery Plan in accordance with section 8.6 or fails to promptly and continuously implement such Recovery Plan;
(o) the Interim Project LC, the Project LC or the Warranty LC ceases to be in full force and effect during the period specified in section 4.1(a), or if the issuing bank indicates that it will not, or will be unable to, meet any draw by OPG on such letter of credit; or

(p) the Guarantee ceases to be in full force and effect for any reason (including where there has been a change in ownership of the Contractor and a replacement Guarantee is not provided in accordance with section 4.1(b)(5)), or if the Guarantor challenges the validity of the Guarantee (for certainty, invoking valid defences available to the Guarantor under the Guarantee (other than with respect to the validity of the Guarantee) will not be considered challenging the validity of the Guarantee) or otherwise indicates that it will not, or will be unable to, honour the Guarantee if and when demand is made thereunder.

For purposes of this section 10.1, "Contractor" will be deemed to be B&W or CEI and the "Guarantor" will be deemed to be the CEI Guarantor, the B&W Guarantor or any replacement guarantors of the CEI Guarantor or the B&W Guarantor as the case may be.

10.2 Notice

OPG may terminate this Agreement immediately and without any cost to OPG (other than amounts otherwise owing by OPG to the Contractor under this Agreement for the Work that has been entirely finished and delivered in accordance with the terms of this Agreement), by delivering a Notice to the Contractor on the occurrence of any event of default set out in section 10.1.

10.3 OPG's Recourse

If OPG is entitled to terminate this Agreement under section 10.2, OPG may, in addition to its rights under section 10.2 and without terminating this Agreement:

(a) eject and exclude from the Site the Contractor, any Subcontractor and any of the Contractor's Personnel;

(b) entirely finish the Work, in whole or in part, by whatever means OPG deems appropriate under the circumstances (and the Contractor, at no additional charge to OPG, will promptly, and in any event within three Business Days, provide OPG with all such records and work in progress that are not located on the Site and that are requested by OPG in a Notice);
(c) take possession of all or part of the Site, any work in progress, Goods, the Contractor’s Property (including the Contractor’s construction equipment, tools, fuel and temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal) at the Site (and at no additional charge for the retention and use thereof);

(d) exercise any of OPG’s rights under section 4.1 and give a Notice to any Subcontractor with a contract with the Contractor respecting the Project that such contract has been assigned and transferred to OPG under section 4.1;

(e) enforce any indemnity, letter of credit, performance bond, guarantee or other security provided by the Contractor, a Subcontractor or any other Person with respect to the applicable Work or Goods (although, if the terms of any such document permit earlier enforcement under any such document, OPG may enforce such rights in accordance with the terms of such other document);

(f) incorporate or use in the Project any or all Goods stored at the Site or for which OPG has paid the Contractor but which are stored elsewhere; and/or

(g) withhold, without interest, all payments, in whole or in part, to the Contractor under any agreement between OPG and the Contractor until the Contractor’s liability (including any liability of the Contractor under Section 8) to OPG is determined.

10.4 Deemed Termination

If at any time after OPG terminates this Agreement under section 10.2 or exercises its rights under section 10.3, it is determined for any reason that an event of default had not occurred or the default was otherwise excusable, the rights and obligations of the Parties will be the same as if the termination of this Agreement by OPG had occurred under section 12.2.
10.5 Contractor’s Liability

If OPG terminates this Agreement under section 10.2 or exercises its rights under section 10.3, the Contractor will be liable to OPG for:

(a) all costs in excess of the Contract Price incurred by OPG to finish entirely the Work, Goods and the Project, including external and internal costs (including costs of additional engineering, management and administration);

(b) all costs of correcting Defective parts, if any, in the Work, Goods or Project, calculated in accordance with section 9.8(c); and

(c) all other Losses suffered or incurred by OPG in respect of any event of default arising in respect of section 10.1.

OPG may set off such amount, in whole or in part, as OPG determines is owing by the Contractor to OPG under this section 10.5, against any amount otherwise owing by OPG to the Contractor in accordance with section 13.5.

10.6 OPG’s Liability

Notwithstanding any term in this Agreement, the Contractor may not make any claim against OPG for breach of this Agreement by OPG unless, the Contractor, within 60 days of the date on which the Contractor knew or ought to have known of the occurrence of the breach, gives Notice to OPG in the form attached as Schedule 10.6 describing the breach and the anticipated claim for the breach. The Contractor will be estopped from making any claim against OPG unless it provides this Notice in the time period required by this section 10.6. Notwithstanding any term in this Agreement, but subject to section 10.9, OPG’s maximum liability to the Contractor and its Subcontractors for any claim for breach of this Agreement by OPG (regardless of the legal theory upon which any such damages claim is based, even upon the fault, tort (including without limitation negligence), statute, regulation, or any other theory of law or strict liability) will not exceed an amount equal to 100% of the Contract Price. The foregoing limitation of liability will not apply, however, to: (i) unpaid amounts due and owing under Applications for Payment received and properly payable by OPG in accordance with Section 7; (ii) OPG’s obligations under section 4.7; (iii) Intellectual Property infringement claims by third parties arising from a modification of Contractor IP where such modification was at OPG’s own risk in accordance with section 2.16(d); (iv) OPG’s indemnity obligations under section 2.17(d); and (v) any claims, demands, orders, actions, suits or proceedings of third parties, to the extent arising in respect of liability
for contribution or indemnity for injury or damage to third parties arising in respect of OPG’s negligence.

10.7 Limitation of Liability

10.8 Exceptions

The limitations of liability set out in section 10.7 will not apply, however, to:

(a) the Contractor’s indemnity obligations under sections 2.16(f), 2.17(d) and 4.6(b)(2), all with respect to any claims, demands, orders, actions, suits or proceedings of third parties;

(b) amounts recovered from insurance under this Agreement to the extent of the limits specified in section 4.3; and

(c) Losses suffered or incurred by a member of the OPG Group or any claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person (other than a member of the OPG Group), to the extent arising in respect of,
(1) fraud, criminal acts or wilful misconduct of the Contractor; or

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

10.9 Consequential Damages Disclaimer

(a) Notwithstanding any other term in this Agreement and except as recoverable from insurance provided under section 4.3(b), in no circumstances whatsoever will the Contractor and its Subcontractors be liable to OPG for indirect, incidental or consequential liabilities, damages, losses, costs or expenses, loss of anticipated profit, economic loss (including loss of revenue by reason of plant shutdown or non-operation, service interruptions, cost of purchased or replacement power or steam, loss of use of capital or revenue, cost of money), interest or any other similar damages or loss suffered or incurred by OPG, regardless of the legal theory upon which any such damages claim is based, even upon the fault, tort (including without limitation negligence), statute, regulation, or any other theory of law or strict liability ("OPG’s Consequential Damages"). For certainty, the disincentives described in section 8 will not be considered OPG’s Consequential Damages for purposes of this Agreement.

(b) Notwithstanding any other term in this Agreement, in no circumstances whatsoever will OPG be liable to the Contractor and its Subcontractors for indirect, incidental or consequential liabilities, damages, losses, costs or expenses, loss of anticipated profit, economic loss (including loss of revenue), interest or any other similar damages or loss suffered or incurred by the Contractor, regardless of the legal theory upon which any such damages claim is based, even upon the fault, tort (including without limitation negligence), statute, regulation, or any other theory of law or strict liability (the “Contractor’s Consequential Damages”). For certainty, the following will not be considered the Contractor’s Consequential Damages for purposes of this Agreement: (i) OPG’s obligations to pay the Contractor undisputed amounts owing in respect of the Contract Price for Work performed in accordance with this Agreement; and (ii) OPG’s obligations under section 4.7.
10.10 Claims by an OPG Subsidiary

Any liability of the Contractor and its Subcontractors for Losses suffered by a subsidiary of OPG (as defined in the Business Corporations Act (Ontario)) (an "OPG Subsidiary") with respect to the Work or Goods will be included in and, therefore, be counted against the applicable limitation of the Contractor's liability set out in section 10.7 (subject to the exclusions in section 10.8). The applicable limitation of the Contractor's liability to OPG pursuant to section 10.7 (subject to the exclusions in section 10.8) will be reduced by the aggregate of any such Losses actually recovered by such OPG Subsidiary from the Contractor, and OPG will indemnify and hold harmless the Contractor from and against any such Losses recovered by such OPG Subsidiary from the Contractor in excess of the limitations set out in section 10.7 (subject to the exclusions in section 10.8). In no event will any OPG Subsidiary be considered a third party for the purposes of section 10.8.

SECTION 11 ARBITRATION

11.1 Procedure for Resolution of Disputes

The Parties will work cooperatively to resolve any dispute, disagreement, controversy, question or claim, including any claim for indemnification, relating to the Goods or Work or otherwise to this Agreement (in each case, a "Dispute"). If either Party wishes to resolve a Dispute, the Party will first refer such Dispute to the Project Representative of such Party, who will communicate the subject matter of such Dispute to the Project Representative of the other Party. If a Dispute is not referred to a Project Representative within two years of the date the other Party is aware of the Dispute, then the limitation period with respect to such Dispute will expire. The Project Representatives will attempt to resolve such Dispute. If the Project Representatives are unable to resolve such Dispute within 10 Business Days, either Project Representative may refer such Dispute to their Senior Management Representatives who will communicate the subject matter of such Dispute to the Steering Committee to attempt to resolve such Dispute. At such meeting, the Steering Committee will attempt to resolve such Dispute. Any Dispute not resolved by the Steering Committee during the meeting at which such Dispute is presented to the Steering Committee, or within such fixed period of time thereafter as may be agreed upon by all members of the Steering Committee, may thereafter be referred to arbitration by either Party. The Senior Management Representatives will have discretion to delay the referral to the Steering Committee of Disputes about costs until the amount in dispute exceeds a threshold to be determined by the Senior Management Representatives from time to time. If a Steering Committee meeting does not occur within four months of the date of the Dispute being referred to it by the Senior Management Representative, the disputing Party may thereafter refer the Dispute to arbitration. Notwithstanding the foregoing,
unresolved Disputes (other than in connection with a draw made by OPG on the Project letter of credit) arising during the commissioning phase on a particular Unit may not be referred to arbitration until such Unit is returned to service.

If a Dispute is referred to arbitration:

(a) OPG may, at its option, elect that the Dispute be tried, heard or arbitrated together with and in the same arbitration proceedings as one or more other related dispute(s) under any one or more agreement(s) with the Other OPG Contractors, and the Contractor consents to such other dispute(s) being tried, heard or arbitrated together with the Dispute; and

(b) in determining if OPG and the Contractor have performed their respective obligations under this Agreement relating to the subject matter of the Dispute, the Parties agree that the judge(s) or arbitrator(s) will be instructed to and will take into account that it is the intention of the Parties to this Agreement that the Parties are to perform their respective obligations under this Agreement with regard to the need for coordination and timely completion of the Work, the work by the Other OPG Contractors and the Refurbishment Program.

11.2 Arbitration

(a) **Arbitration.** Subject to section 11.1 and section 2.17(d), all disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, or in respect of any legal relationship associated with or arising from this Agreement, including with respect to this Agreement’s formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, will be finally determined by arbitration pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. (as amended from time to time, the “**Rules**”). Unless otherwise agreed in writing, there will be three (3) arbitrators, appointed in accordance with Rule 14 of the Rules. The place of the arbitration will be Toronto, Ontario. The language of the arbitration will be English. The law of the arbitration will be the law of the Province of Ontario.
(b) **Non-Application.** For certainty, neither a panel of arbitrators appointed in accordance with this section 11.2, nor any court, may restrict the right of OPG to suspend or terminate this Agreement in accordance with sections 12.1 or 12.2.

(c) **Confidentiality.** In addition to the provisions of Rule 33 of the Rules, the Parties will keep confidential, and not disclose to any other Person, the arbitration and all matters arising directly or indirectly from the subject matter of the arbitration (including all documents exchanged, the evidence and the award), except that a Party may disclose any such information to the extent required:

1. to obtain assistance from Persons to conduct the arbitration;

2. by Applicable Laws (including the *Freedom of Information and Protection of Privacy Act* (Ontario) and the *Sarbanes-Oxley Act* (United States)) or securities exchange rules; or

3. by a disclosure requirement with a shareholder, lender or potential lender (including any advisor to any such recipient Person), so long as such Person is informed of the confidential nature of such information and such Person agrees to be bound, subject to Applicable Laws, by such confidentiality obligation.

(d) **Final and Binding.** All interim awards, partial final awards and final awards of the arbitrators will be final and binding upon the Parties regarding all matters submitted to arbitration, with no rights of appeal, even on questions of law.

(e) **Enforcement.** Either Party may have recognized and enforced any interim awards, partial final awards and awards rendered by the arbitrators in any court having jurisdiction.

(f) **Costs of Arbitration.** Subject to Rule 46 of the Rules, if the arbitrators do not specify the costs and expenses of the arbitration, each Party will bear its own costs and will share the costs of all three arbitrators equally.