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**INDEPENDENT EXTERNAL OVERSIGHT SERVICES**

**AGREEMENT**

**DARLINGTON REFURBISHMENT PROGRAM**

**February 25, 2013**

**Between**

**ONTARIO POWER GENERATION INC.**

**And**

**BURNS & McDONNELL CANADA, LTD.**

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## INDEPENDENT EXTERNAL OVERSIGHT SERVICES AGREEMENT

This Independent External Oversight Services Agreement is made as of February 25, 2013 between:

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

and

**BURNS & McDONNELL CANADA, LTD.**, a  
corporation existing under the laws of Ontario (the  
"**Supplier**").

### RECITALS

- A. OPG is the owner and operator of the Darlington nuclear generating station (the "**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 is to extend the service life of all four units of the DNGS (the "**Refurbishment Program**").
- D. OPG is retaining the Supplier to provide the Services as described in this Agreement and on the terms of this Agreement.
- E. This Agreement is a "conformed contract" and all the terms between the parties respecting the Services 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) **Agreement** means this independent external oversight services agreement, including any recitals and schedules, as amended by an Amendment or restated from time to time.

- (b) **Amendment** means a written amendment agreement signed by the parties in accordance with section 10.3 which makes any change to this Agreement.
- (c) **Applicable Laws**, in respect of any Person, property, transaction or event, means all applicable laws, statutes, by-laws, regulations, treaties, judgements and decrees applicable to that Person, property, transaction or event at the applicable time and all applicable Approvals, requirements, requests, directives, rules, guidelines, standards, specifications, codes, instructions, circulars, manuals, and policies of any relevant technical organisation or any Governmental Authority having or purporting to have authority over that Person, property, transaction or event at the applicable time.
- (d) **Approvals** means any approvals, permits, licences, consents, grants, privileges, rights, clearances, orders, ordinances, registrations, filings or other authorisations as may be required from any applicable Governmental Authorities or by this Agreement.
- (e) **Billing Rates** means collectively, the hourly rates charged for each individual anticipated to be employed by the Supplier or a Subcontractor in the provision of the Services further to this Agreement, as particularly set out in Schedule 4.1(b).
- (f) **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, Remembrance Day, Thanksgiving Day, Christmas Day and Boxing Day. Each Business Day will end at 5:00 p.m. on that day.
- (g) **Business Expense Schedule** means OPG's Standard Form Business Expense Schedule set out in Schedule 1.1(v).
- (h) **Contract Price** means the total amount paid and payable by OPG under this Agreement through to completion of all the Services.
- (i) **Dispute** is defined in section 10.1.
- (j) **DNGS** is defined in Recital A.
- (k) **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.

- (l) **Indemnitor** means Burns & McDonnell Engineering Company, Inc., a corporation existing under the laws of the State of Missouri in the United States of America and providing an indemnity in accordance with Schedule 3.4.
- (m) **Key Personnel** is defined in section 2.2(c).
- (n) **Losses** means all costs, penalties, expenses, incurred liabilities, injuries, losses and damages (including all fees and charges of engineers, architects, accountants, lawyers and other professionals and experts and all court, arbitration and other dispute, mediation or resolution costs), whether incurred through settlement or otherwise, together with interest at the rate of the Bank of Canada Prime Lending 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.
- (o) **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.
- (p) **ONCORE** is defined in section 5.1.
- (q) **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, and agents, including OPG's Representative, but, for greater certainty, excluding the Supplier and the Supplier's shareholders, directors, officers, partners, members, employees, representatives, agents, advisors, and any other Person for whom the Supplier is responsible at law.
- (r) **OPG's Representative** means the Director Strategic Oversight & Partnerships Management or such other individual designated in writing by OPG from time to time to act as OPG's representative in dealings with the Supplier under this Agreement.
- (s) **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 (including any heir, executor, administrator, personal or legal representative, successor or assign).
- (t) **Records** is defined in section 6.1.
- (u) **Refurbishment Program** is defined in Recital C.
- (v) **Reimbursable Expenses** means the expenses which are reimbursable under the Business Expense Schedule.

- (w) **Site** means any OPG facilities where the Supplier is providing the Services.
- (x) **Services** means independent external oversight services as set out in Schedule 1.1(x) as amended from time to time in accordance with an Amendment.
- (y) **Services Manager** is defined in section 2.2(a).
- (z) **Subcontractor** means a Person who supplies services to the Supplier in relation to the Services under an agreement with the Supplier, another Subcontractor or a combination of the Supplier and another Subcontractor and includes, for greater certainty, individuals who are “independent contractors” to the Supplier or a Subcontractor, but does not include any contract or temporary staffing labour, who, for greater certainty, are the Supplier’s Personnel.
- (aa) **Supplier’s Personnel** means all personnel, including the Supplier’s representatives and the Services Manager, used by the Supplier or assisting the Supplier in the provision of the Services, including any personnel, staff, labour (including temporary or contract labour), and other employees of the Supplier or a Subcontractor and any Subcontractor who is an individual.
- (bb) **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.

## **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 in this Agreement, 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”. 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 Services, such words will be interpreted in accordance with that meaning.

#### **1.4 Time of Day**

Unless otherwise specified in this Agreement, 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, each of the documents contemplated by this Agreement and the conduct of the parties with respect to the formation and performance of 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 10.4. 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) Schedules to this Agreement; and

- (e) Work releases signed in accordance with section 2.6(c).

## **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 [Intentionally Omitted]**

## **1.10 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 a standard, specification, manual or code of any technical organisation or Governmental Authority is deemed to be a reference to that standard, specification, manual or code as amended or re-published from time to time.

## **1.11 Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding the subject matter and, except for any Amendment, supersedes all other agreements, negotiations, discussions, undertakings, representations, warranties and understandings whether written or verbal, including any OPG request for proposals, any Supplier 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 Services or this Agreement, including any minimum or maximum hours of employment or respecting any statements or other information previously provided to the Supplier or respecting any physical conditions, labour conditions or scheduling. If the Supplier did not seek a clarification during the request for proposals process regarding any term in this Agreement and there is a subsequent controversy respecting the interpretation of that term, OPG's interpretation will govern.

# **SECTION 2 - THE SUPPLIER'S OBLIGATIONS**

## **2.1 Intent and Initial Actions**

- (a) **General.** The Supplier will, safely and diligently, provide the Services in an organised and timely manner and in accordance with this Agreement and, to the extent not inconsistent with this Agreement, with generally accepted industry practices. The Supplier will perform the Services in accordance with the Standard of Care.

- (b) **Intent.** The Supplier will provide all services (which are deemed to be part of the Services), 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 provision of the Services.
- (c) **Standard of Care.** In the provision of the Services, the Supplier will exercise that degree of skill, care, diligence, prudence and foresight and that degree of professional thoroughness and competence that is the customary and usual standard exercised by suppliers providing services of a similar nature for a similar project in terms of scope, character and magnitude (the “**Standard of Care**”).
- (d) **Financial Information.** The Supplier authorises OPG to make credit enquiries about the Supplier or any of its affiliates from time to time and to receive and exchange credit information from credit reporting agencies or other Persons with which the Supplier or any of its affiliates has or may expect to have financial dealings. The Supplier has provided OPG with the Supplier’s consolidated audited balance sheet for the last three financial years. Such financial statements have been prepared in accordance with U.S. generally accepted accounting practices, consistently applied. Such financial statements fairly reflect the consolidated financial position of the Supplier as at the dates and for the periods set out in such statements. The Supplier will provide OPG with such audited consolidated financial statements within 120 days of each year end.
- (e) **No Guarantee of Work.** The Supplier acknowledges and agrees that OPG is not guaranteeing any specific number of hours for the Services under this Agreement.
- (f) **The Supplier’s Representations.** The Supplier represents and warrants to OPG that the Supplier:
  - (1) is sufficiently experienced and properly qualified, licensed, equipped, organised and financed to provide, or cause the Services to be completely provided as set out under this Agreement;
  - (2) is not using any Subcontractors other than Subcontractors identified in Schedule 2.8(a) and if Subcontractors are being used, has engaged and will engage only Subcontractors that are qualified and pre-approved by OPG;
  - (3) has examined and has satisfied itself in respect of all matters respecting the Services, including all necessary information respecting the risks, contingencies and other circumstances which may affect the Billing Rates or the Services;

- (4) is not aware of any legal action instituted, threatened or pending against the Supplier that could have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (5) will not provide any services, that are related to the Refurbishment Program, to a third party without OPG's knowledge and written consent.

## 2.2 Project Organisation and Supplier's Personnel

- (a) **Provision of Supplier's Personnel.** The Supplier will provide, schedule and co-ordinate all of the Supplier's Personnel required for the provision of the Services including a representative of the Supplier who is trained, qualified and experienced in project management who will have overall responsibility for the Services (the "**Services Manager**"). The Supplier will not provide for, and will remove from, the provision of the Services any individuals in respect of whom OPG may from time to time reasonably object.
- (b) **Foreign Nationals.** The Supplier will obtain the written approval of OPG prior to engaging any foreign nationals in connection with the Services. Prior to granting any approval, OPG will require submission by the Supplier of the name, title, and Billing Rates for such individuals. Billing Rates for foreign nationals will be inclusive of all costs, mark-ups and profits including tax equalization costs or any other associated costs. For greater clarity, OPG is only responsible for paying the applicable Billing Rate for approved hours worked and no other additional indirect or direct costs associated with foreign nationals.
- (c) **Supplier Organisation and Key Personnel.** Schedule 2.2(c) sets out an organisational chart identifying the Supplier's Personnel by name, title and contact information, and, if applicable, anticipated availability who will be involved in any material way in providing the Services. The Services Manager and the names on the chart (except those individuals identified as "additional support") are key personnel, as well as any other key personnel assigned to the Services in a work package authorized by a work release (collectively, "**Key Personnel**"). The Supplier will cause the Key Personnel to use all reasonable efforts to make the Services their first priority. The Supplier will provide any information reasonably required by OPG about any of the Supplier's Personnel on the organisational chart.
- (d) **Removal of Key Personnel.** The Supplier will not remove any Key Personnel from the provision of the Services, materially reduce the responsibilities of any Key Personnel respecting the provision of the Services or redeploy any Key Personnel, in full or in part to another project, unless:

- (1) OPG's Representative consents in writing to such removal, reduction of redeployment; or
- (2) any such Key Personnel leave the employ of the Supplier (and all its affiliates) or the applicable Subcontractor (and all its affiliates).

If any Key Personnel leave the employ of the Supplier or a Subcontractor, the Supplier will, within twenty-four (24) hours, deliver a Notice to OPG with this information. The Supplier will then, within five (5) Business Days, deliver a Notice to OPG with the name of the proposed replacement individual and any information reasonably required by OPG about the proposed replacement. Should the Services Manager or any of the other Key Personnel leave the employ of the Supplier or a Subcontractor or become incapacitated for whatever reason, the Supplier will implement the personnel replacement plan for that Key Personnel as described in Schedule 2.2(d). OPG may accept or reject the proposed replacement. Should the proposed replacement be deemed unacceptable by OPG, then OPG may identify any Person of its choice as the proposed replacement, and the Supplier will use its diligent efforts to implement such proposed replacement. Subject to the preceding terms of this section 2.2(d), the Supplier will revise Schedule 2.2(c) from time to time or at any time on request by OPG and immediately on the change of any Key Personnel. If any of the Supplier's Personnel leave the employment of the Supplier or any Subcontractor for any reason then, so long as OPG has not solicited such Supplier's Personnel before the Supplier's Personnel announce their leaving, OPG may hire or contract directly or indirectly with such Supplier's Personnel.

- (e) **Authorities.** The Services Manager will have full authority to sign any documents requiring the Supplier's signature and to act on behalf of and bind the Supplier with respect to all matters arising in respect of this Agreement. OPG may deliver Notices to, and rely on instructions from, the Services Manager and any of the Supplier's Personnel to whom the Services Manager has delegated authority. The Supplier will require the Services Manager and all designated delegates to be available to OPG at all reasonable times to render any necessary decisions or instructions promptly to avoid delays to the Services.
- (f) **Skill and Co-ordination of Supplier's Personnel.** The Supplier will provide all of the Supplier's Personnel with all the necessary skills certification, knowledge, training and experience to perform their roles and obligations under this Agreement. Where required by Applicable Laws, the Supplier will provide Services by professionals, including engineers and architects, who are duly licensed in Ontario and, without limiting the Standard of Care required of the Supplier under this Agreement, such professionals will satisfy all standards expected of such professionals.

- (g) **Supplier's Personnel Not Employees.** For all purposes under this Agreement and Applicable Laws, the Supplier's Personnel are employees of, or independent contractors to the Supplier or its Subcontractors, and not OPG. Accordingly, none of the Supplier's Personnel are entitled to any benefits respecting any pension or other benefit plan, program or policy of OPG. The Supplier will indemnify OPG for any Losses resulting from a claim by any member of the Supplier's Personnel against OPG for any such benefits.

## 2.3 Conflicts of Interest and Disputes

- (a) **Conflicts of Interest.** During the term of this Agreement, the Supplier will not undertake, directly or indirectly, either alone or in conjunction with any Person any commissions or contracts or provide any goods or services:
- (1) to, or together with, any Person in relation to the Refurbishment Program;
  - (2) to any other Person who would adversely affect the Supplier's provision of the Services, or who could constitute a conflict of interest in the provision of the Services;
  - (3) to assist any Person with claims against OPG; or
  - (4) for construction claims consulting services or any related services which conflicts with the interests of OPG,

unless, in each case, OPG's Representative expressly consents in writing, in OPG's sole discretion, to the Supplier engaging in such activity.

- (b) **Continuing the Services.** Provided that OPG continues to pay compensation for the Services that are not the subject of any Dispute, the Supplier will not stop, delay or suspend the provision of the Services, in whole or in part, due to any Dispute. In the event of any Dispute, the Supplier will ensure that the provision of the Services is not stopped, delayed or suspended pending resolution of any such Dispute and will continue to provide the Services and ensure the provision of the Services in a timely manner.

## 2.4 [Intentionally Omitted]

## 2.5 Applicable Laws, Approvals and Procedures

- (a) **Applicable Laws.** The Supplier will comply with all Applicable Laws, including those relating to health, safety and the environment. In providing the Services, the Supplier will not, however, develop maintain, enforce, control or regulate any health and safety programs of OPG, its

officers, agents or employees or any third parties working at any project site, which are not employed by or contracted by the Supplier.

- (b) **Policies and Procedures.** The Supplier will follow all written instructions of OPG's Representative in the provision of the Services. The Supplier acknowledges that the Supplier's Personnel must comply with OPG's policies and procedures relating to health, safety and the environment.
- (c) **Failure to Comply with Laws.** OPG will not be responsible for monitoring the Supplier's compliance with, or for any failure of the Supplier to comply with, any Applicable Laws, OPG's applicable policies and procedures or this Agreement.
- (d) **OPG Code of Conduct.** The Supplier 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). The Supplier confirms that it has reviewed a current copy of this code.

## **2.6 Work Packages and Work Releases**

- (a) **Scope of Services.** The Services to be performed are described in the Schedule 1.1(x) as amended from time to time in accordance with an Amendment.
- (b) **Work Packages.** Portions of the Services described in Schedule 1.1(x) will be described in more detail in work packages that will be developed from time to time by the parties. The parties will agree on the estimates for resources, schedule, and cost to complete a work package.
- (c) **Work Release.** For each work package, the estimated resources, schedule, and cost will be stated on a written work release. Each work release will be signed by OPG's Representative and the Services Manager. Unless directed in writing by OPG's Representative, the Supplier will not perform the Services described in a work package until the parties have signed the work release. Upon signature of the work release by both parties, the work release and associated work package become part of this Agreement. For certainty, in no event will a work package or work release amend any of the provisions of this agreement.

## **2.7 Budget and Progress Schedule**

OPG may request a meeting with the Services Manager to discuss the resources, schedule, and costs associated with the Services or a work release and whether any measures should be instituted to ensure that the Supplier and Subcontractors stay on schedule and within budget.

The Supplier will use diligent efforts to complete the Services in accordance with the applicable budget and schedule for the Services or part thereof.

## 2.8 Subcontractors

- (a) **Retention of Subcontractors.** Set out in Schedule 2.8(a) is a list of each Subcontractor who will or may be providing any of the Services, together with a summary of the Services to be provided by each such Subcontractor. The Supplier will not change any Subcontractor or materially change the Services provided by any such Subcontractor unless OPG's Representative consents in writing to such change. The Supplier will not subcontract the Services or any portion thereof without the prior written consent of OPG's Representative. For purposes of obtaining such consent, the Supplier will submit to OPG a listing of Subcontractors' staff (including independent contractors) with names, titles and rates for Subcontractor personnel in accordance with section 4.1(b). OPG may accept or reject any Subcontractor or any change to any Subcontractor in OPG's sole and absolute discretion.
- (b) **Responsibility.** The Supplier will ensure that all of the Supplier's Personnel comply with the performance obligations set out in this Agreement to the same extent as if each of the Supplier's Personnel were a party to this Agreement and had all of the same obligations as the Supplier under this Agreement. Notwithstanding any term in this Agreement, the Supplier will be responsible for all acts and omissions of Supplier's Personnel as if such acts or omissions were done by the Supplier.
- (c) **Terms in Subcontracts.** The Supplier will include in each subcontract with a Subcontractor respecting the Services the right to freely assign such subcontract to OPG to give OPG the right to continue the subcontract with the Subcontractor in place of the Supplier if OPG decides to finish entirely the Services in accordance with section 8.3. In such a case, the Supplier will comply in a timely manner with any such direction from OPG, if OPG elects to deliver any such direction. In the case of such an assignment of a subcontract to OPG, all invoices submitted by the Subcontractor must be addressed directly to OPG. The Supplier will include in each subcontract with a Subcontractor providing any of the Services the following term stating:

"Notwithstanding any term in this Agreement, the parties commit to each other and to Ontario Power Generation Inc., as a third party beneficiary of this contract, that each party will comply in all respects with section 2.8(c) of the Independent External Oversight Services Agreement dated as of [Insert Agreement effective date] between Ontario Power Generation Inc. and [the Supplier's name]."



- (d) **Security Checks.** OPG will perform an employment suitability check for each of the Supplier's Personnel from time to time. Upon request by OPG, the Supplier will, at no cost to OPG, submit to OPG's Representative the information required by OPG for each of the OPG identified Supplier's Personnel. The information that OPG requires, such as photographic identification, birth certificate and citizenship card, may vary from individual to individual, depending on the individual's background and circumstances. OPG may require, from time to time, that any of the Supplier'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 Supplier's Personnel have not resided in Canada for more than five years, OPG will require that such Supplier'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 Supplier's Personnel is unsuitable for any reason, or if OPG is not satisfied with the timeliness, accuracy, validity, adequacy or completeness of any of the information received by OPG, then the Supplier will ensure that the applicable Supplier's Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this section 2.8(d) in accordance with Applicable Laws.

## **2.9 Intellectual Property**

- (a) **OPG Rights.** Except as otherwise specified in this section 2.9, all intellectual property (including, all trade secrets, patents, patent applications, rights to file patents, copyright, inventions, ideas, processes, discoveries, designs, techniques, drawings, specifications, data, software (hard copies and machine readable formats) and know-how) (collectively, the "**Intellectual Property**") conceived, reduced to practice, designed, provided or developed by or for the Supplier under this Agreement will vest in and be owned exclusively by OPG. For greater certainty, and without limiting any term in this section 2.9(a), the Intellectual Property which is owned by OPG includes all Intellectual Property that is contained or embedded in, was used in the production of, or is required or desirable for the provision, use, reproduction, modification, maintenance, servicing, improvement or continued operation of the Services, in whole or in part or which is contained or disclosed in any drawings or data provided under this Agreement. The Supplier will not do any act, which may compromise or diminish OPG's ownership rights and will perform any acts required to confirm or document OPG's ownership rights set out in this section 2.9(a) including obtaining assignments of rights from the Supplier's Personnel if so required by OPG, at the Supplier's expense, and at OPG's cost, providing access to the Supplier's Personnel to assist OPG so that it may fully protect its Intellectual Property rights.

- (b) **Licence.** Notwithstanding any term in section 2.9(a) Intellectual Property which the Supplier can establish through written records existed before the date of this Agreement, or the commencement of any Services in respect of this Agreement, whichever is earlier, will remain the property of the Supplier or a third party supplier of such Intellectual Property, whichever the case may be (the “**Retained Intellectual Property**”). The Supplier will provide to OPG all such Retained Intellectual Property and any supplemental information requested by OPG which is reasonably required to allow OPG to use, reproduce or modify the Supplier’s work product or the Intellectual Property owned by OPG as set out in section 2.9(a), or required to use maintain, service, improve or continue operation of the facilities discussed or referred to in the work product or the Intellectual Property owned by OPG as set out in section 2.9(a), including all drawings and manuals (including electronic and hard copy formats) in forms reasonably acceptable to OPG. The Supplier grants to OPG an irrevocable, perpetual, royalty free and fully paid-up right to use, reproduce, copy, transmit, modify and create derivative works from the Retained Intellectual Property and information respecting the Supplier’s Retained Intellectual Property (collectively, the “**Unrestricted Licence**”). The Unrestricted Licence also includes the right to assign, sublicense and transfer rights granted under this paragraph, in whole or in part, to a present or future affiliate of OPG or to a third party that provides services to a member of the OPG Group, so long as in OPG’s contract with such other third party, OPG limits such third party’s rights to such Retained Intellectual Property, to use, reproduction or modification of the Retained Intellectual Property solely for the benefit of a member of the OPG Group and not for any anti-competitive purpose. The Supplier will, before incorporating any third party Retained Intellectual Property into the Services or any drawing or data developed or provided under this Agreement, obtain the written consent of OPG and secure for OPG an Unrestricted Licence in all such third party Retained Intellectual Property.
- (c) **Supplier’s Rights.** Subject to OPG’s Unrestricted Licence but notwithstanding any other term in this section 2.9, the Supplier will retain all of its rights in its proprietary information and property including, without limitation, its methodologies and methods or analysis, ideas, concepts, expressions, know-how, techniques, skills, knowledge and experience in respect of the Retained Intellectual Property.
- (d) **Representation.** The Supplier represents and warrants to OPG that, before transferring ownership in the Intellectual Property to OPG, or licensing the Retained Intellectual Property to OPG:
- (1) the Supplier is the exclusive owner of, and has good and marketable title to, all the Intellectual Property;

- (2) the Supplier has obtained waivers of all moral rights in respect of the Services;
  - (3) that other than this Agreement, 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 Supplier of, or any lien or other encumbrance, in favour of any other Person, in any of the Intellectual Property;
  - (4) the Supplier has the right to grant the licence rights in the Retained Intellectual Property and has obtained such rights as contemplated by this Agreement; and
  - (5) the Supplier will not incorporate into the Services any Intellectual Property or Retained Intellectual Property the use of which by OPG violates the proprietary rights of third parties.
- (e) **Defence.** The Supplier will defend all claims, actions or proceedings against OPG relating to any allegation that all or any part of the Services (including modifications to the Services by the Supplier) constitutes an infringement of any Intellectual Property rights. The Supplier will pay to OPG an amount equal to all Losses suffered by OPG in respect of any allegation that the Supplier infringed any Intellectual Property Rights of any third party. OPG will give the Supplier Notice of any such allegation and, at the request and expense of the Supplier, OPG will provide the Supplier with available information, assistance and authority for the defence. If all or any part of the Services is in any action or proceeding held to constitute an infringement of an Intellectual Property Right of a third party, or if OPG is enjoined from using all or any part of the Services as a result of an infringement claim, the Supplier will promptly:
- (1) secure for OPG the right to continue using the Services;
  - (2) replace the infringing Services with non infringing Services, while maintaining the full functionality and integrity of the Services; or
  - (3) modify the Services so that they no longer infringe, while maintaining the full functionality and integrity of the Services.

## 2.10 Confidential Information

- (a) **Definition of Confidential Information.** In preparation for, and in the course of, providing the Services, OPG will disclose to the Supplier or the Supplier's Personnel certain information which is confidential, a trade secret or otherwise proprietary to OPG (the "**Confidential Information**"). Confidential Information does not include information that the Supplier is able to demonstrate to OPG's satisfaction, acting reasonably was or becomes generally known to the public through no fault of a member of

the Supplier or any of the Supplier's Personnel, or was specifically known by the Supplier before disclosure by OPG 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 OPG. The Supplier will not disclose any Confidential Information except to the Supplier's Personnel or Subcontractor for the purpose of providing Services under this Agreement.
- (c) **AECL Confidential Information.** The Supplier 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 ("AECL Confidential Information"). The Supplier hereby covenants and agrees that it will use the AECL Confidential Information only in respect of fulfilling its obligations set out in this Agreement. The Supplier hereby agrees that each of AECL and Her Majesty the Queen in Right of Canada are third party beneficiaries of the Supplier's covenants in this section 2.10(c) with respect to the AECL Confidential Information and will be entitled to enforce the Supplier's confidentiality obligations with respect to the AECL Confidential Information against the Supplier as though each was a party to this Agreement. The Supplier 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 Supplier is providing to OPG and the third party beneficiaries under this section 2.10(c) with respect to the AECL Confidential Information. Except as expressly set out in this section 2.10(c), the Supplier has no right to use or disclose any AECL Confidential Information for any purpose whatsoever.
- (d) **Return of Confidential Information.** On OPG's instructions, the Supplier will promptly return to OPG or destroy any Confidential Information, including all reproductions and any documents which include any of the Confidential Information.
- (e) **Remedies.** The Supplier acknowledges that OPG would not have an adequate remedy at law for money damages if the Supplier fails to fulfil any of its obligations under this section 2.10. Accordingly, in addition to any other remedies under this Agreement, OPG will be entitled to any injunction, specific performance or other remedy in law or equity, in respect of any breach or threatened breach of this section 2.10 and, in which case, the Supplier consents to any such injunction, specific performance or other remedy in law or equity.
- (f) **Required Disclosure of Confidential Information.** If the Supplier or any of its representatives are required by Applicable Law, or are required

or requested in a judicial or administrative proceeding or by any Governmental Authority, to disclose any Confidential Information, the Supplier will and will cause its representatives to:

- (1) without incurring any penalty, provide prompt notice of the existence, terms and circumstances of such requirement or request to OPG prior to disclosure so that OPG may seek an appropriate protective order or waive compliance with the terms of this Agreement;
  - (2) consult with OPG on the advisability of taking legally available steps to resist or narrow such requirement or request; and
  - (3) disclose, if disclosure of such information is required, only such information as is required by Applicable Law and use the Supplier's commercially reasonable efforts, and cause its representatives to use their commercially reasonable efforts, to obtain reliable assurances that confidential treatment will be accorded to such portion of the disclosed information as OPG designates.
- (g) **Application of Freedom of Information and Protection of Privacy Act (Ontario).** The Supplier acknowledges and agrees that OPG is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("**FIPPA**"). FIPPA applies to all information in the custody or control of OPG and may require the disclosure of some or all of such information to third parties.

## **2.11 [Intentionally Omitted]**

## **2.12 Public Announcements**

Except to the extent required by Applicable Laws or with the prior written consent of OPG, the Supplier will not make any public announcement relating to this Agreement or the Services provided hereunder.

# **SECTION 3- INSURANCE, LIABILITY AND INDEMNITY**

## **3.1 Required Insurance**

- (a) **Coverages to be Maintained.** Supplier will maintain in full force with financially responsible insurance carriers with an AM Best's rating of at least A- or a Standard and Poor's rating of at least BBB, or with the appropriate Governmental Authorities, all coverages referred to in this section 3.1. The Supplier represents to OPG that each of these coverages is currently in full force. The Supplier provide coverages that cover all Subcontractors, will be maintained continuously in force from the date of

this Agreement until 60 days after the end of the term of the Agreement and will cover all Services provided by the Supplier.

- (b) **Workers' Compensation.** The Supplier 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 the Supplier's Personnel. The Supplier's Workplace Safety and Insurance Board account number is [REDACTED]. The Supplier will be and remain at all times in good standing with the Workplace Safety and Insurance Board. Upon initial arrival on the Site, and every 60 days thereafter, the Supplier will submit a certificate of compliance from the Workplace Safety and Insurance Board as to the Supplier's status and that of all Subcontractors that will be providing Services at the Site.
- (c) **Additional US Requirements.** In respect of all of the Supplier's Personnel who provide any of the Services in the United States, the Supplier will maintain or cause to be maintained workers' compensation coverage in each applicable state. Such coverage will include employer's liability with a minimum 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.
- (d) **Commercial General and Excess Umbrella Liability Insurance.** The Supplier will maintain commercial general liability and excess umbrella liability insurance, on an occurrence basis, in an amount not less than \$5,000,000 inclusive for bodily injury, including death, personal injury and damage to property, including loss of use thereof, for each occurrence. The Supplier will obtain excess umbrella liability insurance in excess of the coverages under sections 3.1(b) and 3.1(c) (to the extent the coverages under those sections include employer's liability) and 3.1(e). The commercial general liability and excess umbrella liability coverage will specifically include the following:
  - (1) blanket contractual liability;
  - (2) damage to property of the owner of the Site, including loss of use thereof;
  - (3) products and completed operations;
  - (4) cross liability;
  - (5) severability of interests;
  - (6) employer's liability;
  - (7) non-owned automobile liability; and

- (8) broad form property damage;
- (e) **Motor Vehicle Liability Insurance.** The Supplier will maintain motor vehicle liability insurance, covering all licensed motor vehicles owned, rented or leased and used in respect of the Services. The Supplier will ensure that this coverage will cover bodily injury and property damage liability to a combined inclusive minimum limit of \$2,000,000 per occurrence and mandatory accident benefits.
- (f) **Errors and Omissions Insurance.** The Supplier will maintain professional liability insurance for all engineering, architectural, design or other professionals or consultants in an amount not less than \$5,000,000 aggregate limit, covering the period from the effective date of this Agreement through to the end of the term of the Agreement and for a further discovery period of five years from the end of the term of the Agreement.
- (g) **Other.** The Supplier will maintain at OPG's expense, any other insurance for such risks and in such amounts as OPG may require from time to time.

### 3.2 General Insurance Terms

- (a) **Certificates of Insurance.** Both on the date of this Agreement and no more than 60 days and no fewer than 30 days before starting any Services, the Supplier will deliver to OPG certificates of insurance completed by each of the Supplier's insurers certifying that at least the minimum coverages required under section 3.1 are in effect. The Supplier will ensure that each certificate will state that the coverages will not be cancelled, will not fail to be renewed without 30 days advance Notice by courier given to OPG's Representative, with a copy delivered by fax as follows:

Ontario Power Generation Inc.  
Risk Management and Insurance  
700 University Avenue H18-H18  
Toronto, Ontario, Canada M5G 1X6

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

To the extent that the Supplier is required to maintain any coverages under section 3.1 in force after final payment of all amounts owing to the Supplier, the Supplier will deliver to OPG, at the time that the Supplier submits its final invoice for payment, a certificate of insurance completed by a duly authorised representative of such Person's insurer certifying that such insurance will remain in force for the period of time required under section 3.1.

- (b) **Copies of Policies.** Promptly upon request by OPG, the Supplier will allow OPG to review a certified copy of any insurance policy referred to in section 3.1. Such review shall be subject to a confidentiality agreement and unless required by Applicable Law, OPG shall not be provided a copy of the policy. OPG may only make a request following an occurrence where OPG may have coverage under the policy.
- (c) **No Waiver by OPG.** If OPG fails to demand any certificate referred to in this section 3.2 or otherwise fails to demand other evidence of full compliance with sections 3.1 or 3.2 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 Supplier's obligations. The Supplier's obligation to purchase and maintain insurance under this Agreement will in no way limit or otherwise qualify the liabilities or obligations of the Supplier under this Agreement.
- (d) **No Approval by OPG.** If OPG receives and accepts any certificate or other evidence under this section 3.2, OPG has not approved or agreed, and OPG will not be deemed to have approved or agreed, that the Supplier has satisfied any of its obligations under sections 3.1 or 3.2.
- (e) **OPG May Purchase Insurance.** If the Supplier fails to maintain any insurance required under section 3.1 (including for failure to obtain insurance of sufficient scope as to comply with section 3.1), OPG may purchase any such insurance, at the Supplier's sole expense or OPG may terminate this Agreement immediately due to default by the Supplier in accordance with section 8.1.
- (f) **Deductibles.** The Supplier will pay the amount of all deductibles for insurance it is required to maintain under this Agreement and may not charge back any such amount to OPG.
- (g) **Insurance Not Contributory.** With the exception of the insurance referred to in section 3.1(e) and 3.1(f), the Supplier will obtain insurance that is primary coverage and not contributory with, or in excess of, any insurance that may be maintained by OPG.
- (h) **Subrogation.** The Supplier will ensure that each insurer which provides insurance under section 3.1 will provide a waiver of subrogation to each member of the OPG Group, the Supplier and all the Subcontractors. OPG agrees to waive all rights for recovery against the Supplier for damage covered by OPG's property insurers for the Refurbishment Program.
- (i) **No Invalidation by Supplier.** The Supplier will ensure that no insurance referred to in section 3.1 will be invalidated or vitiated by any action or failure to act by the Supplier, any applicable subsidiary of the Supplier or



the Supplier's Personnel or by any breach by the Supplier or any other Person of any declarations, warranties or other terms in such policies.

- (j) **Notice of Claim.** The Supplier will deliver a written Notice to OPG's Representative within three Business Days of asserting any claim in respect of the Services under any insurance referred to in section 3.1. The Supplier will include in the Notice the date of the events giving rise to the claim, a summary of the circumstances respecting the claim and the amount of the claim. The Supplier will provide OPG any additional information respecting the claim that may request. The Supplier warrants that the insurance referred to in section 3.1 will not be diminished by any claims to an amount below the minimum amount of coverage required under this Agreement.

### 3.3 Indemnity

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

- (a) all Losses suffered or incurred by a member of the OPG Group arising in respect of the Services, to the extent that any such Losses are attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property;
- (b) all Losses arising from claims, demands, actions, suits or proceedings made against any member of the OPG Group by any third Person; and
- (c) all Losses to the extent arising from any claim or finding that any of the Supplier's Personnel are employees of OPG, including any liability imposed by the Canada Revenue Agency under the *Income Tax Act* (Canada) or any other Applicable Laws to make contributions, withhold or remit any monies, make deductions from payments, or to pay any related interest or penalties in respect of the Supplier's Personnel;

but only in each case to the extent such Losses are caused by any negligent or wrongful act or omission of any of the Supplier's Personnel. The Supplier will indemnify all Losses suffered or incurred by a member of the OPG Group arising in respect of the Services, to the extent that any such Losses are attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property and all Losses arising from claims, demands, actions, suits or proceedings made against any member of the OPG Group by any third Person where such Losses result from OPG's failure to reasonably mitigate damages following or connected with a breach of this Agreement by the Supplier. The obligations of the Supplier under this section 3.3 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.

### 3.4 Parental Indemnity

On the date of this Agreement, the Supplier will provide to OPG a parental indemnity from the Indemnitor in the form set out in Schedule 3.4.

## SECTION 4 – COMPENSATION

### 4.1 Contract Price

- (a) **General.** The Contract Price to be paid by OPG to the Supplier as full compensation for the provision of the Services is exclusively composed of payment for the Supplier's Personnel at the Billing Rates and Reimbursable Expenses. OPG will only be obligated to pay the Supplier for any Services provided by the Supplier's Personnel if OPG has requested and approved in writing any such Services.
- (b) **Billing Rates.** Schedule 4.1(b) contains a listing of hourly rates that will be applied for calculating the Contract Price for Services provided by the Supplier's Personnel (the "**Billing Rates**"). The Billing Rates are fixed and are "all-inclusive" rates.
- (c) **Adjustments to Billing Rates.** The Supplier may adjust the Billing Rates following the end of every two-year period during the term of this Agreement. Except as otherwise agreed by OPG's Representative in writing, the percentage increase in the Billing Rates will not exceed the percentage increase in the Statistics Canada Consulting Engineering Price Index for the previous two-year period.
- (d) **Change in Applicable Laws.** If, after the date of this Agreement, there is any:
  - (1) change in Applicable Laws (except those that relate to Taxes); or
  - (2) new Canadian federal or provincial sales, use or excise taxes, duties, or any changes in the rates or applicability of such taxes (but no other Taxes),

which directly and materially impacts on the Services 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 Services, then the Supplier may request an adjustment to the Billing Rates. If such a request is made the Supplier will promptly provide OPG's Representative with a Notice detailing the impact the change in any Applicable Laws, or any new, Canadian federal or provincial sales, use or excise taxes, duties, or any changes in the rates or applicability of such taxes (but no other Taxes) has on the Services. OPG's Representative will discuss the impact and provide a prompt direction to the Supplier resolving the issue by way of an adjustment to the Billing

Rates. Any other disputes relating to the impact of the change will be resolved in accordance with section 10.1.

- (e) **Reimbursable Expenses.** OPG will reimburse the Supplier for its Reimbursable Expenses to the extent such Reimbursable Expenses have been directly and properly incurred in connection with the Services. The amount payable by OPG for Reimbursable Expenses will not exceed the actual cost of the expenses incurred by the Supplier.
- (f) **Exclusion.** Except for the Billing Rates and Reimbursable Expenses, the Supplier will be responsible for all costs of providing the Services. These costs include all indemnifications by the Supplier under this Agreement, all costs of all acts that are to be provided at the expense of the Supplier under this Agreement, all costs respecting the provision of labour and benefits, all travel and subsistence expenses, all office, corporate, executive and management expenses, all general administration expenses, all overhead and profit, all benefits, all Taxes (except for Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada), and all insurance costs required to be paid by the Supplier.

## SECTION 5 - PAYMENT

### 5.1 ONCORE

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

OPG will pay the license fees for ONCORE for up to two of the Supplier’s Personnel during the term of this Agreement. OPG will not pay additional license or configuration fees for the integration and implementation of ONCORE with the Supplier’s payroll system.

Prior to the Supplier being obligated to provide invoicing information for ONCORE, OPG will provide the Supplier with the following:

- (a) access to a secure information channel via the internet;
- (b) ONCORE training for up to two of the Supplier’s Personnel;
- (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 Supplier’s trained

employees are having problems using or accessing ONCORE for a three (3) month period.

OPG will set up the preliminary invoicing information on ONCORE for the initial request for the Services from the Supplier. Upon OPG's approval of the Supplier's data in ONCORE, payments will be issued in accordance with section 5.2. Upon the Supplier's successful implementation of ONCORE, the obligations of OPG under sections 5.1(b), 5.1(c), and 5.1(d) will terminate.

The Supplier will maintain access to the internet for the term of this Agreement. The Supplier 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 Supplier's errors and omissions arising from the misuse of ONCORE. The Supplier will be responsible for the ongoing internet and employee resource costs associated with access and use of ONCORE.

The parties agree to work co-operatively to minimize each other's costs associated with the implementation and ongoing access and use of ONCORE.

The Supplier is aware and accepts that OPG will review, accept and approve of the Supplier's data submitted via ONCORE prior to any issuance of payment. Nothing in this section 5.1 diminishes or amends OPG's rights set out in the remainder of this Agreement.

## **5.2 Alternative Invoicing Process**

- (a) **Payment.** From time to time, OPG may request the Supplier to prepare one or more invoices and in this event, OPG will pay the Supplier in accordance with section 4 and this section 5.2.
- (b) **Draft Invoice.** Supplier will submit a draft invoice to OPG on a monthly basis for each work release on or before the 15<sup>th</sup> day of each month unless otherwise specified by OPG, in respect of the Services rendered during the immediately preceding month. Invoices will include the hours billed, Billing Rate for each employee, a listing of all Reimbursable Expenses, and copies of receipts and invoices in respect of all Reimbursable Expenses.
- (c) **Review of Draft Invoice.** The Supplier will submit each draft invoice to OPG's Representative for review. OPG's Representative will review and provide comments, if any, in respect of the draft invoice within five (5) Business Days after receipt thereof. After addressing the comments and receiving OPG's Representative's acceptance, the Supplier will deliver a final invoice to OPG for payment.
- (d) **Invoices.** After receiving OPG's Representative's acceptance, the Supplier will electronically deliver to OPG (at [opg@octacom.ca](mailto:opg@octacom.ca)) an

invoice for payment in .pdf or .tif format. Each invoice will contain the following information:

- (1) the total amount owing by OPG (and expressly stating any amounts invoiced in a currency other than Canadian dollars);
- (2) shown separately all amounts due as Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) (GST/HST);
- (3) the Supplier's full name and address, and the name of a contact individual at the Supplier, with a telephone number;
- (4) electronic transfer instructions;
- (5) the Supplier's invoice number (which must be unique for each invoice);
- (6) the invoice date (which must be the date the invoice is delivered);
- (7) the value of Services provided in Canada and outside Canada, identified separately; and
- (8) the Supplier's 15 digit registration number for the purposes of Part IX of the *Excise Tax Act* (Canada).

### 5.3 Payments

- (a) **Payment Terms.** OPG will aggregate all outstanding invoices received and accepted by OPG for payment before the 25<sup>th</sup> day of each month. Subject to any Applicable Laws, OPG will pay the Supplier this aggregate amount electronically on the 25<sup>th</sup> day of the following month. All payments are conditional, however, on the Supplier fulfilling its obligations and making satisfactory progress in providing the Services before the date payment is made. OPG's Representative will determine whether or not such obligations have been fulfilled and progress is satisfactory.
- (b) **Refusal of Payments.** OPG may refuse to make any payment, in whole or in part, or set off from any payment otherwise payable to the Supplier under this Agreement, an amount to be determined by OPG on account of:
  - (1) Services required that have not been entirely provided;
  - (2) Losses suffered or incurred by any member of the OPG Group to the extent caused by the Supplier or Losses arising from claims, demands, actions, suits or proceedings having been made against a member of the OPG Group by any Person in respect of which the Supplier is required to indemnify under this Agreement; or

- (3) any other terms of this Agreement or rights under Applicable Laws entitling OPG to a set off against the invoiced amount.
- (c) **Interest on Late Payments.** Subject to section 5.3(b), OPG will pay the Supplier interest on late payments at the rate of the Bank of Canada Prime Lending Rate plus 2% annually, compounded monthly, calculated from the date that payment is due under section 5.3(a).

#### 5.4 Taxes

- (a) **Goods and Services Tax/Harmonized Sales Tax.** The Supplier represents and warrants to OPG that the Supplier is duly registered for the purposes of Part IX of the *Excise Tax Act* (Canada) and that the Supplier's 15 digit registration number is [REDACTED]. The Supplier will deduct all GST/HST recovered or recoverable by the Supplier on the payment of expenses before submitting any invoice to OPG covering any such expenses. The Supplier will ensure that each invoice will separately set out all GST/HST payable by OPG under this Agreement.

The Supplier is solely responsible for any Taxes levied in respect of any goods or materials (including test equipment, notebook computers, construction equipment, or tools) brought into Ontario for temporary use in respect of the Services.

- (b) The Supplier's Income Taxes and Withholdings. OPG will have no liability for:
  - (1) any of the Supplier'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 5.4(d)), collection, payment, remitting or reporting of any Taxes paid or payable by the Supplier in respect of this Agreement, including in respect of any of the Supplier's Personnel.
- (c) **Refund of Taxes.** All remissions or refunds of any Taxes other than income or capital taxes paid or payable by any Governmental Authority in respect of the Services are the exclusive property of OPG. All amounts received by the Supplier or a Subcontractor by way of a remission or refund of any Taxes will constitute trust monies to which OPG is exclusively entitled. The Supplier will promptly forward all such 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 Supplier will execute, or cause any Subcontractor to execute, all required or desirable documentation to allow OPG to act in the name of the Supplier 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 Supplier 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 Supplier \$100 and of that amount OPG is required to withhold \$15, and the Supplier owes OPG \$95, then:

- (1) OPG would withhold and remit to the Canada Revenue Agency \$15;  
and
- (2) the Supplier would pay OPG \$10.

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

## **SECTION 6 – DOCUMENTATION AND RIGHT OF AUDIT**

### **6.1 Documentation of Services and Records**

The Supplier will retain records and documents (and require its Subcontractors to do the same), including all purchase orders, invoices, time sheets, accounts, and final reports and deliverables relating to the Services, reasonably requested by OPG to verify the nature and quality of the Services and accuracy of invoices issued by the Supplier hereunder for Services provided (collectively, the “**Records**”). Timesheets will identify the Supplier's Personnel providing of the Services, the Services provided, the location of the Service, the relevant period of time the Service were provided and the hours incurred. The Records will be in a format approved by OPG. The level of detail required in the Records will be specified by OPG or, if not specified, at least commensurate with good industry practices.

### **6.2 Audit**

OPG may, at any time during the term of this Agreement and for three years following termination or expiration of this Agreement, require from the Supplier reasonable evidence of any aspect of the Supplier's or Subcontractor's compliance with Supplier's or Subcontractor's obligations under this Agreement. OPG may, through its own auditors or auditors designated by OPG, inspect, audit and copy all records and other information, and interview all relevant Supplier's Personnel, respecting such compliance. The Supplier or Subcontractor will provide such auditors prompt access to all premises, the Supplier'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 Supplier or Subcontractor will provide OPG's auditors with reasonable work space at the Supplier's or Subcontractor's facilities to conduct any inspection, audit, copying and interviews. The Supplier or Subcontractor will preserve all such records and other information necessary for any such calculations or compliance until the end of such three-year period. The audit rights of OPG that are granted by section 6.2 and section 6.3 do not allow for the audit of Billing Rates.

### **6.3 Access to Information by Governmental Authorities**

The Supplier acknowledges that OPG is subject to supervision and regulation by Governmental Authorities 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 Supplier agrees that OPG will have the right to:

- (a) provide a Governmental Authority with access to and copies of any documents or information, including the Records, prepared by or for the Supplier, a Subcontractor or OPG in respect of the Services, including audit reports and associated working papers and recommendations; and
- (b) with respect to any audit, monitoring or inspection rights of OPG under section 6.2 or elsewhere in this Agreement, permit a Governmental Authority to attend with OPG or, at the request of OPG, attend independently.

## **SECTION 7 – CORRECTION OF DEFECTS, WARRANTY**

### **7.1 Correction of Defects**

- (a) **Inspection.** OPG's Representative, or designate, may inspect any part of the Services at all times and may reject any part of the Services which is found to be not in accordance with this Agreement. Where, in the opinion of OPG's Representative, or designate, the remedy can be practically applied, the Supplier, at its sole expense, will promptly re-provide such Services. Re-provision will include all information prepared by the Supplier under this Agreement that is found to be incomplete or inaccurate within a period of nine months following the date of the provision of the relevant Services to OPG.
- (b) **Effect of Defects.** If at any time during the provision of the Services there are defects (including delays or non-delivery of activities or data) in the Services, OPG may, withhold payment for the defective part of the Services until after the defects have been corrected. In addition, if OPG has already paid for Services which have defects, OPG may, withhold from future payments the amount paid for the Services that have defects.



When the Supplier has been afforded an opportunity to correct the defects, the amount withheld will be paid on the 25<sup>th</sup> day of the month after receipt of an invoice for such amount, submitted after OPG's approval of the correction of defects. Alternatively, and at OPG's sole discretion, OPG may withhold from any invoice, or pay a lesser amount that, in OPG's reasonable opinion, compensates OPG for the defects.

- (c) **Warranties Exclusive.** The warranties set forth in this Agreement are in lieu of all other warranties in connection with the Services, express or implied, including but not limited the implied warranties of merchantability and fitness for a particular purpose.

## **7.2 Warranty**

The Supplier warrants and guarantees to OPG that:

- (a) notwithstanding any term in this Agreement, the Services will be performed in accordance with the Standard of Care; and
- (b) all Services will be provided in accordance with this Agreement.

## **7.3 Access to Services**

The Supplier will provide access to all Services and the premises of the Supplier and its 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, for the purposes of viewing, performing surveillance on, inspecting, testing and/or accepting the Services, in whole or in part, including to monitor compliance with any applicable quality management program. At the request of OPG's Representative, the Supplier will promptly provide to OPG's Representative and/or OPG's designated delegates a copy of all the documents respecting any subcontract for Services subject to viewing, performing surveillance, inspecting, testing and/or accepting. No such viewing, performing surveillance, inspecting, testing and/or accepting by OPG will relieve the Supplier of any of its obligations under this Agreement. The Supplier will advise each applicable representative of OPG of the Supplier's or Subcontractor's applicable site safety procedures and policies. The Supplier will provide each such representative with proper and safe transportation and conditions for such access.

## **SECTION 8 – DEFAULT**

### **8.1 Events of Default**

Each of the following events and circumstances constitutes an event of default by the Supplier and / or Indemnitor under this Agreement:

- (a) the Supplier and / or Indemnitor commences dissolution, liquidation or wind-up or 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;

- (b) the Supplier and / or Indemnitor breaches any of its obligations under this Agreement and fails to cure the breach to the reasonable satisfaction of OPG within seven (7) Business Days following receipt of written Notice from OPG specifying the breach, or if the breach cannot be cured within such seven (7) Business Day period, after such longer period of time as is reasonably required to cure the breach (but no longer than sixty (60) days in any circumstances), so long as the Supplier diligently and constantly endeavours to cure the breach during such extended period;
- (c) the Supplier and / or Indemnitor is in any way responsible for a fatality respecting the Services;
- (d) the Supplier and / or Indemnitor, or any Subcontractor, any of their shareholders, directors, officers, partners, members, representatives, agents or any of the Supplier'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 respect of this Agreement; or
  - (2) for showing favour or disfavour to any Person in respect of this Agreement; or
  - (3) otherwise in connection with any other project of OPG;
- (e) the Supplier and / or Indemnitor assigns or attempts to assign this Agreement, in whole or in part, except in a manner expressly permitted in section 10.2; or
- (f) the Supplier and / or Indemnitor breaches the nuclear security requirements related to security clearance of the Supplier's Personnel.

## **8.2 Notice**

OPG may terminate this Agreement immediately and without any cost to OPG by delivering a Notice to the Supplier on the occurrence of any event of default set out in section 8.1.

## **8.3 OPG's Recourse**

If OPG may terminate this Agreement under section 8.2, OPG may, in addition to its rights under section 8.2 and whether or not this Agreement is terminated:

- (a) eject and exclude from the project the Supplier and any of the Supplier's Personnel;
- (b) entirely finish the Services, in whole or in part, at OPG's expense, by whatever means OPG deems appropriate under the circumstances (and the Supplier, at no additional charge to OPG, will promptly, and in any event within three (3) Business Days, co-operate with OPG in this regard);
- (c) direct the Supplier in a Notice to assign any specified subcontracts with Subcontractors; and
- (d) withhold, without interest, all payments, in whole or in part, to the Supplier under any agreement between OPG and the Supplier until the Supplier's liability to OPG is determined.

#### **8.4 Deemed Termination**

If at any time after OPG terminates this Agreement under section 8.2 or exercises its rights under section 8.3, it is determined for any reason that an event of default had not occurred or that a default was cured in a timely manner in accordance with section 8.1(b), the rights and obligations of the parties will be the same as if the termination of this Agreement by OPG had occurred under section 9.3.

#### **8.5 The Supplier's Liability**

If OPG terminates this Agreement under section 8.2 or exercises its rights under section 8.3, the Supplier will be liable to OPG for all Losses suffered or incurred by OPG in respect of any event of default arising in respect of section 8.1, except for the costs in excess of the Billing Rates that would otherwise have been incurred by OPG to complete the Services, in accordance with the requirements under this Agreement including external and internal costs (including costs of additional management and administration).

#### **8.6 OPG's Liability**

Notwithstanding any term in this Agreement, the Supplier may not make any claim against OPG for breach of this Agreement by OPG unless the Supplier within ten Business Days of the breach or when they reasonably ought to have known of the breach, gives Notice to OPG describing the breach and the anticipated claim for the breach. The Supplier will be estopped from making any claim against OPG unless it provides this Notice in the time period required by this section 8.6.

#### **8.7 Limitation of Liability**

Subject to section 8.8, the total liability of the Supplier respecting all claims by OPG against the Supplier arising in respect of this Agreement will not exceed an amount equal to the Contract Price or \$2,000,000, whichever is greater. The Supplier will not be liable for:

- (a) any costs or expenses incurred by the OPG Group due to the failure of the Refurbishment Program to meet its expected budget, schedule, performance requirements or guarantees; or
- (b) any additional costs incurred by the OPG Group for any construction or engineering delays, changes in scope or force majeure events impacting the Refurbishment Program in any way, provided (with respect only to this section 8.7(b)) that such additional costs were not incurred as a result of the Supplier's negligence.

## **8.8 Exceptions**

The limitations of liability set out in section 8.7 will not apply, however, to:

- (a) the Supplier's obligations under sections 2.9, 2.10, 3.3(c), and 8.5;
- (b) the Supplier's obligations under section 3.3(b) related to third party bodily injury or property damage;
- (c) Losses suffered or incurred by OPG to the extent arising in respect of any fraud, gross-negligence, or wilful misconduct of the Supplier; or
- (d) limit the liability of the Supplier or any insurer to an amount below the minimum limits of insurance stated in section 3.1 for any claim covered by such insurance.

Except for the Supplier's obligations under sections 2.9, 2.10 and 3.3(c), and the Supplier's obligations in section 3.3(b) related to third party bodily injury or property damage and except to the extent recoverable under the insurance required in section 3.1, neither party will be liable to the other party for consequential or indirect loss or damages, loss of anticipated profit or other economic loss.

## **SECTION 9- TERM, SUSPENSION OF SERVICES AND TERMINATION**

### **9.1 Term**

This Agreement will be in effect from February 25, 2013 to February 25, 2015. OPG may at its sole discretion extend the term of this Agreement for an additional two-years. Subsequently, the parties may, on mutual agreement, renew this Agreement.

### **9.2 Suspension of Services**

OPG may at any time from time to time, for any reason without affecting the validity of this Agreement, suspend the provision of the Services in whole or in part for such period of time as OPG may notify the Supplier. Except to the extent any such suspension arises in respect of any default by the Supplier or any negligent or wilful act or omission of the

Supplier, OPG will pay the Supplier the reasonable and extra direct damages suffered by the Supplier arising from the suspension. Severance costs respecting the termination of any of the Supplier's Personnel do not constitute direct damages. In no circumstances whatsoever will OPG be liable to the Supplier for consequential or indirect loss or damages, loss of anticipated profit, economic loss, interest or any other damage or loss suffered or incurred by the Supplier in respect to such suspension. Before OPG pays the Supplier for such extra direct damages, the Supplier will provide to OPG such reasonable evidence of such damages as OPG may request. In addition, before making any payment, OPG may conduct an audit of such damages in accordance with section 6.2. Immediately following a Notice of resumption delivered by OPG to the Supplier, the Supplier will resume providing the Services in accordance with the schedule established by OPG.

### **9.3 Termination**

Without cause and without affecting the validity of this Agreement OPG may immediately terminate this Agreement by delivering a Notice to this effect to the Supplier. Except to the extent any such termination arises in respect of any event of default by the Supplier, OPG will pay the Supplier:

- (a) for Services completed in accordance with the terms of this Agreement, and for which OPG has not made any payment; and
- (b) the reasonable extra direct damages suffered by the Supplier arising from the termination (such as the reasonable out-of-pocket costs of demobilisation).

In no circumstances whatsoever will OPG be liable to the Supplier for consequential or indirect loss or damages, loss of anticipated profit, other economic loss, interest or any other damages or loss suffered or incurred by the Supplier in any such termination. Before OPG pays the Supplier, the Supplier will provide to OPG such reasonable evidence of such amounts and damages as OPG may request. In addition, before making any payment, OPG may conduct an audit of such losses or damages in accordance with section 6.2. Title to all the Services that have not already vested in OPG will vest in OPG on payment by OPG under this section 9.3.

### **9.4 Orderly Transition**

On any termination of this Agreement under section 8 or section 9, the Supplier will co-operate with OPG to enable an orderly transition of the provision of all Services to OPG or to such party as OPG may direct so as to minimize the occurrence, effect or duration of any disruptions to the Project caused by the termination. The Supplier will return promptly, and in any event within ten (10) Business Days following receipt of Notice under section 8.2: (i) any and all documentation, data and information, whether in written or electronic form, provided to the Supplier by OPG or otherwise made available under this Agreement, including any such documentation, data and information provided by OPG together with any Intellectual Property, and (ii) any work product developed by the

Supplier prior to the date of termination. The provisions of this section 9.4 will survive the termination of this Agreement.

## **SECTION 10 – GENERAL**

### **10.1 Disputes Referred to Arbitration**

The parties will work co-operatively to resolve any dispute, disagreement, controversy, question or claim (including a claim for indemnification) (collectively, a “**Dispute**”). If the parties are unable to resolve a Dispute, the parties may on mutual agreement, at any time, refer the Dispute to arbitration under the Arbitration Act, 1991 (Ontario).

### **10.2 Assignment and Benefit**

The Supplier may not assign this Agreement, in whole or in part, without the prior written consent of OPG. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

### **10.3 Amendments**

Any officers of OPG of equal or higher authority than the signatory of this Agreement are the only individuals authorised to execute any Amendment on behalf of OPG. Aside from those individuals, no other Person has any authority to make any agreement, undertaking, representation, warranty, guarantee, release or waiver on behalf of OPG in respect of this Agreement. Except as expressly provided in this Agreement, no amendment (including an Amendment), restatement or termination of this Agreement in whole or in part is binding unless it is in writing and signed by each party. Accordingly, this Agreement will not be amended by any application for payment, invoice or other document (even where such application for payment, invoice or other document purports, directly or indirectly, to be paramount to any term of this Agreement), unless such application for payment, invoice or other document is signed by both parties.

### **10.4 Notice**

Except as otherwise provided in this Agreement, every Notice required or permitted under this Agreement must be in writing and may be delivered in person, by courier or by fax to the applicable party, as follows:

<p>If to OPG,</p> <p>Ontario Power Generation Inc. 1908 Colonel Sam Drive Oshawa, Ontario, L1H 8P7</p> <p>Attention: Director, Refurbishment Supply Chain</p> <p>Fax: 905-697-5263</p>	<p>if to the Supplier:</p> <p>Burns &amp; McDonnell Canada, Ltd. 9400 Ward Parkway, Kansas City, MO 64114</p> <p>Attention: Ken Montgomery</p> <p>Fax: 816-333-3690</p>
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or to any other address, fax number or individual that a party designates by Notice. Any Notice under this Agreement, if delivered personally or by courier will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by fax after 3:00 p.m. on a Business Day or on a day which is not a Business Day will be deemed to be delivered on the next Business Day.

#### **10.5 Currency**

Unless otherwise specified in this Agreement, all amounts to be paid or calculated under this Agreement are to be paid or calculated in Canadian dollars.

#### **10.6 Set Off**

OPG may set off any amount owing to OPG by the Supplier from any amount otherwise owing by OPG to the Supplier.

#### **10.7 Waivers**

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

#### **10.8 Cumulative Remedies**

Except as otherwise set forth herein, OPG's rights and remedies under this Agreement and under any security held by OPG for the Supplier's performance under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

#### **10.9 Survival of Obligations**

The terms of this Agreement will survive the termination or expiration of this Agreement to the extent necessary to preserve the rights of the parties that were in existence immediately before or on the termination or expiration of this Agreement.

#### **10.10 Relationship of Parties**

The relationship between the parties is that of a purchaser and an independent contractor. The Supplier will have no authority to bind OPG or to assume or create any obligation or responsibility express or implied on OPG's part or in its name, nor will the Supplier represent to anyone that the Supplier has such power or authority, except as expressly provided in this Agreement.

#### **10.11 No Third Party Beneficiary**

This Agreement is solely for the benefit of the parties and, to the extent expressly and specifically made, beneficiaries of this Agreement. In particular, the parties hold the rights of all third party beneficiaries in trust for the benefit of such third party beneficiaries. Otherwise, no term of this Agreement will be deemed to confer upon other third parties any claim, remedy, reimbursement or other right. The Supplier represents and warrants to OPG that the Supplier is entering into this Agreement solely on its own behalf and not as agent for any other Person.

#### **10.12 Acknowledgement as to Negotiation of this Agreement**

Each party acknowledges that all parties have participated in the drafting of this Agreement. Accordingly, no term of this Agreement will be interpreted less favourably to any party because that party or its counsel was primarily responsible for the drafting of that term.

#### **10.13 Choice of Language**

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

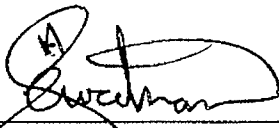
#### **10.14 Counterparts**

This Agreement and any Amendment, restatement or termination of this Agreement in whole or in part may be signed and delivered in any number of counterparts, each of which when signed and delivered is an original but all of which taken together constitute one and the same instrument. This Agreement and any Amendment, restatement or termination of this Agreement in whole or in part may be delivered by fax.


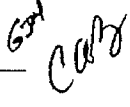


The parties have duly executed this Agreement.

**ONTARIO POWER GENERATION INC.**

By:   
\_\_\_\_\_  
Name: Albert Sweetnam  
Title: Executive Vice-President,  
Nuclear Projects

**BURNS & McDONNELL CANADA, LTD.**

By:    
\_\_\_\_\_  
Name: Raymond J. Kowalik  
Title: Vice President

**Schedule 1.1(v) - Reimbursable Expenses**

**STANDARD FORM BUSINESS EXPENSE SCHEDULE**

Effective June 17, 2009

For

**ONTARIO POWER GENERATION INC.**

Updated July 27<sup>th</sup>, 2010

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# BUSINESS EXPENSE SCHEDULE

## RECITALS

- A. Ontario Power Generation Inc. ("**OPG**") entered into an agreement (the "**Agreement**") with the other party to the Agreement (the "**Supplier**"). This schedule (this "**Schedule**") forms part of the Agreement. Under the Agreement, OPG agreed to reimburse the Supplier for certain business expenses incurred by employees of the Supplier ("**Eligible Employees**") in performing work for OPG under the Agreement.
- B. This Schedule sets out the terms on which OPG will reimburse the Supplier for business expenses incurred by Eligible Employees in performing work for OPG.

## SECTION 1-INTERPRETATION

### 1.1 Three Types of Reimbursement

OPG will reimburse the Supplier for expenses that are eligible for reimbursement in accordance with this Schedule. OPG will make the reimbursements in one of three ways respecting each Eligible Employee in respect of whom reimbursements are payable. The three ways of reimbursement are:

- (a) reimbursement of individually incurred Allowable Expenses as set out in section 2 through section 5;
- (b) payment on a flat rate daily basis as set out in section 6; or
- (c) payment on a flat rate monthly basis as set out in section 7.

Except as expressly set out in section 6 or section 7, if OPG pays the Supplier the daily or monthly rate in respect of an Eligible Employee, OPG will reimburse the Supplier no Allowable Expenses in respect of that Eligible Employee.

### 1.2 Definitions

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

- (a) **Agreement** is defined in Recital A.
- (b) **Allowable Expenses** is defined in section 2.1.
- (c) **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, Remembrance Day, Thanksgiving Day, Christmas Day and Boxing Day.
- (d) **Supplier** is defined in Recital A.
- (f) **Eligible Employees** is defined in Recital A.
- (g) **Home Base** means the permanent residence of the Eligible Employee.
- (h) **OPG Representative** is defined in section 2.1(d).
- (i) **Schedule** is defined in Recital A.
- (i) **Work Site** means a location at which the Eligible Employee is ordinarily required to provide services to OPG under the Agreement.

### **1.3 Headings**

The division of this Schedule 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 schedule.

### **1.4 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".

### **1.5 Business Day**

If under this Schedule 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 Payment Currency**

Except as expressly set out in the Agreement, amounts to be paid or calculated under this Schedule will be paid or calculated in Canadian dollars. Any amounts to be paid or calculated which are denominated in a foreign currency will be converted into Canadian dollars, within three Business Days of the invoice date, using the Bank of Canada nominal noon exchange rate, as posted on the Bank of Canada website (currently located at [www.bankofcanada.ca](http://www.bankofcanada.ca)).

### **1.7 Conflict**

If there is conflict between any term of this Schedule and any term in another part of the Agreement, the relevant term in the other part of the Agreement will prevail.

### **1.8 Notice**

Any notices to be given under this Schedule will be given in accordance with the notice terms set out elsewhere in the Agreement.

## **SECTION 2 - REIMBURSEMENT OF ALLOWABLE EXPENSES**

### **2.1 Allowable Expenses**

OPG will only reimburse the Supplier for the following eligible expenses ("**Allowable Expenses**") to the extent they otherwise meet the requirements of this Schedule and the rest of the Agreement:

- (a) air, rail and bus travel expenses permitted under section 3;
- (b) vehicle expenses permitted under section 4;
- (c) lodging expenses permitted under section 5; and

- (d) any other expenses which have been approved in writing by the OPG individual managing the Agreement (the "OPG Representative").

## **2.2 Expenses Minimised**

Notwithstanding any term in this Schedule, the Supplier will use all reasonable efforts to ensure that Eligible Employees minimise Allowable Expenses and the Supplier will ensure that all Allowable Expenses are reasonable and properly incurred in a manner consistent with effective and efficient business practice. OPG is not obliged to reimburse any expenses which are not so incurred. Eligible Employees who normally live together are expected to share accommodations and vehicle expenses, where reasonable.

## **2.3 Excluded Items**

Notwithstanding any term in this Schedule, OPG will not reimburse any amounts to the Supplier or any Eligible Employee for any hospitality, food or incidental expenses, including, but not limited to, in respect of the following:

- (a) meals, snacks, alcoholic and non-alcoholic beverages
- (b) any expense whatsoever if the one way distance between the Eligible Employee's Home Base and the Work Site is less than 100 kilometres;
- (c) gratuities;
- (d) airline or railway club dues, fees or other charges;
- (e) personal service expenses, including hair care, shoe shine, toiletry and spa treatment expenses;
- (f) laundry, dry cleaning or valet expenses;
- (g) hotel telephone charges or internet access
- (h) personal telephone calls;
- (i) cellular telephones, data devices (for example, Blackberries) or other communication devices;
- (j) entertainment or recreation expenses, including pay-per-view, video, compact disk or DVD rental, in-room entertainment, games, gaming, reading, sports or exercise expenses;
- (k) headsets or other in-flight expenses;
- (l) dependant care expenses
- (m) pet care expenses;
- (n) mini bar charges or sundry items (including gum and snacks);
- (o) credit card interest or other credit card expenses;
- (p) automobile washes;
- (q) fines or other expenses assessed or otherwise incurred in respect of traffic or parking violations; or
- (r) fees or other expenses for toll highways or vehicle rental agency administration charges for use of toll highways.

## 2.4 Method of Reimbursement

OPG will reimburse the Supplier for Allowable Expenses which otherwise meet the requirements of this Schedule and the rest of the Agreement in accordance with the following terms.

- (a) **Monthly Invoice.** The Supplier will deliver to OPG, to the address indicated in the purchase order or Agreement, on a monthly basis, an invoice for Allowable Expenses in a form and manner acceptable to the OPG Representative, acting reasonably. The Supplier will deliver to the OPG Representative, a copy of the invoice and will ensure that the invoice legibly itemises and, if necessary, briefly describes all Allowable Expenses. The Supplier will not invoice or otherwise charge OPG for any expenses other than Allowable Expenses. The Supplier will ensure that all expenses claimed on each such invoice meet the requirements of this Schedule and the rest of the Agreement and are first approved by the Supplier. If the Supplier fails to deliver an invoice to OPG for an expense within six months of the expense being incurred, OPG will not be obliged to reimburse the Supplier for such expense.
- (b) **Receipts.** The Supplier will deliver to the OPG Representative, together with a copy of the invoice, original official itemised receipts for each Allowable Expense claimed (including airline, railway or bus ticket passenger coupons or electronic tickets, boarding passes, vehicle rental contracts, itemised hotel bills and travel itineraries). The Supplier will separate expenses for each Eligible Employee. Debit card and credit card receipts are not acceptable without the itemised receipt. OPG will not accept electronic, photocopied or fax copies of receipts.
- (c) **GST/HST Deducted.** The Supplier will deduct all Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) recovered or recoverable by the Supplier on the payment of expenses before submitting any invoice to OPG covering any Allowable Expenses. The Supplier will ensure that each such invoice will separately set out all Canadian goods and services tax /harmonized sales tax levied under the *Excise Tax Act* (Canada) and reimbursable by OPG under this Schedule.
- (d) **Reimbursement.** OPG will reimburse the Supplier for Allowable Expenses which meet all of the requirements of this Schedule, received and approved by OPG before the 25<sup>th</sup> of each month on the 25<sup>th</sup> of the following month.

The Supplier will ensure that all Eligible Employees initially pay for expenses using their own payment methods. OPG will not provide any advances respecting Allowable Expenses. The Supplier is exclusively responsible for the reimbursement of expenses to all Eligible Employees. Failure by the Supplier to comply with the requirements of this Schedule and the rest of the Agreement may result in delay of reimbursement of expenses or rejection of any invoice in whole or in part.

## 2.5 Travel Agency

OPG has and may in the future negotiate rates with a travel service to reduce travel and lodging expenses. Unless OPG provides the Supplier with written notice stating otherwise, or the Supplier can

demonstrate it can obtain lower rates from providers other than American Express Business Travel, the Supplier will ensure that all Eligible Employees process travel requirements through American Express Business Travel. OPG also encourages the Supplier to have all vehicle rental and hotel arrangements made through American Express Business Travel. American Express Business Travel may be reached in Canada and the United States at 1-866-868-4441. The Supplier will ensure that all Eligible Employees travelling for the purpose of providing services under the Agreement identify themselves to American Express Business Travel as such.

## **2.6 Confirming Rates**

The Supplier will ensure that the rates booked by it or an Eligible Employee are the same or lower than that listed on the travel itinerary.

## **2.7 Home Base and Work Site**

Where applicable, the Supplier will specify in each invoice the Home Base and the Work Site for each Eligible Employee. At OPG's request, the Supplier will provide written confirmation from each Eligible Employees as to the employee's permanent residence and street address. A post office box is not an acceptable street address.

# **SECTION 3 - AIR, RAIL OR BUS TRAVEL**

## **3.1 Air, Rail or Bus Travel**

The expense of air, rail and bus travel is an Allowable Expense to the extent the actual amount of airfare or, rail or bus fare was incurred by an Eligible Employee in providing services to OPG under the Agreement and to the extent of compliance with the other requirements of this Schedule and the rest of the Agreement. The Supplier will cause Eligible Employees, to the extent possible, to take advantage of hotel and airport shuttles where available. OPG will reimburse the Supplier for the expenses actually incurred by an Eligible Employee for travel between the Eligible Employee's Home Base, Work Site or hotel and the airport, railway station or bus terminal where the Eligible Employee arrives or departs. In addition, the amount of any such reimbursement may not exceed the lesser of:

- (a) the expense of the taxi fare or other similar out of pocket charge to travel to or from the airport, railway station or bus terminal; and
- (b) if applicable, parking charges at the airport, railway station or bus terminal.

## **3.2 Economy Class**

Air expenses are not Allowable Expenses unless the Eligible Employee travels on economy class or equivalent. Rail expenses will be permitted for travel by VIA 1 or equivalent.

## **3.3 Vehicle Instead of Air, Rail or Bus Travel**

OPG will only reimburse the Supplier for use of a personal vehicle or rental car for trips which would customarily be travelled by air, rail or bus, for the amount which is equal to the lesser of:



- (a) the expense of the airfare, rail fare or bus fare that would have been reimbursed by OPG to the Supplier under section 3; and
- (b) the amount that would otherwise be reimbursable by OPG to the Supplier for vehicle travel pursuant to section 4.

OPG will not reimburse the Supplier for any lodging that would not have been incurred had the trip been made by air, rail or bus.

### **3.4 Visits Home**

OPG will reimburse air, rail or bus travel expenses for a maximum of one round trip home per month for each Eligible Employees on assignment at a Work Site where the duration is more than 45 days and the Home Base of that employee is greater than 400 kilometres from the Work Site.

### **3.5 Minimising Expenses**

The Supplier will, to the extent possible, cause all air travel, to be by "lowest logical airfare", to take advantage of weekend specials and other discount fares and to reduce overall expenses and plan ahead (booking at least two weeks before the departure date is expected).

## **SECTION 4 - VEHICLES**

### **4.1 Reimbursable Vehicle Expenses**

The expense of rental vehicles or personal vehicles used by Eligible Employees will be an Allowable Expense to the extent that:

- (a) the use of the vehicle was for official OPG business;
- (b) the one way distance between the Eligible Employee's Home Base and the Work Site is greater than 100 kilometres or the Eligible Employee is required to provide services at a location other than the Eligible Employee's Work Site;
- (c) the use of the rental vehicle was pre-approved in writing by the OPG Representative; and
- (d) the expense otherwise meets the requirements of this Schedule and the rest of the Agreement.

### **4.2 Terms of Rental**

The Supplier will make all bookings of rental vehicles through American Express Business Travel or directly with one of the OPG approved rental car agencies. The Supplier will book only mid size or smaller vehicles unless otherwise approved in writing by the OPG Representative where circumstances require it (for example, a van to carry equipment or a large group). When the Supplier books a rental vehicle, the Supplier will make the following selections when asked to select insurance coverage:

- (a) where collision damage waiver is provided through the credit card company, the Supplier will decline collision damage waiver insurance; and
- (b) where collision damage waiver is not provided through the credit card company, the Supplier will accept collision damage waiver insurance.

Where the Supplier fails to comply with sections 4.2(a) or 4.2(b), any additional expense that is incurred by failing to comply with either of those sections will not constitute an Allowable Expense.

#### **4.3 Personal Vehicle**

OPG will not reimburse the Supplier for use of a personal vehicle by an Eligible Employee for the first 200 kilometres of any trip (round trip), except if the Eligible Employee is required to provide services at a location other than the Eligible Employee's Work Site. If otherwise in accordance with the terms of this Schedule, OPG will reimburse the Supplier as an Allowable Expense for all personal vehicle travel by an Eligible Employee in excess of 200 kilometres (round trip), at the published rates per kilometre on the date of invoice, for vehicle expenses for Ontario set out on the Canada Revenue Agency website (<http://www.cra-arc.gc.ca/tx/lrts/menu-eng.html>). This Canada Revenue Agency amount covers all vehicle related expenses, except parking.

#### **4.4 Reducing Expenses**

The Supplier will use all reasonable attempts to reduce the expenses of vehicle travel by:

- (a) arranging for employees to share vehicles to minimise travel expense;
- (b) requiring Eligible Employees to use a rental vehicle and refuel it before returning it;
- (c) considering a long-term lease for lengthy work assignments (that is, more than 30 consecutive days) when the Eligible Employee requires a rental vehicle; and
- (d) requiring Eligible Employees to use public transit when travelling to locations within or around urban centres.

#### **4.5 Multiple Users**

OPG will only reimburse the Eligible Employee whose vehicle is used when two or more Eligible Employees travel in one vehicle. If two or more Eligible Employees share a rental vehicle, OPG will only reimburse the Eligible Employee who incurred the expense.

### **SECTION 5 - LODGING**

#### **5.1 Overnight Accommodation**

The expense of overnight accommodation for Eligible Employees will be an Allowable Expense to the extent that the overnight stay was pre-approved in writing by the OPG Representative and to the extent that the expense otherwise meets the requirements of this Schedule and the rest of the Agreement. The OPG Representative will not approve any overnight accommodation unless:

- (a) the presence of the Eligible Employee is required at a Work Site which is more than 200 kilometres (one way) from that Eligible Employee's Home Base; or
- (b) poor weather creates hazardous driving conditions and the Eligible Employee cannot safely return to the Eligible Employee's Home Base.

The Supplier will include a written explanation for all overnight accommodation with the invoice.

## **SECTION 6 - DAILY RATES**

### **6.1 Daily Rates Instead of Allowable Expenses**

To the extent this section 6 applies to any Eligible Employee, none of the terms of section 2 to section 5 apply, except for any Allowable Expenses for air, rail or bus travel between an Eligible Employee's Work Site and Home Base that is reimbursable in accordance with section 3. Notwithstanding the previous sentence, the temporary residence (where the Eligible Employee resides while working on the OPG project) will be considered the Home Base for the purposes of calculating Allowable Expenses in the event the Eligible Employee is required to travel to a location other than the Work Site.

### **6.2 Daily Rates**

Before the commencement of, or at any time during, a work assignment for any Eligible Employee, OPG may elect based on the remaining duration of the work assignment, the distance between the Eligible Employee's Home Base and the Work Site or for other reasons to pay the Supplier a daily rate in respect of that Eligible Employee rather than to reimburse the Supplier for Allowable Expenses.

### **6.3 All Inclusive**

Except as expressly set out in this section 6, the daily rate set out in section 6.4 is inclusive of all expenses whatsoever that will be reimbursed by OPG, including expenses respecting accommodation, local transportation, work permits and fees, utilities, communication charges, furnishings, insurance and any Allowable Expenses that would otherwise be reimbursable to the Supplier under section 2 to section 5.

### **6.4 Rates**

Subject to adjustment under section 6.5, the following are the daily rates that OPG will pay the Supplier in respect of Work Sites:

- (a) City of Toronto, \$150; and
- (b) all other locations, \$120 (including Mississauga, Pickering, Whitby and Darlington).

### **6.5 Application of Rate**

Where OPG has elected to pay the daily rate for an Eligible Employee, OPG will pay the daily rate to the Supplier on a monthly basis for that Eligible Employee for each full day that the Eligible Employee

provided services under the Agreement and for each weekend day unless the Eligible Employee surrendered his or her accommodations. The daily rate will not be paid for any period of an unexcused absence or when the Eligible Employee has surrendered the Eligible Employee's accommodation during a home visit or absence (includes unavailability to work on weekends if trip home was taken on the weekend). The daily rate will be reduced by \$35 for each day of approved trips home and on the last day of providing services under the Agreement. Where OPG has elected to pay the daily rate for Eligible Employees who normally live together, the Eligible Employees are expected to share accommodations. Adjustments may be made to the daily rate set out in section 6.4 if Eligible Employees share accommodations and other expenses.

#### **6.6 Method of Reimbursement**

OPG will pay the Supplier the applicable daily rate in accordance with the following terms.

- (a) **Monthly Invoice.** The Supplier will provide OPG, on a monthly basis, with an invoice listing the number of Eligible Employees for whom the Supplier is claiming the daily rate and the number of days being claimed for each Eligible Employee. The Supplier will ensure that the invoice includes a description of the work package or project name and project number (and work breakdown structure element if applicable).
- (b) **Evidence of Expenses.** The Supplier will provide OPG with original itemised receipts and time sheets evidencing that the Eligible Employee attended the Work Site and made use of temporary accommodation on each day for which the daily rate is being requested. Debit card and credit card receipts are not acceptable without the itemised receipt.

Failure by the Supplier to comply with the requirements of this Schedule and the rest of the Agreement may result in delay of reimbursement of expenses or rejection of any invoice in whole or in part.

#### **6.7 Absences**

Unless authorised in writing by the OPG Representative, OPG will not be required to pay the daily rate for an Eligible Employee where that Eligible Employee was absent from the Work Site without having been excused by the OPG Representative or where that Eligible Employee did not make use of the Eligible Employee's accommodation during an absence from the Work Site (other than an absence required to perform services to OPG under the Agreement). The OPG Representative may consider authorising payment of the daily rate for absences such as an infrequent sick day or medical appointments requiring exams or tests.

### **SECTION 7 - MONTHLY RATES**

To the extent this section 7 applies to any Eligible Employee, none of the terms of section 2 to section 6 apply, except for any Allowable Expenses for air, rail or bus travel between an Eligible Employee's Work Site and Home Base that is reimbursable in accordance with section 3. Where OPG elects to pay on a monthly basis in respect of any Eligible Employee, OPG will pay the Supplier \$1800 per month (or pro-rated portion of a month). All the terms of section 6 apply to the calculation of this monthly rate, with such modifications as the circumstances require.

## Schedule 1.1(x) - Scope of Services

### **1. Introduction**

Ontario Power Generations Inc.'s CANada Deuterium Uranium ("CANDU") reactors are designed to provide decades of safe and reliable electricity generation. Mid-way through the reactor's life, replacement of some of the key reactor and station components is required to allow for continued operation for approximately 30 additional years. OPG is moving forward with plans for the mid-life refurbishment of the Darlington nuclear generating station (Refurbishment Program) and is currently in the planning phase for this program. For more information on the Refurbishment Program please visit <http://www.opg.com/power/nuclear/refurbishment/>.

### **2. Purpose of the Independent External Oversight Organization**

The Executive Vice President ("EVP") Nuclear Projects is responsible for leading the preparation and execution of the Refurbishment Program. The mandate of the Nuclear Oversight Committee ("NOC") is to report to the OPG Board of Directors regarding the progress of the Refurbishment Program with respect to project risk, development and execution performance. This is completed by:

- Reviewing and monitoring the definition, development and risk management of the Refurbishment Program.
- Monitoring progress of Refurbishment Program against targets, including cost, schedule, financing and risk.
- Reviewing execution performance of the Refurbishment Program.

The Independent External Oversight Organization (alternatively, the Supplier) will assist the EVP Nuclear Projects and the NOC in fulfilling their mandate by reviewing assessing, evaluating and offering professional opinions regarding the status, processes, procedures and approach taken by OPG's project team (the "**Project Team**") and OPG's contractors performing the Refurbishment Program. The Supplier will report its observations semi-annually on a confidential basis to the EVP Nuclear Projects and the NOC, when directed by OPG, will provide quarterly reports to the NOC.

The Supplier will provide these Services for a period of up to 2 years (renewable in accordance with the Agreement). These Services are expected to begin in 2013.

### **3. Description of the Independent External Oversight Services**

To complete its assessment of the performance of the Refurbishment Program the Supplier is expected to perform the following activities for the planning phase of the Refurbishment Program:

1. *Review and assess the methodology for the development of the release quality estimate and baseline schedule of the Refurbishment Program:*
  - Evaluate the Project Team's approach to preparing and maintaining the baseline schedule and project budget to identify any approaches that might depart from industry-standard methods and techniques and offer suggestions, as appropriate.

regarding the tools and techniques that might be available to improve the overall process;

- Review and assess the Project Team's methodology for determining contingency for the Refurbishment Program;
- Review the Project Team's utilization of scheduling techniques and "rules" to evaluate whether or not there is:
  - 1) Clarity of critical path(s) and sub-critical path(s) for monitoring performance;
  - 2) Proper alignment within the cost system and support of the Refurbishment Program's estimate;
  - 3) Adherence to proper scheduling practices; and
  - 4) Proper schedule integration among all projects and subprojects.

2. *Review and Assess the Project Team's cost control systems*

- Review and assess the systems, processes and procedures the Project Team has in place for commercial conduct, including those in respect of:
  - 1) Change management;
  - 2) Notice and notification of changes in scope;
  - 3) Contract change orders;
  - 4) Contractual changes/amendments; and;
  - 5) Contract payments.

3. *Review and monitor development of the Refurbishment Program's risk management system.*

- This review and monitoring will include, but is not limited to, the following activities:
  - 1) Assess the Project Team's processes for establishing and updating the risk management system and reporting emanating from that system;
  - 2) Assess the effectiveness, adequacy and timelines of the Project Team's risk identification, mitigation and quantification of risks; and
  - 3) Review and assess the effectiveness of the corrective action program (CAP) for identifying adverse trends that may impact the Refurbishment Program.

4. *Tracking of engineering, fabrication and procurement, and project management and execution progress.*

- Asses the Project Team's and contractor's project management and execution capabilities;
- Review the relevant Refurbishment Program project management documentation;

- Assess the Project Team's and contractors' reported engineering, fabrication and procurement progress;
- Assess the Project Team's tracking and documentation of the status of critical design evolutions;
- As necessary, provide suggestions intended to streamline the management of engineering, planning and assessing and procurement; and
- Evaluate whether the Project Team has incorporated lessons learned into its project planning, and suggest other lessons learned from our team's experience that may be applicable.

5. *Review documentation.*

- Determine whether key decisions have been properly documented.

6. *Reports.*

- The Supplier will report the results of its assessments to OPG as scheduled in accordance with the detailed work plan or any applicable work release. OPG will review reports and either accept them, or require the Supplier to revise and resubmit the report. The Supplier will provide draft reports in a timely manner to ensure sufficient opportunity for OPG's review and any necessary revisions, having regard to OPG's need to deliver the final reports the NOC or others. The Supplier will submit reports in a format acceptable to OPG.

7. *Develop detailed work plan.*

The Supplier will develop a detailed work plan with input from the OPG's Representative and EVP Nuclear Projects, which will refine or expand on this scope of the services. The Supplier will ensure that the review plan describes in detail each activity, the schedule and the associated costs for providing the services. OPG's Representative or the EVP, Nuclear Projects will review the detailed work plan and either accept it, or require the Supplier to revise and resubmit the plan. Once OPG accepts the detailed work plan it will authorize the Supplier to perform the services by issuing a work release. The Supplier will revise the work plan at OPG's request.

8. *Progress updates.*

- The Supplier will provide weekly progress updates to OPG's Representative discussing the activities completed, progress of scheduled activities, and associated costs.

9. *Additional services.*

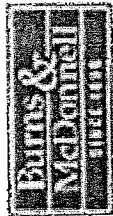
- Where the Supplier identifies or issues that require additional work to the EVP Nuclear Projects, or where the EVP Nuclear Projects requires the Supplier to provide additional services beyond those required in this scope of services, the Supplier will

provide such services in accordance with the work package-work release process under the Agreement.

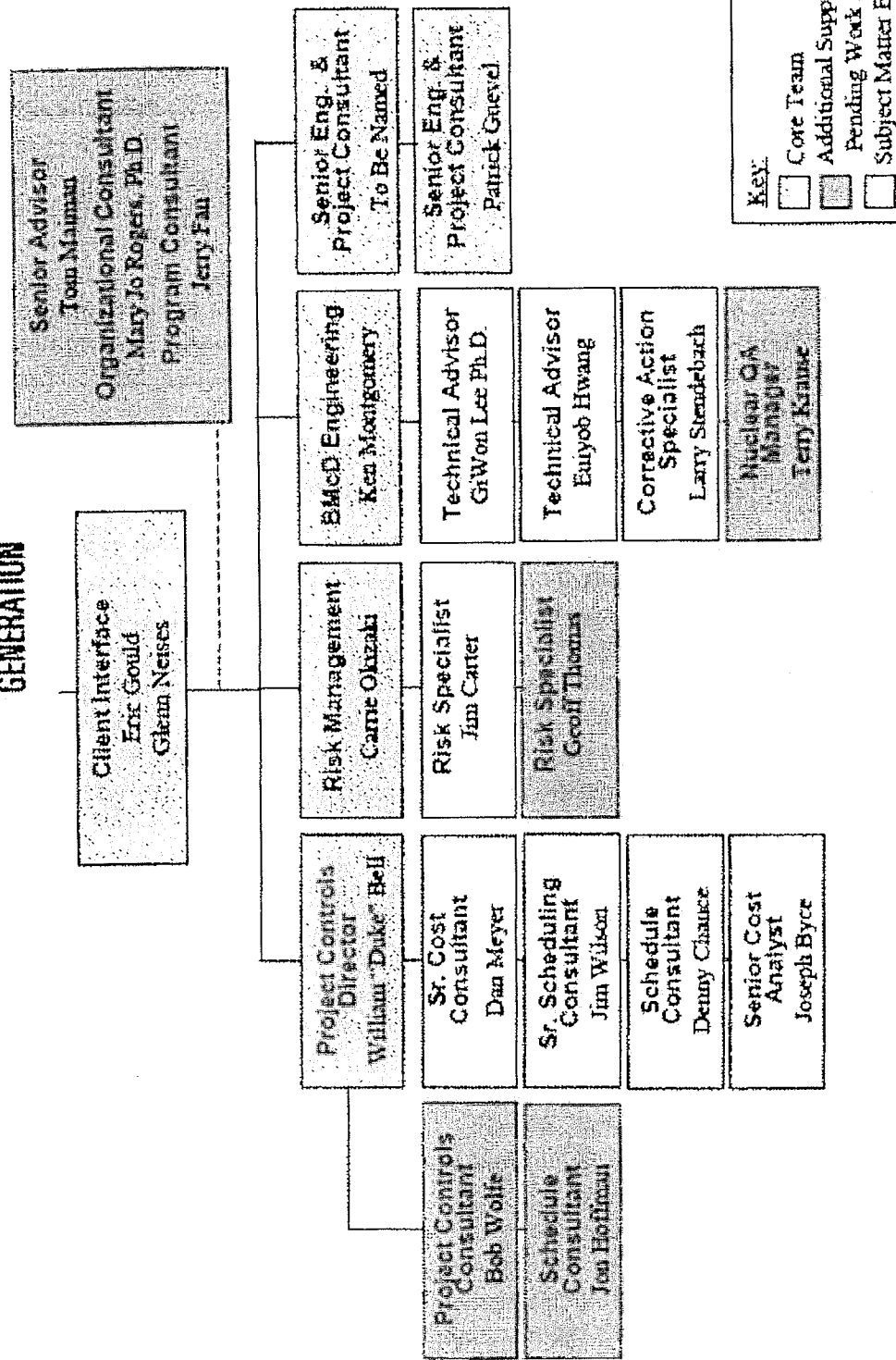


## Project Team

## Oversight Services for Darlington Nuclear Station



# ONTARIOPOWER GENERATION



**Schedule 2.8(a) - Subcontractors**

MODUS Strategic Solutions, LLC.

## Schedule 3.4 – Indemnity Agreement

# INDEMNITY AGREEMENT

This Agreement is made as of [•], 2013 between

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

and

**BURNS & McDONNELL CANADA, LTD.**, a corporation  
existing under the laws of Ontario (“**Subsidiary**”),

and

**BURNS & McDONNELL ENGINEERING COMPANY,  
INC.**, a corporation existing under the laws of State of Missouri in  
the United States of America (“**Parent**”).

### Recitals

- A. Subsidiary and OPG entered into the independent external oversight services agreement dated the date of this Agreement (the “**Underlying Agreement**”). Under the Underlying Agreement, Subsidiary will provide OPG with the independent external oversight services in respect of the Darlington Refurbishment Program.
- B. OPG would not enter into the Underlying Agreement unless Parent and Subsidiary executed this Agreement.
- C. Parent wishes to assist Subsidiary, its wholly owned subsidiary, to obtain the Underlying Agreement. Parent will benefit, directly or indirectly, from Subsidiary entering into the Underlying Agreement with OPG. Accordingly, Parent has agreed to provide OPG with the indemnifications and other rights contained in this Agreement.

For value received, the parties agree as follows.

1. **Obligation to Perform.** If Subsidiary fails to perform in a timely manner any obligation under the Underlying Agreement (collectively, the “**Subsidiary Obligations**”), Parent will itself perform such Subsidiary Obligations, or cause the those obligations to be performed, in each case as if Parent were itself Subsidiary with respect to those Subsidiary Obligations. Parent will perform, or cause to be performed, those Subsidiary Obligations immediately following receipt of a notice from OPG indicating the Subsidiary Obligations that Subsidiary has failed to satisfy in a timely manner, regardless of whether or not OPG, or any other party to which the Subsidiary Obligations apply, has attempted to enforce any of those Subsidiary Obligations against

Subsidiary. Any failure by Parent to perform, or cause to be performed, in a timely manner any Subsidiary Obligations that Parent is obliged to perform, or cause to be performed, will immediately entitle OPG, and any other party to which the Subsidiary Obligations apply, to pursue all rights and remedies available to it in law, in equity or otherwise against each of Parent and Subsidiary.

**2. Other Obligations.** Parent irrevocably and unconditionally agrees to indemnify and save harmless OPG and any other party to which the Subsidiary Obligations apply, from and against all Losses arising in respect of any breach by Subsidiary of any Subsidiary Obligations. This indemnity does not extend to impose any obligation on Parent that would not have been an obligation of Subsidiary under the Underlying Agreement, except that Parent will not be relieved of any of its obligations under this Agreement due to any relief of Subsidiary from any of the Subsidiary Obligations arising in respect of any bankruptcy, insolvency, reorganisation, moratorium, arrangement, readjustment of debt, liquidation, winding-up or dissolution proceedings or legislation.

**3. Obligations Absolute.** The obligations of Parent under this Agreement are absolute and unconditional and continue regardless of any change or other modification to the Subsidiary Obligations from time to time and regardless of any other circumstance which might otherwise constitute, in whole or in part, a defence available to, or a discharge of Parent, Subsidiary or any other entity in respect of the Subsidiary Obligations or any of the obligations of Parent. Specifically, and without limitation, OPG may, in its sole and absolute discretion and without giving notice to, or obtaining the consent of, Parent: (a) grant extensions of time and other indulgences; (b) take and give up securities, (including any bonds and letters of credit); (c) accept compositions; (d) grant releases and discharges, whether full, partial, conditional or otherwise; (e) perfect or fail to perfect any securities; (f) release any undertaking, property or assets charged by any securities to third parties; (g) otherwise deal or fail to deal in any manner whatsoever with Subsidiary or other parties or securities; or (h) hold any monies received from Subsidiary or other parties or from any securities unappropriated, apply such monies against such part of the Subsidiary Obligations and change any such application in whole or in part from time to time. Any such action or failure to act of OPG will be without prejudice to, or in any way discharge or diminish, the liability of Parent. The obligations of Parent under this Agreement are in no way conditioned or contingent upon any requirement on the part of Parent, OPG or any other party to which the Subsidiary Obligations apply, to attempt first to demand the performance, or enforce, any of the Subsidiary Obligations from or against Subsidiary before OPG, or any other party to which the Subsidiary Obligations apply, becomes entitled to payment or other performance from Parent under this Agreement.

**4. No Obligation for OPG.** OPG will have no obligation to Parent whatsoever for any act, omission, matter, thing or circumstance whatsoever and OPG's obligations to Subsidiary are governed solely by the Underlying Agreement.

**5. Fundamental Events.** In the event: (a) of any liquidation, winding up, insolvency or bankruptcy of Subsidiary (whether voluntary or involuntary); (b) that Subsidiary makes a bulk sale of any of its assets within the bulk transfer provisions of any applicable legislation; (c) that Subsidiary enters into any proposal or composition with its creditors, extension of time or is subject to a scheme of arrangement; or (d) other similar proceeding or transaction, OPG, and any other party to which the Subsidiary Obligations apply, will rank in priority to Parent for claims made in

respect of the Subsidiary Obligations and Parent will deliver to OPG all payments made by or on behalf of Subsidiary to Parent until those all unperformed Subsidiary Obligations have been satisfactorily performed in full. These payments are all without prejudice to any claims of OPG, or any other party to which the Subsidiary Obligations apply, for unperformed Subsidiary Obligations.

**6. Additional Security.** This Agreement is in addition and without prejudice to any security of any kind (including any collateral or other indemnities or guarantees, whether or not in the same form as this Agreement) held by OPG.

**7. Parent's Representation.** . Parent represents and warrants to OPG that Parent has taken all necessary corporate action to authorise the execution and delivery of this Agreement and the performance of its obligations under this Agreement and that this Agreement constitutes a valid and binding agreement of Parent enforceable against it in accordance with its terms.

**8. Financial Information of Parent.** Parent authorises OPG to make credit enquiries about Parent or any of its affiliates from time to time and to receive and exchange credit information from credit reporting agencies or other persons with which Parent or any of its affiliates has or may expect to have financial dealings. Parent has provided OPG with Parent's consolidated audited balance sheet for the last three financial years. Such financial statements have been prepared in accordance with U.S. generally accepted accounting practices, consistently applied. Such financial statements fairly reflect the consolidated financial position of Parent as at the dates and for the periods set out in such statements. Parent will provide OPG with its audited consolidated balance sheet within 90 days of each of Parent's year end.

**9. Notice.** Except as set out in section 10, every notice or other communication required or permitted under this Agreement must be in writing and may be delivered in person, by courier or by fax to the applicable party, as follows:

if to OPG,	if to Subsidiary,	if to Parent,
Ontario Power Generation Inc. 700 University Avenue, Toronto, Ontario, M5G 1X6  Attention: Director, Credit  Fax: 416-592-8335	Burns & McDonnell Canada, Ltd. 9400 Ward Parkway, Kansas City, MO 64114  Attention: Ken Montgomery  Fax: 816-333-3690	Burns & McDonnell Engineering Company, Inc. 9400 Ward Parkway, Kansas City, MO 64114  Attention: Christopher Baxter  Fax: 816-822-3413

or to any other address, fax number or individual that a party designates. Any notice or other communication under this Agreement, if delivered personally or by courier will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. (Toronto time) on a business day in Toronto will be deemed to have been delivered on that business day and if delivered by fax after 3:00 p.m. (Toronto time) on a business day in Toronto or on a day which is not a business day in Toronto will be deemed to be delivered on the next business day in Toronto.

**10. Service.** For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in Ontario and the courts of Ontario will have jurisdiction to entertain any action arising under this Agreement. 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 obtained from an Ontario court regarding this Agreement. Any 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 such other party in accordance with section 9. Parent hereby nominates, constitutes and appoints Subsidiary its true and lawful agent to accept service of process and to receive all legal process in respect of any action arising in respect of this Agreement. Until lawful notice of the appointment of another and subsequent agent in Ontario has been given by Parent and accepted by OPG, service of any legal process upon Subsidiary will be accepted by Parent. Nothing in this section 10 will affect the rights of OPG to serve legal process in any other manner permitted by law.

**11. General.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement. 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**”. 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. This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario. Any terms not defined in this Agreement have the meaning given to them in the Underlying Agreement; however, if there is a conflict between any term of this Agreement and any term of the Underlying Agreement, the relevant term of this Agreement is to prevail. 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. For every term of this Agreement, time is of the essence. This Agreement and the Underlying Agreement constitute the entire agreement between the parties with respect to the subject matter and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal. Neither Parent nor Subsidiary may assign this Agreement in whole or in part without the prior written consent of OPG. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns. No waiver of any term of this Agreement is binding unless it is in writing and signed by the party entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term. Subsidiary and Parent will from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the terms and intent of this Agreement and to satisfy all of the Subsidiary Obligations. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled. This Agreement and any amendment, restatement or termination of this Agreement in whole or in part may be signed and delivered in any number of counterparts, each of which when signed and delivered is an original but all of which taken together constitute one and the same

instrument. This Agreement and any amendment, restatement or termination of this Agreement in whole or in part may be delivered by fax. Except as expressly provided in this Agreement, no amendment, restatement or termination of this Agreement in whole or in part is binding unless it is in writing and signed by each party.

Parent and Subsidiary have duly sealed and the parties have duly executed this Agreement.

**ONTARIO POWER GENERATION INC.**

**BURNS & McDONNELL  
ENGINEERING COMPANY, INC.**

(SEAL)

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Name: Albert Sweetnam  
Title: Executive Vice-President, Nuclear  
Projects

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Authorised Signatory

**BURNS & McDONNELL CANADA,  
LTD.**

(SEAL)

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Authorised Signatory

### Schedule 4.1(b) – Billing Rates

Name	Role	Billing Rate (\$/hr)
<b>Initial Team</b>		
Eric Gould	Client Liaison – Reporting and Project Controls	
Glenn Neises	Client Liaison – Engineering & Process	
Carrie Okizaki	Risk Management Director	
William “Duke” Bell	Project Controls Director	
Ken Montgomery	BMcD Engineering Director	
Patrick Guevel	Senior Engineering & Project Consultant	
Sr. Engineering & Project Consultant	Sr. Engineering & Project Consultant	
<b>Additional Subject Matter Experts</b>		
Dan Meyer	Sr. Cost Consultant	
Jim Wilson	Sr. Scheduling Consultant	
Joe Byce	Sr. Cost Analyst	
Jim Carter	Risk Specialist/Engineering	
W. Larry Stendebach	CAP Consultant	
Dr. GiWon Lee	Technical Advisor/Engineer	
Euiyob Hwang	Technical Advisor	
<b>Project Support</b>		
Ned Markey	Project Associate	
Meggan Witte	Project Assistant	
<b>Additional Support: Individuals Available for In-Depth Analysis (Su</b>		
Tom Maiman	Senior Advisor	
Terry Krause	QA Manager	
Geoff Thomas	Risk Specialist	



Jon Hoffman	Risk Specialist	
Denny Chance	Scheduling Manager	
Bob Wolfe	Project Controls Consultant	
Jerry Fan	Program Management Consultant	

