SUMMARY OF EPC CONTRACT FOR RFR WITH SNC/AECON JV

Contract Name:

Engineering, Procurement and Construction Agreement for the Darlington Refurbishment Retube and Feeder Replacement Project

Dates:

Date of Agreement: March 1, 2012
Date of Amendment 1: October 1, 2012
Date of Amendment 2: February 28, 2014
Date of Amendment 3: November 2, 2015
Date of Amendment 4: January 11, 2016
Date of Amendment 5: February 1, 2016
Date of Amendment 6: June 7, 2016
Date of Amendment 7: July 1, 2017
Date of Amendment 8: June 27, 2017
Date of Amendment 9: December 20, 2018
Date of Amendment 10: October 16, 2019
Date of Amendment 11: November 3, 2020
Date of Summary: December 1, 2020

Summary of Key Terms:

The following is a brief summary of the key terms and conditions of the Engineering, Procurement and Construction Agreement for the Darlington Refurbishment Retube and Feeder Replacement Project that was entered into between SNC-Lavalin Nuclear Inc. and Aecon Construction Group Inc. (the “SNC/AECON JV”) as the successful proponent/contractor and OPG as of March 1, 2012, and updated to reflect the following amendments thereto: (i) amendment agreement number 1 dated as of October 1, 2012 (“Amendment 1”); (ii) amendment agreement number 2 dated as of February 28, 2014 (“Amendment 2”); (iii) amendment agreement number 3 dated as of November 2, 2015 (“Amendment 3”); (iv) amendment agreement number 4 dated as of January 11, 2016 (“Amendment 4”); (v) amendment agreement number 5 dated as of February 1, 2016 (“Amendment 5”); (vi)

amendment agreement number 6 dated as of June 7, 2016 ("Amendment 6"); (vii) amendment agreement number 7 dated as of July 1, 2017 ("Amendment 7"); (viii) amendment agreement number 8 dated as of June 27, 2017 ("Amendment 8"); (ix) amendment agreement number 9 dated as of December 20, 2018 ("Amendment 9"); (x) amendment agreement number 10 dated as of October 16, 2019 ("Amendment 10"); and (xi) amendment agreement number 11 dated as of November 3, 2020, with effect as of October 17, 2019 ("Amendment 11").

The form of agreement is an engineering, procurement and construction contract, and the form of agreement and amendments reflect extensive feedback from the entire OPG project team, external legal counsel (Blake, Cassels & Graydon LLP) and the contractor.

Phased Approach to Refurbishment Work

The agreement divides the retube and feeder replacement work on the Darlington refurbishment project into three distinct phases – the definition (planning) phase, the execution (doing) phase, and the commissioning phase. The agreement focuses on definition phase, which includes the retube waste processing building (RWPB) unless explicitly stated otherwise, and execution phase activities. The commissioning phase work is anticipated to be a relatively minor component of the project.

The multi-year definition phase was intended to provide the contractor and OPG with sufficient opportunity to plan all of the retube and feeder replacement work for the four reactor units at Darlington. The design, fabrication and testing of all tooling required to perform this work occurred during the definition phase. The mock-ups of the reactor face, which will be used to test the tooling and for worker training purposes, were also completed during the definition phase.

As part of the definition phase work, the contractor and OPG developed an "execution phase plan". This included a cost estimate, schedules (milestone, target, submittal) and a risk register for the execution phase. The cost and schedule estimates developed by the contractor were subjected to a P50 analysis, which means that the cost and schedule estimates included contingency amounts required to be added or deducted from the estimates to provide the contractor with a confidence level of 50% of achieving completion of the work at the estimated

cost and within the estimated timeline. The P50 analysis was the basis for establishing the target cost and target schedule under the agreement. The contractor's fixed fee for the execution phase work was calculated based on the target cost.

Consequent to the definition phase work, OPG made a decision, pursuant to Amendment 4, to proceed with the execution phase work with the contractor. This was one of the key inflection points in the agreement. If the contractor and OPG had not agreed on the elements of the execution phase plan, OPG could have decided not to proceed with the execution phase work. The dispute resolution mechanism provided for in the agreement would not have applied to the terms of the execution phase plan, and the contractor would not have been entitled to any extraordinary payment if OPG had decided not to proceed with the execution phase work and elected to terminate the agreement for convenience.

Target Cost Model for Key Components of the Contract Price

The agreement adopts a target cost model for the definition phase work and the execution phase work. Under this model, OPG will pay all of the contractor's actual costs (other than overhead costs) incurred in performing the work. The contractor will be entitled to a fixed fee as compensation for all of its overhead costs, profit and risk. The agreement includes "allowed cost" and "disallowed cost" concepts for reimbursable work, as well as a detailed cost allocation table, to distinguish actual costs that are reimbursable by OPG from actual costs that are to be included in the contractor's fixed fee. To address the risk of cost overruns by the contractor on reimbursable work, the agreement also includes a financial incentives/disincentives mechanism that is tied to the target cost for the definition phase work, RWPB work and execution phase work. As a result, while the contactor will be reimbursed for all of its actual (allowed) costs, up to 48% of its fixed fee will be at risk if there are cost overruns (up to 80% of the definition phase fixed fee, 48% of the RWPB fixed fee or 80% of the execution phase fixed fee, as applicable, in aggregate for cost and schedule overruns). This financial incentive/disincentive mechanism also applies to schedule risk and is described in more detail below.

The definition phase target cost, the definition phase fixed fee and the execution phase fixed fee percentages were bid by SNC/AECON JV as the successful proponent as part of its final

proposal. The amounts proposed by the contractor were incorporated into the agreement and amended to reflect changes in scope.

Other Components of the Contract Price

The design, fabrication and testing of the tooling were done on a fixed price basis. This fixed price was bid by SNC/AECON JV as the successful proponent as part of its final proposal. The fixed price amount proposed by the contractor was incorporated into the agreement and amended to reflect changes in scope.

The construction of the reactor mock-ups was also done on a fixed price basis. This fixed price was bid by SNC/AECON JV as the successful proponent as part of its final proposal. The fixed price amount proposed by the contractor was incorporated into the separate mock-ups agreement, as amended to reflect changes in scope.

For all commissioning phase work, the contractor will be entitled to reimbursement of its actual costs, plus a fixed percentage fee. This percentage was bid by SNC/AECON JV as the successful proponent as part of its final proposal. The percentage proposed by the contractor was incorporated into the agreement.

Tooling Performance Guarantee and Tooling Fixed Price Reduction

The agreement requires that the tooling meet the minimum productivity threshold ("tooling performance guarantee") that the contractor provided as part of its final proposal. The agreement contemplated a reduction of up to 10% in the tooling fixed price if the tooling failed to meet this productivity threshold during testing on the mock-ups. However, the tooling met or exceeded the productivity threshold and, therefore, the tooling fixed price did not need to be reduced. If the tooling failed to meet this productivity threshold, the agreement gave OPG discretion to allow the contractor more time to improve the performance of the tooling or, alternatively, to proceed with the execution phase work using the sub-standard tooling.

Schedules

Work on the definition phase and the execution phase is governed by a milestone schedule, a detailed target schedule and a submittal schedule.

The milestone schedule, the target schedule and the submittal schedule for the definition phase were submitted by each proponent as part of its final proposal. The schedules proposed by the contractor and agreed to by OPG were incorporated into the agreement and amended to reflect changes in scope.

The milestone schedule, the target schedule and the submittal schedule for the execution phase were developed as part of the execution phase plan, and were incorporated into the agreement by Amendment 4 and amended to reflect changes in scope. Certain key dates in the execution phase milestone schedule were established prior to the effective date of the agreement and could not be varied during the development of the execution phase plan, other than by an amendment.

Productivity Gain Expectations and Experience-Based Schedule Adjustments

OPG expects that the contractor's productivity will improve on a unit-by-unit basis. The target schedule for the first unit was determined by OPG and the contractor as part of the definition phase work. A fixed percentage reduction – [redacted], [redacted] and [redacted] – was then applied to the target schedule for the first unit to determine the target schedule durations for the second, third and fourth units.

The predetermined target schedule durations for the second, third and fourth units will be adjusted in some instances in response to the actual outage durations experienced during field execution. Such adjustments will affect the amount of schedule incentives or disincentives that will be payable on completion of the execution phase work. If the contractor completes the work on a unit in less than [redacted] of the predetermined target schedule duration for the first unit, then the predetermined target schedule duration for the next-following unit will be reduced. Conversely, in completing the work on a unit, if the contractor exceeds the predetermined target schedule duration for the first unit by more than [redacted], then the predetermined target schedule for the next-following unit will be increased. No adjustments will be made if the actual outage duration falls within a [redacted] neutral band established on either side of the predetermined target schedule duration for the first unit.

The agreement does not provide for any experience-based adjustment of the execution phase target cost.

Financial Incentives and Disincentives – Cost and Schedule

The agreement includes financial incentives and disincentives that apply to both cost and schedule performance during the definition phase and the execution phase. (These incentives and disincentives do not apply to work performed during the commissioning phase).

For each of the definition phase and the execution phase, the contractor's obligation to pay financial disincentives is capped at 80% of its fixed fee. Conversely, OPG's obligation to pay financial incentives is capped at 40% of the fixed fee for the definition phase. With respect to the RWPB work, the contractor's obligation to pay financial disincentives is capped at 48% of the RWPB fixed fee and OPG's obligation to pay financial incentives is capped at 24% of the RWPB fixed fee. The agreement also includes sub-caps on the total amount of cost disincentives that can be incurred by the contractor during the definition phase and the execution phase (so as to preserve meaningful schedule disincentives).

Definition Phase Support Services and Equipment Target Cost – Cost Incentives and Disincentives

The agreement establishes a neutral band 10% above and below the definition phase support services and equipment target cost. If the actual amount of reimbursable costs incurred in connection with the definition phase support services and equipment work falls outside of the neutral band, either OPG will pay to the contractor (for cost savings), or the contractor will pay to OPG (for cost overruns), 50% of the total cost savings or cost overruns.

Definition Phase Target Cost – Cost Incentives and Disincentives

The agreement establishes a neutral band of $2,500,000 above and below the definition phase target cost. If the actual amount of reimbursable costs incurred in connection with the definition phase work falls outside of the neutral band, either OPG will pay to the contractor (for cost savings), or the contractor will pay to OPG (for cost overruns), a specified percentage (not exceeding 50%) of the total cost savings or cost overruns.

RWPB Target Cost – Cost Incentives and Disincentives

The agreement establishes a neutral band of $2,500,000 above and below the RWPB target cost. If the actual amount of reimbursable costs incurred in connection with the RWPB work falls outside of the neutral band, either OPG will pay to the contractor (for cost savings), or the contractor will pay to OPG (for cost overruns), a specified percentage (not exceeding 50%) of the total cost savings or cost overruns. The maximum cost disincentive payable by the contractor with respect to RWPB work is fixed at $10,000,000.

Definition Phase – Schedule Disincentives

The agreement requires the contractor to make disincentive payments to OPG if the contractor does not complete all definition phase work by the respective dates in each of the milestones. The contractor will pay to OPG (a) an aggregate lump sum of $1,000,000 for failing to meet the definition phase work complete milestone; (b) $100,000 for each calendar day that completion of the definition phase work is delayed past the date specified in any of the deferred definition phase work milestones; and (c) $100,000 for each calendar day between August 15, 2016 to August 30, 2016, inclusive, plus $100,000 for each calendar day that completion of the definition phase work associated with the containment isolation valves mods material on site (goods) milestone is delayed past August 30, 2016. With respect to (b) and (c), in no event will the contractor be liable for more than $100,000 per calendar day. The schedule disincentive payable by the contractor for failure to meet the deferred definition phase work milestones is fixed at $10,000,000 and OPG waives any further schedule disincentives for failure to meet such milestones.

Deferred Disincentive Payments

The cost disincentive payable by the contractor with respect to the RWPB work and the schedule disincentive payable by the contractor for failure to meet the deferred definition phase work milestones are collectively subject to economic cost adjustment. These disincentives will be payable by the contractor dollar-for dollar for each dollar by which the aggregate reimbursable costs for Units 3, 1, and 4 (the “Subsequent Units”) exceeds $1,580,000,000. If the aggregate reimbursable cost for the Subsequent Units is less than $1,580,000,000, the deferred disincentive amount will be deemed to have been paid.

Execution Phase Support Services and Equipment Target Cost – Cost Incentives and Disincentives

The agreement establishes a neutral band 10% above and below the execution phase support services and equipment target cost. If the actual amount of reimbursable costs incurred in connection with the execution phase support services and equipment work falls outside of the neutral band, either OPG will pay to the contractor (for cost savings), or the contractor will pay to OPG (for cost overruns), 50% of the total cost savings or cost overruns.

Unit 2 Credit Amount

OPG will prepare an estimate of total costs incurred to complete all execution phase work for Unit 2 on or about breaker closed for Unit 2. The contractor will apply a one-time credit adjustment against future amounts owing by OPG to the contractor for the Subsequent Units equal to the difference between the estimate and $3,417,000,000 (the "Unit 2 Credit Amount"). Within 8 months of breaker closed for Unit 2, OPG will calculate the final total actual costs incurred to complete all execution phase work for Unit 2. The Unit 2 Credit Amount will be adjusted in an amount equal to the difference between the estimate and final total actual costs, plus additional adjustments. The settlement of the Unit 2 Credit Amount is intended to be a cashless transaction. As the contractor completes each Subsequent Unit, the Unit 2 Credit Amount will be reduced as follows: (i) Unit 3: 50%; (ii) Unit 1 (25%); and (iii) Unit 4 (25%). In the event of early termination, the unreduced amount of the Unit 2 Credit Amount at the time of termination will be determined by reference to the applicable milestones completed at such time and the percentages associated with such milestones. At such time, the unreduced amount of the Unit 2 Credit Amount may be applied by OPG against specified amounts owing.

Execution Phase – Cost Incentives and Disincentives

Cost incentives and disincentives for Unit 2 were deemed calculated and paid. If the aggregate amount of all reimbursable costs incurred in connection with the execution phase work for the Subsequent Units is less than $1,550,000,000, OPG will pay to the contractor an incentive amount equal to 50% of the difference between the reimbursable cost and $1,700,000,000, subject to a downward adjustment for an amount equal to the Unit 2 Credit Amount (or by a specified percentage of the Unit 2 Credit Amount if the RFR Agreement is terminated prior to Unit 4 being completed). The cost incentive for the refurbishment of the Subsequent Units will

never be less than zero and no incentive is payable if the aggregate reimbursable cost is equal to or greater than $1,550,000,000.

In addition if the aggregate reimbursable cost is less than $1,550,000,000, the incentive amount will be increased by an amount equal to 32 cents for every dollar that the aggregate reimbursable costs for the Subsequent Units is above $1.187 billion, up to a maximum of $32,000,000.

If the actual amount of reimbursable costs incurred during the execution phase for the Subsequent Units is greater than $1,600,000,000, the contractor will continue to invoice OPG for the excess reimbursable costs, however, the contractor will pay OPG, or OPG will set off against the reimbursable costs (a) 50% of every dollar of reimbursable costs between $1,600,000,000 and $1,650,000,000, and (b) 100% of every incremental dollar of reimbursable costs in excess of $1,650,000,000. The contractor's obligation to pay financial disincentives is capped at 48% of the execution phase fixed fee.

Execution Phase – Schedule Incentives and Disincentives

Schedule incentives and disincentives for Unit 2 were deemed calculated and paid. The agreement requires OPG to pay to the contractor an incentive amount equal to $125,000 multiplied by the number of full calendar days by which the actual duration of the work on each Subsequent Unit is less than the target scheduled duration for such work. The agreement requires the contractor to pay to OPG a disincentive amount equal to $250,000 multiplied by the number of full calendar days by which the actual duration of the work on each Subsequent Unit exceeds the guaranteed duration for such work, which is 10% above the target scheduled duration. The calculation and payment of such schedule incentives and disincentives will be done on an aggregate basis for all completed units.

In addition, if the sum of the number of full calendar days by which the actual duration of the work on the Subsequent Units is less than a more aggressive targeted schedule duration for such work, OPG will pay to the contractor an incentive amount equal to $25,000,000. If the sum of the actual duration of the work for the Subsequent Units is greater than such targeted schedule duration for such work, OPG will pay to the contractor an incentive amount equal to

$25,000,000 reduced by an amount equal to $250,000, multiplied by the number of full calendar days by which the actual duration of the work on each unit exceeds the targeted schedule duration for such work.

Unit 2 Cost Incentives

The agreement establishes a cost incentive sharing mechanism for the first unit to be refurbished ("Unit 2") in addition to the other incentives and disincentives in the agreement, provided the refurbishment program has achieved the P90 schedule milestones for Unit 2. OPG will prepare an estimate of the total actual costs incurred to complete all refurbishment program work for Unit 2 within 3 months of completion of high power testing and turbine testing. If the estimate is less than $5,623,000,000, the contractor will be entitled to share in the difference. The contractor will be entitled to 100% of the first $6,000,000 of the difference and 50% of any amounts above $6,000,000. Within 12 months of completion of high power testing and turbine testing, OPG will calculate the final total actual costs. If final costs are greater than $5,623,000,000, the contractor will repay in full to OPG or OPG will set-off any contractor share amount previously paid by OPG. If final costs are less than $5,623,000,000, the contractor share will be reconciled and the difference will be paid by the contractor or OPG as required.

The $6,000,000 advanced by OPG to the contractor against the Unit 2 cost incentive described above will be subject to economic cost adjustment and will be payable by the contractor dollar-for dollar for each dollar by which the aggregate reimbursable costs for the Subsequent Units exceeds $1,574,000,000. If the aggregate reimbursable cost for the Subsequent Units is less than $1,574,000,000, the $6,000,000 advance will be deemed to have been repaid.

<u>Rework</u>

The contractor is required to perform all work safely and diligently, in an organized and timely manner, and in accordance with the agreement, applicable laws and prudent practices. It is acknowledged in the agreement that, notwithstanding the exercise of prudent practices by the contractor, a certain amount of typical rework is to be expected on a project of this nature. Therefore, the agreement contemplates the inclusion of an allowance equal to 3% of the labour portion of each of the definition phase target cost and the execution phase target cost for

rework. Any actual costs incurred by the contractor for rework in excess of such allowances will be reimbursable by OPG, but such target costs will not be adjusted.

Project Change Directives, Excusable Delays and Force Majeure

The agreement tightly restricts the ability of the contractor to initiate “project change directives” (change orders) and to make claims for “excusable delay” events and “force majeure” events.

An “excusable delay” is a delay that is caused by an OPG breach or a stop work order, emergency or hazardous condition for which OPG is responsible, and which extends the critical path of the Definition Phase Milestone Schedule or the Execution Phase Milestone Schedule, as applicable, by more than 3 days. Delays due to certain radiation protection activities are also considered “excusable delays” under the agreement.

Neither party will be held responsible for material delays resulting from certain “force majeure” events, which are restricted to fire, flood, tidal wave, lightening, earthquake, cyclone, tornado, hurricane, explosion, severe ice storm, epidemic or pandemic disease, legal strike or lock-out (other than those caused by the contractor, a subcontractor, or their employees, or work to rule activities), war, riot, sabotage or other acts of public enemies, including terrorists, or site-related blockades (other than labour-related events).

An “excusable delay” or a “force majeure” event entitles the applicable party to schedule and/or cost relief depending on the type of work (i.e. fixed, firm price or reimbursable work) impacted by the delay or the event.

The rationale for this restrictive approach is twofold. First, the “functional” scope of work for the Darlington refurbishment project is to be determined (or confirmed) in part by the contractor itself during the definition phase. As a result, the contractor should not be discovering additional scope or encountering delay-inducing “unforeseen risks” as the execution phase work progresses. Second, the contractor should have had sufficient time during the definition phase to fully investigate the site conditions, and should have captured all of the required work when developing the execution phase target cost and the execution phase schedules. The restriction on project change directives and claims for “excusable delay” events and “force majeure”

events was intended to give the contractor an incentive to do the best possible planning work during the definition phase. The contractor also enjoys the benefit of a significant neutral band around the target cost that affords protection against erosion of fee for any changes that fall within the neutral band.

The agreement also takes a standard approach to scope changes resulting from “concealed conditions” inside the vault and calandria of each unit. The contactor is not able to examine all of these areas prior to commencement of the execution phase work.

For any Subsequent Unit project change directive for changes that are expected to increase the reimbursable costs incurred by the contractor by less than $1,000,000, OPG will pay the contractor its reimbursable costs but there will be no adjustment to any target costs, thresholds, fees, etc.

For any Subsequent Unit project change directive for changes that are expected to increase the reimbursable costs incurred by the contractor by $1,000,000 or more, OPG will pay the contractor the contractor’s reimbursable costs plus the applicable overhead, which itself will be treated as a reimbursable cost.

In addition, with respect to each Subsequent Unit (on a unit-by-unit basis), for any project change directives for changes that are expected to increase the reimbursable costs incurred by the contractor by $1,000,000 or more in the aggregate but by an amount equal to or less in the aggregate than $10,000,000, the Subsequent Unit cost disincentive thresholds will be adjusted dollar-for-dollar for the aggregate amount of the increase from the first dollar.

Further, with respect to each Subsequent Unit (on a unit-by-unit basis), for any project change directives for changes that are expected to increase the reimbursable costs incurred by the contractor by more in the aggregate than $10,000,000, all Subsequent Unit cost incentive and disincentive thresholds will be increased dollar-for-dollar for the aggregate amount of the increase above $10,000,000.

For any Subsequent Unit project change directive for changes that are expected to reduce the reimbursable costs incurred by the contractor by less than $1,000,000, but there will be no adjustment to any target costs, thresholds, fees, etc.

For any project change directive for changes that are expected to reduce the reimbursable costs paid to the contractor by $1,000,000 or more, for each Subsequent Unit (on a unit-by-unit basis), the execution phase fixed fee will be reduced, but none of the costs, thresholds, fees, etc. will change.

In addition, with respect to each Subsequent Unit (on a unit-by-unit basis) for project change directives for reductions that are expected to reduce reimbursable costs incurred by the contractor by more than $10,000,000, the execution phase target cost and all Subsequent Unit cost incentive and disincentive thresholds will be reduced dollar-for dollar for the aggregate amount of the decrease in excess of $10,000,000.

Contractor Personnel

The agreement requires the contractor to identify and employ certain key personnel for the duration of the Darlington refurbishment project. This obligation is reinforced with financial penalties if such key personnel are replaced without OPG's prior written consent. The agreement gives OPG certain veto rights over the contractor's field supervisory staff.

"Open Book" Approach and OPG Audit Rights

The agreement requires the contractor to provide OPG with full and open access to all financial and other records relating to the project. The agreement also provides OPG with extensive audit rights for all financial and other records that relate to work that is performed on a reimbursable costs basis, with few restrictions on the lookback periods for audits and readjustment of contractor cost claims. OPG's audit rights with respect to payroll burdens (an agreed payroll burden percentage is used as a proxy for actual payroll burden costs) and work that is performed on a fixed price basis or firm price basis are narrower.

Procurement of Owner-Specified Materials

The agreement requires the contractor to procure all "Owner-Specified Materials" for OPG on a cost plus a fixed percentage fee basis. This percentage was bid by the SNC/AECON JV as the successful proponent as part of its final proposal. OPG will not pay any incremental fee for Owner-Specified Materials for the Subsequent Units once the cost of Owner-Specified Materials exceeds $393,910,834. Owner-Specified Materials include, among other things, the calandria and pressure tubes, all "nuclear material" as defined in the *Nuclear Liability Act* (Canada) in respect of which the duties under section 3 of the *Nuclear Liability Act* (Canada) are imposed on OPG, and all nuclear waste containers, racks and flasks.

Procurement of Goods

The agreement requires the contractor to procure all Goods" for OPG on a cost plus a fixed percentage fee basis. This percentage was bid by the SNC/AECON JV as the successful proponent as part of its final proposal. OPG will not pay any incremental fee for Goods for the Subsequent Units once the cost of Goods exceeds $72,376,715.

Subcontractors

The agreement permits the use of subcontractors, but obliges the contractor to "push down" all applicable terms and conditions of the agreement to each subcontractor.

Cash Neutrality for Contractor

The agreement contemplates that OPG will keep the contractor in a "cash neutral" position while the work is being performed.

Scientific Research and Experimental Development ("SRED") Tax Credit

The agreement provides that OPG is entitled to claim all SRED tax credits generated by work on the Darlington project, including those generated in connection with the development of the tooling.

Performance Security

The agreement obliges the contractor to post a letter of credit in the amount of 10% of the tooling fixed price to support the contractor's obligations under the tooling performance

guarantee and for completion of the tooling by the date specified in the definition phase milestone schedule.

The agreement also obliges the contractor to post a letter of credit to support its obligations under the agreement and the separate mock-ups agreement, initially in the amount of $50,000,000 and, on commencement of the execution phase work, increasing to $100,000,000. This letter of credit amount steps down over time as work on the project is completed and warranty periods expire. If the Unit 2 credit note is greater than $100,000,000, the letter of credit must be increased by an amount equal to the difference between $100,000,000 and the Unit 2 credit amount.

The contractor provided guarantees in OPG's standard form from the ultimate parent companies of the contractor in support of all of the contractor's obligations under the agreement. These guarantees contain ratings-based and/or covenant based tests of the ongoing creditworthiness of the parent guarantors.

Ownership of the Tooling

The agreement requires that ownership of the physical tooling be transferred to OPG as such tooling is completed.

Intellectual Property

The agreement requires the contractor to transfer to OPG, or to license to OPG, all intellectual property required for performance of the work, including all intellectual property associated with the tooling. The agreement also provides for the continuing use of such intellectual property by OPG if the agreement is terminated, either following a contractor default or for convenience.

Completion Incentives

The agreement provides for substantial holdbacks of the contractor's fixed fee and other financial incentives at successive points in the completion of the work on each unit – at "Unit Mechanical Completion", at "Final Mechanical Completion" and at "Final Completion". These

holdbacks are primarily intended to ensure that OPG receives all “available for service” documentation that is required for the restart of each refurbished unit.

Warranty

The agreement provides for a warranty of the contractor’s work, and obliges the contractor to correct any defective work at its own cost. The contractor’s sole liability and OPG’s exclusive remedy with respect to the repair or replacement of any defective work will be limited to the warranty remedies set out in the agreement. The warranty period for each unit ends on the earlier of (i) the date that is three months after the actual end date of the first planned outage for such unit, and (ii) the date that is five years from unit mechanical completion for such unit. For work relating to common services for all units, the warranty period will end concurrent with the warranty period for the last unit. If warranty work is performed by the contractor, an extended warranty period also applies. This extended warranty period ends on the earlier of (i) the date that is three months from the actual end date of the next planned outage for such unit, and (ii) the date that is four years from the date on which the corrected work re-enters commercial operation. The warranty period for a unit will not in any event extend beyond nine years from the unit mechanical completion date for such unit. The warranty period for RWPB work ends two years after the RWPB is substantially completed.

Termination for Default

The agreement includes standard events of default. If the contactor defaults, OPG will be entitled to terminate the agreement and to exercise a number of self-help remedies. Termination for default would permit OPG to make a claim against the contractor for full contractual damages (subject to a percentage cap formula that is linked to the total contract price and certain other amounts).

Termination for Convenience

The agreement permits OPG to terminate the agreement for convenience at any time. Certain types of direct damages (but not full contractual damages) will be payable by OPG to the contractor in such circumstances.

Suspension of the Work

The agreement permits OPG to suspend the work at any time. Certain types of direct damages (but not full contractual damages) will be payable by OPG to the contractor in such circumstances. If additional activities are added by OPG that are not already being performed by the contractor, and that extend the critical path of the work being performed, OPG and the contractor will follow a specified suspension protocol. With respect to the suspension of work for Unit 3 and the suspension initiated by OPG in response to the COVID-19 pandemic, OPG will only pay the overhead, not the profit component, of direct damages. For the COVID-19 suspension, OPG will also pay the contractor's bridging costs for project management personnel, sub forepersons, superintendents, and other experienced personnel retained during the suspension (which costs would otherwise be disallowed costs). For the Unit 3 suspension, any suspension costs in excess of $16,000,000 will be deemed reimbursable costs for cost incentive and disincentive purposes.

Dispute Resolution

The agreement provides for both informal and formal resolution of disputes. The informal procedure contemplates a staged escalation of disputes within OPG's and the contractor's management structure with a view to achieving a consensual resolution of the dispute. The formal mechanism is binding arbitration under commercial arbitration rules. The agreement limits the recourse of the contractor and OPG to the ordinary courts.

Other Projects

The agreement restricts the contractor from transferring, or permitting any affiliate from transferring, supervisory trade personnel at the superintendent level or higher that have received project-specific training and have been assigned to the project for four months or more to any other nuclear generating station refurbishment project during the term of the agreement without the prior consent of OPG.

Other Use of the Tooling

Under the agreement the contractor agrees that (i) the tooling, or any component thereof, will not be diverted for use in any other project undertaken by the contractor or any other person,

and (ii) the contractor will not use the tooling except at the Darlington nuclear generating station until such time as unit mechanical completion is achieved for the last unit.