

Court File No. 31-2639875
Estate No. 31-2639875

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF JMX CONTRACTING INC. OF THE TOWN OF
UXBRIDGE IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS
OF JMX NATIONAL INC., BRND PROPERTIES INC., and
JMX LEASING INC.**

MOTION RECORD

May 12, 2020

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TO: SERVICE LIST

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TAB 1

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LEASING INC.**

NOTICE OF MOTION

**JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES INC., and
JMX LEASING INC.** (collectively, the “**Debtors**” or each a “**Debtor**”) will make a motion to a
Judge presiding over the Commercial List on Friday, May 15, 2020, at 10 a.m. or as soon after that
time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please
refer to the conference details attached as Schedule “A” hereto in order to attend the motion and
advise if you intend to join the motion by emailing Christel Paul at cпаul@wfklaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of the Motion Record that, among other things:

- a) dispenses or abridges the time for service of this Notice of Motion and Motion Record;
- b) administratively consolidates the Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”) commenced by each of the Debtors (the “**Proposal Proceedings**”);
- c) expands and enhances the powers of Crowe Soberman LLP in its capacity as proposal trustee of the Debtors (the “**Proposal Trustee**”) and authorizes and directs the Proposal Trustee to take all necessary steps to obtain custody of certain equipment removed from the Debtors’ sites and/or projects by third parties after the commencement of the Proposal Proceedings, without the Debtors’ knowledge or consent, and in violation of the stay of proceedings;
- d) approves the following super-priority charges over the Debtors’ property:
 - i) an Administration Charge (as defined in the proposed Order) to the maximum amount of \$300,000;
 - ii) a D&O Charge (as defined in the proposed Order) in the maximum amount of \$175,000; and,

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. The Debtors are a part of a corporate group (the “**JMX Group**”) in the business of environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada.
4. On April 17 and 20, 2020, the Debtors filed notices of intention to make a proposal (“**NOIs**”) under the BIA in response to s. 244 notices of intention to enforce security delivered by JMX Group’s primary secured creditor, Royal Bank of Canada (“**RBC**”).
5. The JMX Group’s primary assets are the real property upon which the JMX Group’s businesses are situated, including land and buildings in Uxbridge at which the JMX Group’s head offices are located.
6. JMX Contracting owns various equipment and inventory in relation to its environmental services and demolition business. Various equipment lessors also have registered security interests against JMX Contracting and JMX Leasing.
7. The JMX Group continues to operate as a going concern. It is the JMX Group’s intention to restructure its secured debt through refinancing and/or investment and to continue its operations in the normal course.

Administrative Consolidation

8. The Debtors have each historically operated as an integrated part of the JMX Group and have common shareholders. The NOI filings of the four JMX entities has resulted in four

separate Court File and Estate numbers. There is no benefit to maintaining separate court files for each entity.

9. Procedurally consolidating the NOI proceedings for the JMX Group entities to be dealt with as one matter will ensure the most expeditious, least expensive determination of these proceedings. The JMX Group is not requesting substantive consolidation of the companies.

Extension of Time to File a Proposal

10. The time to file a proposal under the BIA will expire on May 17, 2020 for BRND Properties and JMX National and on May 20, 2020 for JMX Contracting and JMX Leasing. The JMX Group is seeking a 45-day extension pursuant to Section 50.4(9) of the BIA up to and including July 1, 2020 (being 45 days from the date of the earlier NOI filings).

11. The test for an extension of time under Section 50.4(9) of the BIA is met:

- a) it is likely that with an extension of time, and if the relief sought in this motion is granted, the JMX Group will be able to make a viable proposal to its creditors;
- b) the JMX Group has engaged, and is continuing to engage, in good faith discussions with its creditors and stakeholders and conducted itself with due diligence; and
- c) a proposal made by the JMX Group on a going concern basis will be more beneficial to its creditors and stakeholders than a liquidation. No creditor will be prejudiced by the extension of time.

Priority Charges

12. The JMX Group is seeking a charge to a maximum of \$300,000 to secure the professional fees incurred in relation to the NOI proceeding, including those of counsel to the JMX Group, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administration Charge**”).
13. In addition, the JMX Group is seeking a charge to a maximum of \$175,000, in favour of the current directors of the JMX Group entities, to secure obligations of the directors over the restructuring period (the “**Directors’ Charge**”).
14. The Debtors are seeking Court approval of the charges, including the DIP Charge, in the following priority, ahead of all other creditors, including secured creditors:
 - a) FIRST – Administration Charge up to a maximum of \$300,000;
 - b) SECOND – the Directors’ Charge up to a maximum of \$175,000.
15. The charges are reasonably necessary to permit the Debtors to restructure and are supported by the cash flow projections prepared by the JMX Group with the assistance of the Proposal Trustee. It is just and appropriate under the circumstances to grant the proposed priority charges.

Expanded Powers of the Proposal Trustee

16. Notwithstanding the stay of proceedings, a JMX Contracting Supplier, Kirby Waste Transfer Solutions (“**Kirby**”) trespassed upon two JMX Contracting project job sites at 475 Commissioners Street in Toronto and 880 Avonhead Road in Mississauga, without

authorization, to illegally remove equipment. While trespassing, hazardous waste, including asbestos deposits, were disturbed, potentially polluting the site.

17. JMX Contracting needs the equipment to continue operating in the normal course. Kirby has denied the trespass and removal of property and a police investigation is underway. However, a police investigation may not result in the return of the Debtors' property, even if charges are laid. Accordingly, the JMX Group is seeking to expand the powers of the Proposal Trustee to permit the Proposal Trustee to take steps to facilitate the return of the misappropriated equipment and, if necessary, take possession of the impugned equipment, in order to preserve it for the benefit of the JMX Group's creditors and stakeholders pending the resolution of any disputes with Kirby.

Further Grounds

18. The Proposal Trustee supports the relief being sought by the Company;
19. Sections 50.4(9) and 64.2 of the BIA;
20. Rules 1.04, 2.03, 3.02, 37 and 45 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended;
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

22. The Affidavit of Charles Dahl, sworn May 12, 2020, with Exhibits attached thereto; and,

23. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 12, 2020

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Lawyers for the Debtors

TO: **THE SERVICE LIST**

Schedule “A”
Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://zoom.us/j/3154597997?pwd=RXJ1OCtqdHUxa2lUREtUYIE5OUpKZz09>

Meeting ID: 315 459 7997

Password: 729363

One tap mobile

+13017158592,,3154597997# US

+13126266799,,3154597997# US (Chicago)

Dial by your location

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US

Meeting ID: 315 459 7997

Password: 729363

Find your local number: <https://zoom.us/u/akmSHXDDJ>

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF JMX CONTRACTING INC. OF THE TOWN OF
UXBRIDGE IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS
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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Debtors

TAB 2

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SUPERIOR COURT OF JUSTICE
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**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS OF
JMX NATIONAL INC., BRND PROPERTIES INC., and
JMX LEASING INC.**

AFFIDAVIT OF CHARLIE DAHL
(Sworn May 12, 2020)

**I, CHARLIE DAHL, of the City of Toronto, in the province of Ontario, MAKE OATH
AND SAY:**

1. I am a director and shareholder of each of the debtors, JMX Contracting Inc., JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (collectively, the “**Debtors**” or each a “**Debtor**”). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. This affidavit is submitted in support of a motion for the following proposed Order, which, among other things:

(a) administratively consolidates the Proposal Proceedings (as defined below) commenced by each of the Debtors;

- (b) expands and enhances the powers of Crowe Soberman LLP, in its capacity as proposal trustee of the Debtors (the “**Proposal Trustee**”), to take all necessary steps to obtain custody of certain equipment removed from the Debtors’ sites and/or projects by third parties, after the commencement of the Proposal Proceedings, without the Debtors’ knowledge or consent and in violation of the stay of proceedings;
- (c) approves a charge up to the maximum amount of \$300,000 to secure professional fees relating to this NOI proceeding (the “**Administration Charge**”) and a charge in favour of the directors and officers of the Debtors in the maximum amount of \$175,000 (the “**Directors’ Charge**”), each with the relative priorities described in this affidavit and the proposed Order.

I. BACKGROUND

3. The Debtors are a part of a corporate group (the “**JMX Group**”). A copy of the JMX Group’s organizational chart is appended hereto as Exhibit “A”.

(i) **JMX Contracting Inc.**

4. JMX Contracting Inc. (“**JMX Contracting**”) is an Ontario corporation with its registered head office at 27 Anderson Boulevard, Uxbridge ON L9P 0C7. A copy of the Corporate Profile Report of JMX Contracting is appended hereto as Exhibit “B”.

5. JMX Contracting is the primary operating entity within the JMX Group. JMX Contracting is in the business of environmental contracting, providing demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada.

6. JMX Contracting is wholly owned by JMX Leasing.

(ii) JMX Leasing Inc.

7. JMX Leasing Inc. is an Ontario corporation, also with its registered head office at 27 Anderson Boulevard, Uxbridge ON L9P 0C7. A copy of the Corporate Profile Report of JMX Leasing is appended hereto as Exhibit “C”.

8. JMX Leasing is the parent corporation of JMX Contracting. It is held in equal shares by 2542097 Ontario Inc., Dahl Demolition Corp., 2391212 Ontario Inc., and 1291213 Ontario Inc. (collectively, the “**JMX Shareholders**”).

(iii) JMX National Inc.

9. JMX National Inc. (“**JMX National**”) is a company incorporated under the *Canada Business Corporations Act*, RSC, 1985, c. C-44 with its registered head office at 27 Anderson Boulevard, Uxbridge ON L9P 0C7. JMX National conducts no active business. JMX National is held in equal shares by the JMX Shareholders. A copy of the Corporate Profile Report of JMX National is appended hereto as Exhibit “D”.

(iv) BRND Properties Inc.

10. BRND Properties Inc. (“**BRND Properties**”) is an Ontario corporation, also with its registered head office at 27 Anderson Boulevard, Uxbridge ON L9P 0C7. JMX Properties is held in equal shares by the JMX Shareholders. A copy of the Corporate Profile Report of BRND Properties Inc. is appended hereto as Exhibit “E”.

11. BRND Properties does not conduct any business operations other than to hold real property.

II. PROCEDURAL CONSOLIDATION OF THE NOI PROCEEDINGS

12. The Debtors have each historically operated as an integrated part of the JMX Group. The JMX Group proposes to procedurally consolidate the NOI proceedings to allow the JMX Group entities to be dealt with as one matter, and to relieve the administrative burden of separate NOI proceedings. The JMX Group is not requesting substantive consolidation of the companies.

III. ASSETS AND LIABILITIES OF THE JMX GROUP

13. The JMX Group, through BRND Properties, holds the real property upon which the JMX Group's businesses are situated, including the land and building in Uxbridge at which the JMX Group's head offices are located. In addition, the JMX Group, through JMX Contracting and JMX National, own various equipment and inventory, including scrap, in relation to its environmental services and demolition business.

14. Other than equipment lessors, the primary secured creditor of the JMX Group is Royal Bank of Canada ("RBC") pursuant to various credit agreements (the "**RBC Credit Agreements**") between RBC and the entities making up the JMX Group.

15. Pursuant to the RBC Credit Agreements, RBC extended the following credit facilities (collectively, the "**RBC Credit Facility**") to the JMX Group:

(a) **BRND Properties** – RBC extended a \$1.3 million construction facility of which approximately \$1.2 million is outstanding. This loan is secured over the real property assets of BRND Properties and guaranteed by JMX Contracting, JMX Leasing and JMX National.

(b) **JMX Contracting** -

- (i) RBC extended a \$4 million revolving credit facility to JMX Contracting of which \$2.5 million is outstanding (the “**Operating Loan**”). The Operating Loan is guaranteed by JMX Leasing and JMX National Inc. The individual principals of the Shareholders have also issued personal guarantees in favour of RBC up to a joint and several maximum of \$2.1 million.
- (ii) RBC also issued a \$3 million letter of credit (the “**LC**”) to Ontario Power Generation (“**OPG**”), as required security under a demolition contract between JMX Contracting and OPG.

- (c) **JMX Leasing** – RBC extended a \$3 million revolving lease line of credit, of which approximately \$730,000 is **outstanding** (the “**CAPEX Loan**”). The CAPEX Loan is guaranteed by JMX Contracting Inc.

16. In total, the JMX Group is currently indebted to RBC in the total amount of approximately \$3.13 million.

17. Each Debtor has granted RBC a general security interest over its assets, property and undertakings. In addition, BRND Properties has granted RBC mortgage security over its real property assets to secure the Construction Loan.

IV. EMPLOYEES AND EMPLOYEE OBLIGATIONS

18. As of April 2020, JMX Contracting employed approximately 51 employees and independent contractors, approximately 24 of whom are unionized. With the exception of a small number of employees located in British Columbia, all of JMX Contracting’s employees are located in Ontario.

JMX Contracting's unionized employees are governed by various collective agreements with several unions. Prior to March 23, 2020 and the provincial restrictions on non-essential services, JMX Group employed over 220 employees. Upon lifting of the sanctions, JMX Group will re-employ employees based on the number of construction projects it will be servicing.

19. JMX Contracting pays employees on a weekly basis. As of the date of this affidavit, JMX Contracting is currently in arrears in respect of payroll and union dues, in the amount of approximately \$340,000, due to cash flow restrictions resulting from delayed receivables. The full amount of the arrears is expected to be paid next week. Union dues from and after May 15, 2020 will be paid in the ordinary course.

20. The JMX Group is currently up to date on source deductions and all other CRA obligations.

V. OVERVIEW OF THE NOI PROCEEDING

21. On April 9, 2020, RBC delivered demand letters to the Debtors alleging a debt service coverage ratio default. The Demand Letters enclosed notices of intention to enforce RBC's security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA").

22. RBC also delivered Demands to each of the JMX Board members in respect of personal guarantees of the Debtors' indebtedness.

23. At the time, the JMX Group was not aware of any apparent debt service coverage ratio default, and in fact, the JMX Group's accounting firm, BDO Canada Limited had reviewed the Group's financial records and advised the JMX Board that the JMX Group was not in breach of such covenant.

24. Despite requests from the JMX Group for additional time, RBC refused to extend the notice period under Section 244 of the BIA to permit the JMX Group to negotiate a satisfactory forbearance agreement with RBC that would avoid a filing.

25. Accordingly, on April 17 and 20, 2020, the Debtors were forced to file notices of intention to make a proposal (“NOIs”) under the BIA in response to the aggressive steps taken by RBC. The purpose of the NOI proceedings is to effect a financial and balance sheet restructuring and to deal with the Debtors’ secured creditor, RBC, in an orderly manner.

26. The JMX Group continues to operate as a going concern. Since the NOI filing, the JMX Group, with the assistance of the Proposal Trustee, has engaged with its secured creditors, customers, vendors, and other stakeholders. It is the JMX Group’s intention to restructure its secured debt through refinancing and/or investment and to continue its operations in the normal course.

VI. DEBTOR-IN-POSSESSION FACILITY AND CHARGE

27. The Debtors have prepared a cash flow projection (the “**Cash Flow**”) with the supervision of the Proposal Trustee, which I appended to and described in the First Report of the Proposal Trustee, to be filed. The Cash Flow demonstrates that the JMX Group will have sufficient liquidity to operate until the end of the proposal period.

Payables Under Key Contracts – Ontario Power Generation

28. The Cash Flows do not include certain significant receivables due to JMX Contracting. Various suppliers have registered post-filing liens under the *Construction Act*, RSO 1990, c. C.30 against JMX

Contracting projects, thereby delaying payment to JMX Contracting. The projects against which post-filing liens have been registered post-filing include:

- (a) the Transalta project at 2740 Derry Road East, Mississauga; and
- (b) the OPG Lambton demolition project at 1886 St. Clair Parkway, Sarnia.

29. JMX Contracting provides services related to the demolishing of OPG's Lambton Generating Station pursuant to a contract with OPG dated July 10, 2018 (the "**OPG Demolition Agreement**"). Pursuant to the OPG Demolition Agreement, JMX Contracting agreed to provide demolition services and to purchase and dispose of scrap from the demolition project. A copy of the OPG Demolition Agreement is appended hereto as Exhibit "F".

30. The OPG Demolition Agreement was structured as a fixed price contract. The contract price for demolition services provided by JMX Contracting amounted to approximately \$30.9 million. Pursuant to the contract, OPG would be paid for scrap removed and sold by JMX. The unit price that JMX Contracting was required to pay to OPG for various types of scrap are set out in the OPG Demolition Agreement, as fixed in July 2018 when the contract was executed.

31. JMX Contracting has performed approximately 70% of the work required under the OPG Demolition Agreement and has been paid approximately \$21.5 million to date. The project end date was extended to October 2020, however, with the recent emergency orders issued in relation to COVID-19, it is not likely that work will be completed by the contract end date.

32. While the OPG Demolition Agreement remains in effect, work on site has ceased due to Ontario Regulation 82/20: Order under subsection 7.0/2(4) of the *Emergency Management and Civil Protection Act* – Closure of Places of Non-Essential Businesses Order released by the Government of

Ontario on March 23, 2020, as updated April 4, 2020 (the “**COVID-19 Emergency Order**”). As demolition services are not deemed to be an essential service, JMX Contracting will not be performing work on site until the COVID-19 Emergency Order is lifted.

33. Further, two events have resulted in the OPG Demolition Agreement being unprofitable and untenable, including: (i) the collapse in world metal prices as it is no longer profitable for JMX to purchase scrap from OPG at contract prices only to sell the scrap at depressed commodity market prices, and (ii) the contract provided for the removal by JMX of a certain amount of asbestos per linear square foot, however JMX has removed almost 20% more asbestos than contracted, resulting in approximately \$8 million of additional costs incurred by JMX to date. JMX is not in the financial position to absorb the negative cash flow impacts of the OPG Demolition Agreement.

34. Pursuant to the terms of the OPG Demolition Agreement, OPG owes \$1,375,559.95 to JMX Contracting for demolition services performed under the OPG Demolition Agreement (the “**OPG Contract Payment**”). The OPG Contract Payment is due and owing.

35. I understand that OPG is asserting a claim for approximately \$700,000 from JMX Contracting for scrap purchased by JMX Contracting to date (the “**Scrap Payment**”).

36. OPG and JMX Contracting are continuing in their negotiations over the payment of the OPG Contract Payment and may pursue a global settlement in respect of the Lambton Demolition Agreement. It is anticipated that, to the extent any settlement is reached, and payment is made, the Proposal Trustee will supervise the payment process to ensure that suppliers and trades with valid claims against the project are paid from proceeds of settlement. It is anticipated such settlement and claims process would require a further Court attendance in due course.

37. Notwithstanding ongoing negotiations, OPG has, to date, refused to pay JMX the OPG Contract Payment. Without the OPG Contract Payment, JMX may not have sufficient liquidity to continue going concern operations if certain receivables are not collected as anticipated by the Cash Flows. If receivables are further delayed, affecting liquidity, JMX may have to re-attend before this Court to seek debtor-in-possession financing for its ongoing expenses over the restructuring period.

VII. ADMINISTRATION AND DIRECTORS' CHARGES

38. The JMX Group is seeking a charge to a maximum of \$300,000 to secure the professional fees incurred in relation to the NOI proceeding, including those of counsel to the JMX Group, the Proposal Trustee, and counsel to the Proposal Trustee (the "**Administration Charge**").

39. In addition, the JMX Group is seeking a charge to a maximum of \$175,000 in favour of the current directors of the JMX Group entities to secure obligations of the directors over the restructuring period (the "**Directors' Charge**"). The JMX Group is current on payments of source deductions, as well as HST and other CRA liabilities, and intends to continue such payments going forward. However, the directors require the security of the Directors' Charge given the lag in time between the accrual of obligations and when payment is due.

40. The JMX Group proposes that the charges have the following priority, ahead of all creditors, including secured creditors:

- (a) FIRST – the Administration Charge up to a maximum of \$300,000;
- (b) SECOND – the Directors' Charge up to a maximum of \$175,000.

VIII. EXPANDED POWERS OF THE PROPOSAL TRUSTEE

41. On or around April 28, 2020, JMX Contracting was advised by one of its customers that a JMX Contracting Supplier, Kirby Waste Transfer Solutions (“**Kirby**”), was threatening legal action against JMX Customers in relation to pre-filing amounts owed to Kirby.

42. On April 29, 2020, counsel to JMX Contracting wrote to Vinnie Ussia at Kirby to advise him of the stay of proceedings and to request that he cease harassing and communicating with JMX Contracting customers without consent of the JMX Group. A copy of the letter from Caitlin Fell to Vinnie Ussia at Kirby, dated April 29, 2020, is appended hereto as Exhibit “**G**”.

43. Notwithstanding the stay of proceedings, on or around April 29, 2020, Mr. Ussia trespassed on two JMX Contracting project job sites at 475 Commissioners Street, Toronto and 880 Avonhead Road, Mississauga, in each case without authorization of the project owner or JMX Contracting, and illegally removed equipment from the construction projects staged there. The equipment removal also resulted in hazardous waste, including asbestos deposits, being disturbed, potentially polluting the site.

44. A list of equipment that was removed from the sites is appended hereto as Exhibit “**H**”. There may be other equipment that was removed that the JMX Group is not aware of. The estimated value of the stolen equipment is over \$150,000, but of greater concern is the fact that the stolen equipment is necessary for the continuation of the construction projects by JMX Contracting.

45. JMX Contracting has contacted the Toronto Police Service (“**Toronto Police**”) to investigate. JMX Contracting was advised that Toronto Police has obtained closed-circuit camera footage of the incidents.

46. On May 2, 2020, counsel to JMX Contracting wrote to Kirby to demand that the equipment be returned to the site and that any hazardous waste be cleaned up and remediated by May 4, 2020. A copy of the letter from Caitlin Fell to Vinnie Ussia at Kirby, dated May 2, 2020, is appended hereto as Exhibit “I”.

47. On May 6, 2020, counsel to Kirby wrote to JMX Contracting’s counsel, denying that Kirby had taken any unlawful steps against JMX Contracting, and demanding to review the closed-circuit camera footage to investigate the matter further. A copy of the letter of Adam Marchioni dated May 6, 2020 is appended hereto as Exhibit “J”.

48. I understand that the closed-circuit camera footage remains with Toronto Police and the investigation is currently in their hands. I also understand that a police investigation will not necessarily result in the recovery of property, even if criminal charges are laid. Accordingly, JMX Contracting is seeking an Order requiring that Kirby return the equipment to the project sites at 475 Commissioners Street and 880 Avonhead Road.

49. In order to facilitate the return of the stolen equipment, JMX Contracting is seeking to expand the powers of the Proposal Trustee to permit the Proposal Trustee to take steps to facilitate the return of the equipment and, if necessary, take possession of the equipment in order to preserve it, pending any disputes with Kirby.

IX. EXTENSION OF TIME TO FILE A PROPOSAL

50. The Debtors’ time to file a proposal will expire on May 17, 2020 for BRND Properties and JMX National and on May 20, 2020 for JMX Contracting and JMX Leasing. The JMX Group is seeking a 45-day extension pursuant to Section 50.4(9) of the BIA up to and including July 1, 2020 (being 45 days from the date of the earlier NOI filings).

51. As described above, the JMX Group, with the assistance of the Proposal Trustee, has engaged in good faith discussions with its creditors and stakeholder and conducted itself with due diligence.

52. The JMX Group will require more time to engage with its creditors, suppliers, customers and stakeholders to develop and advance a viable going-concern proposal. It is likely that with an extension of time and if the relief sought in this motion is granted, the JMX Group will be able to make a viable proposal to its creditors.

53. A proposal made by the JMX Group on a going concern basis will be more beneficial to its creditors and stakeholders than a liquidation. No creditor will be prejudiced by the extension of time.

SWORN BEFORE ME by *video conference* at the City of Toronto, in the Province of Ontario, this 12th day of May 2020.

A Commissioner for taking Affidavits.
Name:

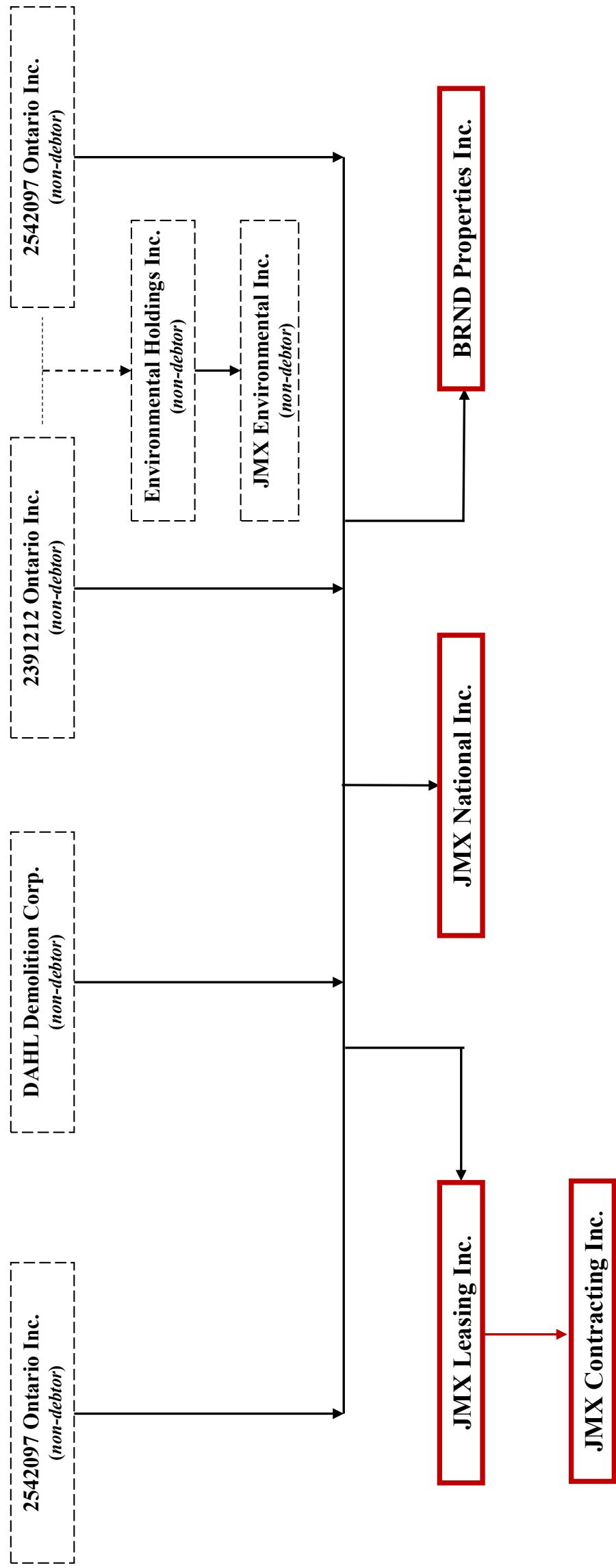
CHARLIE DAHL

THIS IS EXHIBIT "A" REFERRED TO IN THE
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A COMMISSIONER FOR TAKING AFFIDAVITS

JMX Group of Companies

Organizational Chart



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A COMMISSIONER FOR TAKING AFFIDAVITS

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date		
2044133	JMX CONTRACTING INC.	2004/04/02		
		Jurisdiction		
		ONTARIO		
Corporation Type	Corporation Status	Former Jurisdiction		
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE		
Registered Office Address		Date Amalgamated	Amalgamation Ind.	
27 ANDERSON BOULEVARD		NOT APPLICABLE	NOT APPLICABLE	
UXBRIDGE ONTARIO CANADA L9P 0C7		New Amal. Number	Notice Date	
		NOT APPLICABLE	NOT APPLICABLE	
		Letter Date		
Mailing Address		NOT APPLICABLE		
27 ANDERSON BOULEVARD		Revival Date	Continuation Date	
UXBRIDGE ONTARIO CANADA L9P 0C7		NOT APPLICABLE	NOT APPLICABLE	
		Transferred Out Date	Cancel/Inactive Date	
		NOT APPLICABLE	NOT APPLICABLE	
		EP Licence Eff.Date	EP Licence Term.Date	
		NOT APPLICABLE	NOT APPLICABLE	
Activity Classification	Number of Directors Minimum	Maximum	Date Commenced in Ontario	Date Ceased in Ontario
NOT AVAILABLE	00001	00010	NOT APPLICABLE	NOT APPLICABLE

CORPORATION PROFILE REPORT

Ontario Corp Number

2044133

Corporation Name

JMX CONTRACTING INC.

Corporate Name History

JMX CONTRACTING INC.

Effective Date

2004/04/02

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:

Name (Individual / Corporation)

CHARLIE

Address

46 CLAMERTEN ROAD

DAHL

STOUFFVILLE
ONTARIO
CANADA L4A 0E8

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

VICE-PRESIDENT

Resident Canadian

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2044133

JMX CONTRACTING INC.

Administrator:

Name (Individual / Corporation)

Address

CHARLIE

46 CLAMERTEN ROAD

DAHL

STOUFFVILLE
ONTARIO
CANADA L4A 0E8

Date Began

First Director

2016/10/26

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

First Director

2016/10/26

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2044133

JMX CONTRACTING INC.

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number**Corporation Name**

2044133

JMX CONTRACTING INC.

Last Document Recorded**Act/Code Description****Form****Date**

CIA CHANGE NOTICE

1

2020/04/14 (ELECTRONIC FILING)

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ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

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A COMMISSIONER FOR TAKING AFFIDAVITS

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date		
2263331	JMX LEASING INC.	2010/11/12		
		Jurisdiction		
		ONTARIO		
Corporation Type	Corporation Status	Former Jurisdiction		
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE		
Registered Office Address		Date Amalgamated	Amalgamation Ind.	
27 ANDERSON BOULEVARD		NOT APPLICABLE	NOT APPLICABLE	
UXBRIDGE ONTARIO CANADA L9P 0C7		New Amal. Number	Notice Date	
		NOT APPLICABLE	NOT APPLICABLE	
		Letter Date		
Mailing Address		NOT APPLICABLE		
27 ANDERSON BOULEVARD		Revival Date	Continuation Date	
UXBRIDGE ONTARIO CANADA L9P 0C7		NOT APPLICABLE	NOT APPLICABLE	
		Transferred Out Date	Cancel/Inactive Date	
		NOT APPLICABLE	NOT APPLICABLE	
		EP Licence Eff.Date	EP Licence Term.Date	
		NOT APPLICABLE	NOT APPLICABLE	
Activity Classification	Number of Directors Minimum	Maximum	Date Commenced in Ontario	Date Ceased in Ontario
NOT AVAILABLE	00001	00010	NOT APPLICABLE	NOT APPLICABLE

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2263331

JMX LEASING INC.

Corporate Name History

JMX LEASING INC.

Effective Date

2010/11/12

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:

Name (Individual / Corporation)

CHARLIE

Address

DAHL

46 CLAMERTEN ROAD

STOUFFVILLE
ONTARIO
CANADA L4A 0E8

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

VICE-PRESIDENT

Resident Canadian

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2263331

JMX LEASING INC.

Administrator:

Name (Individual / Corporation)

Address

CHARLIE

46 CLAMERTEN ROAD

DAHL

STOUFFVILLE
ONTARIO
CANADA L4A 0E8

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

DIRECTOR

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2263331

JMX LEASING INC.

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

2016/10/26

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2263331	JMX LEASING INC.

Last Document Recorded	Act/Code Description	Form	Date
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A COMMISSIONER FOR TAKING AFFIDAVITS



Government
of Canada Gouvernement
du Canada

Federal Corporation Information - 1047796-6

Corporation Number

1047796-6

Business Number (BN)

786233510RC0001

Corporate Name

JMX National Inc.

Status

Active

Governing Legislation

Canada Business Corporations Act - 2017-11-02

Registered Office Address

27 Anderson Boulevard
Uxbridge ON L9P 0C7
Canada

Directors

Minimum 1

Maximum 10

Matthew Richard
4760 Country Lane
Whitby ON L1P 1Y7
Canada

Jeffrey Norton
7901 Concession 4
Uxbridge ON L9P 1R1
Canada

Peter Bensley
1267 Abbey Road
Pickering ON L1X 1W4
Canada

Charlie Dahl
46 Clamerten Road
Stouffville ON L4A 0E8
Canada

Annual Filings

Anniversary Date (MM-DD)

11-02

Date of Last Annual Meeting

2019-06-27

Annual Filing Period (MM-DD)

11-02 to 01-01

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2020 - Not due

2019 - Filed

2018 - Filed

Corporate History

Corporate Name History

2017-11-02 to Present

JMX National Inc.

Certificates and Filings

Certificate of Incorporation

2017-11-02

Date Modified:

2020-04-02

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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date	
2583938	BRND PROPERTIES INC.	2017/06/22	
Corporation Type	Corporation Status	Former Jurisdiction	
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE	
Registered Office Address		Date Amalgamated	Amalgamation Ind.
27 ANDERSON BOULEVARD		NOT APPLICABLE	NOT APPLICABLE
UXBRIDGE ONTARIO CANADA L9P 0C7		New Amal. Number	Notice Date
Mailing Address		NOT APPLICABLE	NOT APPLICABLE
27 ANDERSON BOULEVARD		Revival Date	Continuation Date
UXBRIDGE ONTARIO CANADA L9P 0C7		NOT APPLICABLE	NOT APPLICABLE
Activity Classification	Number of Directors Minimum Maximum	Date Commenced in Ontario	Date Ceased in Ontario
NOT AVAILABLE	00001 00010	NOT APPLICABLE	NOT APPLICABLE

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2583938

BRND PROPERTIES INC.

Corporate Name History

BRND PROPERTIES INC.

Effective Date

2017/06/22

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:

Name (Individual / Corporation)

PETER

BENSLEY

Address

1267 ABBEY ROAD

PICKERING
ONTARIO
CANADA L1X 1W4

Date Began

2017/06/22

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2583938

BRND PROPERTIES INC.

Administrator:

Name (Individual / Corporation)

Address

PETER

1267 ABBEY ROAD

BENSLEY

PICKERING
ONTARIO
CANADA L1X 1W4

Date Began

First Director

2017/06/22

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

PRESIDENT

Y

Administrator:

Name (Individual / Corporation)

Address

CHARLIE

46 CLAMERTEN ROAD

DAHL

STOUFFVILLE
ONTARIO
CANADA L4A 0E8

Date Began

First Director

2017/06/22

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2583938

BRND PROPERTIES INC.

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

First Director

2017/06/22

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:

Name (Individual / Corporation)

Address

JEFFREY

7901 CONCESSION 4

NORTON

UXBRIDGE
ONTARIO
CANADA L9P 1R1

Date Began

First Director

2017/06/22

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

SECRETARY

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2583938

BRND PROPERTIES INC.

Administrator:

Name (Individual / Corporation)

Address

MATTHEW

4760 COUNTRY LANE

RICHARD

WHITBY
ONTARIO
CANADA L1P 1Y7

Date Began

2017/06/22

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

Address

MATTHEW

4760 COUNTRY LANE

RICHARD

WHITBY
ONTARIO
CANADA L1P 1Y7

Date Began

2017/06/22

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number**Corporation Name**

2583938

BRND PROPERTIES INC.

Last Document Recorded**Act/Code Description****Form****Date**

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A COMMISSIONER FOR TAKING AFFIDAVITS

LAMBTON GENERATING STATION
DEMOLITION AGREEMENT #RG00287132

July 10, 2018

Between

ONTARIO POWER GENERATION INC.

and

JMX CONTRACTING INC.

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DEMOLITION AGREEMENT

This Agreement is made as of July 10, 2018, between

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

and

JMX CONTRACTING INC., a corporation existing under the laws of Ontario (the “**Contractor**”).

RECITALS

- A. OPG owns Lambton Generating Station (“**LGS**”) located at 1886 St Clair Pkwy, Courtright, Ontario.
- B. The Contractor is purchasing and/or disposing of the Recovered Material from the Project.
- C. OPG is retaining the Contractor to provide the Goods and Services for the Project.
- D. Under this Agreement, OPG will be considered the “owner” and the Contractor will be considered the “constructor” for the purposes of the *Occupational Health and Safety Act* (Ontario).
- E. This Agreement is a conformed document and all the terms between the parties respecting the Project are set out in this Agreement.

For value received, the parties agree as follows.

SECTION 1 – INTERPRETATION

1.1 Definitions

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

- (a) **Agreement** means this demolition agreement, including any recitals and schedules, as amended or restated from time to time by an Amendment.
- (b) **Amendment** means a written amendment agreement signed by the parties, in the form of document attached as Schedule 1.1(b), which makes any change to this Agreement or an amended and restated agreement.
- (c) **Applicable Laws**, in respect of any Person, property, transaction or event, means all applicable laws, statutes, regulations, treaties, judgements and decrees applicable to that Person, property, transaction or event at the applicable time and,

whether or not having the force of law, 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) **Application for Payment** means the application for payment delivered by the Contractor to OPG's Representative in accordance with Schedule 7.2, accompanied by completed forms of the documents set out in Schedule 1.1(d) or Schedule 7.13, as applicable.
- (e) **Approvals** means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorisations respecting the Services, Goods or Project as may be required from any applicable Governmental Authorities or by this Agreement.
- (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, Thanksgiving Day, Christmas Day and Boxing Day. Each Business Day will end at 5:00 p.m. on that day.
- (g) **Confidential Information** is defined in section 2.15(a).
- (h) **Contract Price** means the total fixed amount set out on Schedule 7.9(a) to be paid by OPG under this Agreement, as amended from time to time in accordance with an Amendment.
- (i) **Contract Schedule** means Schedule 1.1(i) which sets out the numbers of days and/or the dates to achieve each of the milestones, including Substantial Completion and the Final Completion Date, as amended or restated from time to time in accordance with an Amendment.
- (j) **Contractor's Personnel** means all personnel, including the Contractor's representative and the site manager, used by the Contractor or assisting the Contractor in the provision of the Services, including any personnel, staff, labour and other employees of the Contractor or a Subcontractor and any Subcontractor who is an individual.
- (k) **Contractor's Property** means all Goods that are owned or controlled by a Contractor or a Subcontractor, that are used by the Contractor in the provision of the Services and to which title will not pass to OPG under this Agreement (for example, tools that are owned and used by the Contractor in the provision of the Services).
- (l) **Defective** means:
 - (1) any part of the Services, Goods or Project that is defective, is inoperative, fails because of any defect or does not comply with this Agreement,

including any failure to comply with any requirement of any Submittal, reference standard, inspection, test or Approval required for the Services or otherwise referred to in this Agreement, including whether or not the non-compliance is the result of defective Services (including design, workmanship and installation) or Goods; or

(2) any part of the Goods or Project that was damaged on or before the Final Completion Date (but excluding damage that was caused by OPG and occurred after Substantial Completion to a part of the Project for which OPG was responsible at the time the damage occurred).

- (m) **Dispute** is defined in section 11.1.
- (n) **Final Completion Date** means the day on which OPG accepts the Services as being entirely finished under section 7.12(a).
- (o) **Goods** means any goods, materials, instruments, devices, articles, supplies, equipment, machinery, structures and assemblies, or components of any of them, delivered or required to be delivered to the Site, to OPG or to such place or Person as OPG may direct, under this Agreement, whether or not incorporated into the Project.
- (p) **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.
- (q) **LGS** means the Lambton Generating Station
- (r) **Lien** means any:
 - (1) lien, charge, attachment, security interest, mortgage, hypothec, claim, deemed trust or other encumbrance, whether fixed or floating, including any lien arising in respect of the *Construction Lien Act* (Ontario);
 - (2) pledge or hypothecation; or
 - (3) deposit arrangement, priority, conditional sale agreement or other title retention agreement, equipment trust, capital lease or other security arrangement of any kind,respecting any property, whether real, personal or mixed, tangible or intangible.
- (s) **Losses** means all claims, demands, costs, penalties, expenses, liabilities, injuries, losses and damages (including all fees and charges of engineers, architects, accountants, lawyers and other professionals and experts (in each case on a dollar for dollar full indemnification basis) and all court, arbitration and other dispute,

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

- (t) **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.
- (u) **OPG Group** means OPG, each of OPG's wholly-owned subsidiaries, and each of their shareholders, partners, directors, officers, employees, representatives, agents and advisors, including OPG's Representative and OPG's Designated Delegates, but, for greater certainty, excluding the Contractor, each Subcontractor and each of the Contractor's and each Subcontractor's shareholders, directors, officers, partners, members, employees, representatives, agents, advisors, the Contractor's Personnel and any other Person for whom the Contractor or any Subcontractor is responsible at law.
- (v) **OPG's Designated Delegates** means Persons, who may or may not be employees of OPG, who have been designated, from time to time, in writing by OPG's Representative, in a Notice in the form of document attached as Schedule 1.1(v), as delegates of OPG, within a specified scope and limits of authority, by OPG's Representative or are otherwise named as OPG's delegates in this Agreement.
- (w) **OPG's Representative** means the individual designated in writing by OPG from time to time to act as OPG's representative in dealings with the Contractor under this Agreement.
- (x) **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.
- (y) **Professional** means a licensed professional, including engineers and architects, duly licensed in Ontario, and designated by the Contractor, to provide, in whole or in part, any of the Professional Services.
- (z) **Professional Services** means all the services in respect of this Agreement, including respecting documents, designs, drawings (including as built drawings), diagrams, illustrations, schedules, performance charts, brochures, specifications, plans, progress photographs, reports, manuals (including operating and maintenance manuals), information, data or other deliverables, models or samples whether in a written, graphic, physical, electronic or other format provided, or required to be provided, by the Contractor to OPG under this Agreement, that are:
 - (1) required under Applicable Laws or any Approvals to be provided by a Professional;

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

(aa) **Progress Schedule** means the progress schedule referred to in section 2.7(a)(2); as finalised by the Contractor and submitted to OPG's Representative in accordance with section 2.7(a), as amended from time to time in accordance with an Amendment.

(bb) **Project** means the demolition of the LGS (including the powerhouse and all other structures described in the Specifications) including asbestos removal, removal from the Site of associated equipment, waste and Recovered Material, Site Restoration and Site Remediation by the Contractor in accordance with this Agreement.

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

(dd) **Recovered Material** means all equipment and material to be removed from the Site for resale, recycling or disposal in accordance with this Agreement.

(ee) **Services** means completing the Project, designed and performed in accordance with this Agreement, including the Specifications, that is fit for the purposes intended by this Agreement, including the Specifications, and including:

- (1) providing the Professional Services;
- (2) providing, supplying, procuring, transporting, disposing, delivering, inspecting, receiving, erecting, constructing, demolishing, assembling, installing, connecting, applying, using, calibrating, adjusting, conditioning, cleaning, training, and cleaning up respecting the Goods and Project;
- (3) correcting any part of the Goods or Services that is Defective;
- (4) providing mobilising, labour, de-mobilising, management, supervision and administration;
- (5) providing construction and demolition equipment and tools, including scaffolding, mobile cranes, air compressors and cutting sets;
- (6) using any goods of any kind in respect of the Project;
- (7) providing the design and delivery of any documents, designs, drawings, diagrams, illustrations, schedules, performance charts, brochures, specifications, plans, progress photographs, reports, information, data or other deliverables, or models or samples, whether in a written, graphic,

physical, electronic or other format, required to be delivered to OPG under this Agreement; and

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

all in accordance with this Agreement, including the Specifications.

(ff) **Site** means the areas identified as the “site” in Schedule 1.1(ff).

(gg) **Site Remediation** means removing contaminated soil from the Site in accordance with the Specifications.

(hh) **Site Restoration** means removing debris from the Site and grading the Site in accordance with the Specifications.

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

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

(kk) **Submittal** means:

- (1) a document, design, drawing, diagram, illustration, schedule, performance chart, brochure, specification, plan, progress photograph, report or manual;
- (2) information, data or other deliverable; or
- (3) model or sample,

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

(ll) **Submittal Schedule** means the schedule of Submittals referred to in section 2.7(a)(1) as finalised by the Contractor and submitted to OPG’s Representative in accordance with section 2.7(a), as amended from time to time in accordance with an Amendment.

(mm) **Substantial Completion** is defined in section 7.11(a).

(nn) **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 and 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, 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 or Goods, such words will be interpreted in accordance with that meaning.

1.4 Time of Day

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

1.5 Business Days

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

1.6 Governing Law

This Agreement and each of the documents contemplated by this Agreement are governed by, and are to be construed and interpreted in accordance with, the laws of Ontario and the laws of

Canada applicable in Ontario. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario. No party will oppose the enforcement against it in any other jurisdiction of any judgement or order duly obtained from an Ontario court respecting this Agreement. A party may effect service of summons or any other legal process that may be served in any action, suit or other proceeding by delivering any such process to another party in accordance with section 11.4. 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) the Specifications;
- (e) any other Schedule; and
- (f) Submittals.

1.8 Severability

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

1.9 Time

All references in this Agreement to time are intended by the parties to be the actual time designated without the application of any principles of equity.

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

1.12 Schedules

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

SECTION 2 – CONTRACTOR'S OBLIGATIONS

2.1 Intent and Initial Actions

- (a) **General.** The Contractor will, safely and diligently, provide and entirely finish the Services in an organised and timely manner and in accordance with this Agreement and, to the extent not inconsistent with this Agreement, with very best practices. The Contractor will ensure that all Services are performed in accordance with the Specifications and the other terms of this Agreement.
- (b) **Bargain.** This Agreement contains certain allocations of risk which reflect an informed and voluntary allocation of risk between OPG and the Contractor. This allocation represents a material part of this Agreement.
- (c) **Intent.** The Contractor will provide all services and goods of any kind (which are deemed to be part of the Services and Goods, as applicable), whether or not specifically required under this Agreement, which are evidently necessary, usually provided by prevailing custom or trade usage, or can be reasonably implied for the proper performance of the Services and the safe and proper operation of the Project.
- (d) **Representations Regarding the Project.** The Contractor represents and warrants to OPG that the Contractor:
 - (1) is sufficiently experienced and properly qualified, licensed, equipped, organised and financed to provide, or cause to be provided, the Services;
 - (2) has engaged and will engage only Subcontractors that are competent;

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

- (A) all necessary information respecting the risks, contingencies and other circumstances which may affect the Progress Schedule, the Contract Schedule, the Contract Price, the Services, the Recovered Material (including the types and quantities thereof), the Goods or the Project;
- (B) the current versions of all documents issued by a standards, regulatory or other organisation referred to in this Agreement and all collective agreements applicable to the Services, the Goods or the Project;
- (C) the nature, location and physical conditions of the Site, including, surface and subsurface conditions and the location of all above and below surface buildings, utilities, structures, pipes, conduits and works;
- (D) working and storage space, transportation (including any load or speed restrictions), delivery, construction facilities, uncertainties of weather and other work being carried out on, or in the vicinity of, the Site;
- (E) the general and local conditions, particularly those respecting labour, health and safety, site access and other administrative practices and normal working hours;
- (F) all Applicable Laws, including any restrictions on hours of work, and any required Approvals; and
- (G) the goods, equipment and facilities needed to provide the Services;

(4) has relied solely on the Contractor's findings, conclusions, interpretations and other opinions in evaluating the risks, contingencies and other circumstances that may be encountered in carrying out all the requirements of this Agreement;

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

(6) confirms that the Specifications will ensure conformity of the Project with all Applicable Laws and the very best practices;

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

(8) has disclosed in writing to OPG the names of individuals who the Contractor intends to use to provide the Services, Goods or Project under

this Agreement and who may be Restricted Persons (as defined in section 2.13(l)) to verify whether such individuals are Restricted Persons;

- (9) is not aware of any legal action instituted, threatened or pending against the Contractor that could have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (10) has made due allowance, including by way of pricing, for all the matters referred to in this section 2.1(d).

(e) **Financial Information.** The Contractor authorises OPG to make credit enquiries about the Contractor 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 Contractor or any of its affiliates has or may expect to have financial dealings. The Contractor has provided OPG with the Contractor's consolidated audited financial statements for the last three financial years. Such financial statements have been prepared in accordance with Canadian generally accepted accounting practices, consistently applied. Such financial statements fairly reflect the consolidated financial position and results of operations of the Contractor as at the dates and for the periods set out in such statements. **The Contractor will provide OPG with its review engagement consolidated financial statements within 90 days of each year end, certified by the Contractor's chief financial officer as fairly reflecting the consolidated financial position and results of operations of the Contractor as at the dates and for the periods set out in such statements.** The Contractor will also provide OPG with any other financial information respecting the Contractor or any of its affiliates that OPG may reasonably request to assist OPG in its ongoing evaluation of the value of the indemnifications and other rights provided to OPG by the Contractor under this Agreement.

(f) **Information Waiver.** The Contractor expressly waives all claims for Losses attributable to errors and/or omissions in information, representations or estimates provided by OPG or any Person acting on behalf of OPG whenever or however made, relative to any physical conditions at the Site, the labour conditions affecting the Services, the quantities of work to be provided or work scheduling. OPG makes no representation or warranty as to the accuracy or completeness of any of the Confidential Information and OPG will have no liability to the Contractor or any of the Contractor's Personnel in respect of the use or provision of the Confidential Information.

2.2 Project Organisation

(a) **Personnel.** Schedule 2.2(a) sets out an organisational chart identifying the Contractor's Personnel by name, title and contact information, who will be involved in any material way in providing the Services. At OPG's request, the Contractor will provide OPG with résumés for any such personnel indicating his or her qualifications for the performance of the Services. The names on the chart that are followed by an asterisk are considered key personnel. The Contractor

will not remove any such key personnel from the provision of the Services, or materially reduce the responsibilities respecting the provision of the Services unless:

- (1) OPG's Representative consents in writing to such removal or reduction; or
- (2) any such key personnel leave the employ of the Contractor (and all its affiliates) or the applicable Subcontractor (and all its affiliates) and the Contractor delivers a Notice to OPG regarding such departure.

If any such key personnel leave the employ of the Contractor or a Subcontractor, the Contractor will promptly deliver a Notice to OPG with this information. The Contractor will also promptly deliver a Notice to OPG with the name of the proposed replacement individual and résumé. OPG may accept or reject the proposed replacement. The Contractor will revise Schedule 2.2(a) from time to time or at any time on request by OPG and immediately on the change of any key personnel.

(b) **Site Manager.** The Contractor will keep on the Site at all times during the provision of Services on Site a competent and efficient resident site manager. The Contractor will not replace this site manager unless the Contractor delivers a Notice to OPG's Representative at least three Business Days before the replacement and OPG's Representative consents in writing to such replacement. This site manager will be the Contractor's representative at the Site and will have authority to act on behalf of the Contractor. The site manager may delegate duties to superintendents, health and safety supervisors, account managers, records managers and other Persons designated by name and shown on Schedule 2.2(a) or as otherwise approved in writing by OPG. The site manager will specify in writing, in the form of document attached as Schedule 2.2(b) the scope and the limits of authority of each of his or her designated delegates. Any changes to or revocation of any delegations will also be specified by the site manager in writing to OPG's Representative in the form of documents attached as Schedule 2.2(b). All Notices delivered to the site manager, or, in OPG's sole and absolute discretion, to his or her designated delegates (provided that the Notice relates to a matter within the designated delegate's scope of authority), by OPG will be as binding on the Contractor as if given to the Contractor under section 11.4. OPG may rely on any written instructions, directions or approvals provided by the site manager or his or her designated delegates (provided that such instructions, directions or approvals are within the designated delegate's scope of authority). OPG's determination as to whether or not a matter is within the scope of authority of a designated delegate of the Contractor's representative will be conclusive, so long as OPG has acted in good faith and does not have actual notice that the matter is not within the designated delegate's scope of authority. The Contractor will take all reasonable steps to ensure that the site manager and all designated delegates are accessible to OPG during the performance of the Services (including outside of normal working hours in cases of emergencies) and are available to

render any necessary decisions or instructions promptly to avoid delays to the Progress Schedule.

2.3 Kick off and Subsequent Meetings

(a) **Preparation Phase.** Within 10 Business Days of the date of this Agreement or as agreed otherwise, the Contractor will:

- (1) meet with all appropriate Persons, including OPG's Representative to confirm, among the parties and such Persons, the manner and approach in fulfilling the requirements of this Agreement;
- (2) meet with individuals designated by OPG's Representative to confirm requirements and approach;
- (3) identify and analyse requirements of applicable Governmental Authorities with whom consultation is to be undertaken in respect of the Services or the Project; and
- (4) obtain such additional information that it deems necessary for providing all Services.

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

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

meeting. Unless OPG otherwise requests regarding a particular meeting, the Contractor will prepare and distribute minutes of each meeting within three Business Days.

2.4 Safety

- (a) **Primary Goal.** Safety of the Contractor's Personnel, individuals at or near the Site and the public is of paramount concern to OPG. In the performance of the Services, the Contractor will not in any manner endanger the safety of, or unlawfully interfere with other Persons on or off the Site, including the public.
- (b) **Constructor.** The Contractor will be the "Constructor" in respect of the Services for the purposes of the *Occupational Health and Safety Act* (Ontario). The "Constructor" will submit the required notice of project and registration form to the applicable Governmental Authority. The Contractor will have complete and sole responsibility for all health and safety matters regarding the Project. The Contractor is not required to ask OPG for any input or recommendations (and OPG may not require the Contractor to take any specified actions) respecting any health or safety matters regarding the Project. OPG will not provide to the Contractor any personnel, equipment or services (other than specified utilities). Notwithstanding any terms in this section 2.4(b), OPG may at any time on delivery of a Notice to the Contractor, assume the role of the "Constructor".
- (c) **Compliance.** The Contractor will provide all the Services in accordance with:
 - (1) all Applicable Laws;
 - (2) and to the extent not inconsistent with sections 2.4(c)(1) and the Contractor's safety program (a copy of which is attached as Schedule 2.4(c)(2)), as amended from time to time including the requirement to be in good standing with ISNetworld throughout the term of the Agreement;
 - (3) and to the extent not inconsistent with sections 2.4(c)(1), 2.4(c)(2), and the very best of practices respecting health and safety and in a manner that recognises and minimises the risks to workers, other individuals and property.

The Contractor will forward to OPG without delay, any changes to its safety program made during the course of providing the Services. OPG will monitor the compliance of the Contractor and Subcontractors with these requirements through periodic audits from time to time during the course of the provision of the Services. The Contractor will forward to OPG, without delay, any change to the Council Amendment to Draft #7 (CAD-7) rating of the Contractor or to any Subcontractor providing Services at the Site.

- (d) **Safety Representative.** The Contractor will provide a qualified and experienced full time health and safety supervisor for the Site. The Contractor will make this supervisor's sole obligation the training of the Contractor's Personnel in safety,

prevention of accidents and the maintaining, reviewing, revising and supervising of safety precautions and programs. The Contractor will form a joint health and safety committee that will include representatives of the Contractor and the trades.

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

- (1) **Protection.** The Contractor will be solely responsible for initiating, maintaining, reviewing, revising and supervising all safety precautions and programs in respect of the Services. The Contractor will take all necessary precautions (including ensuring that all of the Contractor's Personnel are equipped with, and properly use, all safeguards and personal protective equipment necessary for the performance of the Services) for the safety of, and will provide the necessary protection to prevent damage, injury or loss resulting from the performance of the Services to:
 - (A) each Person who is on the Site or who may otherwise be affected by the performance of the Services, including the Contractor's Personnel and members of the public;
 - (B) any of the Goods, whether in storage on or off Site;
 - (C) the Project; and
 - (D) any other property on, under, over or near the Site, whether belonging to OPG or to any other Person, including buildings and other structures, facilities, fences, gates, pavements, roadways, sidewalks, walks, vegetation and utilities that are not designated for removal and disposal in the course of providing the Services.
- (2) **Lock Out Requirements.** The Contractor will ensure that all equipment being worked on is safely isolated and de-energised and will provide all Services in compliance with all lock out requirements set out in the *Occupational Health and Safety Act* (Ontario).
- (3) **Notification of Owners.** The Contractor will promptly deliver a Notice to OPG's Representative as the Contractor becomes aware of, and indicating the identity of, each utility, owner of underground facilities and owner of property (excluding OPG and its subsidiaries) on, under, over or near the Site that may be affected by the Services and how each such utility or owner may be affected. OPG will deliver a Notice to the Contractor indicating the identity of each such Person and the Contractor will, at OPG's direction, deal with or co-operate with OPG in dealing with settling all issues respecting the performance of the Services, including the protection, removal, relocation or replacement of the property of any such Person.
- (4) **Repair of Damage.** To the extent that any third party, such as a utility, owner of underground facilities or owner of property (excluding OPG and

its subsidiaries) on, under, over or near the Site suffers or incurs any Losses to any property caused by the Contractor or a Subcontractor, the Contractor will remedy such Losses in a timely manner and at the Contractor's expense. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of the Services or the Goods.

(f) **Safety Reports.** During the performance of the Services, the Contractor will provide OPG's Representative with:

- (1) a verbal report immediately of any serious incident requiring off-site medical attention or near miss incidents which do or could have resulted in the death of, or serious injury to, a worker or other Person on or off the Site or an incident which has resulted in the death of or serious injury to a worker or other Person on or off the Site;
- (2) within 24 hours of an accident, construction occurrence or incident report, a copy of all accident, construction occurrence and incident reports which the Contractor, any Subcontractor, or OPG is required to submit in respect of the Services under the *Occupational Health and Safety Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario);
- (3) within 24 hours, Notice of any visits by the Ministry of Labour and copies of any reports, orders to comply, charges, stop work orders, and notices of compliance under the *Occupational Health and Safety Act* (Ontario) or other Applicable Laws;
- (4) a copy of the minutes of each meeting of the joint health and safety committee; and
- (5) a monthly report within ten days of each month's end with safety statistics for the Contractor and all Subcontractors providing Services at the Site. The Contractor will include in this report, with a brief description of each incident and injury:
 - (A) the number of injuries resulting in a worker requiring medical aid;
 - (B) the number of near miss incidents which could have resulted in the death of, or serious injury to, a worker;
 - (C) the number of injuries resulting in a worker's absence from one or more complete shifts;
 - (D) the time off each worker takes off from work for each injury;

- (E) the number of Ministry of Labour orders to comply; and
- (F) the total number of person hours worked by the Contractor's Personnel at the Site broken down between the Contractor and each Subcontractor.

(g) **Stop Work Orders.** Where an order to comply, stop work order or any similar order or notice respecting the Services is issued by the Construction Health and Safety Branch of the Ontario Ministry of Labour or any other Governmental Authority, such order or notice will not be grounds for any change to the Contract Schedule or any other claim for delay or compensation, except to the extent that an action of OPG or another member of the OPG Group has resulted in such order or notice. To the extent OPG or another member of the OPG Group was responsible for such order or notice, this situation will be deemed to constitute an excusable delay for the purposes of section 6.2(a). The Contractor will promptly deliver to OPG's Representative a copy of any such order or notice.

(h) **Emergencies.** In emergencies affecting the safety or protection of individuals, the Services, Goods or Project or property on, under, over or near the Site, the Contractor, without the express consent of OPG, will take reasonable actions to prevent or minimise all threatened or actual damage, injury and loss. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of any emergency medical treatment provided by any member of the OPG Group to any of the Contractor's Personnel or any invitee of the Contractor or any Subcontractor.

(i) **Requirement to Leave.** In the case of an emergency requiring the Contractor to leave the Site at the direction of OPG, the Contractor will put all equipment in a safe state in accordance with the *Occupational Health and Safety Act* (Ontario) and leave the Site in an orderly fashion pending further instructions from OPG's Representative.

(j) **Hazard Communication Programs.** The Contractor will co-ordinate all exchanges of material safety data sheets and other hazard communication information related to the Services required to be made available to, or exchanged between or among, Persons at the Site.

2.5 Environment

- (a) **Compliance and Protection.** In addition to the Contractor's obligation to comply with all Applicable Laws, the Contractor will provide the Services in a manner that:
 - (1) protects health and the environment;

- (2) complies with the Contractor's environmental management and protection program and plan, a copy of which are attached as Schedule 2.5(a)(2);
- (3) adequately anticipates, protects and plans for impacts to the environment, including spills, erosion and sedimentation, waste disposal and the use, storage and disposal of hazardous materials; and
- (4) uses all commercially reasonable efforts to reduce, reuse or recycle non-hazardous and non-radioactive waste.

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

- (A) discharging, releasing, emitting or depositing; or
- (B) disturbing any vegetation or wildlife on the Site through discharging, releasing, emitting or depositing

any substance, material, solid, liquid or gas, exposure to which is prohibited, limited or regulated by Applicable Laws, or the Contractor's environmental management and protection program and plan.

(c) **Notices.** The Contractor will immediately provide OPG's Representative with Notice in the form attached as Schedule 2.5(b):

- (1) of any changes to its environmental management and protection program and plan made during the course of providing the Services for OPG's review and prior approval;
- (2) of any discharges, spills, releases, emissions, deposits or leaks of:
 - (A) fuels, oils, hydraulic fluid, herbicides; or
 - (B) any substance, material, solid, liquid or gas, exposure to which is prohibited, limited or regulated by any Applicable Laws, or the Contractor's environmental management and protection program and plan,
- that occur at or near the Site or that occur with materials owned or controlled by the Contractor or a Subcontractor; and
- (3) upon receipt of any order, directive, notice or other communication whatsoever received from any Governmental Authority respecting any substance, material, solid, liquid or gas, exposure to which is prohibited, limited or regulated by any Applicable Laws, together with a copy of such order, directive, notice or other communication.

(d) **Clean up.** The Contractor is responsible for the transport, receipt, inspection, use, storage and disposal of all hazardous and non-hazardous substances, materials, solids, liquids and gasses that are brought on to the Site or created at the Site during the performance of the Services. The Contractor will, to the satisfaction of all applicable Governmental Authorities and OPG, in a timely manner, at the Contractor's expense, prevent all further discharges, spills, releases, emissions, deposits or leaks contrary to:

- (1) Applicable Laws;
- (2) to the extent not inconsistent with section 2.5(d)(1), OPG's then current environmental management system manual; or
- (3) to the extent not inconsistent with sections 2.5(d)(1) and 2.5(d)(2), the Contractor's environmental management and protection program and plan as at the date of this Agreement, as amended in accordance with section 2.5(c)(1),

and clean up, dispose of and otherwise comply with all requirements of:

- (4) Applicable Laws;
- (5) to the extent not inconsistent with sections 2.5(d)(3) and 2.5(d)(4), the Contractor's environmental management and protection program and plan as at the date of this Agreement, as amended in accordance with section 2.5(c)(1),

respecting all discharges, spills, releases, emissions, deposits or leaks of any substances, materials, solids, liquids or gases whatsoever that are caused by the Contractor and that occur at or near the Site or that occur with materials owned or controlled by the Contractor.

(e) **Disposal of Hazardous Waste.** Unless otherwise specifically provided for in the Specifications, the Contractor may not dispose of any waste, including asbestos, hazardous waste, polychlorinated biphenyls, petroleum products or radioactive materials or disturb any vegetation on, under, over or near any property owned, leased or licensed by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site.

(f) **Remedy for Breach.** The Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person in respect of any breach by the Contractor of any of its obligations under sections 2.5(a) to 2.5(e) inclusive.

2.6 Applicable Laws and Approvals

- (a) **Applicable Laws.** The Contractor will comply with all Applicable Laws and all standards, specifications, manuals or codes of any technical organisation or Governmental Authority and, to the extent not inconsistent with Applicable Laws or applicable standards, specifications, manuals or codes of any technical organisation or Governmental Authority, the very best practices, in respect of the Services. OPG will not be responsible for monitoring the Contractor's compliance with any Applicable Laws, standards, specifications, manuals or codes of any technical organisation or Governmental Authority or best practices. Except as expressly set out in this Agreement, the Contractor will submit, and provide a copy to OPG of, all notices, requests, documents, instruments and certificates to all applicable Governmental Authorities as may be required in respect of the Services.
- (b) **Approvals.** Except as expressly set out in section 3.1(d), the Contractor will obtain and pay for all Approvals. The Contractor will provide technical criteria, written descriptions and design data required for obtaining all such Approvals. OPG will assist the Contractor upon request to obtain such Approvals. The Contractor will pay all fees and other charges respecting all such Approvals.
- (c) **OPG Codes of Conduct.** The Contractor will:
 - (1) not take any action that would cause any member of the OPG Group to breach an obligation set out in OPG's Code of Business Conduct ("Code"); and
 - (2) comply with all of the obligations set out in OPG's Supplier Code of Business Conduct ("Supplier Code").

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

2.7 Schedules

- (a) **Development of Schedules.** The Contractor will complete, and within 30 days of the date of this Agreement, submit to OPG's Representative the following documents:
 - (1) a schedule to provide the Submittals (using the form, software and dates set out in Schedule 2.7(a)(1)) which will include the dates for the Contractor submitting and finalising each Submittal, those of OPG's Designated Delegates who are to receive each Submittal and those of OPG's Designated Delegates who will be reviewing each Submittal for OPG. The Contractor will ensure that the Submittal Schedule provides for sufficient time for review of Submittals by OPG (or OPG's Designated Delegates) and for the Contractor to revise Submittals in accordance with the terms of this Agreement; and

(2) a detailed progress schedule (using the form, software and dates set out in Schedule 2.7(a)(2)) indicating the dates for starting and entirely finishing each component of the Services, including a reference to each milestone set out in the Contract Schedule and Submittal Schedule so that this progress schedule incorporates, and integrates with, the Contract Schedule and Submittal Schedule. The Progress Schedule will indicate the total number of days set aside for contingencies and the allocation of these days among the tasks constituting the Services.

OPG will review these schedules within 15 Business Days of receipt and provide the Contractor with a Notice setting out any comments on these schedules. The Contractor will then have 15 Business Days from the receipt of such Notice to respond to OPG's comments and make any necessary amendments to these schedules. At least 20 Business Days before submission of the first Application for Payment, the parties will meet with all appropriate Persons, including OPG's Representative, to review the status of and attempt to resolve any outstanding issues regarding these schedules. OPG, however, will make no payment to the Contractor until OPG's review is complete, issues have been resolved and the final schedules have been delivered to OPG.

(b) **Schedules Representation.** Upon finalisation of the Progress Schedule in accordance with section 2.7(a), the Contractor will deliver a certificate addressed to OPG and signed by an officer of the Contractor representing and warranting that the Contractor has reviewed the Progress Schedule and is satisfied that it can provide and entirely finish the Services in accordance with the Contract Schedule and substantially in accordance with the Progress Schedule.

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

- (1) impose on OPG responsibility for the sequencing, scheduling or progress of the Services;
- (2) be deemed to confirm that any schedule is a reasonable plan for providing the Services in accordance with the Progress Schedule;
- (3) affect or change the Contractor's obligation to provide the Services in accordance with this Agreement; or
- (4) otherwise have the effect of transferring any obligation under this Agreement from the Contractor to OPG or otherwise have the effect of amending this Agreement.

(d) **Adherence to Schedules.** The Contractor will adhere to the Progress Schedule. The Contractor will provide OPG with a monthly report, in the form attached as Schedule 2.7(d), setting out the status and progress of the Services and any deviations or anticipated deviations from the Progress Schedule. To the extent

that the Progress Schedule has not been, or is anticipated not to be, satisfied, the Contractor will indicate the total number of days set aside for contingencies that will be used and will provide OPG with satisfactory assurances, including, at the Contractor's cost, recovery plans, involving all necessary additional resources, acceptable to OPG, that progress will be made to restore the Progress Schedule. Any changes to the Contract Schedule require OPG's prior written approval. OPG may refuse to approve any changes to the Contract Schedule in its sole and absolute discretion. Any refusal to approve any such change by OPG will not be subject to the dispute resolution procedures under section 11.1 or any other claim by the Contractor.

(e) **Continuing the Services.** Notwithstanding any term in this Agreement, the Contractor will not stop or delay the provision of Services, in whole or in part, on account of any Dispute between the Contractor and OPG or between the Contractor and any other Person, except to the extent, if any, expressly directed to do so by OPG in a Project Change Directive. Notwithstanding any term in this Agreement, the Contractor will, except to the extent, if any, expressly directed to suspend performance of the Services by OPG in a Project Change Directive, continue to provide all Services in a timely manner and continue to adhere to the Progress Schedule during any such Dispute.

2.8 Submittals

(a) **Submission of Submittals.** The Contractor will provide each Submittal to OPG or OPG's Designated Delegate (as set out in the Submittal Schedule) in a timely manner and orderly sequence and in accordance with the Submittal Schedule, so as not to cause any delay in the Services. Unless otherwise authorised by OPG's Representative or OPG's Designated Delegates, all Submittals will comply with Schedule 2.8(a). Unless otherwise provided in this Agreement, all Submittals are the property of OPG.

(b) **Review of Submittals.** The Contractor will review all Submittals before submission to OPG or OPG's Designated Delegate. The Contractor's review of each Submittal will be indicated by stamp, seal (if applicable), date and a signature of a responsible and qualified Person. Any Submittals not stamped, sealed (if applicable), signed, dated and identified may be returned to the Contractor without being examined and will be considered not to have been submitted. By this review, the Contractor will be deemed to represent that it has determined and verified all necessary requirements including field measurements, field construction criteria, materials, catalogue numbers and similar data and has checked and co-ordinated all Submittals with the requirements of the Specifications and the remainder of this Agreement. Together with any Submittal, the Contractor will notify OPG's Representative or OPG's Designated Delegates (as the case may be) of, and clearly show or describe, any deviation of that Submittal from any requirement under this Agreement.

- (c) **Return of Submittals.** OPG's Representative or OPG's Designated Delegates will return Submittals to the Contractor marked "Reviewed as Submitted", "Revise as Noted – Do not Resubmit", "Revise and Resubmit" or "Review not Required".
- (d) **Non-Compliance.** The Contractor will respond, in a timely manner, to queries from OPG's Representative and OPG's Designated Delegates respecting their review of the Submittals and provide all such other documentation and information requested by OPG's Representative or OPG's Designated Delegate to finish their review of the Submittals. Where any Submittal delivered by the Contractor deviates from the requirements of this Agreement, OPG's Representative or OPG's Designated Delegates may require the Contractor to conform that Submittal to the requirements of this Agreement. Unless otherwise directed by OPG's Representative or OPG's Designated Delegates, the Contractor will promptly, and in any event within the time period required by the Progress Schedule, correct all items in a Submittal, whether or not raised by OPG's Representative or OPG's Designated Delegate, which do not conform to the requirements of this Agreement. The Contractor will then return to OPG's Representative or OPG's Designated Delegate (as the case may be) the required number of corrected copies of the Submittal clearly identifying any revisions to the Submittal. The Contractor will be responsible for recovering any time lost in the review process by reason of any error or defect in the Submittals and, in any event, the Contractor will maintain the dates set out in the Progress Schedule.
- (e) **Compliance with Submittals.** The Contractor will ensure that all Services are provided in accordance with each applicable finalised Submittal.
- (f) **Services Before Review by OPG.** Where a Submittal is required by this Agreement or by the Progress Schedule, any Services relating to that Submittal which are provided before OPG's Representative (or OPG's Designated Delegate) has completed its review of the Submittal (including any required revisions to the Submittal), will be at the sole risk, responsibility and expense of the Contractor. Nothing in this section 2.8(f) relieves the Contractor from any obligations in this Agreement, including compliance with the Contract Schedule.
- (g) **Effect of Review.** Notwithstanding any term of this Agreement, if OPG or OPG's Designated Delegates review, comment on, accept or reject or fails to review, comment on, accept or reject any Submittal or any item in a Submittal, any such action or failure to act:
 - (1) will not have the effect of transferring any obligation under this Agreement from the Contractor to OPG or otherwise have the effect of amending this Agreement; and
 - (2) will not affect or change in any way,
 - (A) the Contractor's obligation to entirely finish the Services, or

(B) the Contractor's responsibility for any error or omission in any Submittal or any deviation in a Submittal from the requirements of this Agreement, unless in each case OPG's Representative gives express written acceptance of the error, omission or deviation.

Review of Submittals by OPG's Representative and OPG's Designated Delegates will be for conformity to the Specifications and this Agreement and for general arrangement only. In addition, any such review will generally not extend to means, methods, techniques, sequences or procedures of demolition or to related safety precautions or programs and will not indicate OPG's approval of such item or OPG's acceptance or approval of the assembly in which the item in the Submittal functions.

2.9 Professional Services

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

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

2.10 Procurement

- (a) **Goods.** Except to the extent otherwise expressly provided in this Agreement, the Contractor will be responsible, at its cost, for manufacturing or supplying or procuring, factory testing, transporting, delivering, inspecting, receiving and installing all Goods, and providing all construction equipment, tools, transportation, fuel, construction and start-up power, air, light, heat, communications, water (including potable water), and temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and disposal including garbage, sewage, sanitation and waste water, and all other goods and services reasonably required in respect of the Services. The Contractor will maintain all demolition equipment, tools and such temporary structures and facilities in good working order. The Contractor will conduct all these activities in accordance with this Agreement. The Contractor will maintain absolute control over, and exclusive responsibility for, the Contractor's own, and each Subcontractor's own, operations and the Contractor's Personnel.
- (b) **Warranty on Goods.** The Contractor will ensure that all Goods will be fit for the purposes intended by this Agreement, new, unused, not Defective and free from all Liens, of good quality and comply with all requirements under this Agreement. All warranties and guarantees set out in this Agreement are for the benefit of OPG. If required by OPG, the Contractor will provide satisfactory evidence (including reports of required inspections, tests and approvals) as to the kind and quality of all Goods. The Contractor will ensure that all Goods will be constructed, applied, assembled, erected, installed, used, connected, adjusted, field tested, conditioned, cleaned, commissioned and cleaned up in accordance with instructions of the applicable Subcontractor, except to the extent as may otherwise be provided in this Agreement.
- (c) **Expediting.** If in OPG's sole and absolute discretion the Contractor is not providing the Services in accordance with the Contract Schedule, or the quality of Services or Goods does not meet the requirements of this Agreement, OPG may take any steps to expedite any Services that OPG's Representative believes requires expediting. The Contractor will, at no cost to OPG, promptly following receipt of Notice, in the form of Schedule 2.10(c) from OPG's Representative make such changes as are, in the opinion of OPG's Representative, necessary to provide the Services in accordance with the Contract Schedule.

2.11 Demolition

- (a) **Direction and Competent Supervision.** The Contractor will provide (including all direction, supervision and inspection of) the Services competently and efficiently, devoting such attention and applying such skills and expertise, as may be necessary to provide the Services in accordance with this Agreement. The Contractor will at all times maintain good discipline and order at the Site. The Contractor will be solely responsible for the means, methods, techniques,

sequences and procedures used to provide the Services. The Contractor will ensure that the Services comply with this Agreement. The Contractor will keep OPG advised as to the quality and progress of the Services and the Project in such manner and at such times as OPG may request from time to time.

- (b) **Temporary Structures and Facilities.** The Contractor will have the sole responsibility for:
 - (1) the design, erection, operation, maintenance and removal of all temporary structures and facilities at the Site; and
 - (2) the design and execution of construction methods required in the use of such structures and facilities.
- (c) **Time for Provision of Services.** Except:
 - (1) to the extent reasonably required for the safety or protection of any individual, the Services, Good, Project or property on, under, over or near the Site;
 - (2) to the extent otherwise provided in this Agreement; or
 - (3) where OPG's Representative provided his or her prior written consent, the Contractor will ensure that all Services at the Site will be provided between 7:00 a.m. and 6:00 p.m. on Business Days.
- (d) **Geological Risk.** The Contractor is solely responsible for all surface and subsurface geological risk.

2.12 Shipping, Handling and Storage for Contractor's Property

The Contractor will be solely responsible for the care, custody and control of the Contractor's Property when providing the Services at the Site, including without limitation the responsibilities described in Schedule 2.12. OPG assumes no responsibility or liability for the Contractor's Property and no act or inaction of OPG will result in a transfer of such responsibility or liability. Notwithstanding the foregoing, OPG will take reasonable care of any of the Contractor's Property that is in OPG's possession or control only if the individual within the OPG line management organization who has overall accountability for the execution of the Project or Services at the Site, or more senior person at OPG, has accepted responsibility in writing for such part of the Contractor's Property prior to possession or control being transferred to OPG. In such event, the Contractor will ensure that it has provided such accountable or more senior person with appropriate shipping, handling, storage or other instructions and will ensure that such accountable or more senior person has agreed in writing to take reasonable steps to comply with such instructions.

2.13 Labour and Subcontractors

(a) **Competent Workers.** The Contractor will ensure all of the Contractor's Personnel assigned to the Services or the Site, including any site manager and his or her delegates, are:

- (1) qualified because of knowledge, training and experience to organise the Services and its performance;
- (2) familiar with the *Occupational Health and Safety Act* (Ontario) provisions that apply to the Services;
- (3) understand, and have the necessary skills to perform, their roles and obligations under this Agreement including those relating to safety, the environment, quality assurance, labour requirements, and Site rules and procedures; and
- (4) have knowledge of any potential or actual danger to health or safety in the workplace.

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

(c) **Identity of Subcontractors.** Set out in Schedule 2.13(c) is a list of each Subcontractor providing any of the Services, where the value of all contracts with that Subcontractor exceeds \$25,000, together with a summary of the Services to be provided by each such Subcontractor. The Contractor will not:

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

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

(d) **Subcontracts.** The Contractor will ensure that all Subcontractors and all Contractor's Personnel comply with the terms of this Agreement as are applicable to them, including the terms relating to safety, environment, quality assurance, labour requirements, and Site rules and procedures. The Contractor will enter into a written contract with each Subcontractor providing any of the Services that specifically binds the Subcontractor to the applicable terms of this Agreement, including the terms relating to safety, environment, quality assurance, labour requirements, and Site rules and procedures and this section 2.13, for the benefit of OPG. The Contractor will ensure that each such contract contains a term stating: "Notwithstanding any term in this Agreement, the parties commit to each other and to Ontario Power Generation Inc. that each party will comply in all respects with section 2.13(d) of the demolition agreement dated as of July 10, 2018 between Ontario Power Generation Inc. and JMX Contracting Inc.." The Contractor will ensure that each contract with a Subcontractor respecting the Services or Project will give OPG or OPG's Designated Delegate the right to continue the contract with the Subcontractor in the place of the Contractor if OPG decides to entirely finish the Services in accordance with 9.3. In the case of assumption of a subcontract by OPG, all invoices submitted by the Subcontractor will be in the name of OPG. At the request of OPG, the Contractor will provide unpriced copies of any subcontract (or evidence otherwise acceptable to OPG) that such subcontract complies with this section 2.13(d).

(e) **Labour Obligations.** The Contractor will comply with all obligations set out in Schedule 2.13(e) including those set out in the "Labour Requirements Clause – Form 1" attached to Schedule 2.13(e). The Contractor will indemnify and save harmless all members of the OPG Group from and against any and all Losses suffered or incurred by any member of the OPG Group on account of claims made or grievances filed by any unions on account of any breach by the Contractor of the obligations set out in Schedule 2.13(e) in the course of providing the Services or on account of other non-unionized labourers providing portions of the Services.

(f) **WSIB.** The Contractor's Workplace Safety and Insurance Board account number is 9250115. The Contractor 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 ninety (90) days thereafter, the Contractor will submit a certificate of compliance from the Workplace Safety and Insurance Board as to the Contractor's status and that of all Subcontractors that will be providing Services at the Site. Together with the letter, the Contractor will submit a list of the Workplace Safety and Insurance Board registration numbers of each of the Contractor's Personnel who will be employed at the Site, and will thereafter update the list as the Services progress.

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

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

(i) **Payment of Subcontractors.** The Contractor will pay in a timely manner all costs (including Taxes) respecting Services provided or caused to be provided by a Subcontractor on the Site which could result in any Lien being filed under the *Construction Lien Act* (Ontario) or otherwise against any property owned, leased or licensed by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site. If the Contractor fails to make any such payment in a timely manner, OPG may make payment directly to the applicable Subcontractor. At the request of OPG, the Contractor will cause the Subcontractor to issue any unpaid invoice directly to OPG. Section 7.6(d) will apply in respect of any such payment and the Subcontractor will be deemed to be the Contractor in respect of any applicable withholdings by OPG under section 7.6(d). Where OPG makes any such payment, OPG may set off the full amount of any such payment against any amount otherwise owing by OPG to the Contractor, or OPG may make a demand for payment from the letter of credit required under section 4.1(a).

(j) **Liens.** The Contractor will keep title to the Site and every part of the Site free and clear of all Liens respecting the provision of the Services. The Contractor will indemnify and hold harmless each member of the OPG Group from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person in respect of any Liens registered by a Subcontractor against any property owned, leased or licensed by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or

in part, including the Site. The Contractor will immediately notify OPG of any such Lien, claim of Lien or other action of which it has knowledge and which affects the title to any property owned, leased or licensed by OPG or any of its subsidiaries or in which OPG or any of its subsidiaries has an interest, in whole or in part, including the Site. If any Lien is registered against any such property, in whole or in part, including the Site, by a Subcontractor, the Contractor will cause the Lien to be vacated or discharged from title within ten Business Days of registration. If the Contractor fails to vacate or discharge any such Lien in a timely manner, OPG may vacate or discharge that Lien by paying into court any sum or providing such security as may be necessary to vacate or discharge the Lien. In addition, the Contractor will immediately reimburse OPG on demand for all OPG's costs and expenses respecting the discharge, including the amount of the payment into court, the cost of any such security, OPG's legal fees and expenses and a reasonable charge for time spent by OPG personnel. OPG may set off the full amount of any such reimbursement obligation against any amount otherwise owing by OPG to the Contractor, or OPG may make a demand for payment from the letter of credit required under section 4.1(a).

- (k) **Security Checks.** OPG will perform an employment suitability check for each of the Contractor's Personnel from time to time. Upon request by OPG, the Contractor will, at no cost to OPG, submit to OPG's Representative the information required by OPG for each of the OPG identified Contractor's Personnel. The information that OPG requires, such as photographic identification, birth certificate and citizenship card, may vary from individual to individual, depending on the individual's background and circumstances. OPG may require, from time to time, that any of the Contractor's Personnel complete OPG forms for security clearance. These forms may include a five year, or more, residence and work history. If any of the Contractor's Personnel have not resided in Canada for more than five years, OPG will require that such Contractor's Personnel provide further information, including references, education credentials and criminal record checks. OPG may require any supporting documentation to be verified in a manner established by OPG, including by notarising. If OPG determines that any of the Contractor's Personnel is unsuitable for any reason, or if OPG is not satisfied with the timeliness, accuracy, validity, adequacy or completeness of any of the information received by OPG, then the Contractor will ensure that the applicable Contractor's Personnel is replaced immediately, at no cost to OPG. OPG will maintain all the information submitted to OPG under this section 2.13(k) in accordance with Applicable Laws.
- (l) **Former OPG Employees.** The Contractor acknowledges that OPG's policies restrict the involvement of the following individuals in OPG contracts: (i) former OPG employees who received a severance package from OPG or any of its affiliates; (ii) former OPG employees who are pension eligible or are receiving pension payments from OPG or any of its affiliates; or (iii) former OPG employees who are receiving a non-working pension bridge from OPG or any of its affiliates (each a "**Restricted Person**"). The Contractor will disclose in

writing to OPG the names of individuals who the Contractor intends to use to perform the Services, Goods or Project under this Agreement and who may be Restricted Persons to verify whether such individuals are Restricted Persons, and OPG will, subject to any restrictions imposed by Applicable Laws, respond to the Contractor within a reasonable period of time. The Contractor will not, and will not permit any Subcontractor to, use any Restricted Person to perform the Services, Goods or Project under this Agreement without the prior written consent of OPG.

(m) **Non-Solicitation of OPG's Employees.** During the term of this Agreement and until the date that is six months from the date of termination or expiry of this Agreement, the Contractor will not, directly or indirectly, whether through an affiliate, a Subcontractor or otherwise, without the prior written consent of OPG, solicit the employment of, hire or otherwise retain in any capacity, any employee of OPG. A general advertisement not specifically directed at OPG or its employees will not be considered a solicitation under this section 2.13(m).

2.14 Use of Site and Other Areas

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

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

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

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

will be restricted only to those areas designated in Schedule 1.1(ff) and any other areas outside of the Site permitted by Applicable Laws. The Contractor will ensure that all such temporary structures and facilities will be of metal construction and will be removed from OPG's property when any such structure or facility is no longer needed, and in any event, within 60 days of the Final Completion Date. If the Contractor does not so remove any such structure or facility, OPG may remove such structure or facility at the Contractor's cost. The

Contractor will conduct all activities in the Designated Areas in accordance with this Agreement.

- (d) **Site Conditions.** The Contractor will keep all of the Contractor's Personnel fully informed in a timely manner of all Site rules and conditions and any changes to such rules and conditions.
- (e) **Contractor Responsibility for Damages.** The Contractor will have exclusive responsibility for any damage, injury or loss to any area on the Site, including street curbs and sidewalks, or to OPG or any other occupant of the Site or to any adjacent area, respecting the providing of the Services. The Contractor will make good and pay all costs incurred by others in making good any such damage, injury or loss. If any claim, demand, action, suit or proceeding is made against OPG by any Person for any Losses arising in respect of the Services or Goods, the Contractor will promptly resolve the claim. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of the Services or Goods, including in respect of any breach of any Applicable Laws.
- (f) **Clean Site.** During the providing of the Services on the Site, the Contractor will keep the Site, and any roads and sidewalks used in the course of providing the Services, free from accumulations of snow, ice, rubbish, debris and other waste materials. The Contractor will implement a housekeeping program to ensure that all rubbish and debris is kept to a minimum and cleared away daily and that all materials are stored in a safe manner. Promptly following Substantial Completion, the Contractor will remove all rubbish, debris and other waste or surplus Goods from and about the Site as well as all applicable construction equipment, tools, fuel, temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal, and all other Goods not otherwise necessary to complete punch list items. Except as set out in section 2.14(c), any materials remaining to complete punch list items will be removed by no later than the Final Completion Date. The Contractor will leave the Site clean and ready for occupancy by OPG at Substantial Completion and once the Project is entirely finished. The Contractor will restore to original condition, as at the date of this Agreement, all property not designated for alteration by this Agreement. In addition, the Contractor will provide any other cleaning activities required by this Agreement.
- (g) **Load Limits.** The Contractor will not load the Project or the Site and will ensure that no part of the Project or Site will be loaded in any manner that will endanger the Project or Site. The Contractor will not subject any part of the Project or any property on, under, over or near the Site to unsafe stresses or pressures.

2.15 Confidential Information

(a) **Definition of Confidential Information.** In preparation for, and in the course of, providing the Services, OPG and OPG's Designated Delegates will disclose to the Contractor certain OPG information which is confidential, a trade secret or otherwise proprietary to OPG, including this Agreement and the fact that the Contractor is providing the Services (collectively, the "**Confidential Information**"). Confidential Information does not include, however, information that the Contractor is able to demonstrate to OPG's satisfaction, acting reasonably:

- (1) was or becomes generally known to the public through no fault of the Contractor, a Subcontractor or their respective shareholders, directors, officers, partners, members, representatives, agents, advisors or any of the Contractor's Personnel or any other Person for whom the Contractor or any Subcontractor is responsible at law; or
- (2) was specifically known by the Contractor 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. Except as expressly set out in this section 2.15(b), the Contractor has no licence or other right to use or disclose any Confidential Information for any purpose whatsoever. The Contractor may use Confidential Information only in respect of the preparation for, and the providing of, the Services, including in negotiations with proposed Subcontractors. The Contractor will ensure that none of its or its Subcontractor's current or former shareholders, directors, officers, partners, members, representatives, agents and advisors or any of the Contractor's Personnel or any other Person for whom the Contractor or any Subcontractor is responsible at law will use any of the Confidential Information for any purposes other than those expressly set out in this section 2.15(b).

(c) **Return of Confidential Information.** At any time, at OPG's request, the Contractor will deliver promptly to OPG all, or an OPG-specified portion of, the Confidential Information, together with all copies, extracts or other reproductions in whole or in part of such Confidential Information. In addition, at any time, at OPG's request, the Contractor will destroy, demonstrably, promptly and irrevocably:

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

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

Following such delivery and destruction, the Contractor will promptly provide OPG with written confirmation of completion. In any event, the Contractor will complete all such actions within 10 Business Days of receipt of OPG's initial request.

(d) **Remedies.** The Contractor acknowledges that OPG would not have an adequate remedy at law for money damages if the Contractor fails to fulfil any of its obligations under this section 2.15. 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 (without being required to post a bond or other security), in respect of any breach or threatened breach of this section 2.15 and in which case, the Contractor consents to any such injunction, specific performance or other remedy in law or equity. The Contractor will indemnify and hold harmless each member of the OPG Group, from and against all Losses suffered or incurred by a member of the OPG Group and all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of a breach or threatened breach of this section 2.15.

2.16 Language and Units of Measure

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

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

2.17 Local Community

The Contractor will use commercially reasonable efforts to provide opportunities to local residents and local First Nations to work on the Services and to acquire goods and services necessary in regards to the Services, including construction material and aggregate, from within the region. The Contractor will ensure that local contractors are provided with information about the Services and its labour requirements and will be provided with timely bidding opportunities.

SECTION 3 – OPG’S OBLIGATIONS

3.1 Take Actions Promptly

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

- (a) designate in writing from time to time an individual to act as OPG’s resident project representative to observe and report on the provision of specific parts of the Services;
- (b) provide access to Site, subject to any restrictions set out respecting certain parts of the Site set out in Schedule 1.1(ff) or otherwise set out in this Agreement;
- (c) provide information known to OPG relating to the presence on the Site of asbestos, hazardous waste, polychlorinated biphenyls, petroleum products or radioactive materials, in addition to those described in the Specifications, in such quantities or circumstances that there is a material danger to any Person providing the Services; and
- (d) obtain those Approvals that OPG is required to obtain under the Specifications.

3.2 OPG’s Representative

OPG will designate in writing an individual to act as OPG’s Representative. OPG may from time to time change this designation, or delegate duties to OPG’s Designated Delegates, by delivering a Notice in the form of Schedule 1.1(v) to this effect to the Contractor. The OPG Representative will specify the scope and the limits of authority of each of OPG’s Designated Delegates. Any changes to or revocations of any delegations will also be specified by OPG’s Representative in writing in a Notice delivered to the Contractor. All Notices delivered to OPG’s Representative, or OPG’s Designated Delegates (provided that the Notice relates to a matter within OPG’s Designated Delegate’s scope of authority), by the Contractor will be as binding on OPG as if given to OPG under section 11.4. The Contractor may rely on any written instructions, directions or approvals excluding safety related matters provided by OPG’s Representative or OPG’s Designated Delegates (provided such instructions, directions or approvals are within OPG’s Designated Delegate’s scope of authority). OPG will take all reasonable steps to ensure that OPG’s Representative and all of OPG’s Designated Delegates are accessible to the Contractor during the performance of the Services (including outside of normal working hours in cases of emergencies) and are available to render any necessary decisions or instructions promptly to avoid delays to the Progress Schedule. OPG’s Representative may interpret and define OPG’s policies and procedures expressly referred to in this Agreement and make decisions with respect to providing the Services.

3.3 No OPG Control Over Services

OPG will not supervise, direct, have control or authority over, or otherwise be responsible for:

- (a) the Contractor's means, methods, techniques, sequences or procedures respecting the Services; or
- (b) the safety programs and precautions used in respect of the Services, subject to OPG's rights and obligations under the *Occupational Health and Safety Act* (Ontario).

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

3.4 Hazardous Conditions

The Contractor will be responsible for the costs of dealing with any asbestos, hazardous waste, polychlorinated biphenyls or petroleum products arising in respect of providing the Services in accordance with Applicable Laws, this Agreement and the Specifications.

3.5 Scorecard Assessment Program

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

- (a) safety performance based on OPG's periodic safety audits;
- (b) Contract Schedule and Progress Schedule adherence;
- (c) scope control;
- (d) budget adherence;
- (e) quality performance;
- (f) deliverable acceptability;
- (g) interface effectiveness;
- (h) environmental performance;
- (i) contingency plan effectiveness; and
- (j) project risks.

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

SECTION 4 – SECURITY DOCUMENTS AND INSURANCE

4.1 Security Documents

(a) **Letter of Credit.** Within 10 days of the date of this Agreement, the Contractor will deliver to OPG a letter of credit acceptable to OPG substantially similar to the form set out in Schedule 4.1 and in an amount of \$3,094,775.00. OPG may apply any amount drawn under the letter of credit to remedy any failure of the Contractor to satisfy any obligation under this Agreement. The bank issuing the letter of credit must be acceptable to OPG and be set out in Schedule I of the *Bank Act* (Canada). Notwithstanding any term in this Agreement, OPG is not obliged to make any payment to the Contractor under this Agreement until the Contractor has delivered to OPG a letter of credit in accordance with this section 4.1(a). The Contractor will maintain the letter of credit in force, at its expense, until the Final Completion Date.

(b) **Treatment of Subcontracts.**

(1) **Assignment and Creation of Security Interest in Subcontracts.** As general and continuing collateral security for the timely performance of all of the Contractor's obligations under this Agreement, the Contractor assigns and transfers to OPG, and grants to OPG a security interest in, both the Goods and each contract between the Contractor and a Subcontractor. If, however, the assignment, transfer or creation of any security interest under this section 4.1(b)(1) in respect of any Goods or contract between the Contractor and a Subcontractor would result in the termination or breach of any applicable contract, or would require a consent which has not yet been obtained, then the applicable Goods or contract will not be subject to such assignment, transfer or security interest but will be held in trust by the Contractor for the exclusive benefit of OPG and, on the exercise of any of OPG's rights under section 9.3(e), will be dealt with by the Contractor, at no cost to OPG, as directed by OPG in writing from time to time. The Contractor confirms that OPG has given value to the Contractor for the granting of the security interest contemplated in this section 4.1(b)(1). The parties have not agreed to postpone the time for attachment of the security interest contemplated in this section 4.1(b)(1), except for contracts with Subcontractors that are entered into after the date of this Agreement, the attachment for which will occur immediately following the Contractor entering into each such contract and for Goods delivered after the date of this Agreement, the attachment for which will occur immediately following delivery of the Goods to the custody or control of the Contractor. OPG may register a financing statement or effect such other registration as may be necessary or desirable to perfect the of the security interest contemplated in this section 4.1(b)(1).

(2) **Contractor Remains Liable.** Notwithstanding any term in this Agreement, the Contractor will be exclusively responsible for all obligations of the Contractor under each contract with a Subcontractor. Until such time as OPG exercises its rights under section 9.3(e) in respect of any such contract, no term contained in this section 4.1(b) will render OPG liable to the applicable Subcontractor for the performance or non-performance of any obligation of the Contractor under such contract.

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

(A) OPG may, on delivering a notice (the “**OPG Enforcement Notice**”) to the Subcontractor under section 9.3(e), indicating that OPG is enforcing its rights against the Contractor under this section 4.1(b) and any other applicable terms in this Agreement, either:

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

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

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

(B) the Subcontractor will:

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

(ii) not terminate the contract with the Contractor as a result of default by the Contractor (assuming that the default would allow the Subcontractor to terminate the contract with the Contractor) without first giving OPG a period of 30 days from receipt of a notice from the Subcontractor to OPG regarding the defaults of the Contractor or such longer period as is reasonably necessary to remedy such default,

except that if any such default is not curable (such as the bankruptcy or insolvency of the Contractor, the Subcontractor will not terminate the contract so long as all curable defaults are cured;

- (C) OPG will only be responsible for the obligations of the Contractor under the contract with the Subcontractor which accrue from the date of receipt by the Subcontractor of the OPG Enforcement Notice until the date of receipt by the Subcontractor of a further Notice that OPG is no longer enforcing its rights under the contract or that OPG has further assigned the contract; and
- (D) from time to time on request from OPG, the Subcontractor will provide a written statement to OPG with respect to the status of the contract with the Subcontractor.

4.2 Contractor Required Insurance

The Contractor will procure and maintain, and will cause its Subcontractors to procure and maintain, in full force with financially responsible insurance carriers (with A.M. Best ratings of at least A- or a Standard & Poor's rating of at least BBB) of recognized standing acceptable to OPG, or with the appropriate Governmental Authorities, all coverages referred to in this section 4.2. The Contractor will ensure that all these coverages will be maintained in force continuously from the date of this Agreement until 60 days after the Final Completion Date or such other date as OPG may designate. The Contractor will ensure that all insurance coverages applicable in Ontario will be obtained from insurance carriers that are duly licensed in Ontario to issue insurance policies for the limits and coverages under sections 4.2(a) to 4.2(i).

- (a) **Workers' Compensation.** The Contractor will maintain or cause to be maintained workers' compensation coverage as required by the *Workplace Safety and Insurance Act, 1997* (Ontario) and any other Applicable Laws respecting all of the Contractor's Personnel to the extent they are performing the Work at the Site.
- (b) **Additional US Requirements (as required).** In respect of all of the Contractor's Personnel whose domicile of hire is the United States, the Contractor will maintain or cause to be maintained workers' compensation coverage in each applicable state while any such Person is engaged in performing the Work at the Site. The Contractor will also ensure that any such coverage includes employer's liability with a 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.
- (c) **Commercial General and Excess Umbrella Liability Insurance (as required for services rendered off OPG sites).** The Contractor will maintain commercial general liability and excess umbrella liability insurance, on an occurrence basis, in

an amount not less than \$10,000,000 inclusive for bodily injury, including death, personal injury and damage to property, including loss of use thereof, for each occurrence. The Contractor will ensure that the excess umbrella liability insurance is in excess of the coverages under sections 4.2(a) and 4.2(b) (to the extent the coverages under those sections include employer's liability) and 4.2(d). The Contractor will also ensure that the commercial general liability and excess umbrella liability coverage specifically includes the following;

- (1) blanket contractual liability;
- (2) damage to property of OPG or any of its subsidiaries, including loss of use thereof;
- (3) pollution liability coverage on at least a sudden and accidental basis;
- (4) blasting, pile driving, caisson services, underground services;
- (5) products and completed operations;
- (6) cross liability;
- (7) severability of interests;
- (8) employer's liability;
- (9) non-owned automobile liability;
- (10) broad form property damage; and
- (11) hook liability, if applicable.

(d) **Motor Vehicle Liability Insurance.** The Contractor will maintain or cause to be maintained motor vehicle liability insurance on licensed motor vehicles owned, rented or leased by the Contractor and Subcontractors providing services at the Site and used in connection with the Work to be performed under this Agreement covering bodily injury and property damage liability to a combined inclusive limit of not less than \$2,000,000 per occurrence and mandatory accident benefits.

(e) **Contractor's Equipment Insurance.** The Contractor will maintain, or cause to be maintained, Contractor's equipment insurance covering all Contractor's equipment and tools owned, rented or leased by the Contractor or a Subcontractor and used in respect of the Work. The Contractor will ensure that this coverage will cover the full replacement cost of such Contractor's equipment and tools on an "all risks" basis, including marine-based risk, subject to normal exclusions.

(f) **Errors & Omissions Insurance.** The Contractor will, at all times, maintain in full force and effect professional liability insurance in an amount not less than \$10,000,000 per occurrence and in the aggregate, covering the period from start

of conceptual design through to the Final Completion Date and for a further discovery period of five years from the Final Completion Date.

(g) **Marine Watercraft Hull and Liability Insurance (as required).** The Contractor will maintain hull and machinery insurance covering the full replacement cost of all barges, scows and other watercraft owned, rented or leased by the Contractor or any Subcontractor, and used in respect of performing the Work.

The Contractor will also maintain marine liability or protection indemnity insurance covering any barges, scows or other watercraft owned, rented or leased by the Contractor or any Subcontractor, and used in respect of performing the Work. The Contractor will ensure that this coverage covers special operations, pollution liability and voluntary removal of wreck for limits that are the greater of those afforded under a protection and indemnity club and not less than \$10,000,000 per occurrence.

(h) **Aircraft Liability (as required).** If there is any aircraft exposure in connection with the Project, the Contractor will, at its own expense, obtain and maintain or cause to be obtained and maintained, aircraft liability insurance covering aircraft owned, rented or leased by the Contractor and used in the Project. The Contractor will ensure that this coverage includes limits of not less than \$25,000,000 per occurrence for bodily injury, death (including passenger hazard) and damage to property, including loss of use thereof.

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

4.3 OPG Provided Insurance

Without limitation to the Contractor's obligations and liabilities hereunder, OPG will procure and maintain in full force and effect with financially responsible insurance carriers (with A.M. Best ratings of at least A- or a Standard & Poor's rating of at least BBB) of recognized standing, all coverages referred to in sections 4.3(a) and 4.3(b). OPG will ensure that the coverage referred to in section 4.3(a) will be maintained in force continuously from: (i) the date the Contractor starts any Work at the Site until 60 days after the Final Completion Date; or (ii) such other date as OPG may designate. OPG will ensure that all such coverages include as named insureds the Contractor and all Subcontractors, subject to the terms and conditions of the relevant policy, and that all insurance coverages applicable in Ontario will be obtained from insurance carriers that are duly licensed in Ontario to issue insurance policies for the limits and coverages required.

(a) **Wrap-Up Liability Insurance.** OPG will maintain wrap-up liability insurance (a "Wrap-Up Liability Insurance Policy") on an occurrence basis in the joint names of OPG, any applicable subsidiary of OPG, OPG's Designated Delegate, the Contractor and the Subcontractors as named insureds, subject to the terms and conditions of the policy. This coverage will include limits of no less than

\$25,000,000 inclusive per occurrence for bodily injury, death and damage to property. OPG will also ensure that this coverage specifically includes:

- (1) blanket contractual liability;
- (2) pollution liability coverage on at least a sudden and accidental basis;
- (3) damage to property of OPG or any of its subsidiaries, excluding damage to the Project;
- (4) blasting, pile driving, caisson services, underground services;
- (5) products and completed operations;
- (6) cross liability;
- (7) severability of interests;
- (8) employer's liability;
- (9) non-owned automobile liability; and
- (10) broad form property damage.

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

4.4 General Insurance Terms

(a) **Certificates of Insurance.** Before starting any Work at the Site, the Contractor will deliver to OPG certificates of insurance completed by a duly authorized representative of each of the Contractor's insurers certifying that at least the minimum coverages required under section 4.2 are in effect. The Contractor will ensure that each certificate will state that the coverages will not be cancelled, will not fail to be renewed and will not be materially changed by endorsement or through issuance of any other policy of insurance which restricts or reduces coverage, without 60 days advance written Notice by courier given to OPG's Representative, with a copy delivered by email as follows:

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

Attention: Director, Insurance Risk Management
Email: brian.doyle@opg.com

And

Heidi Cyfko
Senior Procurement Specialist
Email: heidi.cyfko@opg.com

To the extent that the Contractor is required to maintain any coverages under section 4.2 in force after final payment of the Contract Price, the Contractor will deliver to OPG, at the time that the Contractor submits its final Application for Payment for the Contract Price, a certificate of insurance completed by a duly authorized representative of such Person's insurer certifying that such insurance will remain in force for the period of time required under section 4.2.

- (b) **Copies of Policies.** Promptly upon request by OPG, the Contractor will provide OPG with a certified copy of any insurance policy referred to in section 4.2.
- (c) **No Waiver by OPG.** If OPG fails to demand any certificate for insurance referred to in section 4.2 or otherwise fails to demand other evidence of full compliance with section 4.2 or fails to identify a defect from evidence provided, OPG has not waived, and OPG will not be deemed to have waived, any of the Contractor's obligations. The Contractor's obligation to purchase and maintain insurance under this Agreement will in no way limit or otherwise qualify the liabilities or obligations of the Contractor under this Agreement.
- (d) **No Approval by OPG.** If OPG receives, reviews and accepts any certificate or other evidence for insurance referred to under section 4.2, OPG has not approved or agreed, and OPG will not be deemed to have approved or agreed, that the Contractor has satisfied any of its obligations under sections 4.2 or 4.4.
- (e) **OPG May Purchase Insurance.** If the Contractor fails to maintain any insurance required under section 4.2 or any such insurance is inadequate in its scope, OPG may purchase any such insurance. In the event that OPG must purchase insurance under this section 4.4(e), OPG may set off the costs thereof against any monies then or thereafter due, owing or payable to the Contractor and may set off and retain, in addition, and in consideration for its services in procuring such insurance, an amount equal to the cost thereof, in addition to the cost of such insurance.
- (f) **Deductibles.** The Contractor and OPG agree to pay the deductibles payable as a result of an insured event under sections 4.3(a) to the extent of their responsibility, up to a limit of \$100,000. To the extent OPG elects to have deductibles in excess of these limits, OPG will be solely responsible for any deductible amounts over and above these limits.
- (g) **Insurance Not Contributory.** With the exception of the insurance referred to in section 4.2(b), the Contractor will ensure that all other insurance referred to in section 4.2 will specify that such insurance is primary coverage and not contributory with, or in excess of, any insurance that may be maintained by OPG.

(h) **Subrogation.** The Contractor will ensure that each insurer which provides insurance under sections 4.2(b), 4.2(e), 4.2(g) and 4.2(h) will provide a waiver of subrogation to OPG, any applicable subsidiary of OPG, OPG's Designated Delegates and all the Subcontractors.

(i) **OPG as Additional Insured.** The Contractor will ensure that each insurer that provides insurance under sections 4.2(c), 4.2(g) and 4.2(h) will include OPG, any applicable subsidiary of OPG, OPG's Representative and OPG's Designated Delegates as an additional insured only with respect to the Work being performed by the Contractor.

(j) **No Invalidation by the Contractor.** The Contractor will ensure that no insurance referred to in section 4.2 will be invalidated or vitiated by any action or failure to act by the Contractor or any applicable subsidiary of the Contractor, the Contractor's Representative or the Contractor's Personnel or by any breach by the Contractor or any of its Subcontractors of any declarations, warranties or other terms in such policies

(k) **Notice and Processing of Claims.** The Contractor will process all proper claims under policies of insurance hereunder in accordance with this section 4.4(k) and both the Contractor and OPG will use best efforts to recover under such policies. Insurance claims will be asserted and processed on the following basis:

- (1) In connection with the insurance described in sections 4.2(a) to 4.2(h), the Contractor will be solely responsible to process and settle all such claims directly with the insurer. In the case of a claim under the insurance described in sections 4.2(a) to 4.2(h), the Contractor will deliver a written Notice to OPG's Representative detailing the claim at least five Business Days prior to asserting such a claim. The Contractor will include in any written Notice provided under this section 4.4(k) 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 Contractor will provide OPG any additional information respecting the claim that OPG's Representative may request.
- (2) In connection with the insurance described in section 4.3, the Contractor will assert all of its claims through OPG who will notify the insurer which provides such insurance within five Business Days after the Contractor has delivered written Notice to OPG's Representative detailing the claim. The Contractor will not be permitted to assert any claim under any insurance referred to in section 4.3 until OPG has completed its review and verification of such claim, which will be completed within the time period required under the applicable policy to assert the claim, after which the Contractor will be responsible to further process and settle all claims directly with the insurer.

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

4.5 Contractor's Property

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

4.6 Risk and Indemnities

(a) **Risk of Loss.** The Services, Recovered Material, Goods and Project will remain at the sole risk of the Contractor against loss or damage.

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

- (1) 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, including any resulting loss of use; and
- (2) all claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person,

but only, in each case, to the extent such Losses are caused by a breach of this Agreement by the Contractor or by any negligent or other act or omission of any Person providing any of the Services. The obligations of the Contractor under this section 4.6(b) will not be affected in any way by any certificate, acceptance, approval, payment or any other act, matter or thing done or omitted under this Agreement, including any act by OPG or OPG's Designated Delegates referred to in sections 8.1(c)(1) to 8.1(c)(6) inclusive.

SECTION 5– CHANGES IN SERVICES, GOODS OR PROJECT

5.1 Changes Requested by OPG

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

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

- (1) any proposed change to the Contract Price, calculated in accordance with section 7.8; and
- (2) any proposed changes to the Contract Schedule and/or material changes to the Progress Schedule that the Contractor estimates will occur as a result of such changes.

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

(c) **Obligation to Implement Project Change Directive.** OPG may require, in any Project Change Directive, that the Contractor proceed with the Project Change Directive before the parties have agreed on the terms of an Amendment. Upon receipt of any such Project Change Directive, the Contractor will comply with the applicable Project Change Directive and any Dispute will be resolved in accordance with section 5.5. Section 2.7(e) expressly applies to any changes set out in a Project Change Directive.

5.2 Changes Requested by the Contractor

The Contractor will not make any change in the Services except in accordance with section 5. The Contractor will ensure that no changes are made in the Services without the prior written consent of OPG's Representative. If the Contractor desires to make any changes in the Services, in whole or in part, the Contractor must first advise OPG in a Notice as to the matters referred to in section 5.1(b) and obtain the prior written consent of OPG's Representative in a Project Change Directive. Nothing in this Agreement obliges OPG to agree to any change proposed by the Contractor and OPG may in its sole and absolute discretion refuse to agree to any such change. Any refusal to approve any such change by OPG will not be subject to the dispute resolution process under section 11.1 or any other claim by the Contractor. Any written consent of OPG's Representative in a Project Change Directive to any such proposed change requested by the Contractor will constitute a Project Change Directive issued by OPG in accordance with section 5.1.

5.3 Changes in Applicable Laws

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

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

which directly and materially impacts on the Services or Contract Schedule that is neither known nor foreseeable on the date of this Agreement and that has the effect of materially increasing or decreasing the cost or time of providing the Services, then such change will be treated as a Project Change Directive issued by OPG under section 5.1. The Contractor will promptly provide OPG's Representative with a Notice in the form of Schedule 5.3 detailing the impact the change in 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 and Contract Schedule. OPG's Representative will discuss the impact and provide a prompt direction to the Contractor resolving the issue by way of a Project Change Directive. Any dispute relating to changes to the Contract Schedule or Contract Price will be resolved in accordance with section 5.5.

5.4 Execution of Amendments

OPG will not be deemed to have agreed to, or be required to pay for, any changes to the Services, Contract Price or the Contract Schedule, until the parties have executed an Amendment evidencing the Project Change Directive. Once the changes resulting from a Project Change Directive have been agreed to or resolved in accordance with section 5.5, the parties will execute an Amendment covering the applicable changes to the Services, Contract Price and Contract Schedule.

5.5 Change to Contract Price or Contract Schedule

- (a) **Filing Notice of Claim.** If the parties are unable to agree as to the extent, if any, of a change in the Contract Price or the Contract Schedule that should be made as a result of changes in the Services under sections 5.1, 5.2 or 5.3, either party may deliver a Notice in the form attached as Schedule 5.5(a) of its intent to the other party to resolve the Dispute under this section 5.5. The party delivering any such Notice will deliver it promptly, and in any event not later than five Business Days, after the circumstances giving rise to the Dispute first arose. If a party fails to deliver such Notice in a timely manner, the other party may, in its sole and absolute discretion, dismiss the Dispute. In such a case it will be deemed that there is no Dispute and the position of the party dismissing the Dispute will prevail.
- (b) **Claim Documentation.** The party that delivers a Notice under section 5.5(a) will submit to the other party all reasonable documentary evidence and a concise statement of the rationale of the party's position within five Business Days after delivery of such Notice.
- (c) **Decision.** The party receiving a Notice under section 5.5(a) will review the documents and rationale received under section 5.5(b) and will render a decision, including a concise statement setting out the reasons for its decision, no more than five Business Days after the receipt of the documents and rationale received under section 5.5(b). This decision will be final and binding on the parties.

SECTION 6 – CHANGES TO CONTRACT SCHEDULE

6.1 Changes to Contract Schedule

The Contract Schedule may only be changed by an Amendment made in accordance with section 5. No other purported change to the Contract Schedule will be valid. Except as set out in this Agreement, nothing in this Agreement obliges OPG to agree to any change to the Contract Schedule. Any refusal by OPG to agree to a change will be final and not subject to the dispute resolution process in section 11.1.

6.2 Time Extensions

- (a) **Excusable Delays.** The Contractor will not be responsible for any delay in fulfilling any obligation under this Agreement to the extent the delay is material and is caused by:
 - (1) OPG or another member of the OPG Group being responsible for a stop work order or similar notice under section 2.4(g); or
 - (2) a state of emergency requiring the Contractor to leave the Site at the direction of OPG under section 2.4(i) (except to the extent that any act or failure to act of the Contractor or a Subcontractor led to the evacuation).
 - (3) Neither party will be responsible for any delay in fulfilling any obligation under this Agreement to the extent the delay is material and is caused by fire, flood, tidal wave, lightning, earthquake, cyclone, strike or lockout, war, riot or act of public enemies, including terrorists.
- (b) **Exceptions to Excusable Delays.** Section 6.2(a) does not apply to the extent a delay is caused by the fault or negligence of the party seeking relief because of the delay. Section 6.2(a) does not apply if the party seeking relief on account of the delay fails, within three Business Days of the commencement of any such delay, to give a Notice in the form attached as Schedule 6.2(b) to the other party describing the event under section 6.2(a)(2) giving rise to the delay and the anticipated period of the delay. Failure by the Contractor to give such Notice within such three Business Day period is sufficient reason for denial by OPG of any extension of time.
- (c) **Compensation.** The Contractor will be entitled to compensation by way of an increase in the Contract Price, calculated in accordance with section 7.8, for material delays impacting the Services resulting from events referred to in sections 6.2(a)(1) and 6.2(a)(2). The Contract Price may not be increased, however, by an amount that is more than is reasonably attributable to the event that caused the material delay. The Contractor will not be entitled to any additional compensation in respect of any delay referred to in section 6.2(a)(2).
- (d) **Actions During Delay.** During any period of delay excused under section 6.2(a), the party that delivered the Notice under section 6.2(b) will:

- (1) act prudently in all respects to mitigate the impact of the delay on the Contract Schedule; and
- (2) keep the other party informed in a timely manner of the status of the event under section 6.2(a) giving rise to the delay and of the actions being taken to mitigate the impact of such delay.

(e) **Steps After Delay Ends.** Within three Business Days after cessation of the period of delay excused under section 6.2(a), the party that delivered the Notice under section 6.2(b) will deliver an updated Notice in the form attached as Schedule 6.2(b) to the other party specifying the alleged duration of the excused delay and its impact, if any, on the Contract Schedule. The party receiving such Notice will review such Notice and provide for an equitable change, if any, to the Contract Schedule in an Amendment made in accordance with section 5. The Contract Price may also be changed in accordance with section 6.2(c). The dates in the Contract Schedule may not be extended by more than the delay reasonably attributable to the event causing the delay. If the parties are unable to agree to a change in the Contract Schedule, either party may file a claim under section 5.5(a).

SECTION 7 – PAYMENT OF CONTRACT PRICE AND CHANGES

7.1 Electronic Invoicing System

The Contractor acknowledges that OPG has implemented an electronic invoicing system such as ARIBA or other similar system as OPG may designate (the “**EIS**”) and the timely payment of amounts owing to the Contractor requires that the Contractor provide invoicing information in accordance with this system. The Contractor will set up the preliminary invoicing information on the EIS promptly following the date of this Agreement. The Contractor will be responsible for maintaining access to the internet, and for the accuracy and timeliness of the data entered into the EIS. OPG will not be responsible for any delays to payments as a result of the Contractor’s errors and omissions arising from the misuse of the EIS. The Parties agree to work co-operatively to minimize each other’s costs associated with the implementation and ongoing access and use of the EIS. The Contractor is aware and accepts that OPG will review, accept and approve of the Contractor’s data submitted via the EIS prior to any issuance of payment. Nothing in this section 7.1 diminishes or amends OPG’s rights set out in the remainder of this Agreement.

7.2 Application for Payment

OPG will pay the Contractor in accordance with the milestone payment schedule set out in Schedule 7.2 and in accordance with this section 7. The Contractor will submit each draft Application for Payment to OPG’s Representative or OPG’s Designated Delegates for acceptance. After receiving OPG’s Representative’s or OPG’s Designated Delegates’ acceptance, the Contractor will electronically deliver to OPG via the EIS (as defined in section 7.1) a complete Application for Payment after provision of all Services respecting any milestone. The Contractor will not submit to OPG any Application for Payment in respect of any milestone unless all Services required to be provided in respect of that milestone (and all previous

milestones) have been entirely provided and OPG's Representative has accepted such Services as entirely finished. As part of each Application for Payment, the Contractor will submit to OPG:

- (a) an invoice containing:
 - (1) the total amount owing by OPG for completion of the applicable milestone (showing separately all amounts due as Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) and expressly stating any amounts invoiced in a currency other than Canadian dollars);
 - (2) the OPG purchase order number;
 - (3) the Contractor's full name and address;
 - (4) the name of a contact individual at the Contractor, with a telephone number;
 - (5) electronic transfer instructions;
 - (6) the Contractor's invoice number (which must be unique for each invoice);
 - (7) the invoice date (which must be the date the invoice is delivered);
 - (8) the Contractor's registration number for the purposes of Part IX of the *Excise Tax Act* (Canada);
- (b) a statutory declaration in the form set out in Schedule 1.1(d) signed by a director or officer of the Contractor declaring that:
 - (1) all payments due to Subcontractors, all wages and benefit payments due to any of the Contractor's Personnel, and all contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement, have been paid on or before the date of the Application for Payment in a timely manner, subject to any withholdings or holdbacks required by Applicable Laws; and
 - (2) title to the applicable part of the Project will pass to OPG in accordance with section 7.4 no later than the date of OPG's payment;
- (c) a certificate in the form set out in Schedule 1.1(d) signed by an officer of the Contractor certifying,

- (1) that the coverages that the Contractor is obliged to maintain under section 4.2 remain in full force,
- (2) that the Contractor has paid in a timely manner all amounts payable under the *Workplace Safety and Insurance Act, 1997* (Ontario),
- (3) that the Contractor remains in compliance with all its other obligations under the *Workplace Safety and Insurance Act, 1997* (Ontario), and
- (4) that the Contractor has provided OPG with the Workplace Safety and Insurance Board registration number for each member of the Contractor's Personnel providing Services at the Site for the period covered by the certificate; and

- (d) a certificate in the form set out in Schedule 1.1(d) signed by an officer of the Contractor respecting outstanding claims; and
- (e) a certificate of compliance from the Workplace Safety and Insurance Board as to the Contractor's status and that of all Subcontractors that will be providing Services at the Site.

7.3 Milestone Payments

- (a) **OPG Reviews Each Application for Payment.** OPG will, within 10 Business Days of receipt of each Application for Payment, either provide a written Notice to the Contractor approving the Application for Payment or alternatively return the Application for Payment to the Contractor indicating in writing OPG's reasons for rejection.
- (b) **OPG Issues Invoice for Recovered Material.** On a monthly basis, OPG will submit an invoice to the Contractor before the end of the month setting out the total amount owing by the Contractor for the Recovered Material removed from the Site in the previous month. The Contractor will pay OPG this amount by cheque within 30 days of receipt. Such amount will be based on the prices of Table 1, Table 2 or Table 3 in Part B of Schedule 7.9(a). All amounts due as Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) will be shown separately.
- (c) **Payment Terms.** OPG will aggregate all outstanding Applications for Payment received and approved by OPG for payment before the 25th of each month. Subject to sections 7.3(d), 7.3(f) and 7.6, OPG will pay the Contractor this aggregate amount on the 25th of the following month. All payments are conditional, however, on the Contractor fulfilling its obligations and making satisfactory progress in providing the Services before the date payment is made. OPG's Representative will determine whether or not such obligations have been fulfilled and progress is satisfactory.

(d) **Construction Lien Act (Ontario) Holdbacks.** Notwithstanding any term in this Agreement, OPG may retain 10% of the amount of each approved Application for Payment, or such greater amount as may be required, to satisfy OPG's obligation under the *Construction Lien Act (Ontario)*. OPG will only pay to the Contractor the total accumulated 10% holdback when OPG makes final payment under section 7.14, to the extent that such amount has not otherwise been paid to another Person under this Agreement. Under no circumstance, however, will OPG be obliged to release any such holdback, in whole or in part, that OPG retains in accordance with the *Construction Lien Act (Ontario)*, on any date that is earlier than permitted under that statute.

(e) **No Deemed Acceptance.** No payment made by OPG under this Agreement and no use or occupancy of the Project, in whole or in part, by OPG will constitute acceptance of any part of the Services or Goods that is not in accordance with this Agreement.

(f) **Refusal of Payment.** Notwithstanding any term in this Agreement, OPG may refuse to make any payment, in whole or in part, or set off from any payment, otherwise payable to the Contractor under this Agreement, an amount to be determined by OPG on account of:

- (1) Services required to be provided by a milestone, including previous milestones, that have not been entirely provided;
- (2) Services, Goods or the Project being Defective, in whole or in part;
- (3) OPG having corrected or replaced a Defective part of the Services, Goods or Project in accordance with this Agreement;
- (4) Losses suffered or incurred by any member of the OPG Group or claims, demands, actions, suits or proceedings for Losses having been made against a member of the OPG Group by any Person in respect of which the Contractor is required to indemnify under this Agreement;
- (5) a Lien having been filed in respect of the Services or Goods (except to the extent that the Contractor has delivered to OPG a specific security instrument, satisfactory to OPG, to secure the discharge of such Lien);
- (6) the Contract Price having been reduced; or
- (7) any other terms of this Agreement or rights under Applicable Laws entitling OPG to a set off against the amount for which Application for Payment was made.

7.4 Title Warranty

(a) **Warranty.** The Contractor represents and warrants to OPG that title to all Services (including documents, designs, drawings, specifications, plans, reports,

information and other deliverables and data) and Goods covered by any Application for Payment, whether used or incorporated in the Project or not and wherever situate, will pass to OPG no later than the time of payment, free and clear of all Liens. OPG's retention of any amount under sections 7.3(d), 7.3(f) or 7.6 will in no way affect the Contractor's representation and warranty in this section 7.4, and for the purposes of this section 7.4, OPG will be deemed to have paid each approved Application for Payment in full upon any payment required under section 7.3(b) having been made.

(b) **Maintenance of Records.** The Contractor will compile and maintain at the Site, in accordance with the Specifications and Applicable Laws, detailed, itemised records of all items covered by each Application for Payment, including all Services (including documents, designs, drawings, specifications, plans, reports, information and other deliverables and data) and Goods. On request by OPG, the Contractor will promptly provide OPG access to such records for review and copying. The Contractor will maintain these records for the period expiring on the latest of:

- (1) seven years following expiration or termination of this Agreement;
- (2) the period of time as may be specified in the Specifications;
- (3) the period of time as may be required by Applicable Laws; and
- (4) such other period as OPG may set out in a Notice to the Contractor.

7.5 Title to Recovered Material

Title to the Recovered Material passes to the Contractor upon removal from Site.

7.6 Taxes

(a) **Goods and Services Tax/Harmonized Sales Tax.** The Contractor represents and warrants to OPG that the Contractor is duly registered for the purposes of Part IX of the *Excise Tax Act* (Canada) and that the Contractor's registration number is 85539 7303 RT0001. The Contractor will deduct all Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) recovered or recoverable by the Contractor on the payment of expenses before submitting any Application for Payment to OPG covering any such expenses. The Contractor will ensure that each Application for Payment (and any other invoice submitted to OPG under this Agreement) will separately set out all Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada) and payable by OPG under this Agreement.

The Contractor is solely responsible for any Taxes levied in respect of any Goods, construction equipment or tools brought into Ontario for temporary use in respect of the Services.

OPG represents and warrants to the Contractor that OPG is duly registered for the purposes of Part IX of the *Excise Tax Act* (Canada) and that OPG's registration number is 878664226RT0001.

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

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

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

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

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

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

(e) **Exporter of Record.** If any portion of the Recovered Material is to be shipped outside Canada, the Contractor will ensure that either the Contractor or its agent will be the exporter of record for customs purposes.

(f) **Scientific Research and Experimental Development (“SR&ED”).** OPG and the Contractor acknowledge and agree that this Agreement may require the performance of SR&ED as defined in subsection 248(1) of the *Income Tax Act (Canada)* (the “ITA”). OPG and the Contractor further agree that to the extent that this is the case, the SR&ED will be performed by the Contractor on behalf of OPG and OPG will be entitled to include certain amounts paid for SR&ED in computing the amounts described in Section 37 of the ITA. As such, it is agreed that OPG will be entitled to claim all “investment tax credits” (as defined in subsection 127(9) of the ITA) and all similar provincial equivalents (“**Investment Tax Credits**”) that arise from the activities of the Contractor under this Agreement for which OPG has made payments, and the Contractor is not entitled to claim such Investment Tax Credits. OPG may require the Contractor to provide satisfactory evidence that it has not claimed such Investment Tax Credits. The Contractor will cooperate fully with, provide scientific, technical and financial information to, and assist OPG to determine what activities of the Contractor under this Agreement qualify as SR&ED and what expenditures qualify for deductions and for the Investment Tax Credits and to allow OPG and its tax advisors to complete OPG’s claims for deductions and for the Investment Tax Credits. The Contractor will not be entitled to any separate or additional fee or compensation for such cooperation, information and assistance. If OPG is subject to an income tax audit by any Government Authority relating to a SR&ED tax credit, the Contractor will provide to OPG such reasonable support and additional documentation and access to the Contractor’s cost data as OPG may request at any time during an income tax audit.

7.7 Contract Price Fixed and Recovered Material Revenue

(a) **Demolition Fixed Price.** Subject to changes in the Contract Price made in accordance with section 7.8(a), the Contract Price is fixed and constitutes the total compensation payable to the Contractor for providing and entirely finishing the Services. In particular, the Contract Price includes all Services (including all costs respecting the provision of labour and benefits, construction equipment and tools), Goods, freight (delivered duty paid, as that term is defined in the Incoterms 2010), Taxes (except for Canadian goods and services tax/harmonized sales tax levied under the Excise Tax Act (Canada)), currency exchange risk and costs, insurance required to be provided by the Contractor and all other costs and expenses of every kind respecting the Services, Recovered Materials and Goods under this Agreement. The Contract Price does not include, however, Canadian goods and services tax/harmonized sales tax levied under the Excise Tax Act (Canada) or the daily travel and subsistence allowances payable for construction labour under the applicable terms of the applicable construction collective agreements. OPG will reimburse the Contractor, without mark-up, for all such

travel and subsistence allowances incurred by the Contractor and properly documented in any Application for Payment.

(b) **Scrap Recovery and Remarketing of Recovered Material.** In accordance with Tables 1, 2 and 3 of Part B of Schedule 7.9(a), the Contractor will provide revenue to OPG received from the Recovered Materials from i) the sale of scrap and ii) the remarketing of OPG assets or equipment. With respect to scrap, the Contractor has provided minimum set quantities of scrap as set out in Table 1. If the scrap actual quantities are less, the scrap revenue payable to OPG will be calculated as per Table 1. If the scrap actual quantities are greater than the set quantities in Table 1, then the remaining scrap revenue payable to OPG will be calculated as per Table 2. With respect to OPG assets or equipment, the Contractor will make commercially reasonable efforts to resell these assets or equipment at 2.5 times the scrap price and the revenue payable to OPG will be calculated as per Table 3.

7.8 Changes in Contract Price

(a) **Changing Contract Price.** The Contract Price may only be changed by an Amendment made in accordance with section 5. No other purported change to the Contract Price will be valid.

(b) **Pricing Changes to Contract Price.** If a Project Change Directive will have the effect of changing the Contract Price, the parties will change the Contract Price by an Amendment made in accordance with section 5 by application of:

- (1) unit prices calculated in accordance with section 7.9 applied to the change in the Services;
- (2) to the extent that section 7.8(b)(1) is not applicable, a mutually agreed lump sum based on section 7.10 or mutually agreed unit prices, based to the extent possible on section 7.9; or
- (3) to the extent that section 7.8(b)(1) and 7.8(b)(2) are not applicable, cost reimbursement based on section 7.10.

7.9 Unit Prices

(a) **Detailed Price Summary, Unit Prices and Option Prices.** Set out in Schedule 7.9(a) is a detailed price summary and a listing of unit prices and option prices.

(b) **Calculation of Change in Contract Price.** To the extent that a change in the Contract Price is to be calculated in accordance with section 7.8(b)(1), OPG will classify each of the types of change in the applicable Services and calculate the total amount of the increase or decrease in the Contract Price based on the applicable unit prices set out in Schedule 7.9(a).

(c) **Unit Prices All Inclusive.** The unit prices set out in Schedule 7.9(a) include all amounts payable respecting each type of Services covered by each applicable unit price. There are no additional amounts payable in respect of a unit price, including no additional amounts for overhead or profit, except for any applicable daily travel and subsistence allowances payable for construction labour under the applicable terms of the applicable construction collective agreements and any applicable amounts due as Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada).

7.10 Cost Reimbursement

(a) **Costs to Include in Calculating Value in Change in Project.** Where the parties calculate the amount of the costs applicable to any change in the Services under this section 7.10, the parties will calculate all the applicable amounts under sections 7.10(a) and 7.10(c) without duplication, but will not include any amounts for items under section 7.10(b). Notwithstanding any term in this section 7.10, no amount calculated under sections 7.10(a) or 7.10(c) will exceed the applicable amounts then prevailing in the locality of the provision of the applicable Services. The terms of this section 7.10 apply equally whether the amount of the Services is being increased or decreased due to the change in the Services.

(1) **Payroll Costs of Labour.** In calculating the amount of the costs applicable to any change in the Services, the parties will calculate the payroll costs, including shift and overtime premiums, for hourly paid union labour in the direct employ of the Contractor that would be involved in providing the increase and/or decrease in Services. Such payroll amounts will be determined under the applicable terms of the applicable collective agreements. Such payroll costs include all contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement and all Canada Pension Plan contributions, employment insurance premiums, Ontario health premiums and Workplace Safety and Insurance Board premiums. Notwithstanding any term in this section 7.10, under no circumstance will OPG pay, or otherwise be liable for, any tax equalisation payment respecting any Person providing any of the Services.

(2) **Services of Subcontractors.** In calculating the amount of the costs applicable to any change in the Services, the parties will calculate the actual purchase cost to the Contractor, net of discounts, rebates and other refunds, of the increase and/or decrease in the applicable Services provided by a Subcontractor.

(3) **Professional Services.** To the extent that Services include Professional Services, however, the amounts payable therefor may not exceed the then prevailing competitive rates charged by comparable service providers.

(4) **Purchased Goods.** Subject to section 7.10(b)(2), in calculating the amount of the costs applicable to any change in the Services, the parties will calculate the actual purchase cost to the Contractor, net of discounts, rebates and other refunds and returns from the sale of surplus Goods, of the increase and/or decrease in the applicable Goods, delivered to the Site.

(5) **Rented Construction Equipment.** Subject to section 7.10(b)(2), in calculating the amount of the costs applicable to any change in the Services, the parties will calculate the actual rental cost to the Contractor, net of discounts, rebates and other refunds, of the increases and/or decreases in the applicable rented construction equipment, delivered to the Site. The rental costs may not exceed the lesser of the Contractor's rental rates or the rates set out in the latest edition of the Contractor's Equipment Cost Guide published by the Associated General Contractors of America, converted to Canadian dollars at the then prevailing exchange rates set out on www.oanda.com. All rental rates will exclude the cost of the operator.

(6) **Owned Construction Equipment.** Subject to section 7.10(b)(2), in calculating the amount of the costs applicable to any change in the Services, the parties will calculate the cost to the Contractor of the increases and/or decreases in the applicable construction equipment owned by the Contractor or one of its affiliates, delivered to the Site. The costs may not exceed the lesser of the Contractor's rates or the rates set out in the latest edition of the Contractor's Equipment Cost Guide published by the Associated General Contractors of America, converted to Canadian dollars at prevailing exchange rates set out on www.oanda.com.

(7) **Taxes.** In calculating the amount of the costs applicable to any change in the Services, the parties will calculate the actual cost of additional or reduced Taxes, excluding income and capital taxes and Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada).

(b) **Costs to Exclude in Calculating Value in Change in Project.** Notwithstanding any term in section 7.10(a), where the parties calculate the amount of the costs applicable to any change in the Services, the parties will exclude the costs of each of the amounts set out in this section 7.10(b).

(1) **Payroll Costs of Supervisors and Management.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude all payroll costs, additives and other costs respecting individuals not included under section 7.10(a)(1), including supervisors, managers, superintendents, engineers and other design professionals employed by the Contractor (except to the extent directly required to make the change in the Services), architects, estimators, accountants, lawyers, auditors, purchasing and contracting agents, field engineers, expediters, timekeepers, clerks, officers, directors and partners, whether on or off the

Site. The costs of all such individuals are considered to be administrative costs covered under section 7.10(c).

- (2) **Overhead and Profit Fee.** Any overhead or profit fee of any Subcontractor of any tier. The Contractor will be responsible for paying any such overhead or profit fees from any overhead and profit fee paid to the Contractor under section 7.10(c).
- (3) **Specified Construction Equipment.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude all construction equipment and tools having a replacement cost, or with a base rental price, of less than \$2,500, exclusive of all Taxes.
- (4) **Office Costs.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude all costs respecting the Contractor's offices, whether on or off the Site.
- (5) **Capital Costs.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude:
 - (C) any debt carrying charges, including principal payments, interest or other carrying charges; and
 - (D) all capital costs, including interest, on the Contractor's capital employed for the Services and charges against the Contractor for late payments, if any.
- (6) **Negligence.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude all costs of negligence of the Contractor, any Subcontractor, any member of the Contractor's Personnel or any of the Contractor's or any of a Subcontractor's shareholders, directors, officers, partners, members, representatives, agents, advisors or any other Person for whom the Contractor or any Subcontractor is responsible at law, including any costs of any claims, demands, actions, suits or proceedings for Losses made by any Person and the costs respecting the correction or replacement of the Defective part of the Services, the disposal of Goods incorrectly purchased or the correction of any damages.
- (7) **Other Costs.** In calculating the amount of the costs applicable to any change in the Services, the parties will exclude all other costs not expressly set out in sections 7.10(a) or 7.10(c), including all indemnifications by the Contractor under this Agreement, all costs of all acts that are to be provided at the expense of the Contractor under this Agreement and all costs which are recoverable by the Contractor in respect of warranties, guarantees, insurance or other security (including performance related security) in favour of the Contractor or a Subcontractor.

(c) **Overhead and Profit Fee.** Where the parties calculate the amount of the costs applicable to any change in the Services, the parties will include or deduct the additional fee, representing the Contractor's supervision, overhead (including salary burdens and small tools), profit and all other costs. This fee may be agreed on by the parties or, if it is not so agreed, then such fee will be calculated as follows:

- (1) for costs incurred or deducted under section 7.10(a)(1), the Contractor's fee will be 15%;
- (2) for costs incurred or deducted under sections 7.10(a)(2) and 7.10(a)(5), the Contractor's fee will be 10%;
- (3) for costs incurred or deducted under sections, 7.10(a)(4) and 7.10(a)(6), the Contractor's fee will be 5%; and
- (4) for 7.10(a)(7), nil.

(d) **Documentation and Readjustment.** Where any calculations are made under this section 7.10, OPG may, at any time, require from the Contractor satisfactory evidence of any cost figures supplied by the Contractor. OPG may have any such cost figures reviewed by auditors designated by OPG, so long as OPG directs such review to be performed within two years of the Final Completion Date. The Contractor will provide such auditors prompt access to all premises and documents required for such review. The Contractor will preserve all records necessary for any such calculation until the end of such two-year period. If the Contractor fails to preserve any such records, OPG may make any reasonable assumptions in the absence of such records. All payments made by OPG involving calculations under this section 7.10 are subject to readjustment based on any such audit at any time before the expiry of the 26th month after the Final Completion Date.

7.11 Substantial Completion

(a) **Notice of Ready for Use.** The Contractor will deliver a Notice in the form attached as Schedule 7.11(a) to OPG (including a punch list of all items that remain unfinished and which will not impair the intended use of the Project and a schedule for entirely finishing each such item) when:

- (1) “**substantial performance**” has occurred, as such term is defined in the *Construction Lien Act (Ontario)*;
- (2) the Services have progressed to the point where the fencing for all construction islands is ready for removal and the Project is complete as intended in accordance with this Agreement;

- (3) all Recovered Material has been removed from the Site and the Contractor has paid all amounts owing to OPG in respect to all such Recovered Material;
- (4) all material obligations as set out in the Specifications are complete;
- (5) the cost to entirely finish the Services that remain unfinished and to correct any known Defective parts of the Services does not exceed a total of \$5,000;
- (6) the Contractor has obtained and delivered to OPG the Approvals which the Contractor is required to obtain under section 2.6(b); and
- (7) the Contractor has delivered copies of all certified reports described in this section 7.11(a).

When OPG determines, acting reasonably, that all of the terms of sections 7.11(a)(1) to 7.11(a)(7) inclusive have been complied with then **“Substantial Completion”** has occurred.

- (b) **Joint Inspection.** Within a reasonable time after receipt of the Notice under section 7.11(a), the parties will make a joint inspection of the Project to determine the status of the Project and each outstanding item, including each item set out in the Notice delivered under section 7.11(a). If OPG determines that Substantial Completion has not occurred in accordance with section 7.11(a), OPG will deliver a Notice in the form of document attached as Schedule 7.11(b) to this effect to the Contractor, giving reasons. If OPG determines that Substantial Completion has occurred in accordance with section 7.11(a), OPG will deliver a Notice in the form of document attached as Schedule 7.11(b) containing a certificate of Substantial Completion. This certificate will fix the date of Substantial Completion. The parties will then sign a certificate of substantial completion as contemplated by section 32(1)1 of the *Construction Lien Act* (Ontario). The Contractor will then promptly publish the notice in accordance with the *Construction Lien Act* (Ontario) and deliver proof of publication to OPG’s Representative.
- (c) **Punch List and Allocation of Responsibilities.** OPG will attach to the certificate of Substantial Completion a punch list of items that are to be entirely finished or are Defective and must be corrected or replaced by the Contractor before final payment will be made under section 7.14. At the time of delivery of the certificate of Substantial Completion OPG will also deliver to the Contractor a written allocation of responsibilities between OPG and the Contractor pending final payment made under section 7.14 respecting safety, security, operation, maintenance, heat, utilities, insurance and warranties and guarantees respecting the remaining Services. The Contractor will deliver a Notice to OPG each week setting out an update as to the status of completion of each punch list item.

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

7.12 Final Inspections

When the Contractor considers that it has entirely finished or corrected all items on the punch list, the Contractor may deliver a Notice to this effect to OPG. Promptly following receipt of this Notice, the parties will make a joint inspection of the Project. OPG will then deliver a Notice in the form attached as Schedule 7.12 to the Contractor stating either that:

- (a) OPG accepts the Services as being entirely finished, including because the Contractor has delivered to OPG all Approvals and other written or graphic documents, designs, drawings, specifications, plans, reports, information and other deliverables or data required to be provided by the Contractor to OPG under this Agreement and because the Contractor has satisfied all requirements of Applicable Laws; or
- (b) there are items remaining to be entirely finished or that are Defective and must be corrected or replaced by the Contractor. The Contractor will promptly take such actions as are necessary to finish entirely, correct or replace all such items. Once the Contractor has finished all such actions, the Contractor will deliver another Notice to OPG in accordance with this section 7.12.

7.13 Final Application for Payment

After OPG has accepted the Services as being entirely finished under section 7.12(a), the Contractor may make a final Application for Payment in accordance with section 7.2. The Contractor will submit with the final Application for Payment (except to the extent previously delivered by the Contractor and accepted by OPG as satisfactory), the following:

- (a) the required consent of any surety, if any, to the final payment made under section 7.14;
- (b) a certificate of good standing from the Workers' Safety and Insurance Board or successor organisation;
- (c) releases in the form set out in Schedule 7.13, from the Contractor and each Subcontractor who provided Services in respect of the Project, respecting all Liens and other claims filed or otherwise arising in respect of the Services, Goods or Project; and
- (d) statutory declarations in the form set out in Schedule 7.13, signed by a director or officer of the Contractor, and each Subcontractor who has provided Services at the Site, declaring that all payments due to Subcontractors, all wages and benefit payments due to any of the Contractor's Personnel, and all contributions,

premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement, have been paid in a timely manner.

If the Contractor is unable to deliver to OPG any release or statutory declaration referred to in sections 7.13(c) and 7.13(d) from a Subcontractor, the Contractor will deliver to OPG collateral or security satisfactory to OPG to indemnify OPG against any Lien or other claim until such time that any Lien or claim would expire by operation of Applicable Laws.

7.14 Final Payment and Acceptance

On receipt of the final Application for Payment under section 7.13, OPG will review the final Application for Payment within 10 Business Days of receipt and deliver a Notice to the Contractor stating either that:

- (a) OPG accepts the final Application for Payment and OPG will make, subject to sections 7.3(f) and 7.6, the final payment within 60 days of the delivery of such final Application for Payment to OPG; or
- (b) the final Application for Payment does not yet satisfy all the obligations under this Agreement and setting out the reasons therefor. The Contractor will promptly take such actions as are necessary to satisfy its remaining obligations. Once the Contractor has satisfied all such obligations, the Contractor will deliver to OPG an amended final Application for Payment under section 7.13.

Where OPG makes the final payment to the Contractor under this section 7.14, such payment will not relieve the Contractor from any of its obligations or liabilities under this Agreement or otherwise. To the extent that any of the Services were not provided on a fixed fee basis, the Contractor will maintain the applicable records, including time sheets, accounts and invoices, for seven years following expiration or termination of this Agreement, or for such other period as OPG may set out in a Notice to the Contractor. On request by OPG, the Contractor will promptly provide OPG access to such records for review and copying.

7.15 Audit

OPG will not audit the components of the initial Contract Price with respect to demolition only set as of the date of this Agreement. This section 7.15 applies to any changes to the initial Contract Price and to calculations with respect to the Recovered Material. OPG may, at any time within two years of the Substantial Completion Date, require from the Contractor satisfactory evidence of the calculation and substantiation of any cost figures or Recovered Material amounts supplied by the Contractor. OPG may, through auditors designated by OPG, inspect, audit and copy all records and other information, and interview all relevant Contractor's Personnel, respecting such calculations. The Contractor will provide such auditors prompt access to all premises, Contractor's Personnel, books, records and other documents, whether in written, electronic or other format, required to substantiate any calculations or compliance with this Agreement. The Contractor will provide OPG's auditors with reasonable work space at the Contractor's facilities to conduct any inspection, audit, copying and interviews. The Contractor will preserve all such records and other information necessary for any such calculations until the

end of such two-year period. If the Contractor fails to provide any such records or other information, OPG may make any reasonable assumptions in the absence of such records. If any audit reveals that OPG was overcharged or underpaid for any reason (including because costs charged to OPG are inadequately substantiated), the Contractor will promptly pay OPG the amount of the overcharge or underpayment.

SECTION 8 – ACCEPTANCE OF PROJECT AND CORRECTION OF DEFECTS

8.1 Warranty

(a) **Basic Warranty.** The Contractor warrants and guarantees to OPG that:

- (1) notwithstanding anything else in this Agreement, the Services will in all respects be fit for the purposes intended by this Agreement, including the Specifications; and
- (2) all Services will be provided in accordance with this Agreement.

(b) **Exclusions.** The Contractor's warranties and guarantees in section 8.1(a) do not apply to the extent that any breach of the warranty or guarantee is due to the negligence of OPG or any Person providing services to OPG, other than the Contractor or a Subcontractor.

(c) **No Deemed Acceptance.** The Contractor's obligations under section 8.1(a) are absolute. These warranties and guarantees will not be affected in any way by any certificate, acceptance, approval, payment or any other act, matter or thing done or omitted under this Agreement. For greater certainty, none of the following actions will constitute any acceptance of the Services, Goods or Project by OPG in whole or in part or will constitute a waiver or release of any of the Contractor's obligations under this Agreement:

- (1) any review, comment, acceptance, rejections or failure to review, comment, accept or reject by OPG of a Submittal or other document under this Agreement;
- (2) any inspection, test or approval by OPG or any third party;
- (3) any payment under this Agreement;
- (4) any certificate of Substantial Completion issued under section 7.11(b);
- (5) any use or occupancy of the Project in whole or in part by OPG; or
- (6) any correction or replacement of a Defective part of the Services, Goods or Project by, or at the request of, the Contractor, OPG or OPG's Designated Delegates.

8.2 Access to Project

The Contractor will provide access to the Project, the Site and the premises of the Contractor and Subcontractors, at all reasonable times and from time to time, to OPG's Representative, and at the request of OPG's Representative, to OPG's Designated Delegates, for the purposes of undertaking specific tasks including compliance with applicable regulatory requirements, viewing, performing surveillance on, inspecting, testing and/or accepting the Services, Goods and/or Project, in whole or in part, including to monitor compliance with the Specifications and any applicable quality assurance requirement. In particular, the Contractor will deliver a Notice to OPG's Representative providing OPG with Notice of at least two Business Days before OPG is required to inspect any Goods at any hold point in any inspection plan. At the request of OPG's Representative, the Contractor will promptly provide to OPG's Representative and/or OPG's Designated Delegates a copy of all the documents (unpriced, if the Contractor desires) 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 Contractor of any of its obligations under this Agreement. The Contractor will advise each applicable representative of OPG of the Contractor's or Subcontractor's applicable site safety procedures and policies. The Contractor will provide each such representative with proper and safe transportation and conditions for such access.

8.3 Inspections, Tests and Approvals

The Contractor will with promptness and in an orderly sequence so as not to cause any delay to the Services arrange for and obtain all inspections, tests and approvals required for the acceptance of Goods that are to be incorporated or used in the Project. The Contractor will ensure that each inspection, test or approval that is required to be carried out, in whole or in part, by a Professional, is so carried out by a Professional. The Contractor will pay all costs respecting such inspections, tests and approvals. If this Agreement, the applicable quality assurance program or any Applicable Laws or Approvals require any part of the Services, Goods or the Project to be inspected, tested or approved, in whole or in part, the Contractor will arrange for and obtain all such inspections, tests and approvals. The Contractor will pay all costs respecting such inspections, tests and approvals. The Contractor will deliver to OPG all certificates, reports and other documents respecting any inspections, tests and approvals made in accordance with this section 8.3 or the Specifications. The Contractor will give OPG reasonable Notice of the date, time and location for all inspections, tests or approvals carried out under this section 8.3 so that OPG and OPG's Designated Delegates can attend. If Notice is not given, OPG may require the inspection, test or approval to be redone. If any such approval is to be issued in the name of OPG or that will affect the operation of the Project following the Final Completion Date, the Contractor will submit the draft approval to OPG's Representative or OPG's Designated Delegates for acceptance, before the Contractor obtains this approval. The Contractor will only obtain any such approval following receipt of the written acceptance of OPG's Representative or OPG's Designated Delegates of the draft approval. In addition to any other inspection, test or approval set out in this Agreement, OPG may require, at its cost (but for certainty without payment of any amount to the Contractor), any other inspection, test or approval of any part of the Services, Goods or the Project, in whole or in part, either on or off the Site, upon Notice to the Contractor.

8.4 Notice of Defective Project

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

- (a) have the effect of transferring any obligation under this Agreement from the Contractor to OPG or otherwise have the effect of amending this Agreement; or
- (b) will not affect or change in any way the Contractor's,
 - (1) obligation to entirely finish the Services in accordance with this Agreement, or
 - (2) responsibility for repairing, replacing or re-providing any Defective part of the Services, Goods or Project.

8.5 OPG May Stop Demolition

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

- (a) the Services, Goods, or the Project is Defective, in whole or in part;
- (b) the Contractor fails to supply suitable Goods, in whole or in part;
- (c) the Contractor fails to provide the Services, in whole or in part, in a manner that ensures that the entirely finished Project will conform to this Agreement; or
- (d) the Contractor has breached any term of this Agreement, including due to any act or omission of a Subcontractor that breaches a term of this Agreement.

The Contractor may only resume the stopped Services to which OPG's direction applies only once the Contractor has remedied the issue that was the cause for OPG to deliver such Notice. OPG is not obliged to deliver a Notice to the Contractor under this section 8.5 for any reason whatsoever. The Contractor will not be entitled to any cost adjustment for any stopped Services.

8.6 Correction or Removal of Defective Part of Project

- (a) **Services Required.** Upon request by OPG, the Contractor will promptly correct all Defective parts of the Services, Goods and the Project either upon discovery or upon rejection by OPG under this section 8.6. If reasonably requested by OPG, the Contractor will remove any and all Defective parts of the Project from the Site, whether or not such parts have been incorporated into the Project, and replace such parts with parts that are not Defective and that comply with this Agreement.

(b) **Cost to Correct or Remove.** The Contractor will pay all costs respecting the correction of a Defective part of the Services, Goods or the Project (“**Correction Costs**”), including:

- (1) all incidental costs of the corrective services, including, as may be required for disassembly, removal, re-installation, re-erection, re-assembly, transportation, insurance and any applicable Taxes;
- (2) all of OPG’s fees and charges of engineers, architects, accountants, lawyers (on a solicitor and his own client basis) and other professionals, all court, arbitration and other dispute mediation or resolution costs and charges, whether incurred through settlement or otherwise, together with interest calculated in accordance with section 1.1(s); and
- (3) all costs and charges respecting correction or replacement of any Defective part of the Services, Goods or the Project, including any part of the Services, Goods or Project that was rendered Defective because of the Defective part of the Services, Goods or Project, including in respect of any damage or loss arising in respect of such correction or replacement or in respect of any inspections conducted to determine whether any such correction or replacement was required, including for loss of use.

SECTION 9 – DEFAULT

9.1 Events of Default

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

- (a) the Contractor has been dissolved or has had a resolution passed for its winding-up or liquidation, other than in respect of an amalgamation, merger or consolidation;
- (b) the Contractor has made a general assignment, arrangement, composition or proposal with, or for the benefit of, its creditors;
- (c) the Contractor ceases to be, or admits that it is no longer, able to satisfy its obligations as they become due;
- (d) the Contractor has instituted, or has had instituted against it, a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or similar Applicable Laws affecting creditor’s rights, or a petition is presented for its winding-up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
 - (1) is instituted by or consented to by the Contractor;

- (2) results in a judgement of insolvency or bankruptcy, the entry of an order for relief or the making of an order for its winding-up or liquidation and any such judgement or order has not been stayed pending an appeal; or
- (3) if instituted against the Contractor, is not stayed pending an appeal and dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof;
- (e) the Contractor has filed a petition, answer or consent seeking reorganisation, readjustment, arrangement, composition or similar relief under any Applicable Laws;
- (f) the Contractor has consented or becomes subject to the appointment of a receiver, liquidator or trustee or assignee in bankruptcy in respect of all or a substantial part of its assets and in the case that any such process, if instituted against the Contractor, has been instituted or presented against the Contractor, any such process has not been stayed pending an appeal and dismissed, discharged, stayed or restrained within 30 days thereafter;
- (g) the Contractor had a secured party take possession of all or a substantial part of its assets;
- (h) the Contractor has a distress, execution, attachment, or sequestration enforced or sued on or against all or a substantial part of its assets;
- (i) the Contractor breaches any of its obligations (including any representations, warranties, guaranties and indemnities) under this Agreement, or under any document delivered under this Agreement, and fails to remedy the breach to the satisfaction of OPG within seven Business Days following receipt of Notice from OPG specifying the breach, or if the breach cannot be cured within such seven Business Day period, after such longer period of time as is reasonably required to cure the breach (but no longer than 60 days in any circumstances), so long as the Contractor diligently and constantly endeavours to cure the breach during such extended period;
- (j) the Contractor fails to complete the Services in accordance with the Contract Schedule;
- (k) the Contractor is in any way responsible for a fatality respecting the Services;
- (l) the Contractor, or any Subcontractor, any of their shareholders, directors, officers, partners, members, representatives, agents or any of the Contractor's Personnel gives or offers to give (directly or indirectly) to any Person, a bribe, gift, gratuity, commission or other thing of note, as an inducement or reward;
 - (1) for doing or forbearing to do any action in relation to this Agreement; or

- (2) for showing favour or disfavour to any Person in relation to this Agreement;
- (m) the Contractor assigns or attempts to assign this Agreement, in whole or in part, except in a manner expressly permitted in section 11.2; or
- (n) the Contractor fails to achieve Substantial Completion within 30 days of the date for Substantial Completion in the Contract Schedule.

9.2 Notice

OPG may terminate this Agreement immediately and without any cost to OPG by delivering a Notice to the Contractor on the occurrence of any event of default set out in section 9.1.

9.3 OPG's Recourse

If OPG is entitled to terminate this Agreement under section 9.2, OPG may, in addition to its rights under section 9.2 and without terminating this Agreement:

- (a) require immediate payment of any outstanding amounts owing to OPG in respect of the Recovered Material;
- (b) eject and exclude from the Site the Contractor, any Subcontractor and any of the Contractor's Personnel;
- (c) entirely finish the Services, in whole or in part, by whatever means OPG deems appropriate under the circumstances (and the Contractor, at no additional charge to OPG, will promptly, and in any event within three Business Days, provide OPG with all such records and work in progress that are not located on the Site and that are requested by OPG in a Notice);
- (d) take possession of all or part of the Site, any work in progress, Goods, Recovered Material, Contractor's construction equipment, tools, fuel and temporary structures and facilities, including for offices, lunchrooms, canteens, sanitation, showers, change rooms, accommodations, shops, warehouses and garbage disposal, at the Site (and at no additional charge for the retention and use thereof);
- (e) exercise any of OPG's rights under section 4.1(b) and give a Notice to any Subcontractor with a contract with the Contractor respecting the Project that such contract has been assigned and transferred to OPG under section 4.1(b);
- (f) enforce any indemnity, performance bond, guarantee or other security provided by the Contractor, a Subcontractor or any other Person with respect to the applicable Services, Recovered Material or Goods (although, if the terms of any such document permit earlier enforcement under any such document, OPG may enforce such rights in accordance with the terms of such other document);

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

9.4 Deemed Termination

If at any time after OPG terminates this Agreement under section 9.2 or exercises its rights under section 9.3, it is determined for any reason that an event of default had not occurred or the default was otherwise excusable, the rights and obligations of the parties will be the same as if the termination of this Agreement by OPG had occurred under section 10.2.

9.5 Contractor's Liability

If OPG terminates this Agreement under section 9.2 or exercises its rights under section 9.3, the Contractor will be liable to OPG for:

- (a) all costs in excess of the Contract Price incurred by OPG to finish entirely the Services, Goods and the Project, including external and internal costs (including costs of additional engineering, management and administration);
- (b) all costs of correcting Defective parts of the Services, Goods or Project, calculated in accordance with section 8.6; and
- (c) all other Losses suffered or incurred by OPG in respect of any event of default arising in respect of section 9.1.

OPG may set off such amount, in whole or in part, as OPG determines is owing by the Contractor to OPG under this section 9.5, against any amount otherwise owing by OPG to the Contractor.

9.6 OPG's Liability

Notwithstanding any term in this Agreement, the Contractor may not make any claim against OPG for breach of this Agreement by OPG unless, the Contractor, within three Business Days of the breach, gives Notice to OPG in the form attached as Schedule 9.6 describing the breach and the anticipated claim for the breach. The Contractor will be estopped from making any claim against OPG unless it provides this Notice in the time period required by this section 9.6. Notwithstanding any term in this Agreement, OPG's maximum liability for any claim for breach of this Agreement by OPG, other than failure to pay any part of the Contract Price otherwise due to the Contractor, will not exceed 10% of the Contract Price.

9.7 Limitation of Liability

Notwithstanding any term in this Agreement, the liability of each party respecting all claims arising in respect of this Agreement will not exceed:

- (a) an amount equal to two times the Contract Price; and
- (b) the amount of insurance recoverable under this Agreement.

9.8 Exceptions

The limitations of liability set out in section 9.7 will not apply, however, to:

- (a) the Contractor's obligations under sections 2.4(e), 2.5(f), 2.13(e), 2.14(e), 2.15, 7.4(a), 4.6(b), 8.5, and 9.5; and
- (b) Losses suffered or incurred by a member of the OPG Group or any claims, demands, actions, suits or proceedings for Losses made against any member of the OPG Group by any Person, to the extent arising in respect of,
 - (1) the deliberate or wilful breach of this Agreement by the Contractor; or
 - (2) liability for contribution or indemnity for injury or damage to third parties arising in respect of the Contractor's negligence.

Except for the Contractor's obligations under sections 2.5(f), 2.13(e), 2.14(e), 2.15, and 4.6(b), and except where recoverable under insurance, neither party will be liable to the other party for consequential liabilities, damages, losses, costs or expenses.

SECTION 10- SUSPENSION OF SERVICES AND TERMINATION

10.1 Suspension of Services

OPG may at any time from time to time, for any reason without affecting the validity of this Agreement, suspend the providing of the Services in whole or in part for such period of time as OPG may notify the Contractor. Except to the extent any such suspension arises in respect of any default by the Contractor or any negligent or wilful act or omission of the Contractor or a Subcontractor, OPG will pay the Contractor the reasonable extra direct damages suffered by the Contractor arising from the suspension. Except for such direct damages, notwithstanding any term in this Agreement, in no circumstances whatsoever will OPG be liable to the Contractor for consequential liabilities, damages, losses, costs or expenses suffered or incurred by the Contractor in any such suspension. Severance costs respecting the termination of any of the Contractor's Personnel do not constitute direct damages. Before OPG pays the Contractor for such extra direct damages, the Contractor 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 and the Contractor will provide OPG with all information reasonably requested by OPG in respect of such audit. Immediately following a Notice of resumption delivered by OPG to the Contractor, the Contractor will resume providing the Services and Goods in accordance with the schedule established by OPG.

10.2 Termination

Notwithstanding any term in this Agreement, OPG may from time to time, without cause and without affecting the validity of this Agreement, immediately terminate any unprovided Services, in whole or in part, by delivering a Notice to this effect to the Contractor. Except to the extent any such termination arises in respect of any event of default by the Contractor, OPG will pay the Contractor:

- (a) the amounts set out in this Agreement for all parts of the Services that have been entirely finished and delivered 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 Contractor arising from the termination (such as the reasonable out-of-pocket costs of demobilisation).

Except for such amounts and direct damages referred to in sections 10.2(a) and 10.2(b), notwithstanding any term in this Agreement, in no circumstances whatsoever will OPG be liable to the Contractor for consequential liabilities, damages, losses, costs or expenses damages, loss of profit, economic loss, interest or any other damages or loss suffered or incurred by the Contractor in any such termination. Before OPG pays the Contractor for such amounts or extra direct damages referred to in sections 10.2(a) and 10.2(b), the Contractor 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 amounts and damages and the Contractor will provide OPG with all information reasonably requested by OPG in respect of such audit. On payment for such amounts and damages, title to all the remainder of the Services (including documents, designs, drawings, specifications, plans, reports, information and other deliverables and data) and Goods that had not to date vested in OPG, will vest automatically in OPG.

SECTION 11 – GENERAL

11.1 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).

11.2 Assignment and Benefit

The Contractor 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.

11.3 Amendments

OPG’s Representative and any officer of OPG of equal or higher authority to 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.

11.4 Notice

Except as otherwise provided in this Agreement, such as in section 9.2, every Notice required or permitted under this Agreement must be in writing and may be delivered in person, by courier or by email to the applicable party, as follows:

If to OPG,	if to the Contractor,
Ontario Power Generation Inc. 800 Kipling Avenue, KR2 106 Toronto, Ontario, M5G 1X6	JMX Contracting Inc. 130 Ram Forest Road Stouffville, Ontario, L4A 2G8
Attention: Yogender Tagra Email: yogender.tagra@opg.com	Attention: Charlie Dahl Email: charlie.dahl@jmxcontracting.com

or to any other address, email address 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 email before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by email 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.

11.5 Currency

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

11.6 Set Off

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

11.7 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.

11.8 Cumulative Remedies

OPG's rights and remedies under this Agreement and under any security held by OPG for the Contractor'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.

11.9 Survival of Obligations

All representations, warranties, guarantees and indemnities made in, required by or given under this Agreement, as well as all continuing obligations under this Agreement, will survive final payment made under section 7.14, Substantial Completion and acceptance of the Project and termination or expiry of this Agreement.

11.10 Relationship of Parties

Nothing in this Agreement will be construed as constituting either party as the agent, partner, joint venturer or other representative of the other party. The relationship between the parties is that of a purchaser and an independent contractor. The Contractor's Personnel are solely the employees of the Contractor and Subcontractors (and not OPG's) for all purposes under this Agreement, including for all purposes under any Applicable Laws. Accordingly, none of the Contractor's Personnel or Subcontractors is entitled to any benefits respecting any pension or other benefit plan, program or policy of OPG. The Contractor will pay all Taxes respecting each of the Contractor's Personnel and each of the Subcontractors and OPG will have no responsibility for any such Taxes.

11.11 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, OPG holds the rights of all third party beneficiaries under sections 2.14(e) and 4.6(b) 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 Contractor represents and warrants to OPG that the Contractor is entering into this Agreement solely on its own behalf and not as agent for any other Person.

11.12 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.

11.13 Choice of Language

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.

11.13 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.

11.14 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 email.

The parties have duly executed this Agreement.

ONTARIO POWER GENERATION INC.

By:



Name: Yogender Tagra

Title: Vice President, Supply Chain Services

JMX CONTRACTING INC.

By:



Name: Charlie Dahl

Title: Executive Chief Officer

Schedule 1.1(b) - Amendment Form

AMENDMENT AGREEMENT NUMBER [1]

This Agreement is made as of [•], between

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

and

JMX CONTRACTING INC., a corporation existing under the laws of Ontario (the "Contractor").

Recitals

A. OPG and the Contractor entered into a demolition agreement dated as of July 10, 2018 (the "Original Agreement"). Under the Original Agreement, the Contractor is obliged to provide the Services and Contractor is purchasing and/or disposing of the Recovered Material from the Project. .

B. OPG and the Contractor have agreed to amend the Original Agreement to [•].

For value received, the parties agree as follows.

1. Interpretation

Any defined term used in this Agreement that is not defined in this Agreement has the meaning given to that term in the Original Agreement. In this Agreement, the following terms have the respective meanings set out below.

(a) **[Insert any definitions required in this Agreement.]**

2. Change to Section [•] (Title of Section)

Section [•] of the Original Agreement is deleted in its entirety and replaced with the following. OR Section [•] of the Original Agreement is deleted in its entirety. OR The following section is added as a new section [•] to the Original Agreement.

3. Change to Section [•] (Title of Section)

Section [•] of the Original Agreement is deleted in its entirety and replaced with the following. OR Section [•] of the Original Agreement is deleted in its entirety. OR The following section is added as a new section [•] to the Original Agreement.

4. Original Agreement Remains in Full Force

Except for changes to the Original Agreement set out in this Agreement and any previous Amendment, the Original Agreement remains in full force, unamended.

The parties have duly executed this Agreement.

ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

JMX CONTRACTING INC.

By: _____
Name:
Title:

Schedule 1.1(d) - Payment Related Documents

Certificate - Application for Payment

TO: Ontario Power Generation (“OPG”)

RE: Lambton Generating Station Demolition Agreement #RG00287132 (the “Agreement”) between OPG and JMX CONTRACTING INC. (the “Contractor”), dated as of July 10, 2018

I, [name], am the [title] of the Contractor and am authorised to deliver this Certificate on behalf of the Contractor. I hereby certify, for and on behalf of the Contractor, that:

1. the coverages that the Contractor is obliged to maintain under section 4.2 of the Agreement remain in full force;
2. the Contractor has paid in a timely manner all amounts payable under the *Workplace Safety and Insurance Act, 1997* (Ontario);
3. the Contractor remains in compliance with all its other obligations under the *Workplace Safety and Insurance Act, 1997* (Ontario);
4. the Contractor has provided OPG with the Workplace Safety and Insurance Board registration number for each member of the Contractor’s Personnel providing Services at the Site for the period covered by the certificate; and
5. (a) there are no known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by the Agreement and which are listed in the Appendix to this Certificate, including an estimate of the value of each such claim; or
 - (b) there are outstanding claims which have not been communicated to OPG in the form of Notice required by this Agreement and each of these claims is described in the attached form of Notice required by this Agreement and is delivered to OPG in a timely manner, and there are no other known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by this Agreement and which are listed in the Appendix to this Certificate, including an estimate of the value of each such claim.

Defined terms used in this Certificate that are not defined in this Certificate have the meanings given to those terms in the Agreement.

DATED: [date], 20[•].

JMX CONTRACTING INC.

By: _____

Name:

Title:

Statutory Declaration - Application for Payment

C A N A D A) IN THE MATTER OF THE LAMBTON
 PROVINCE OF ONTARIO) GENERATING STATION DEMOLITION
) AGREEMENT #RG00287132 BETWEEN
) ONTARIO POWER GENERATION INC.
) AND JMX CONTRACTING INC.
) DATED AS OF JULY 10, 2018
) (the "Agreement")

I, [•], of the [City] of [•], Ontario, do solemnly declare that:

1. I am the [title] of JMX CONTRACTING INC. and as such have personal knowledge of the facts set out in this solemn Declaration.
2. Defined terms used in this solemn Declaration but not defined in this solemn Declaration have the meanings given to those terms in the Agreement.
3. All
 - (a) payments due to Subcontractors;
 - (b) wages and benefit payments due to any of the Contractor's Personnel; and
 - (c) contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan or union fund in accordance with a collective agreement or Applicable Laws,

have been paid in a timely manner on or before the date of the Application for Payment to which this solemn Declaration relates, subject to any withholdings or holdbacks required by Applicable Laws.

4. Title to the applicable part of the Project will pass to OPG in accordance with section 7.4 of the Agreement no later than the date of OPG's payment to which this solemn Declaration relates.
4. (a) there are no known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by the Agreement and which are listed in the Appendix to this solemn Declaration, including an estimate of the value of each such claim; or
 - (b) there are outstanding claims which have not been communicated to OPG in the form of Notice required by this Agreement and each of these claims is described in the attached form of Notice required by this Agreement and is delivered to OPG in a timely manner, and there are no other known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by this Agreement and

which are listed in the Appendix to this solemn Declaration, including an estimate of the value of each such claim.

I make this solemn Declaration conscientiously believing it to be true and knowing it is of the same force as if made under oath.

DECLARED before me at the [City])
of [•], Ontario on [•], 20[•])
)
)
)

Name:
A Commissioner, etc.

Schedule 1.1(i) - Contract Schedule

Item	Milestone Description	Date
1.	Delivery of Letter of Credit	Within 10 days of the date of Agreement
2.	Substantial Completion	July 6, 2020
3.	Final Completion Date	July 23, 2020

Schedule 1.1(v) - OPG's Delegation Notice

DELEGATION OF AUTHORITY

To: JMX CONTRACTING INC.	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 OPG’s Delegation Notice No. • Date: •
---------------------------------	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 3.2 of the Agreement, OPG hereby delegates authority to the Persons named below for the subject matters and subject to the limitations set out in this Notice. These delegations will continue in full force until revoked by OPG in another delegation of authority Notice.

Title	Delegate	Effective Date	Scope of Authority

ONTARIO POWER GENERATION INC.

By: _____
Name:

Title:

Schedule 1.1(cc) - Project Change Directive Form

PROJECT CHANGE DIRECTIVE

To: JMX CONTRACTING INC.	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”)
	Contract No.: #RG00287132
	Project Change Directive No. •
	Date: •

Defined terms used in this Notice have the same meanings given to those terms in the Agreement.

Change to Services

In accordance with section 5.1(a) of the Agreement, OPG hereby directs the Contractor to make the following changes in the Services:

Expected Change to Contract Price

OPG expects that the changes to the Services set out in this Notice will have the following effect on the Contract Price:

Contract Price, as set out in the Agreement as of the date of the Agreement	\$ _____
Total Contract Price, as set out in the Agreement as of the date of the Agreement, as adjusted by all changes in the Contract Price made under all Amendments	\$ _____
Total expected change to the Contract Price under this Notice	\$ _____

Expected Change to Contract Schedule

OPG expects that the changes to the Services set out in this Notice will have the following effect on the Contract Schedule:

ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

Schedule 1.1(ff) - Site and Designated Areas

The Site is Lambton Thermal Generating Station. Site photo follows on next page.



Schedule 1.1(ii) - Specifications

1. Demolition Specification Lambton Generating Station Project LMB80889 File: NA27-SPEC-00970-0001 Revision 1 dated May 22, 2018

Schedule 2.2(a) - Organisational Chart

Follows on next page.

Schedule 2.2(b) - Scopes of Authority for Contractor's Delegates

DELEGATION OF AUTHORITY

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Delegation No. • Date: •
---	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 2.2(b) of the Agreement, the Contractor hereby delegates authority to the individuals named below for the subject matters and subject to the limitations set out in this Notice. These delegations will continue in full force until revoked by the Contractor in another delegation of authority Notice.

Title	Delegate	Effective Date	Scope of Authority
			•

JMX CONTRACTING INC.

By: _____
Name: _____
Title: _____

Schedule 2.4(c)(2) - Contractor's Safety Program

Follows on next page.

Schedule 2.5(a)(2) - Contractor's Environmental Policies

Follows on next page.

Schedule 2.5(b) - Environmental Notice
ENVIRONMENTAL NOTICE AND CONSENT

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Environmental Notice No. • Date: •
---	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. Under section 2.5(b) of the Agreement, the Contractor hereby requests the written consent of OPG to:

- (a) discharge, release, emit or deposit; or
- (b) disturb vegetation or wildlife on the Site through discharging, releasing, emitting or depositing,

the substance, material, solid, liquid or gas described on Appendix A to this Environmental Notice in the manner described on Appendix A.

JMX CONTRACTING INC.

By: _____
 Name: _____
 Title: _____

Consented to by OPG on _____, 20• on the terms set out in Appendix B.

ONTARIO POWER GENERATION INC.

By: _____
 Name: _____
 Title: _____

ENVIRONMENTAL NOTICE AND CONSENT

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Environmental Notice No. • Date: •
---	---

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. Under section 2.5(c) of the Agreement, the Contractor hereby gives OPG notice of:

(c) the changes to its environmental management and protection program and plan described on Appendix A to this Environmental Notice;	<input type="checkbox"/>
(d) the discharge, spill, release, emission, deposit or leak described on Appendix A to this Environmental Notice; or	<input type="checkbox"/>
(e) the order, directive, notice or other communication attached as Appendix A to this Environmental Notice from the Governmental Authority set out in the order, directive, notice or other communication.	<input type="checkbox"/>

JMX CONTRACTING INC.

By: _____
 Name: _____
 Title: _____

Schedule 2.7(a)(1) - Submittal Schedule

SECTION 1– INITIAL SUBMITTALS

INITIAL SUBMITTALS				
Submittal	Date for Delivery to OPG	Individuals To Be Delivered To	Date for Comments from OPG	Date of Finalisation
Final Project Execution Plan/Project Narrative, including:	Prior to construction			
Engineering Support Plan				
• Chimney Felling Plan				
• Traffic Control Plan				
• Protection Plan				
Project Site Specific Safety Plan (PSSSP), including:				
• Emergency Response Plan				
• Fire Protection Plan				
Project Site Specific Environmental Plan (PSSEP), including:				

• Waste Management Plan				
• Storm Water Management Plan				
• Sediment Control Plan				
Inspection and Test Plan (QA/QC program)				
Recycling Program per O.Reg. 103/94				
Level 3 Project Schedule				
Demolition Permit Application Documentation				
Supervisors' Names and Phone Numbers (including home numbers) including dedicated safety officer				
Detailed monthly report of recovered material removed from site	During construction			
Demolition Sequencing Plan	45 days before the start of the work			
Blasting Plan	45 days before the start of the work			
Grading Plan	45 days before the start of the work			

	work			
Approved building permits for the structures demolished	After Construction			
Photos and video of demolition activities				
A document of Site Restoration activities, as-left conditions, drawings, etc.				
Waste manifests (eg. PCB ballasts, asbestos)				
Listing of hazardous waste removed from site				
Records of materials removed – weight and type				
Listing of scope changes or additions				
Organized record of all monitoring data obtained during the demolition activities – including at a minimum - vibration, dust, noise				
Warranties				
All drawings to be revised to represent the “as built” condition. Print to be in black & white – D size One dwg per PDF file in version 9.0				

One dwg per DWG file in version 2008				
Contract Close-out Documentation				

Schedule 2.7(a)(2) - Progress Schedule

Follows on next page.

Schedule 2.7(d) - Schedule Reporting Form

LAMBTON DEMOLITION PROJECT

Project Status Report – •, 20•

Executive Summary	•
Milestones	See Appendix A
Cost Status	See Appendix B
Health and Safety and Environmental	See Appendix C <i>[Attach as Appendix C the safety statistics required by section 2.4(f) of the main body of this Agreement. Also describe any environmental issues.]</i>
Current Status	<p><i>[This section should be broken down by the components of the Services, e.g. mechanical, electrical, common systems. Include:</i></p> <ul style="list-style-type: none"> <i>• a detailed description of activities, together with any charts and photographs for each stage and portion of the Services;</i> <i>• the status of key manufactured goods (e.g. turbines, goods over a dollar threshold); and</i> <i>• a description of the status of commissioning, testing and quality assurance and include copies of quality assurance documents, test results and certificates.]</i>
Upcoming Activities	<i>[Discuss upcoming activities with a particular focus on activities planned before the next status report.]</i>
Risks	<i>[Discuss comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract Schedule and the Progress Schedule and the measures being (or to be) adopted to overcome delays.]</i>
Issues	<i>[Discuss other issues.]</i>
Amendments	<i>[Sequentially list by number all Amendments and Project Change Directives]</i>
Status of Unresolved Project Change Directives	<i>[List and briefly describe status all outstanding Project Change Directives (including ones deemed to have been given on account of excusable delays under section 6.2 of the main body of this Agreement) that have not been agreed to between the parties.]</i>

Financial	See Appendix D [<i>Attach, as Appendix D the financial information required by section 2.1(e) of the main body of this Agreement.</i>]
-----------	--

Prepared by: Contractor's Representative Date: •	Approved by: OPG's Representative Date: •
--	---

Appendix A**Current Milestones (Completed Since Last Report and Predicted to be Complete Before Next Report)**

Description of Milestone	Original Schedule	Previous Forecast	Current Forecast/Actual

Appendix B

Schedule 2.8(a) - Submittal Requirements

SECTION 1– DRAWINGS AND INFORMATION PROVIDED TO CONTRACTOR

1.1 Resolution of Conflicts Between Drawings

If there is a conflict between drawings, the drawing with the later date will govern. If there is a conflict between drawings of the same date, the drawing of larger scale will govern. Subject to section 1.2, if any of the Specifications conflict with any drawing provided by the Contractor, the Specifications will govern.

1.2 Interpretation of Drawings

Figured dimensions on a drawing will govern over measurements scaled from a drawing. Figures on drawings identified with lines and arrow points show exact dimensions for construction purposes. The Contractor, without extra charge, will make adjustable parts fit to fixed parts. If any of the figured dimensions on a drawing conflict with any product specified in the Specifications, the dimensions of the specified product will govern.

1.3 Identification of Conflicts

If the Contractor becomes aware of any:

- (a) discrepancy or inconsistency between any two Submittals that cannot be reconciled under section 1.1;
- (b) discrepancy or inconsistency between any Submittal and any of the Specifications that cannot be reconciled under section 1.1;
- (c) discrepancy or inconsistency between any Submittal or the Specifications and the physical conditions at or near the Site;
- (d) any error, including for failure to satisfy any Applicable Laws or Approvals, in any of the drawings, the Specifications or in the lines and grades given for the construction of the Project,

the Contractor will immediately notify OPG's Representative. After the Contractor provides OPG's Representative with all information reasonably requested him or her, OPG's Representative will discuss the error, deficiency, defect, inconsistency, discrepancy, omission or deviation and provide a prompt direction to the Contractor resolving the issue (by way of a Project Change Directive, if requested by the Contractor). If the Submittals, Specifications, or any portion of them, are found to be in error, deficient, defective, inconsistent, incomplete or deviate from the requirements of this Agreement in any way, the Contractor will perform, at its cost, any corrective work to remedy the erroneous, deficient, defective, inconsistent or incomplete part of the Submittals and/or Specifications and take any other remedial action with respect to the Services, Goods or Project arising on account of such error, deficiency, defect, inconsistency, discrepancy, omission or deviation. All Services provided after the Contractor became aware of the error, deficiency, defect, inconsistency, discrepancy, omission or deviation

from the requirements of this Agreement will be at the Contractor's sole risk until OPG's Representative makes a decision as to how to reconcile or fix the error, deficiency, defect, inconsistency, discrepancy, omission or deviation. If the Contractor fails to so notify OPG's Representative respecting any such error, deficiency, defect, inconsistency, discrepancy, omission or deviation, the Contractor may not make any claim whatsoever against OPG respecting such error, deficiency, defect, inconsistency, discrepancy, omission or deviation.

1.4 Information Provided to Contractor

OPG may have provided, or may provide, the Contractor with dimensions and other data contained in drawings, documents and other information provided either verbally or in writing respecting lot sizes, grade elevations, existing obstructions on or near the Site, location and position of sewers, conduits, pipes, wires and other services and/or physical conditions, including ground conditions. OPG has provided all this information solely for the convenience of the Contractor and without any guarantee of accuracy. Notwithstanding any term in this Schedule 2.8(a), to the extent that the Contractor wishes to rely on any such information, the Contractor will independently verify such information.

1.5 Confidentiality Policies

The Contractor will comply with OPG's policies CIO-STD-CS-003 rev 00 dated September 18, 2002 (Information Security Classifications) and CIO-STD-CS-004 rev 00 dated September 18, 2002 (Protection of Classified Information) as amended from time to time (provided OPG has provided the Contractor with Notice of the applicable amendment).

Schedule 2.9(b) - Notice of Error in Specifications**NOTICE OF ERROR IN SPECIFICATIONS**

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Specification Error Notice No. • Date: •
---	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 2.9(b) of the Agreement, the Contractor hereby gives OPG notice of the error/deficiency/defect/inconsistency/discrepancy/omission/Deviation from the requirements of the Agreement in the Specifications as more particularly described below:

- *[Describe issue]*

JMX CONTRACTING INC.

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:

Title:

Schedule 2.10(c) - Expediting Notice

EXPEDITING NOTICE

To: JMX CONTRACTING INC.	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Expediting Request No. • Date: •
---------------------------------	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. OPG has determined that:

(a) the Contractor is not providing the Services in accordance with the Contract Schedule; or	<input type="checkbox"/>
(b) the quality of Services or Goods does not meet the requirements of this Agreement.	<input type="checkbox"/>

Therefore, under section 2.10(c) of the Agreement, OPG hereby requires the Contractor to take the following actions:

• *[Describe Requirements]*

ONTARIO POWER GENERATION INC.

By: _____

Name:

Title:

Schedule 2.12 - Shipping, Handling and Storage for Contractor's Property

It is the Contractor's responsibility to:

- (a) Ensure that the Contractor's Property is packed, braced and loaded in such a manner as to prevent physical damage and damage from environmental conditions. Where necessary, skids, hauling eyes, jacking plates, and sling hooks will be used;
- (b) Clearly mark on the outside of each shipping container, package, box, crate, bundle, or unpackaged component all specific instructions setting out any precautions required during shipping, handling and storage in a durable envelope securely attached to each shipping container and suitably labelled;
- (c) Monitor the Contractor's Property while it is on Site to ensure that it is safely and appropriately stored, handled and protected from damage; and
- (d) Ensure that all shipping containers, packages, boxes, crates, bundles, and unpackaged components are clearly and indelibly marked to show necessary shipping, handling and storage information. Labels and markings will be clearly and visibly applied by a method suitable to the type of product and packaging involved and will provide the following information:
 - (1) destination address and OPG's Purchase Order number;
 - (2) other identification specific to the Services;
 - (3) the Contractor's shipment identification number, numbering of shipping containers, packages, boxes, crates, bundles, components, or assemblies;
 - (4) the mass and sizes of each shipping/storage container (if the lifting points are critical, they will be clearly marked and identified);
 - (5) shipping, handling and storage precautions; and
 - (6) identified as the property of the Contractor.

A detailed packing slip, listing each separate item, will be enclosed in a weatherproof envelope and firmly attached to each shipping container, package, box, crate, bundle, or unpackaged component.

Where applicable, the Contractor will be responsible for obtaining any permits required for transportation or storage of the Contractor's Property.

Schedule 2.13(c) - Subcontractors

Subcontractor	Summary of Services or Goods to be Provided
Big Show Scaffolding 5800 Ambler Dr., Mississauga, ON L4W 4J4	Scaffolding
Pinchin Environmental – Sarnia 250 Christina St N., Sarnia, ON N7T 7V3	Environmental testing and monitoring
Clean Harbors 4090 Telfer Rd, Corunna, ON N0N 1G0	On-site water/chemical management, treatment and disposal
JMX Contracting Inc. 130 Ram Forest Rd., Stouffville, ON L4A 2G8	Abatement
Jim Redyke Dykon Blasting 8120 W 81st. S, Tulsa, OK, USA, 74131	Demolition, blasting
Aecon 150 Sheldon Dr, Cambridge, ON N1R 7K9	Forebay protection
WHS Environmental Services Inc. 838 Fennell Ave E., Suite 301, Hamilton, ON L8V 1V6	Seismic and environmental testing
SL Marketing 555 Brown Rd, Welland, ON L3B 5N4	Scrap metal recycling

Schedule 2.13(e) - Labour Obligations

SECTION 1 – UNION OBLIGATIONS

1.1 Construction Collective Agreements

The Contractor will ensure that all construction trade Services provided at the Site will be carried out in accordance with the appropriate construction collective agreements (collectively, the “**Collective Agreements**”). The Contractor will comply with the Collective Agreements, including fabrication clauses, and will not take any action that would cause OPG to fail to comply with any of its obligations under the Collective Agreements.

SECTION 2 - ACKNOWLEDGEMENT OF LABOUR REQUIREMENTS FORM

The Labour Requirements Clause Form 1 forms part of this Schedule 2.13(e). The Contractor will advise all Subcontractors of these requirements and the Contractor will deliver to OPG’s Representative a written acknowledgement substantially in the form of Schedule 2.13(e) from each Subcontractor before that Subcontractor commences to provide Services at the Site.

SECTION 3 – OPG’S POLICIES AND PROCEDURES

3.1 Station Policies

The Contractor will comply with all OPG policies applicable to the generating station at which the Site is located. OPG’s current policies are set out in this Schedule 2.13(e).

3.2 Procedures

The Contractor will ensure that all the Services provided at the Site will be provided in accordance with OPG’s applicable procedures in force from time to time. OPG has made all of these procedures available to the Contractor.

STATION POLICIES

3.3 –Substances on Site

The Workplace Hazardous Material Information System (WHMIS) shall apply and all such materials shall be properly identified with WHMIS type warning labels. All shipments of such material to Ontario Power Generation Inc. sites shall include a Material Safety Data Sheet (MSDS).

3.4 Notice as to Hours of Work

Subject to section 2.11(c), before any individuals start to provide any Services at the Site, the Contractor will deliver a Notice to OPG’s Representative indicating the hours of work of each such individual or class of individuals.

3.5 Report to Station Security

The Contractor will cause each individual providing Services at the Site to report to OPG station security for the Site immediately upon arrival at the station and immediately before departure from the station. The Contractor will ensure that each such individual will indicate to OPG station security where that individual anticipates providing the Services during the individual’s time at the Site. (This information assists OPG in case of an emergency.)

3.6 Holidays

The Contractor will not permit any of the Services to be provided at the Site on a weekend or a holiday without the prior written permission of OPG’s Representative.

3.7 Hard Hats

The Contractor will ensure that each individual providing Services at the Site will wear, at all times on the Site, a hard hat that clearly identifies the individual’s name and the name or logo of the individual’s employer. The Contractor will ensure that all hats worn by members of the Contractor’s Personnel of the same employer are of the same colour.

SECTION 4 – PARKING

4.1 On Site Access

The Contractor will use entrances, exits and on-site routes as directed by OPG. The Contractor will comply with OPG's rules and requirements if access through the gate and related security is required. The Contractor will ensure that no individual providing Services at the Site will drive any private vehicles around the station for any reason other than parking in designated areas.

4.2 Minimise Vehicles

To assist in the maintenance of safety at the station, the Contractor will minimise the number of vehicles that the Contractor and the individuals providing Services at the Site have at the station at any time. The Contractor will ensure that any individual providing Services at the station and driving a vehicle of the Contractor or a Subcontractor that does not bear the name of the Contractor will obtain a tag from OPG station security.

4.3 Parking for Private Vehicles

The Contractor will cause each individual providing Services at the Site to park private vehicles in the areas designated from time to time by OPG's Representative in writing. Unless otherwise specified by OPG's Representative in writing, parking is on a first come, first served basis.

4.4 Speed Limits

The Contractor will ensure that no individual providing Services at the Site will drive (both private vehicles and vehicles of the Contractor) at speeds in excess of the speed limits posted at the generating station. OPG station security may prohibit any individual from driving at the station if that individual exceeds the speed limits posted at the station.

SECTION 5 — ALCOHOL AND DRUGS

The Contractor will ensure that no individual providing Services at the Site will bring to the station or the Site any alcohol, intoxicants, incapacitating agents or non-prescribed drugs. If any such individual is found with any such substance at the Site or at the station, OPG may seize and control such substances, and OPG will treat the individual in accordance with applicable OPG procedures. If OPG station security believes that any individual providing Services at the Site is under the influence of any such substance, OPG station security may detain such individual and advise the Contractor.

Schedule 4.1 - Security Documents

LETTER OF CREDIT

[Letterhead of Canadian Chartered Bank]

	<p>Date of Issue: •</p> <p>Irrevocable standby letter of credit</p> <p>No: •</p> <p>Amount: Not exceeding CAD \$•,000,000</p> <p>Date of Expiry: •</p>
<p>To:</p> <p>Ontario Power Generation Inc. 800 Kipling Avenue Toronto, Ontario M8Z 5G5</p> <p>Attention: Heidi Cyfko, Sr. Procurement Specialist</p>	<p>Applicant:</p> <p>JMX Contracting Inc. 130 Ram Forest Road Stouffville, Ontario L4A 2G8</p>

Dear Sirs/Mesdames:

At the request of JMX CONTRACTING INC. (the “**Customer**”), we hereby issue in your favour our irrevocable standby letter of credit for a maximum total amount not to exceed CAD \$3,094,775.00.

This letter of credit is available against presentation of the following documents delivered to us at •:

- (a) your written demand for payment under this letter of credit;
- (b) the original of this letter of credit for notation hereon of the drawing or, if no further drawings are available under this letter of credit, for cancellation; and
- (c) a certificate, signed by your Chief Financial Officer, Treasurer or Secretary stating that OPG is entitled to draw on this letter of credit under the agreement relating to Lambton Generating Station Demolition Agreement #RG00287132.

This letter of credit will be automatically renewed for a period of one year upon the expiration date set out above and thereafter each year upon each anniversary of such date,

unless at least 45 days before such expiration date, or before any anniversary of such date, we notify both you and the Customer in writing by registered mail that we elect not to so renew this letter of credit for any additional period. Upon your receipt of such notice of election not to renew this letter of credit, you may at any time before the expiration date, or anniversary of such date, draw under this letter of credit by your sight draft(s) drawn on us and bearing the statement "drawn under letter of credit no. •".

You are permitted any number of drawings under this letter of credit.

We will honour each demand made by you under this letter of credit which is accompanied by the documentation specified above, without inquiring whether you have the right, as between you and the Customer, to make such demand.

This letter of credit is irrevocable and will expire at 4:30 p.m. (Toronto time) on •.

To the extent not inconsistent with this letter of credit, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce publication no. 600.

[Name of Canadian Chartered Bank]

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 5.3 - Notice of Change in Applicable Laws

NOTICE OF CHANGE IN LAW

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Change in Law Notice No. • Date: •
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 5.3 of the Agreement, the Contractor hereby gives OPG notice that there has been:

(a) a change in Applicable Laws as described on Appendix A to this Notice;	<input type="checkbox"/>
(b) a change to a standard, specification, manual or code of a technical organisation or Governmental Authority as described on Appendix A to this Notice; or	<input type="checkbox"/>
(c) a new Canadian federal or provincial sales, use or excise tax, duties, or a change in the rate of such tax as described on Appendix A to this Notice	<input type="checkbox"/>

The change will have the following impacts on the Contract Price, the Services and the Contract Schedule:

- *[Describe impact]*

JMX CONTRACTING INC.

By: _____
Name: _____
Title: _____

Schedule 5.5(a) - Dispute Notice**INTENT TO RESOLVE DISPUTE NOTICE**

To: •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Dispute Notice No. • Date: •
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 5.5(a) of the Agreement, the undersigned hereby gives notice to the addressee that the undersigned wishes to have the Dispute related to the following matter resolved in accordance with section 5.5 of the Agreement:

- *[Describe disputed matter]*

•

By: _____
Name: _____
Title: _____

Schedule 6.2(b) - Excusable Delay Notice**EXCUSABLE DELAY NOTICE**

To: •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Excusable Delay Notice No. • Date: •
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement. Under section 6.2(b) of the Agreement, the undersigned hereby gives notice to the addressee that the undersigned is seeking relief of certain of its obligations under the Agreement because of an excusable delay as described below:

Date of Event	
Nature of Delay	
Impact of Delay on Agreement	
Anticipated Period of Delay	
Anticipated Impact on Contract Price	
Anticipated Impact on Contract Schedule	
Expected Actions to be taken to mitigate impact	

•

By: _____

Name:

Title:

Schedule 7.2 - Milestone Payment Schedule

Zone	MILESTONE TASK	PAYMENT MEASUREMENT	Total
Start-up	Mark Up Meeting	Upon completion	\$6,513.00
Start-up	Pre-Start Submittals	Upon completion	\$45,596.00
Start-up	Engineering for Demolition Permits	Upon completion	\$80,000.00
Start-up	Obtain Demolition Permits	Upon completion	\$21,000.00
Start-up	Site Mobilization	Upon completion	\$108,562.00
Start-up	Set Up Site Facilities	Upon completion	\$105,220.00
		Admin	
A	Demolish Stacker Reclaimer, Conveyor and Track	Upon completion	\$181,194.00
A	Bldg. 25 -Conveyor House Demolition	Upon completion	\$27,553.00
A	Bldg. 9 -Transfer House Demolition	Upon completion	\$27,553.00
A	Bldg. 8 -Crusher House Demolition	Upon completion	\$27,553.00
A	Bldg. 7 -Coal Handling Maintenance Bldg. Demolition	Upon completion	\$55,106.00
A	Bldg. 10 -Ash Dust Suppression Garage Demolition	Upon completion	\$27,553.00
A	Demolish Remaining Conveyor and Misc. Coal Handling Equipment	Upon completion	\$276,950.00
A	Bldg. 11-Stores Building Abatement	Upon completion	\$29,850.00
A	Bldg. 11-Stores Building Demolition	Upon completion	\$27,553.00
A	Bldg. 12-Warehouse Building Demolition	Upon completion	\$200,000.00
A	Bldg. 13-Stores Building Abatement	Upon completion	\$10,000.00
A	Bldg. 13-Stores Building Demolition	Upon completion	\$155,000.00
A	Bldg. 14-OPG Silver Warehouse Abatement	Upon completion	\$5,000.00
A	Bldg. 14-OPG Silver Warehouse Demolition	Upon completion	\$25,000.00
A	Bldg. 44&45-North Parking Garage Demolition	50% and 100% completion	\$492,500.00
		Zone A	
B	Intake and Discharge Pipe Capping and Forebay Inlet Isolations	50% and 100% completion	\$715,000.00
B	Install Forebay Protection Measures	50% and 100% completion	\$715,000.00
B	Bldg. 2-Administration Building Abatement	Upon completion	\$298,540.00
B	Bldg. 2-Administration Building Demolition	Upon completion	\$275,530.00
B	Backfill Basement	Upon completion	\$184,550.00
B	Bldg. 3-Unit #1 & 2 Pumphouse Abatement	Upon completion	\$29,850.00
B	Bldg. 3-Unit #1 & 2 Pumphouse Demolition	Upon completion	\$41,320.00
B	Bldg. 3-Unit #3 & 4 Pumphouse Abatement	Upon completion	\$29,850.00
B	Bldg. 3-Unit #3 & 4 Pumphouse Demolition	Upon completion	\$41,320.00
B	Bldg. 42-South Declorination Building Demolition	Upon completion	\$27,553.00

B	Bldg. 56-Clorination Building Demolition	Upon completion	\$27,553.00
B	Erect 315m of Chainlink Fence around Oily Water Separators	Upon completion	\$110,250.00
Zone B			
C	Bldg. 15 Drop Plans and Procedures Planning	Upon completion	\$33,380.00
C	Rapid Drain Tank Demolition	Upon completion	\$27,553.00
C	Bldg. 36-Unit #3 & 4 Ash Silo Demolition	Upon completion	\$55,100.00
C	Bldg. 15-Unit #3 Interior Demolition Drop Prep	Upon completion	\$137,760.00
C	Bldg. 15-Unit #3 Demolition Drop	Upon completion	\$55,107.00
C	Bldg. 15-Unit #3 Interior Post Drop Clean Up	50% and 100% completion	\$413,300.00
C	East Chimney Drop Procedures and Plans	Upon completion	\$43,420.00
C	East Chimney Drop Preparation	Upon completion	\$81,420.00
C	East Chimney Drop	Upon completion	\$261,000.00
C	East Chimney Clean Up	Upon completion	\$44,290.00
C	Bldg. 15-Unit #4 Interior Demolition Drop Prep	Upon completion	\$137,760.00
C	Bldg. 15-Unit #4 Demolition Drop	Upon completion	\$55,100.00
C	Bldg. 15-Unit #4 Interior Post Drop Clean Up	50% and 100% completion	\$413,300.00
Zone C			
D	Precipitator Area Drop and Demo Procedures and Plans	Upon completion	\$26,000.00
D	Bldg. 28-Unit #1 Precipitator Building and Surrounding Structure Demolition	50% and 100% completion	\$900,000.00
D	Bldg. 29-Unit #2 Precipitator Building and Surrounding Structure Demolition	50% and 100% completion	\$900,000.00
D	Bldg. 35-Unit #3 Precipitator Building and Surrounding Structure Demolition	50% and 100% completion	\$900,000.00
D	Bldg. 38-Unit #4 Precipitator Building and Surrounding Structure Demolition	50% and 100% completion	\$900,000.00
D	Bldg. 55-Unit #1 & 2 Ash Silo Demolition	Upon completion	\$55,100.00
D	Bldg. 27-Oil Pumphouse Demolition	Upon completion	\$55,100.00
D	Precipitator Area Clean Up, Pre-Stack Drop Preparation	Upon completion	\$104,980.00
D	North Stack Drop Procedure and Plans	Upon completion	\$52,000.00
D	South Stack Drop Procedure and Plans	Upon completion	\$52,000.00
D	North Stack Drop Preparation	Upon completion	\$81,420.00
D	South Stack Drop Preparation	Upon completion	\$81,420.00
D	North Stack Drop	Upon completion	\$261,000.00
D	North Stack Clean Up	Upon completion	\$44,290.00
D	South Stack Drop	Upon completion	\$261,000.00
D	South Stack Clean Up	Upon completion	\$44,290.00
Zone D			

E	Turbine Building Demolition Plans and Procedures	Upon completion	\$28,000.00
E	Bldg. 1a-Powerhouse Turbine Building Abatement	25%-50%-75%-100% completion	\$1,450,000.00
E	Bldg. 1a-Powerhouse Turbine Building Interior Demolition	25%-50%-75%-100% completion	\$1,610,000.00
E	Bldg. 1a-Powerhouse Turbine Building Demolition	25%-50%-75%-100% completion	\$1,290,000.00
E	Bldg. 40-Auxiliary Boiler Demolition	Upon completion	\$52,490.00
E	Boiler Buildings Demolition Plans and Procedures	Upon completion	\$52,000.00
E	Bldg. 1b-Powerhouse Boiler Buildings Abatement	20%-40%-60%-80%-100% completion	\$3,104,900.00
E	Bldg. 1b-Powerhouse Boiler Buildings General Interior Demolition	20%-40%-60%-80%-100% completion	\$1,410,000.00
E	Bldg. 1b-Powerhouse Boiler Buildings Pre-Drop Demolition	25%-50%-75%-100% completion	\$2,085,600.00
E	Bldg. 1b-Powerhouse Boiler Buildings Drop (4x Drops)	25%-50%-75%-100% completion	\$1,434,353.00
E	Bldg. 1b-Powerhouse Boiler Buildings Process and Clean Up	10%-20%-30%-40%-50%-60%-70%-80%-90%-100% completion	\$6,094,960.00
		Zone E	
F	Bldg. 18-Fabrication Shop Abatement	Upon completion	\$29,900.00
F	Bldg. 18-Fabrication Shop Demolition	Upon completion	\$27,553.00
F	Bldg. 17-Effluent Treatment Building Demolition	Upon completion	\$27,553.00
F	Bldg. 19-Ash Handling Filter Building Demolition	Upon completion	\$27,553.00
F	Bldg. 47-50-Small Misc. Building Demolition (OPTIONAL DEMO)	Upon completion	\$0.00
F	Bldg. 26-Service Maintenance Building Abatement (OPTIONAL DEMO)	Upon completion	\$0.00
F	Bldg. 26-Service Maintenance Building Demolition (OPTIONAL DEMO)	Upon completion	\$0.00
F	Bldg. 24-George Weiss Building Demolition (OPTIONAL DEMO)	Upon completion	\$0.00
F	Bldg. 16-South Maintenance Shop Demolition	50% and 100% completion	\$400,000.00
		Zone F	
G	Bldg. 20-Effluent Water Treatment & Reagent Prep Buildings Demolition	Upon completion	\$55,107.00
G	Bldg. 21-Garage/Carpenters Shop Demolition	Upon completion	\$27,553.00
G	Bldg. 57-Storage Dome Demolition	Upon completion	\$27,553.00
G	Bldg. 59-Limestone Storage Dome Demolition	Upon completion	\$27,553.00

G	Misc. Conveyor Demolition	Upon completion	\$82,660.00
G	Natural Gas Line Removal and Disconnect	Upon completion	\$160,000.00
G	Removal of Buried Ammonia Line	Upon completion	\$200,000.00
G	West Lift Station Equipment Removal	Upon completion	\$50,000.00
Zone G			
Close-out	Construction Power Switchgear	Upon completion	\$10,000.00
Close-out	Final Site Inspections	Upon completion	\$32,600.00
Close-out	Final Site Clean Up	Upon completion	\$136,920.00
Close-out	Demobilize	Upon completion	\$54,280.00
Close-out	Close Out Paper Work	Upon completion	\$50,000.00
All			\$30,947,750.00

Schedule 7.9(a) - Detailed Price Summary, Unit Prices and Option Prices

The Contract Price will be the sum of the amounts set out in Part A – Demolition Fixed Price.

Part A – Demolition Fixed Price

Item	Services	Demolition/ Construction Price
1	Demolition of Lambton Generating Station and provision of all Services in accordance with the Specification	\$29,430,000.00
2	Demolition of Building 44 - North Parking Garage Electrical Room	\$5,000.00
3	Demolition of Building 45 - North Parking Garage	\$487,500.00
4	Demolition of Building 12 - Warehouse	\$200,000.00
5	Demolition of Building 13 – Stores Building Green Warehouse	\$165,000.00
6	Demolition of Building 14 – OPG Silver Warehouse	\$30,000.00
7	Demolition of Building 16 – South Maintenance Shop	\$400,000.00
8	Construction Power Switchgear	\$10,000.00
9	Demolition of 4" natural gas pipeline from the Union Gas station, including making arrangements with Union Gas to disconnect it in the main gas compound on Oil Springs Line.	\$160,000.00
10	Removal of the west sewage lift station equipment located in the coal yard	\$50,000.00
11	Erect 315m of permanent chain-link fencing around the perimeter of two oily water separators, around the intake and outfall channels on both sides of the St. Clair Parkway, around the forebay, and in front of the existing black iron fencing on the west side of the property. This fencing will be in strict accordance with OPG's standard in Appendix J.	Price per m: \$350.00 \$110,250.00
12	Price reduction not-demolishing the north maintenance building.	-\$300,000.00
13	Removal of buried ammonia piping	\$200,000.00
	Total Price CAD	\$30,947,750.00

Part B - Scrap Recovery and Remarketing of Recovered Material

In general, the Contractor will make the determination of the best method of scrap recovery and remarketing of Recovered Material. The Contractor will make commercially reasonable efforts to maximise the Recovered Material revenue to OPG. The Contractor has guaranteed OPG a total revenue of \$31,401,500.00 from scrap and assets.

Revenue to OPG will be generated by two streams:

1. The sale of scrap
2. The remarketing of OPG assets or equipment

Sale of Scrap

Table 1 and Table 2 will be used for the sale of scrap.

- Table 1 sets out each type of scrap material, corresponding Set Quantities and calculations. The quantity of scrap materials up to the Set Quantities in Table 1 will be calculated in accordance with Table 1.
- For scrap material quantities over the Set Quantities, Table 2 will be used.

The Table 1 Set Quantities are guaranteed by the Contractor and are the minimum quantities of scrap per category anticipated to be recovered by the Contractor (the “**Set Quantity(ies)**”). Should the actual quantity of scrap in any category be less than the Set Quantity for that category in Table 1, the Contractor guarantees OPG payment based on the Set Quantity at the Scrap Type Value rate for the applicable scrap type in Table 1, payable to OPG at the conclusion of the project. The Scrap Type Value rates set out in Table 1 are fixed for the duration of the Project and not subject to change. Table 1 also includes a guaranteed amount for remarketing of OPG assets or equipment.

Example: The Set Quantity for Copper #1 is 1,300,000 lbs. At the end of the Project, it is determined that only 1,250,000 lbs. of Copper #1 was removed from the Site. The outstanding quantity of Copper #1 from the Set Quantity is 50,000 lbs. The remaining payment to OPG will be $50,000 \text{ lbs} \times \$3.36/\text{lb} = \$168,000$ in accordance with Table 1.

Remarketing of OPG Assets or Equipment

Except for the guaranteed amount (\$667,000.00) for OPG assets in Table 1, Table 3 will apply for OPG asset or equipment recovery. The line 16 for OPG assets in Table 1 is exclusive of the Set Quantities. For greater certainty, once the Contractor has sold \$667,000.00 of OPG assets, the arrangements of Table 3 will apply.

**TABLE 1: RECOVERED MATERIAL SCRAP CALCULATION SHARING WITH OPG
UP TO THE SET QUANTITIES OF TABLE 1**

The Table 1 calculations for scrap up to the Set Quantity of scrap for each type of scrap will be based on the Scrap Weight, the Scrap Type Value for each type of scrap, and the Processing Fee for each type of scrap. Example calculations for Table 1 follow.

Table 1 Example Calculations

Example 1: The Contractor moves offsite 500 tonnes of P&S prepared in March 2019 and the calculation proceeds as follows:

OPG share will be:

$$((\text{Scrap Type Value}) - (\text{Processing Fee})) \times (\text{Scrap Weight}) = (\$320/\text{tonne} - \$40.00/\text{tonne}) \times 500 \text{ tonnes} = \$140,000.00$$

Example 2: The Contractor moves offsite 50,000 lbs of insulated copper wire in August 2019 and the calculation proceeds as follows:

OPG share will be:

$$((\text{Scrap Type Value}) - (\text{Processing Fee})) \times (\text{Scrap Weight}) = (\$1.35/\text{lb} - \$0.11/\text{lb}) \times 50,000\text{lbs} = \$62,000.00$$

TABLE 1

Item	Scrap Type	Scrap Type Value	Set Quantity for Scrap Type	Processing / Shipping Fee	Guaranteed Total
1	P&S Prepared 4ft	\$320.00	50,000	\$40.00	\$14,000,000.00
2	Heavy Melt #1	\$290.00	20,000	\$40.00	\$5,000,000.00
3	Shredding (machine shop turnings)	\$250.00	6,790	\$40.00	\$1,425,900.00
4	Rebar (#1 Heavy Melt)	\$230.00	5,040	\$40.00	\$957,600.00
5	Cast Iron	\$240.00	2,000	\$40.00	\$400,000.00
6	Copper #1 (lbs)	\$3.36	1,300,000	\$0.11	\$4,225,000.00
7	Insulated Copper Wire (lbs)	\$1.35	1,600,000	\$0.11	\$1,984,000.00
8	SS316 (lbs)	\$0.76	400,000	\$0.11	\$260,000.00
9	SS304 (lbs)	\$0.64	400,000	\$0.11	\$212,000.00
10	Aluminum Plate (lbs)	\$0.85	300,000	\$0.11	\$222,000.00
11	Aluminum Boiler Siding (lbs)	\$0.60	100,000	\$0.11	\$49,000.00
12	Brass – Admiralty (lbs)	\$2.30	200,000	\$0.11	\$438,000.00
13	Monel (lbs)	\$3.20	400,000	\$0.11	\$1,236,000.00
14	Motors (lbs)	\$0.26	1,000,000	\$0.11	\$150,000.00
15	Transformers – based on total weight (lbs)	\$0.18	2,500,000	\$0.11	\$175,000.00
16	Remarketable OPG Asset				\$667,000.00
				Total	\$31,401,500.00

TABLE 2: RECOVERED MATERIALS SCRAP CALCULATION SHARING WITH OPG FOR QUANTITIES GREATER THAN SET QUANTITIES GIVEN IN TABLE 1

Table 2 Example Calculations

Example 1:

A total of 65,000 tonnes of P&S prepared is removed from site. Compared to the Set Quantities in Table 1 that is (65,000 tonnes - Set Quantity of 50,000 tonnes = 15,000 tonnes). Therefore, there are 15,000 tonnes of additional P&S prepared scrap. The Contractor moves this additional scrap in October of 2019 and the Detroit benchmark source for P&S prepared is \$300.00/tonne CAD. Then the calculation per table 2 proceeds as follows:

OPG share will be:

$$((\text{Scrap Type Current Benchmark}) - (\text{Processing Fee})) \times (\text{Scrap Weight}) \times (\text{OPG share}) = (\$300.00/\text{tonne} - \$40.00/\text{tonne}) \times 15,000 \text{ tonnes} \times 0.65 = \$2,535,000.00$$

The Contractor share will be:

$$((\text{Scrap Type Current Benchmark}) - (\text{Processing Fee})) \times (\text{Scrap Weight}) \times (\text{Contractor share}) = (\$300.00/\text{tonne} - \$40.00/\text{tonne}) \times 15,000 \text{ tonnes} \times 0.35 = \$1,365,000.00$$

Example 2:

A total of 426,000 lbs of Monel is removed from site. Compared to the Set Quantities in Table 1 that is (426,000 lbs - Set Quantity of 400,000 lbs = 26,000 lbs). Therefore, there is 26,000 lbs of additional Monel scrap. The Contractor moves this scrap in December 2019 and the Detroit benchmark source is for Monel is \$3.22/lb CAD; then the calculation per table 2 proceeds as follows:

OPG share will be:

$$((\text{Scrap Type Current Benchmark}) - (\text{Processing Fee})) \times (\text{Scrap Weight}) \times (\text{OPG share}) = (\$3.22/\text{lb} - \$0.11/\text{lb}) \times 26,000 \text{ lbs} \times 0.65 = \$52,559.00$$

The Contractor share will be

((Scrap Type Current Benchmark) – (Processing Fee)) X (Scrap Weight) X (Contractor share) = (\$3.22/lb - \$0.11/lb) X 26,000 lbs X 0.35= \$28,301.00

TABLE 2

Item	Scrap Type	Benchmark Source	Benchmark Value in \$/ Tonne, Lb (BMRK) Converted To CAD	Processing/ Shipping Fee (PSF)	Current Scrap Value (CSV)	Weight over Set Quantities (W)	OPG share equation	Contractor share equation
1	P&S Prepared 4ft	Detroit	BMRK at time of shipment from the Site	\$40.00	,=BMRK-PSF	W (in tonnes)	,= CSV X W X 0.65	,= CSV X W X 0.35
2	Heavy Melt #1	Detroit	BMRK at time of shipment from the Site	\$40.00	,=BMRK-PSF	W (in tonnes)	,= CSV X W X 0.65	,= CSV X W X 0.35
3	Shredding (machine shop turnings)	Detroit	BMRK at time of shipment from the Site	\$40.00	,=BMRK-PSF	W (in tonnes)	,= CSV X W X 0.65	,= CSV X W X 0.35
4	Rebar (#1 Heavy Melt)	Detroit	BMRK at time of shipment from the Site	\$40.00	,=BMRK-PSF	W (in tonnes)	,= CSV X W X 0.65	,= CSV X W X 0.35
5	Cast Iron	Detroit	BMRK at time of shipment from the Site	\$40.00	,=BMRK-PSF	W (in tonnes)	,= CSV X W X 0.65	,= CSV X W X 0.35
6	Copper #1 (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
7	Insulated Copper Wire (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
8	SS316 (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
9	SS304 (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
10	Aluminum Plate (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
11	Aluminum Boiler Siding (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
12	Brass – Admiralty (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
13	Monel (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
14	Motors (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35
15	Transformers – based on total weight (lbs)	Detroit	BMRK at time of shipment from the Site	\$0.11	,=BMRK-PSF	W (in lbs)	,= CSV X W X 0.65	,= CSV X W X 0.35

TABLE 3: ASSET OR EQUIPMENT RECOVERY

The Contractor will market the existing assets or equipment from this Project and try to sell it at a minimum of 2.5 times the scrap value. At a minimum, the Contractor will compensate OPG for assets or equipment sold at the scrap value calculated in accordance with Table 1 up to the Set Quantities (excluding assets or equipment in line 16 of Table 1). For greater certainty, up to the Set Quantities in Table 1 no sale of assets or equipment will result in a compensation lower than that calculated in accordance with Table 1. The Contractor shall be solely responsible for arranging or executing the dismantling and removing of equipment from Site.

The profits from sale of assets or equipment will be shared between OPG and the Contractor as follows:

OPG SHARE:	50% OF THE EQUIPMENT SALE
CONTRACTOR SHARE:	50% OF THE EQUIPMENT SALE

Table 3 Example Calculation

Example: The Contractor finds a buyer for one of the coal pulverizers and the weight is 104 tons of P&S prepared 4ft and 8,960 lbs of motor scrap. The selling price is \$75,000.00 plus buyer pays for dismantling. Then the calculation proceeds as follows;

OPG share of the sale:

$$(\text{Selling price}) \times (\text{OPG share}) = \$75,000 \times 0.50 = \$37,500.00$$

Contractor's share of the sale:

$$(\text{Selling price}) \times (\text{Contractor share}) = \$75,000 \times 0.50 = \$37,500.00$$

After the sale is confirmed, the amounts of 104 tons of P&S prepared 4ft and 8,960 lbs. of motor scrap would subsequently be deducted from the set quantity totals for those scrap types in Table 1.

Part C – Option Prices

i. Demolition Services

Item	Description	Demolition Price	Revenue Amount
1	Demolition of Building 24 – George Weisz Building	\$160,000.00	\$15,000.00
2	Demolition of Building 26 – Services Maintenance Building	\$35,000.00	\$1,000.00
3	Demolition of Building 47 – Storage Shed (Quonset Hut)	\$20,000.00	\$3,000.00
4	Demolition of Building 48 – Storage Shed (Quonset Hut)	\$20,000.00	\$3,000.00

ii. Construction Services

No.	Activity	Description	Price	Unit
1	Price for the Complete Work including design, detailing, supply, fabrication, assembly, installation, inspection, documentation and warranty for all areas in compliance with the Technical Specification	Option 1: with zinc coated galvanized iron Chain Link Fencing with 2.44m fabric with and barbed wire, all as per OPG document DSP-08960.04-001.02-001.04 Option 2 : with black vinyl coated 1.97m fabric width Chain Link Fencing, in accordance with the CAN/CGSB-138.1, Sec. 9.1 (g)	Opt.1 \$195,468.00 Opt.2 \$216,528.00	Lump Sum
2	Price reduction for not doing the three segments of 175m (45m+45m+85m) along the Power Plant Perimeter Fence	For Option 1 For Option 2	Opt.1 \$28,367.00 Opt.2 \$30,703.00	Lump Sum
3	No. of working days required for the completion of work from the day of mobilization till the day of handing over the completed work to OPG	For Option 1 For Option 2	28 Days for Opt.1 or 28 Days for Opt.2	Days

No.	Activity	Description	Price	Unit
4	Supply and installation of zinc coated galvanized iron Chain Link Fencing with 2.44m fabric width and barbed wires	Unit rate to supply and install including design, procurement, labour and quality control, all as per the contract. This rate will be used for calculating any additions or reduction of the work	\$210.00	Linear metre
5	Supply and installation of black vinyl coated Chain Link Fencing with 1.97m fabric width without any barbed wire	Unit rate to supply and install including design, procurement, labour and quality control, all as per the contract. This rate will be used for calculating any additions or reduction of the work	\$294.00	Linear metre
6	Supply and install New signs as per specification	Supply and install	\$150.00	Each

iii. **Removal of Minor Assets & Inventory (reference Specification section 2.2.7)**

No.	Activity	Price
1	packaging and loading certain assets (to be defined by OPG after mobilization) onto trucks provided by OPG	Time and Material in accordance with Schedule 7.9(a) Part D

Note: Should OPG exercise this option iii Removal of Minor Assets & Inventory, any weights associated with this inventory would be deducted from the applicable scrap type category in Table 1 and the total amount of \$31,018,000.00 would be adjusted for the decrease in Set Quantity of those scrap types.

Part D – unit rates for discovery work

<u>DEMOLITION LABOUR (per hour)</u>	<u>REG TIME</u>	<u>OVER-TIME</u>	<u>SUN & STAT</u>
GENERAL MANAGER	\$148.00	\$222.00	\$296.00
ENGINEER	\$128.00	\$192.00	\$256.00
HEALTH & SAFETY MANAGER	\$112.00	\$168.00	\$224.00
HEALTH & SAFETY CO-ORDINATOR	\$75.00	\$112.50	\$150.00
OPERATIONS MANAGER	\$113.00	\$169.50	\$226.00
PROJECT MANAGER	\$95.00	\$142.50	\$190.00
SUPERVISOR	\$94.00	\$141.00	\$188.00
FOREMAN	\$94.00	\$141.00	\$188.00
OPERATOR	\$91.00	\$136.50	\$182.00
TORCHMAN	\$86.00	\$129.00	\$172.00
LABOURER	\$76.00	\$114.00	\$152.00
NIGHT SHIFT PREMIUM	\$7.00	\$10.50	\$14.00
ROOM & BOARD (day)	\$188.00	\$282.00	\$376.00
TRAVEL TIME	\$30.00	\$45.00	\$60.00
PICK UP TRUCK (day)	\$75.00		

<u>EXCAVATOR (or similar per hour excluding operator)</u>	<u>BUCKET</u>	<u>GRAPPLE</u>	<u>SHEAR/HAMMER</u>
BOBCAT MINI	\$72.50	\$85.00	\$90.00
8 TON KABOTA	\$85.00	\$105.00	\$130.00
CAT 120	\$95.00	\$113.00	\$160.00
CAT 320/325	\$130.00	\$150.00	\$210.00
CAT 330	\$135.00	\$185.00	\$250.00
CAT 345/349	\$150.00	\$190.00	\$285.00
CAT 330 HIGH REACH (80 FEET)			\$500.00

<u>LOADER DOZER (or similar per hour excluding operator)</u>	<u>BUCKET</u>	<u>GRAPPLE</u>	<u>SHEAR/HAMMER</u>
SKID-STEER	\$61.00	\$67.00	\$90.00

Any Third Party items or consumables at cost + 10%, back up to be included.

Schedule 7.11(a) - Substantial Completion Form

NOTICE OF SUBSTANTIAL COMPLETION

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Date: •
---	--

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 7.11(a) of the Agreement, the Contractor hereby gives OPG notice that Substantial Completion has occurred as follows:

Date of “substantial performance” under the <i>Construction Lien Act (Ontario)</i>	•
Grounds for Requesting Substantial Completion	• <i>[Contractor to confirm that the requirements of the tests for Substantial Completion have been met]</i>
Costs to Finish the Services	\$•
Delivery of Approvals	• <i>[Contractor to set out the dates on which Approvals were delivered and/or attach remaining Approvals]</i>
Delivery of Reports	• <i>[Contractor to set out on dates on which reports were delivered and/or attach remaining reports]</i>
Independent Professional Certificate	Attached as Appendix A.

JMX CONTRACTING INC.

By: _____
Name: _____
Title: _____

Schedule 7.11(b) - Substantial Completion Confirmation Form**CONFIRMATION OF SUBSTANTIAL COMPLETION**

To: JMX CONTRACTING INC.	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Date: •
---------------------------------	---

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. OPG has determined that:

(d) Substantial Completion has occurred effective •, 20•; or	<input type="checkbox"/>
(e) Substantial Completion has not occurred for the reasons set out in Appendix A.	<input type="checkbox"/>

ONTARIO POWER GENERATION INC.

By: _____
Name: _____
Title: _____

Schedule 7.12 - Final Completion Form**CONFIRMATION OF FINAL COMPLETION**

To: JMX CONTRACTING INC.	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Date: •
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Defined terms used in this Notice have the same meanings given to those terms in the Agreement. OPG has determined that:

(f) Final Completion has occurred effective •, 20•; or	<input type="checkbox"/>
(g) Final Completion has not occurred for the reasons set out on Appendix A.	<input type="checkbox"/>

ONTARIO POWER GENERATION INC.

By: _____
Name: _____
Title: _____

Schedule 7.13 - Final Payment Related Documents

Certificate - Application for Final Payment

TO: Ontario Power Generation (“OPG”)

RE: Lambton Generating Station Demolition Agreement (the “Agreement”) between OPG and JMX CONTRACTING INC. (the “Contractor”), dated as of July 10, 2018

I, [name], am the [title] of the Contractor and am authorised to deliver this Certificate on behalf of the Contractor. I hereby certify, for and on behalf of the Contractor, as follows.

1. Set out in Appendix A to this Certificate are complete:
 - (a) as built drawings;
 - (b) maintenance and operating instructions;
 - (c) security documents;
 - (d) certificates of insurance;
 - (e) certificates of inspection;
 - (f) all documents required to be maintained at the Site in accordance with section 2.14(a) of the Agreement; and
 - (g) all other documents required by the Agreement to be delivered to OPG on the entire finishing of the Project.
2. Set out in Appendix B to this Certificate is the required consent of any surety, if any, to the final payment made under section 7.14 of the Agreement.
3. Set out in Appendix C to this Certificate is a certificate of good standing from the Workers’ Safety and Insurance Board or successor organisation.
4. Set out in Appendix D to this Certificate are releases in the form set out in Schedule 7.13 of the Agreement, from the Contractor and each Subcontractor who provided Services in respect of the Project, respecting all Liens and other claims filed or otherwise arising in respect of the Services, Goods or Project.
5. Set out in Appendix E to this Certificate are statutory declarations in the form set out in Schedule 7.13 of the Agreement, signed by a director or officer of the Contractor, and each Subcontractor who has provided Services at the Site, declaring that all payments due to Subcontractors, all wages and benefit payments due to any of the Contractor’s Personnel, and all contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan, or union fund in accordance with a collective agreement, have been paid in a timely manner.

6. There are:

- (a) no known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by the Agreement and which are listed in Appendix F to this Certificate, including an estimate of the value of each such claim; or
- (b) there are outstanding claims which have not been communicated to OPG in the form of Notice required by this Agreement and each of these claims is described in the attached form of Notice required by this Agreement and is delivered to OPG in a timely manner, and there are no other known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by this Agreement and which are listed in Appendix F to this Certificate, including an estimate of the value of each such claim.

Defined terms used in this Certificate that are not defined in this Certificate have the meanings given to those terms in the Agreement.

DATED: [date], 20[•].

JMX CONTRACTING INC. By: _____

Name:

Title:

Release – Application for Final Payment

TO: Ontario Power Generation Inc. (“OPG”)

RE: Lambton Generating Station Demolition Agreement (the “Agreement”) between OPG and JMX CONTRACTING INC. (the “Contractor”), dated as of July 10, 2018For value received, including the final payment to the Contractor by OPG, the Contractor agrees as follows.

1. **Release.** Effective when OPG makes the payment under section 7.14 of the Agreement, the Contractor irrevocably waives all entitlement to, and releases and forever discharges OPG and each member of the OPG Group from, any and all manner of claims, demands, suits, proceedings, actions and causes of action respecting any and all costs, damages, expenses, losses, liabilities, debts, sums of money, obligations, dues, accounts, interest and statutory rights or remedies, whether express, implied or otherwise, known or unknown, which the Contractor had, now has, can, will or may hereafter have respecting:
 - (a) any member of the OPG Group; or
 - (b) any act, cause, matter or thing whatsoever respecting the Project or the Agreement.
2. **No Claims Against Certain Third Parties.** The Contractor will not initiate any claim, demand, suit, proceeding or action against any Person respecting the Project or the Agreement if:
 - (a) that Person has claimed or demanded, in future claims or demands, or may reasonably be expected in future to claim or demand contribution or indemnity under the *Negligence Act* (Ontario) or otherwise from any member of the OPG Group; or
 - (b) that claim, demand, suit, proceeding or action may result (whether directly or indirectly against intermediate parties by way of a third or subsequent party claim or an independent legal proceeding) in a claim, demand, suit, proceeding or action against any member of the OPG Group.
3. **No Assignment.** The Contractor represents and warrants to each member of the OPG Group that the Contractor has not assigned, either in whole or in part, to any Person, any right to initiate any claim, demand, suit, proceeding or action respecting the Project or the EPC Contract.
4. **General.** The division of this Release into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Release. 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. Any reference in this Release to any agreement, is deemed to include a reference to that agreement as amended, supplemented or restated

from time to time. Defined terms used in this Release but not defined in this Release have the meanings given to those terms in the Agreement. This Release is solely for the benefit of the parties and, to the extent expressly and specifically made, beneficiaries of this Release. In particular, OPG holds the rights of each other member of the OPG Group under this Release in trust for the benefit of each such member.

The Contractor has duly executed this Release as of [•], 20[•].

JMX CONTRACTING INC. By: _____

Name:

Title:

[Modify as required for signature by a Subcontractor]

Statutory Declaration - Application for Final Payment

CANADA) IN THE MATTER OF THE LAMBTON
 PROVINCE OF ONTARIO) GENERATING STATION DEMOLITION
) AGREEMENT BETWEEN ONTARIO
) POWER GENERATION INC. AND JMX
) CONTRACTING INC.
) DATED AS OF JULY 10, 2018 FOR
) (the "Agreement")

I, [•], of the [City] of [•], Ontario, do solemnly declare that:

1. I am the [title] of **JMX CONTRACTING INC.** and as such have personal knowledge of the facts set out in this solemn Declaration.
2. Defined terms used in this solemn Declaration but not defined in this solemn Declaration have the meanings given to those terms in the Agreement.
3. All
 - (h) payments due to Subcontractors;
 - (i) wages and benefit payments due to any of the Contractor's Personnel; and
 - (j) contributions, premiums, allowances and remittances due to any Governmental Authority, pension fund, benefit plan or union fund in accordance with a collective agreement or Applicable Laws,

have been paid in a timely manner on or before the date of the Application for Payment to which this solemn Declaration relates, subject to any withholdings or holdbacks required by Applicable Laws.

4. Title to the applicable part of the Project will pass to OPG in accordance with section 7.4 of the Agreement no later than the date of OPG's payment to which this solemn Declaration relates.
5. (a) there are no known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by the Agreement and which are listed in the Appendix to this solemn Declaration, including an estimate of the value of each such claim; or
 - (c) there are outstanding claims which have not been communicated to OPG in the form of Notice required by this Agreement and each of these claims is described in the attached form of Notice required by this Agreement and is delivered to OPG in a timely manner, and there are no other known outstanding claims under the Agreement, except for those claims which have already been communicated to OPG in a timely manner in the form of Notice required by this Agreement and

which are listed in the Appendix to this solemn Declaration, including an estimate of the value of each such claim.

I make this solemn Declaration conscientiously believing it to be true and knowing it is of the same force as if made under oath.

DECLARED before me at the [City]
of [•], Ontario on [•], 20[•])

)

Name:
A Commissioner, etc.

[Modify as required for signature by a Subcontractor]

Schedule 9.6 - Breach Form**NOTICE OF BREACH BY ONTARIO POWER GENERATION INC.**

To: Ontario Power Generation Inc. •	Contract: Lambton Generating Station Demolition Agreement (the “ Agreement ”) Contract No.: #RG00287132 Breach Notice No. • Date: •
---	---

Defined terms used in this Notice have the same meanings given to those terms in the Agreement. In accordance with section 9.6 of the Agreement, the Contractor hereby gives OPG notice as follows.

Date of breach of Agreement by OPG: _____, 20•.

Obligation that OPG breached and section in which OPG’s obligation is set out in the Agreement:

Describe action or failure to act of OPG that constitutes the breach of OPG’s obligation:

Describe precisely the anticipated remedy, if any, sought by the Contractor for OPG’s breach of its obligation (including any changes to the Contract Price or the Contract Schedule):

JMX CONTRACTING INC.

By: _____
Name: _____
Title: _____

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 12TH DAY OF MAY, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS



Caitlin Fell
Partner
T: 416-613-8282
F: 416-613-8290
E: cfell@wfklaw.ca

WITH PREJUDICE

April 29, 2020

SENT BY ELECTRONIC MAIL

Kirby Waste Transfer Solutions
7055 Kirby Road,
Vaughn, ON L0G 1C0

Attention: Vinnie Ussia

Dear Mr. Ussia:

RE: JMX Contracting Inc.

We are counsel to JMX Contracting Inc. (“**JMX**”). JMX has been advised that you have contacted various JMX customers, employees and suppliers to discuss JMX affairs without JMX consent. In those improper and unsolicited communications, you have made false and misleading statements that have interfered with JMX’s economic relations with its customers, and that constitute harassing and/or defamatory communications.

You are hereby advised to permanently cease and desist all communications with customers of JMX. JMX reserves all rights available including but not limited to the commencement of legal action against you for injunctive relief and for all damages associated with your conduct, and the costs of such action.

As you are aware, JMX has filed a Notice of Intent to Make a Proposal under the *Bankruptcy and Insolvency Act* to effect a financial restructuring. To the extent you may have monetary amounts owing to you by JMX prior to April 20, 2020 (the “**Pre-Filing Claims**”), such claims are stayed and you may not take any steps to enforce such claims against JMX or its property without leave of the Court.

JMX continues to operate in the normal course. No suppliers are permitted to terminate, amend or accelerate contracts or otherwise interrupt the supply of goods or services to JMX due to non-



payment of pre-filing amounts. JMX will continue to make payments for post-filing supply of goods and services in accordance with its usual terms.

Yours very truly,

WEISZ FELL KOUR LLP

Caitlin Fell
CF/cp

cc. Sharon Kour – *Weisz Fell Kour LLP*
 Hans Rizzari – *Crowe Soberman Inc.*

THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 12TH DAY OF MAY, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

LIST OF EQUIPMENT REMOVED FROM JMX CONTRACTING JOB SITES**475 Commissioners Street**

JMX Pup Trailer
40yd Bin - Scrap Steel from 320 Bay
20yd or 15yd Bin - GFL bin
Empty
20yd Bin - Empty
40yd Bin - Empty
40yd Bin - Empty
40yd Bin - ACM

880 Avonhead Road - Mississauga

40yd Bin
40yd Bin
80' Aggregate stacker with accessories for loader (Set of Forks)
Small Generator

THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 12TH DAY OF MAY, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS



Caitlin Fell
Partner
T: 416-613-8282
F: 416-613-8290
E: cfell@wfklaw.ca

May 5, 2020

WITH PREJUDICE – SENT BY ELECTRONIC MAIL

Kirby Waste Transfer Solutions
7055 Kirby Road,
Vaughn, ON L0G 1C0

Attention: Vinnie Ussia

Dear Mr. Ussia:

RE: JMX Contracting Inc.

We are writing further to our letter of April 29, 2020, in which we advised you to permanently cease and desist all communications with customers of our client, JMX Contracting Inc. (“JMX”).

Upon further review, we understand that on or about April 24, 2020, you or representatives of your company, without JMX authorization or consent, entered the construction project site at 475 Commissioners street, Toronto (the “**Construction Site**”) and illegally removed equipment owned and stored by JMX- being disposal bins owned by JMX. The removal of the JMX equipment is also a flagrant breach of the stay of proceedings granted in favour of JMX pursuant to the provisions of the *Bankruptcy & Insolvency Act*.

All of your activities, including theft at the Construction Site were captured by closed-circuit television cameras. In addition, you should be aware that the theft of JMX equipment resulted in the disturbance of hazardous waste, including asbestos, dirtying and potentially polluting the Construction Site as well as damage to JMX’s property.

We hereby demand that you return the equipment to 475 Commissioners street, as well as clean-up the hazardous waste spilled on the premises **by the close of business on Wednesday, May 6, 2020**. If you fail to do so, we will attend remotely before the Superior Court of Justice during the week of May 4, 2020 to obtain an Order compelling you to return the equipment and will seek the payment of damages resulting from any cleaning and repair required at the Construction Site or the property of JMX. Yours very truly,

WEISZ FELL KOUR LLP

Caitlin Fell
CF/cp

cc. Sharon Kour – *Weisz Fell Kour LLP*

WFK:00013990.2

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF CHARLIE DAHL SWORN BEFORE ME,
THIS 12TH DAY OF MAY, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

march law

barristers and solicitors

March Law
 Barristers and Solicitors
 9100 Jane Street
 Suite 300, Building "A"
 Vaughan, Ontario
 Canada L4K 0A4

Tel: 905-738-8181
 Fax: 905-695-8489

Mauro Marchioni, ext. 2246
 Email: mmarch@marchlaw.ca

Adam Justin Marchioni, ext. 2274
 Email: amarch@marchlaw.ca

David Marchioni, Paralegal ext. 2260
 Email: dmarch@marchlaw.ca

Dulce Lucca, Assistant ext. 2247
 Email: dlucca@marchlaw.ca

May 06, 2020

Caitlin Fell
 Weisz Fell Kour LLP
 100 King Street West
 Suite 5600
 Toronto, Ontario
 M5X 1C9

Dear Ms. Fell:

RE: Kirby Waste Transfer Solutions

We are counsel to Kirby Waste Transfer Solutions (Kirby Waste) and are in receipt of your correspondence of May 05, 2020. Your client's allegations of unlawful conduct are serious in nature and are not taken lightly by Kirby Waste.

Our client vehemently denies having taken any unlawful step as against your client, whether as alleged in your May 05, 2020 letter or otherwise. You have suggested that the alleged 'theft' was recorded by closed-circuit video. We ask that you provide us immediately with any such recordings, which we will review with our client and, if required as a result thereof, investigate the matter further.

In the interim, our client will take no further step in respect of this matter. Should your client move to initiate court proceedings in respect of this, we expect that proper notice of the same will be delivered to this office.

We trust the foregoing is satisfactory and await your reply.

Very truly yours,



Adam Justin Marchioni

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF JMX CONTRACTING INC. OF THE TOWN OF
UXBRIDGE IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS
OF JMX NATIONAL INC., BWND PROPERTIES INC., and JMX
LEASING INC.

Court File No. 31-2639875
Estate No. 31-2639875

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF CHARLIE DAHL

WEISZ FELL KOUR LLP
100 King Street West,
Suite 5000
Toronto, ON M5X 1C9

Sharon Kour
LSO No. 58328D
skour@wfkllaw.ca
Tel: 416.613.8283

Caitlin Fell
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TAB 3

Court File No. 31-2639875
Estate No. 31-2639875

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) FRIDAY, THE 15TH
)
JUSTICE CONWAY) DAY OF MAY, 2020

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**AND IN THE MATTER OF THE PROPOSAL OF JMX CONTRACTING INC.
OF THE TOWN OF UXBRIDGE IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THREE RELATED INTENDED
PROPOSALS (JMX NATIONAL INC., BRND PROPERTIES INC.,
and JMX LEASING INC.)**

**ORDER
(Re Extension of Time to File a Proposal and
Expansion of Proposal Trustee's Powers)**

THIS MOTION, made by JMX Contracting Inc. (the "Company") and together with JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (collectively, the "JMX Group"), pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), was heard this day by way of teleconference, in accordance with the Chief Justice's Notice to the Profession dated March 15, 2020 and Changes to Commercial List Operations in Light of COVID-19 dated March 16, 2020.

ON READING the Affidavit of Charlie Dahl sworn May 12, 2020, the First Report of the Proposal Trustee dated May 12, 2020, and, on hearing the submissions of counsel for the

Company, Crowe Soberman Inc., in its capacity as Proposal Trustee (the “**Proposal Trustee**”), and for •, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Christel Paul sworn May 12, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ADMINISTRATIVE CONSOLIDATION

2 . **THIS COURT ORDERS** that the proposal proceedings of the JMX Group, bearing Court and Estate file numbers **31-2639614**, **31-2639615**, **31-2639875**, and **31-2639876** (collectively, the “**Proposal Proceedings**”) be and are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings:

Court File No. **31-2639875**
Estate No. **31-2639875**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

**AND IN THE MATTER OF THE PROPOSAL OF JMX CONTRACTING INC.
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**AND IN THE MATTER OF THREE RELATED INTENDED
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and JMX LEASING INC.**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed only in the JMX Contracting Inc. estate and court file (file no. **31-2639875**) and hereby dispenses with further filing thereof in the estate and court files of the other JMX Group entities.

EXTENSION OF TIME TO FILE A PROPOSAL

4. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the JMX Group entities to file proposals with the Official Proposal Trustee be and is hereby extended to July 1, 2020.

POWERS OF THE PROPOSAL TRUSTEE

5. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to take all necessary steps to obtain custody of equipment removed from JMX Group sites and/or projects by third parties after the commencement of the Proposal Proceedings, without JMX Group's knowledge or consent, and in violation of the stay of proceedings

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE PROPOSAL TRUSTEE

6. **THIS COURT ORDERS** that Kirby Waste Transfer Solutions and Vinnie Ussia shall forthwith return all equipment removed from JMX Group sites and/or projects after the commencement of the Proposal Proceedings, without JMX Group's knowledge or consent, and in violation of the stay of proceedings, including but not limited to the equipment listed in Schedule A hereto.

7. **THIS COURT ORDERS** that (i) all of JMX Group's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (ii) all other individuals, firms, corporations,

governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Proposal Trustee of the existence of any Property in such Person's possession or control and shall grant immediate and continued access to the Property to the Proposal Trustee.

INDEMNITY AND PRIORITY OF CHARGES

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the JMX Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 10 and 12 hereof.

9. **THIS COURT ORDERS** that the JMX Group shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the JMX Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

10. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$175,000, as security for the indemnity provided in paragraph 8 of this Order. The Directors' Charge shall have the priority set out in paragraphs 10 and 12 herein.

11. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge, as among them, shall be as follows:

FIRST – Administration Charge (to the maximum amount of \$300,000); and

SECOND – Directors' Charge (to the maximum amount of \$175,000).

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect.

13. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the JMX Group and the beneficiaries of the Charges, or further Order of this Court.

GENERAL

15. **THIS COURT ORDERS** that the Proposal Trustee and the JMX Group are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SCHEDULE A**LIST OF EQUIPMENT REMOVED FROM JMX CONTRACTING JOB SITES****475 Commissioners Street**

JMX Pup Trailer
40yd Bin - Scrap Steel from 320 Bay
20yd or 15yd Bin - GFL - Empty
20yd Bin - Empty
40yd Bin - Empty
40yd Bin - Empty
40yd Bin - ACM

880 Avonhead Road - Mississauga

40yd Bin
40yd Bin
80' Aggregate stacker with accessories for loader (Set of Forks)
Small Generator

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ONTARIO
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(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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National Inc., JMX Leasing Inc. and
BRND Properties Inc.**

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MOTION RECORD

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