

Schedule 9

Confidentiality Agreement

PHASE 2 CONFIDENTIALITY AGREEMENT

SCHEDULE 9 TO THE RFP

This Confidentiality Agreement, effective as of the _ day of ●, 2008 (“**Agreement**”) is among Ontario Infrastructure Projects Corporation (“**Infrastructure Ontario**”) and [**Insert name of Respondent**], each referred to as a “**Party**” and together referred to as the “**Parties**”. As used herein, “**Disclosing Party**”, with respect to Confidential Information, is the Party providing such Confidential Information and may be any of the Parties, as applicable, and “**Receiving Party**” is the Party or Parties receiving such Confidential Information and may be any or all of the other Parties other than the Disclosing Party, as applicable.

WHEREAS Infrastructure Ontario has issued a Request for Proposals for Nuclear Procurement Project (RFP No. OIPC 08-00-1027) (the “**RFP**”) for the selection of a “**Preferred Vendor**” in connection with the RFP Process;

AND WHEREAS during the RFP Process each Party may disclose to any of the other Parties certain Confidential Information;

WHEREAS the RFP contains certain confidentiality provisions which are binding on the Parties;

AND WHEREAS Disclosing Party would not disclose any such information to Receiving Party or to any Representatives of Receiving Party unless all Parties had first executed this Agreement;

AND WHEREAS the Parties acknowledge that FIPPA is applicable to Infrastructure Ontario and some members of the Governmental Project Team and the Confidential Information in their custody and control;

AND WHEREAS Section 17 of FIPPA provides an exemption for such Parties to the requirement to disclose Confidential Information under FIPPA if certain specified conditions are met;

AND WHEREAS the Parties are entering into this Agreement in part to make it explicit that all Confidential Information disclosed by each Party during such procurement process and negotiations is supplied in confidence and intended by the Parties to be confidential;

NOW THEREFORE for value received, the Parties agree as follows:

1. **Ownership and Permitted Use.** All Confidential Information remains, at all times, the exclusive property of Disclosing Party. Receiving Party may use Confidential Information only in connection with the RFP Process. Except as expressly set out in this Section 1, neither Receiving Party nor any of its Representatives has any license or other right to use or disclose any Confidential Information for any purpose whatsoever.
2. **Non-disclosure.** Subject to Sections 4 and 8 of this Agreement, a Receiving Party shall protect the confidentiality of the Confidential Information and not disclose Confidential Information except as follows:
 - (a) Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information with respect to the RFP Process. On each

copy made by Receiving Party, Receiving Party must reproduce all notices which appear on the original. Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Agreement by any of its Representatives; and

- (b) For greater clarity, Infrastructure Ontario may disclose any Confidential Information to members of the Government Project Team on an “as-needed” basis in accordance with RFP Section 3.8.4.

Receiving Party shall use the same means to protect the confidentiality of the Confidential Information that Receiving Party uses to protect its own confidential and proprietary information, but in any event Receiving Party will use not less than reasonable means.

3. **Infrastructure Ontario Disclosures.** The Parties acknowledge and agree that, as set out in Section 3.8.2 of the RFP, Infrastructure Ontario may, in its sole discretion, publicly disclose the information described in the RFP.

4. **Notice Preceding Compelled Disclosure.** If Receiving Party or any of its Representatives are required by law or requested in any judicial or regulatory proceeding or by any governmental authority to disclose any Confidential Information, Receiving Party shall, or shall cause its Representatives to, if permitted under applicable law, promptly notify Disclosing Party of the existence, terms and circumstances of such request or requirement so that Disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party or its Representatives are compelled to disclose the Confidential Information, Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law.

5. **Definitions.** The following terms shall have the following meanings:

“**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by a Disclosing Party to a Receiving Party during the RFP Process. Confidential Information shall not include: (i) publicly-available information, unless made public by Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to Receiving Party prior to being furnished by Disclosing Party; and (iii) information disclosed to Receiving Party from a source other than Disclosing Party or its Representatives, if such source is not subject to any agreement with Disclosing Party prohibiting such disclosure to Receiving Party.

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

“**Representatives**” means a company or other entity associated or affiliated with a Party or any shareholder, director, officer, employee, partner, representative, agent or advisor (including a financial or technical advisor, legal counsel or accountant) of a Party or of any company or other entity associated or affiliated with a Party, and with respect to Infrastructure Ontario, shall include any member of the Governmental Project Team.

6. **Return of Confidential Information.** Upon written request by Disclosing Party, Confidential Information provided by Disclosing Party in printed paper format or contained on a

compact disc or digital video disc, together with all copies or other reproductions in whole or in part of such Confidential Information, will be returned to Disclosing Party and Confidential Information transmitted by Disclosing Party in electronic format will be deleted from the emails and directories of Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, which cannot through reasonable efforts be returned to Disclosing Party or deleted from the emails and directories of Receiving Party's and its Representatives' computers, as the case may be, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, Receiving Party shall be entitled to make, at its own expense, and retain one copy of any Confidential Information it receives for the limited purpose of discharging any obligation it may have under applicable laws and regulations, and shall keep such retained copy subject to the terms of this Agreement. This Section 6 shall not apply to any Proposal submitted pursuant to the RFP Process.

7. **Remedies.** Receiving Party acknowledges that a breach of any provisions of this Agreement may prejudice the economic or competitive interests of, and may result in undue loss to, Disclosing Party or to any third party to whom Disclosing Party owes a duty of confidence, and that the prejudice or injury to Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. Receiving Party agrees that Disclosing Party is entitled to specific performance and injunctive relief (without proving any damage sustained by it or by any of its Representatives or by any third party) or any other remedy against any actual or potential breach of the provisions of this Agreement.

8. **FIPPA Records and Compliance.** The Parties acknowledge and agree that Infrastructure Ontario, the Government of Ontario and Ontario Power Generation Inc. are subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of Infrastructure Ontario, the Government of Ontario or Ontario Power Generation Inc. ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The confidentiality covenants contained in this Agreement are expressly subject to any and all obligations and requirements that may exist or may in the future arise under FIPPA, including all disclosure obligations. The provisions of this Section 8 shall prevail over, and in lieu of, any other applicable provisions in this Agreement.

9. **Notice.** Any notice, consent or approval required or permitted to be given in connection with this Agreement ("**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier services or other personal method of delivery), or if transmitted by facsimile or e-mail:

(a) to Infrastructure Ontario at:

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Attention: ●
 Facsimile: ●

with a copy to:

Attention: ●
 Facsimile: ●

(b) to ● at:

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-
-

Attention: ●
Facsimile: ●

with a copy to:

Attention: ●
Facsimile: ●

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day then the Notice shall be deemed to have been given and received on the next business day. Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section 8.

10. **Miscellaneous.**

- (a) This Agreement (i) constitutes the entire agreement among the Parties with respect to the subject matter hereof, (ii) may not be assigned by a Party without the prior written consent of the other Parties, and (iii) enures to the benefit of and is binding on the Parties hereto and their successors and permitted assigns. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement. Words importing the singular include the plural and vice versa. The term “including” means “including without limitation”, and the terms “includes” and “included” have similar meanings. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability will be deemed severable and will not affect any other term of this Agreement. For every term of this Agreement, time is of the essence. No term of this Agreement may be amended or waived except in writing. No failure or delay in exercising any right or remedy hereunder will operate as a waiver, nor will any single or partial exercise preclude any other exercise of any other right or remedy. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same agreement. Signatures by facsimile shall be as effective as original signatures to this Agreement.
- (b) Capitalized terms used in this Agreement but not defined herein shall have the meaning ascribed to them in the RFP.
- (c) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario (and the federal laws of Canada applicable in the Province of Ontario).

- (d) With respect to a Respondent that is not identified as the Preferred Vendor (as such term is defined in the RFP) pursuant to the RFP Process, the provisions of this Agreement shall survive indefinitely, and for greater certainty, shall survive any cancellation of the RFP Process and the conclusion of the RFP Process. With respect to a Respondent that is identified as the Preferred Vendor (as such term is defined in the RFP) pursuant to the RFP Process, this Agreement shall survive indefinitely provided that in the event of any inconsistency with respect to treatment of Confidential Information between this Agreement and the Project Agreement, the Project Agreement shall govern.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION

By: _____
Name: _____
Title: _____

[RESPONDENT]

By: _____
Name: _____
Title: _____