



2G ENERGY

TERMS AND CONDITIONS - MAINTENANCE AGREEMENT

RECITALS

WHEREAS, Contractor is, among other things, engaged in the business of providing certain maintenance services with respect to power plant equipment; and

WHEREAS, Customer owns, operates, has purchased or will purchase certain power plant equipment located at the Facility (as defined below); and

WHEREAS, Customer has requested that Contractor provide services for the Covered Unit(s) (as defined below) in accordance with the terms of this Agreement and Contractor is willing to provide services for the Covered Unit(s) in accordance with the proposal and terms and conditions ; and

WHEREAS, Contractor has made a Proposal (as defined below) which proposal has been accepted by the Customer.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Customer and the Contractor hereby agree as follows:

1. **Definitions.** The following terms shall have the meaning set forth below when used in this Agreement:
 - (a) “2G” means the Contractor or any affiliate thereof that manufactures some or all of the Parts for the Covered Unit(s).
 - (b) “System” means the scope of supply by 2G.
 - (c) “Contractor Taxes” means any and all corporate and individual taxes that are measured by net income or profit imposed by any government authority of any country on Contractor, its employees or subcontractors, due to the performance of or payment for work under this Agreement.
 - (d) “Contract Price” means the price for the Work as set out in the Proposal, including any Price Escalation (as set forth below).
 - (e) “Covered Unit(s)” means the engines/modules/SCR/, installed at the Facility identified in the Proposal and as outlined in Schedule B.
 - (f) “Customer Taxes” means any and all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Contractor Taxes, imposed by any governmental authority of any country.



- (g) “Extra Work” means any goods or services that the Contractor provides or performs that are outside the scope of Work which shall be previously approved in writing by the Customer, which Extra Work shall incur costs in addition to the Contract Price to be paid by the Customer to the Contractor. “Extra Work” includes any work performed by the Contractor which is necessitated by misuse, improper or insufficient maintenance, the use of unacceptable fuel quality (as set forth on Schedule E), excessive heat, electrical supply fluctuations, storm, fire, flood, riot, vandalism, sabotage, espionage or any other cause beyond Contractor’s control with respect to the Covered Unit(s), or any parts thereof. Similarly, any tests, additions or modifications made to the Covered Unit(s) by the Contractor as may be required by governmental authorities or independent third Parties shall qualify as Extra Work. Customer shall pay Contractor for Extra Work at the applicable billing rates for material and labor as set forth on Schedule G
- (h) “Facility” means the power generation plant, station or power generation section of the premises in which the Covered Unit(s) is located, as identified in the Proposal and Schedule B.
- (i) “Hazardous Materials” means toxic substances, hazardous substances or hazardous wastes, as such terms are defined in any law, statute, ordinance or regulations promulgated by any national, federal, state, provincial, or local government authority or the country of the Site.
- (j) “Insolvent” has the same definition as “insolvent person” in the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.
- (k) “OEM” means the original equipment manufacturer, which includes 2G and any Third Party Manufacturer.
- (l) “Monitoring & Performance System” means a system or systems which may be used from time to time by the Contractor for the monitoring of Facility equipment and/or the provision of performance information and support, generally consisting of hardware, software, and a connection to a source of technical oversight or review.
- (m) “Parts” means new, repaired or refurbished parts, materials, components and other goods furnished by Contractor, or its subcontractors or suppliers, under this Agreement for the Covered Unit(s) as expressly provided in the Proposal.
- (n) “Proposal” means the Maintenance Agreement between the contractor and the customer.. In the event of a conflict between the terms of the Proposal and these terms and conditions, the Proposal shall govern.
- (o) “Site” means the real property upon which the Facility is located.
- (p) “Third Party Manufacturer” means any party other than 2G who manufacturers Parts used for the Covered Unit(s).
- (q) “Time and Material Rates” means those rates as set forth in Schedule G comprising:
 - (i) Contractor’s published or standard hourly rates for services, that are not warranty related, carried out at the Facility in effect at the time services are performed applied to the number of hours of such services including travel time, plus



- (ii) Reasonable travel and living expenses (including standard per diems, if applicable).
 - (r) “Work” means the scope of services, equipment and material to be provided by Contractor as set forth in the Proposal. Work shall not include any equipment or materials added and/or modified after date of the Proposal, unless such changes are expressly accepted by Contractor.
 - (s) “Regular Business Hours” means regular working & business hours on Monday through Friday, excluding public holidays and Saturday and Sunday, between 7:00 am and 6:00 pm at the physical location of the Covered Unit(s).
 - (t) “Maintenance Schedule” means the schedule of services described in the Proposal, as well as any documentation from the OEM, as the same may be amended from time to time by the OEM.
 - (u) “Minor Overhaul” means the scheduled minor overhaul maintenance according to the OEM maintenance schedule (Schedule C) represented as M5 for 2G, E60 for MWM, 30K Service for Jenbacher and QL3 for MTU or equivalent.
2. **Obligations of the Contractor.** The Contractor shall perform the Work as set forth in the Proposal in a professional and workmanlike manner in accordance with industry standards. The Contractor shall document the Work performed, including its completion, in the Contractor’s service report. The service report shall be made available to customer upon request.. The Work does not include any activities, services, parts or components that are not explicitly included in the Proposal. By way of example, but not limitation, unless otherwise provided in the Proposal, the Contractor shall not be obligated to:
- (a) Incur storage or preservation expenses or any other additional costs due to the shut down of any engine/module for an uninterrupted period of more than three (3) months.
 - (b) Provide any third party services or equipment including without limitation cranes, man lifts, hydraulic modifications or other construction activities that may be required after the replacement of the Covered Unit(s) or any related equipment or materials.
 - (c) Remove or replace any systems, structures or parts of the Facility (other than the Covered Unit(s) themselves to the extent necessary to perform covered maintenance and warranty obligations). If the Proposal explicitly contemplates that Contractor will remove or replace any systems, structures or parts of the Facility in order to access the Covered Unit(s) then such removals or replacements will be performed only to the extent so provided in the Proposal.
3. **Obligations of the Customer.** In consideration of the Contractor performing the Work, the Customer agrees as follows:
- (a) The Customer shall not make changes to the Covered Unit(s) without the prior written consent of the Contractor and without compensating the Contractor for any associated Extra Work.
 - (b) The Customer shall acquire and maintain a Hazardous Waste Identification Number (“HWIN”) or its equivalent (i.e. an International Waste Identification Code (“IWIC”) or other hazardous waste manifest identification system).



- (c) The Customer shall provide the Contractor promptly upon request with historical fuel quality analyses (for fuels other than natural gas), which shall be carried out by the Customer every three (3) months. The fuel quality must meet the specifications designated by the OEM which are as set forth in the Proposal.
- (d) The Customer shall provide at no additional cost a secured room suitable for storage at the Site for the Contractor's use to store supplies in connection with the Work.
- (e) The Customer shall ensure that the Facility's structure and environment is suitable and safe for the Covered Unit(s) and the Work, including making such modifications to the Facility as are reasonably necessary or advisable to minimize the possibility and the impact of an emergency that could cause physical harm to people or damage the Facility. Any other modifications to the Facility by the Customer shall require written approval by the Contractor's Service Manager. Any approval by Contractor of, or consent by Contractor to, any plans, specifications or other items with respect to the Facility to be submitted to and/or reviewed by Contractor will be strictly limited to an acknowledgment of approval or consent by Contractor thereto, and such approval or consent will not constitute the assumption by Contractor of any responsibility for the accuracy, sufficiency or feasibility of any plans, specifications or other such items and will not imply any acknowledgment, representation or warranty by Contractor that the design is safe, feasible, structurally sound or will comply with any legal or governmental requirements, and Customer will be solely responsible for all of the same.
- (f) The Customer shall ensure that the determined number of operating hours per covered unit per year is maintained as set forth in the Proposal.
- (g) The Customer shall permit the Contractor to carry out the Work during regular business hours as set forth in the Proposal without interference. Any work included in the Contract Price but provided outside normal working hours, shall be considered Extra Work. The Customer shall compensate the Contractor for such Extra Work by paying standard overtime fees in addition to the normal working hour fees as such fees are set forth on Schedule G, as well as other costs associated with working outside normal working hours.
- (h) The Customer shall use, and allow the Contractor to access, online monitoring that allows remote off-site readings of the status of the operating hours and certain performance relevant measurements with respect to the Covered Unit(s).
- (i) The Customer shall allow the Contractor to enter the Site to take on-site readings for accounting purposes and review written records of the performed operating records and hours.
- (j) Throughout the Term and for a period of twelve (12) months after the termination or expiration of this Agreement, the Customer shall not, without expressed written consent of the Contractor, directly or indirectly, solicit or induce any of the Contractor's employees or subcontractors to terminate or breach an employment, contractual or other relationship with the Contractor.
- (k) The Customer shall promptly make payments of the Contract Price as required by this Agreement and the Proposal.



- (l) The Customer shall perform troubleshooting on the Covered Unit(s) to ensure the safe operation of the Covered Unit(s), which troubleshooting must cover items including but not limited to the pressure, temperature transmitter, thermometer, gauges, ignition coils, spark plugs, ignition wires, and any leaks with respect to the Covered Unit(s). The Customer shall remedy any defects or issues discovered by such troubleshooting, or inform the Contractor of such to defects or issues in accordance with the warranty provisions set forth in this Agreement. This paragraph does not supersede the technical support by the Contractor, or the warranty obligations of the unit /parts.
- (m) The Customer shall support the Contractor by providing, at the Customer's cost, basic facilities and operator personnel, parking spaces, storage areas, changing and washing facilities, ladders, lifts (scissor or boom), rigging services, crane services, electricity, and water and compressed air (including the necessary connections) for use by the Contractor to perform the Work.
- (n) The Customer and its operators shall carry out the operation of the Covered Unit(s) and the remediation of minor malfunctions or repairs of the Covered Unit(s) which do not affect the safe operation of the Covered Unit(s), as well as perform the work required of the Customer as set forth on Schedule D. The Customer shall ensure that its personnel entrusted with carrying out such work do so in accordance with the OEM's guidelines & regulations for the Covered Unit(s).
- (o) The Customer shall provide the Contractor with access to the Site, the Facilities and the Covered Unit(s) to perform the Work.
- (p) The Customer shall ensure that its personnel meet the minimum qualifications, receive the necessary training, and are capable, qualified, and properly prepared to perform operator duties with respect to the Covered Unit(s).
- (q) The Customer shall adhere to the operating instructions and other instructions given by the OEM of the Covered Unit(s) with respect to the operation and maintenance of the Covered Unit(s).
- (r) The Customer shall provide the Contractor with any information relating to the Covered Unit(s) that is reasonably necessary for the Contractor to perform the Work, including any supporting documents such as an operator's log.
- (s) The Customer shall be solely responsible for compliance with any applicable (i) workplace health and safety regulations relating to the Work or the Site and (ii) any applicable legislation related to toxic and hazardous substances associated with the Work or the Site.

4. Pricing and Payment.

- (a) The Contract Price in Canadian Dollars to be paid by the Customer to the Contractor is set forth in the Proposal and is net of any Contractor Taxes.
- (b) The Customer shall pay the portion of the Contract Price billed monthly by the Contractor net Thirty (30) days after receipt of an invoice from the Contractor. Any amounts not paid



when due shall be subject to interest at the rate of two percent (2%) per month or the highest rate allowed by law, whichever is less.

- (c) If, during the term of this Agreement, any new legislation, taxes or regulations are established that cause an increase in fees or charges in connection with oil and/or other waste removal requirements, the Customer shall be responsible for paying Contractor such increased fees or charges, as applicable.
- (d) Customer agrees that the Work qualifies as services or materials on which a claim for lien (including without limitation a construction lien, mechanic's lien or builder's lien) may arise pursuant to the applicable legislation should the Contractor opt to pursue such lien for unpaid amounts owed to the Contractor. The Customer hereby waives any defense associated with the non-applicability of such lien legislation to the Work. The Customer shall execute and deliver any documents required for the Contractor to perfect its security interest in accordance with this Section 4(d).
- (e) If the Customer fails to make any of the payments when due, Customer shall pay, in addition to any defaulted amount and interest thereon, all of the Contractor's legal fees, collection costs and court costs in connection herewith. The Contractor reserves the right to share any relevant credit information when requested of it.
- (f) If the Customer fails to meet an agreed upon appointment for the Contractor to carry out the Work, if access to the Site or Covered Unit(s) is denied by the Customer, or if the Customer otherwise delays the Work, the Customer shall be charged separately for any additional costs incurred by the Contractor as the result of such delay ("Delay Costs"), unless the Customer has provided at least five (5) days' prior written notice to the Contractor cancelling the appointment. The Contractor reserves the right to invoice the Customer separately for any Delay Costs incurred.
- (g) The parties acknowledge that the Contract Price is based on a certain minimum expected annual operating hours as identified in the Proposal (the "Minimum Hours"). If the actual annual operating hours of the Covered Unit(s) (the "Actual Hours") fall short for any given year by more than twenty percent (20%) of the Minimum Hours for any reason outside the Contractor's control, the Contractor shall be compensated by multiplying the percentage difference, but in no event more than eighty percent (80%), between the Actual Hours and the Minimum Hours, by the cost per operating hour as set forth in the Proposal. If applicable, this adjustment will be calculated in January following the previous year's contract term.

5. Term. This Agreement shall become effective upon the Effective Date as identified in the proposal., And unless earlier terminated pursuant to Section 6, shall end in accordance with the "contract completion" as per the proposal without the need for a notice of termination (the "Term").

6. Termination.

(a) Termination for Default and/or Insolvency.

- (i) Either party may terminate this Agreement if the other party (i) becomes insolvent or (ii) commits a monetary or material breach of this Agreement and fails to cure such breach within thirty (30) days' of written notice of such breach, or if such breach is non-monetary and if it is not possible to sure such non-monetary breach



within thirty (30) days' of such notice, fails to commence to cure the breach within the same thirty (30) day period or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible.

In the case of termination by the Contractor pursuant to Section 6(a)(i), the Customer shall pay the Contractor the Termination Amount (as defined below). In addition, any amounts due under this Agreement but unpaid as of the effective date of termination shall be payable in accordance with the terms of this Agreement. The relief specified in this Section 6 shall be the Contractor's sole and exclusive relief with respect to the damages arising from termination of this Agreement by reason of Customer's default.

(b) Termination Amount.

(i) The "Termination Amount" as used in this Agreement shall be calculated as thirty percent (30%) of the remaining Contract Price to be billed pursuant to this Agreement (as of the date of termination). The parties agree that damages incurred in the event of termination would be difficult to measure, that the Termination Amount is reasonable and represents a genuine estimate of those damages, and that the Termination Amount shall be paid as liquidated damages in lieu of all such actual damages and not as a penalty.

(ii) Notwithstanding any other provision in this Agreement to the contrary, if, prior to the Covered Unit(s) achieving the contract completion hours, the Customer terminates this Agreement with or without cause, or the term of this Agreement expires, the Customer shall compensate the Contractor immediately upon such termination or expiration, in addition to the Termination Amount, as follows:

(A) 35% of the remaining Contract Price to be billed pursuant to this Agreement (as of the date of termination) if the minor overhaul has been performed.

7. Warranties.

(a) Warranty for the Parts.

(i) For Parts manufactured by 2G, the Contractor warrants that such Parts, shall be free from defects in material and workmanship. The claims procedure for the warranties in this Section 7(a)(i) are set forth on the Contractor's Warranty Guidelines, as the same may be amended from time to time, the present terms of which are set forth on Schedule H and incorporated herein by reference. The Contractor shall bear the cost of repairing or replacing any defective or nonconforming Parts, including costs associated with shipping, dismantling, installation, and labor. All other costs associated with such repair or replacement shall be borne by the Customer.



- (ii) For Parts manufactured by any Third Party OEM, such Third Party OEM's warranty, if any, shall apply.
 - (b) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7 AND SCHEDULE H, THE CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER REGARDING THE WORK OR THE PARTS AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.
8. **Acceptance of Work and Parts.** Unless the Customer provides written rejection of the Work performed by the Contractor or the Parts installed by the Contractor within five (5) days after such completion of the Work or installation of the Parts, the Work and the Parts shall be deemed irrevocably accepted by the Customer, subject to the ongoing warranties set forth in Section 7.
9. **Assignment.** The Customer may not transfer or assign, in whole or in part, any of its rights or obligations under this Agreement without the express written consent of the Contractor, which consent shall not be unreasonably withheld. Any attempted transfer or assignment in contravention of this Agreement, whether by operation of law or otherwise, shall be null and void. The Contractor may transfer or assign, in whole or in part, any of its rights or obligations under this Agreement upon thirty (30) days' written notice to the Customer. This Agreement shall be binding upon each party's permitted successors and assigns. Nothing in this Section 9 shall restrict Contractor from subcontracting portions of the Work, provided that Contractor shall remain responsible to Customer for performance of subcontracted scope.
10. **Changes.** Each party may, from time to time, propose changes in the scope of Work to be performed by the Contractor under this Agreement, which changes must be accepted by both parties before becoming effective. The Contractor will advise the Customer if any proposed change would result in Extra Work or have other cost or performance impact. The Contractor shall not be obligated to proceed with any change until the Parties have agreed upon its effect and signed a written amendment to this Agreement or similar change order document.
11. **Contractor's Suspension Right.** In addition to other rights the Contractor may have, if the Customer fails to make payments as required by this Agreement, becomes generally unable to pay its debts when they become due, or sustains a material deterioration of its financial condition, Contractor may suspend performance of the Work and/or thereafter require full or partial payment of the Contract Price in advance. The Customer shall pay the Contractor for any costs incurred by the Contractor relating to such suspension of Work (including storage costs).
12. **Clauses**
- (a) **Mediation.** Except as provided below, all disputes arising under or related to this Agreement which cannot be resolved through negotiations between the parties shall be submitted to mediation according to this Section. Completion of such mediation shall be a condition precedent to bringing any action pursuant to this Agreement. If the parties fail to reach a settlement of their dispute within thirty (30) days after the earliest date upon which one of the parties notified the other of its desire to attempt to resolve the dispute, then the dispute shall be promptly submitted to mediation by a single mediator chosen by the mutual consent of the parties. If the parties are unable to agree on a mediator, 2G Energy shall nominate one individual and the other party shall nominate another and those two nominated individuals jointly shall choose a mediator. The mediation shall take place in



Guelph, Ontario. This obligation of the parties to submit any dispute arising under or related to this Agreement shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, either party may seek an injunction or other appropriate relief from a court or arbitrator (if arbitration is provided for in this Agreement) to preserve the status quo (including preservation of a claim that would otherwise be barred by an applicable statute of limitations that expires within 60 days of the filing) with respect to any matter pending conclusion of the mediation, but shall not be permitted to stay or otherwise impede the progress of the mediation. If the parties fail to reach an agreement through the above mediation process, either party may seek resolution through arbitration in accordance with Section 15 Dispute Resolution above.

- (b) Price. Buyer shall purchase the Goods from 2G Energy at the prices (the "Prices") set forth in 2G Energy's published price list in force as of the date 2G Energy accepts Buyer's purchase order. All published prices were based on 2G Energy's then current costs when those prices were published, quoted or otherwise provided to Buyer (including, without limitation, the cost of parts, materials, and labor need to manufacture, assemble, and deliver the Goods), and the assumption that 2G Energy's ability to supply the Goods in a timely fashion would not be delayed or impaired for reasons beyond its reasonable control. If 2G Energy incurs increased costs for performance for any reason beyond its reasonable control, then 2G Energy will be entitled to an equitable adjustment in the Prices payable by Buyer, as determined by 2G Energy in good faith, to cover 2G Energy's increased costs of performance.
 - (c) Force Majeure. 2G Energy shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of 2G Energy including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, labor or equipment at prices and on terms 2G Energy deems in its sole discretion to be commercially reasonable, or equipment or telecommunication breakdown or power outage. Such circumstances entitle 2G Energy to postpone performance for the duration of such circumstances plus a reasonable starting up time or to cancel any order or part thereof not yet fulfilled.
- 13. Laws, Codes and Standards.** Unless otherwise set forth on the Proposal, this Agreement shall be governed, interpreted and unless otherwise specified, in all respects be construed and be given legal effect in conformity with the laws of the Province of Ontario, without regard to its choice of law provisions.
- 14. Limitation of Liability.**
- (a) IN NO EVENT SHALL THE CONTRACTOR BE LIABLE TO THE CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF



THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- (b) IN NO EVENT SHALL THE CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE CONTRACT PRICE.
- (c) The limitation of liability set forth in this Section 14 shall not apply to (i) liability resulting from the Contractor's gross negligence or willful misconduct or (ii) death or bodily injury resulting from the Contractor's negligent acts or omissions.

15. Dispute Resolution. All disputes arising in connection with this Agreement shall be settled, if possible, by negotiation between the parties. If the matter is not resolved by such negotiations, all disputes arising out of or relating to this Agreement, or any transactions contemplated hereby, whether in contract, tort or otherwise, shall be settled by arbitration administered in Ontario, Canada in accordance with its arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to award costs, including attorneys' fees, to either party in its sole discretion.

16. General Terms and Conditions.

- (a) The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- (b) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (c) No modification, amendment, rescission, waiver or other change to this Agreement shall be binding on a party unless agreed in writing by that party. This Agreement represents the entire agreement between the parties with respect to the subject matter contained herein. No oral or written representation, warranty, course of dealing or trade usage not contained or referenced in this Agreement will be binding on either party. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in this Agreement.
- (d) If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- (e) The language of this Agreement, and all documents, materials and training, if any, to be supplied by the Contractor under this Agreement shall be English.
- (f) Customer represents that it is the sole owner of the Covered Unit(s), the Facility and the Site. In the event there is an additional or different owner of all or any portion of the

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Covered Unit(s), the Facility or the Site, in addition to any other rights of Contractor, Customer shall indemnify and hold harmless Contractor from any and all claims, suits, losses and expenses (including legal fees) brought against or incurred by the Contractor by, or on account of, any such additional or different owner.

- (g) This Agreement may be signed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute one and the same instrument.

17. Price Escalation.

- (a) The Contract Price shall be adjusted upward on a cumulative annual basis in accordance with this Section 17 according to the formula set forth below (the “Price Escalation”). The Price Escalation shall begin on January 1 of each calendar year during the Term, and on January 1 of each year thereafter, by an amount determined in accordance with the definitions and formulas described in this Section 17:

P = new price after application of the formula

P_0 = price for the previous year under this Agreement

(price for the first year under this Agreement)

L_0 = labour based Consumer Price Index of [Canada/USA] value for “Energy” (as per Statistics Canada, CANSIM, table 326-0020 and Catalogue nos. 62-001-X and 62-010-X.) for the month in which the Contractor starts Work pursuant to this Agreement

L_1 = L_0 at end of 12-month period

M_0 = indices of the German Statistical Federal Authority for “combustion engines and turbines”; no. GP = 28 11, price indexes for industrial product value for the month in which the Contractor starts Work pursuant to this Agreement;

M_1 = M_0 at end of 12-month period

Formula: $P = P_0((0.35*(L_1/L_0)) + (0.65*(M_1/M_0)))$

- (b) The price (P) of the applicable payments shall equal the greater of starting price (P_0) or the result from the calculation in accordance with the above formula.
- (c) In the event that the indices listed above are discontinued, or the basis of their calculation is modified, equivalent indices shall be substituted by mutual agreement of parties.
- (d) The Contractor will indicate the Price Escalation amount as a separate item on the first invoice submitted after January 1 of the applicable calendar year or claim for payment submitted under this Agreement.



18. Currency Fluctuation Adjustment.

- (a) In addition to any Price Escalation as provided for herein, to the extent that any Parts, as per the percentage established in Section 17 inclusive, are purchased by the Contractor from a non-North American supplier and/or for which the Contractor must pay for such Parts using currency other than local currency, the price for such Parts shall be adjusted according to this Section 18 after providing for such Price Escalation as provided in Section 17, and by employing the following formula:

$$\text{Adjustment} = \text{FCC} \times (i1 - i0) / i0$$

where formula variables correspond to:

FCC = Foreign Currency Component based on the total percentage of the price as per Section 17 inclusive for the parts supply only. For further clarity 65% of the price identified in the Proposal.

$i0$ = initial exchange rate on date of acceptance of the Proposal (CAN\$ per unit of foreign currency [e.g. €1])

$i1$ = exchange rate for adjustment (CAN\$ per unit of foreign currency [e.g. €1]) adjusted on an annual basis, beginning on January 1 of each calendar year to which this Agreement applies, and on January 1 of each year thereafter for such Parts in question;

- (b) The Contractor will indicate the exchange rate adjustment amount (either upward, downward or no change) as a separate item on first invoice submitted after January 1 of the applicable calendar year or claim for payment submitted under this Agreement. This must be shown even when there is no adjustment claim due to the change in the rate being below the threshold.

19. Availability

For Platinum level Services, 2G guarantees that the system shall be available to perform a minimum percentage of availability as listed under the coverage section of the proposal. If the availability exceeds the agreed percentage of availability, such additional hours will be carried forward to the following calendar year. This availability guarantee takes effect 60 days after 2G commences the Services.

If the system fails to achieve the minimum availability, 2G shall compensate Customer as follows:

- 2G shall pay to Customer 1% of the value of the annual price paid by Customer under the proposal for every full 1% below the minimum availability guarantee which is not achieved (as determined in the below formula), but not to exceed 5% of the annual price paid by Customer under the proposal.
- The percentage by which the system's availability does not meet the minimum percentage is calculated as follows according to VDI 4680 availability:

$$V = \frac{B1 + B2 + S1}{B1 + B2 + S1 + S2} * 100\%$$

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Defined as:

V - annual availability

B1 - annual operating hours

B2 - annual standby hours, i.e. the system is ready for operation

S1 -non 2G downtimes (including periods for regular maintenance work)

S2 -abruptly unplanned downtimes for reasons for which 2G is responsible

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