# STANDARD CONSTRUCTION CONTRACT DOCUMENTS FOR ELECTRONIC BIDDING

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# INSTRUCTIONS TO TENDERERS FOR ELECTRONIC BIDDING


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# INSTRUCTIONS TO TENDERERS FOR ELECTRONIC BIDDING

## 1. TENDER DOCUMENTS

1.1 Tender Documents are available through MERX or as otherwise directed by Defence Construction Canada in the Invitation to Tender. Tenders received from firms whose names do not appear on the official plan takers list may be declared invalid.

1.2 All inquiries regarding the tender are to be submitted in writing and only to the Contracting Authority named in the tender notice. Failure to comply with this provision may, for this reason alone, result in disqualification of a tender. Inquiries received within five (5) business days prior to tender closing will not be answered. Inquiries that are of general interest and require modification(s) to the Tender Documents will be issued by amendment to all plan takers.

## 2. DCC PROCUREMENT CODE OF CONDUCT

2.1 Tenderers shall comply with the DCC Procurement Code of Conduct.

2.2 DCC will verify compliance with the DCC Procurement Code of Conduct, through independent research, the use of any government resources or by contacting third parties. Depending on the results of this verification, a Criminal Record Verification may be requested.

2.3 Tenderers shall, within 48 hours of receipt of a written request from DCC, provide to DCC the following: the names of owners, directors, officers, controlling shareholders as described in Section 3 of the DCC Procurement Code of Conduct, or a duly completed Consent for Criminal Record Verification (CCRV) form.

## 3. COMPLETION OF TENDER

3.1 The tender shall:

3.1.1 be submitted using the *Electronic Bidding System* and the system's identification and authentication process;

3.1.2 be based on the Tender Documents listed in the acknowledgement form; and

3.1.3 be accompanied by:

.1 bid security, if required, as specified in clause 5, and

.2 any other document or documents specified elsewhere in the Tender Documents where it is stipulated that they are to accompany the tender.

3.2 Any condition or qualification provided with the tender shall render the tender invalid and be direct cause for disqualification. Subject to the provisions of 8.5, failure to provide the information requested in the Tender Documents may render the tender invalid.

3.3 Only the tender submitted through the *Electronic Bidding System* will be accepted as a valid tender.

3.4 DCC publishes tenders through the *Electronic Bidding System* (*EBS*), accessible at merx.com. All modifications to tenders and related documents are also posted via the *EBS*. Tenderers are responsible for regularly checking the *EBS* to obtain the most up-to-date information. DCC accepts no responsibility for any omissions on the part of a tenderer or for errors and omissions arising from third-party notification services.

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### 4. REVISIONS TO THE TENDER

4.1 Any revision to a tender must be done using the *Electronic Bidding System* by revising the information on-line.

4.2 Failure to comply with the above provision will result in the rejection of the revision(s). The tender shall be evaluated based solely on the information submitted through the *Electronic Bidding System*.

### 5. BID SECURITY REQUIREMENTS

5.1 When specifically called for through the *Electronic Bidding System*, the Tenderer shall submit bid security with the tender in the form of an electronic bid bond or wire transfer that comply with the conditions set out in this section and in an amount that is equal to not less than 10 percent of the tender amount. Federal and provincial sales taxes shall not be included when calculating the amount of any bid security that may be required. The maximum amount of bid security required with any tender is $2,000,000.

5.2 When the bid security takes the form of an electronic bid bond, it shall comply with the following conditions:

5.2.1 in an approved form as described in the General Conditions (DCL32);

5.2.2 prepared in accordance with provincial/territorial electronic documents and commerce legislation;

5.2.3 submitted through the *Electronic Bidding System*;

5.2.4 issued by one of the following entities;

.1 A provider licensed by the Office of the Superintendent of Financial Institutions (OSFI) to issue surety products for

.1 Canadian domiciled insurers (Who We Regulate (osfi-bsif.gc.ca);

.2 For foreign insurers who have been granted an order to insure in Canada (Who We Regulate (osfi-bsif.gc.ca);

or

.2 A provider licensed by a provincial or territorial insurance regulatory authority to issue surety products, provided that the contract is taking place in a province or territory in which the surety provider is licensed to issue surety products.

5.2.5 be an electronic encrypted file with embedded digital certificate verifiable electronically by DCC with respect to the totality and wholeness of the bond form, including: the content; all digital signatures; all digital seals; with the Surety Company, or a verification service provider; and

5.2.6 be viewable, printable and storable by DCC. It must be in a single file in pdf format.

5.3 The verification may be conducted immediately or at any time during the guaranty period, at DCC's discretion, free of charge.

5.4 The results of the verification must provide a clear and printable indication of whether the bond meets or does not meet the requirement described in Article 5.2.5. Do not

incorporate or attach other documents to the bid bond, as this could prevent verification and render the bid non-compliant.

5.5 It is not acceptable to submit a bid bond with an unverifiable signature and/or seal. Failure to comply with this requirement will render the bond non-compliant and result in rejection of the tender. A scanned/digitized copy of a paper bond form does not constitute an electronic bond.

5.6 Guaranties validated by the verification process will be treated as original and authentic documents.

5.7 DCC reserves the right to request proof of a license issued by a provincial or territorial authority to offer surety products.

5.8 When the bid security takes the form of a wire transfer, it shall comply with the following conditions:

5.8.1 be sent to the account number provided in the *Electronic Bidding System*;

5.8.2 contain the reference number provided by the *Electronic Bidding System*;

5.8.3 be made through:

.1 a corporation or institution that is a member of the Canadian Payments Association, or

.2 a corporation, association or federation incorporated or organized as a credit union or cooperative credit society that conforms to the requirements of a credit union which are more particularly described in paragraph 137(6)(b) of the *Income Tax Act*; and

5.8.4 be received by Defence Construction Canada not later than the date and time specified for the *Electronic Bidding System* closing. Tenderers are advised to allow sufficient time for the wire transfer to be completed. Tenderers are further advised that direct deposits, or any other types or forms of electronic funds transfers which do not allow Defence Construction Canada to determine the exact date and time the funds were received, are not acceptable and will result in the rejection of the tender.

5.9 If the tender is accepted:

5.9.1 Contract security must be provided by the successful Tenderer in accordance with paragraph 10.1 below.

5.9.2 If bid security is required in accordance with paragraph 5.1:

.1 DCC will hold the security deposit referred to in Article 5 until the contract security is provided; and

.2 when the contract security is provided, DCC will return the security deposit referred to in paragraph 5.6 (wire transfer) to the person from whom it was received unless it forms part of the contract security, in which case it shall be retained as contract security.

5.10 If the tender is not accepted, bid security in the form prescribed in paragraph 5.6 will be returned to the to the person from whom it was received by way of direct deposit.

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Tenderers that have not previously had bid security returned by way of direct deposit will be contacted by Defence Construction Canada and provided with further instructions.

## 6. LISTING OF SUBCONTRACTORS AND SUPPLIERS

6.1 Notwithstanding any list of subcontractors which the Tenderer may be required to submit as part of the tender, the Tenderer shall, within 48 hours of receipt of a written request from Defence Construction Canada, submit the names of subcontractors and suppliers for the part or parts of the work listed in the said request. Failure to do so may result in disqualification of its tender.

6.2 No subcontractor who holds a restricted license under the *Quebec Building Act* (CQLR, c. B-1.1) can be included by the Tenderer in its list of subcontractors mentioned in paragraph 6.1 above and selected for execution of work failing which the Tenderer must submit a revised list.

6.3 Tenderers are advised that, when naming of *subcontractors* is required through the *Electronic Bidding System*, failure by the Tenderer to provide a name in the space(s) provided for *subcontractor*(s) shall be cause for rejection of the Tenderer's bid by Defence Construction Canada. Tenderers are further advised that where *Contractor*'s own forces will be used for any of the *subcontractors* listed, the Tenderer shall so indicate in the spaces provided by inserting own name.

## 7. SUBMISSION OF TENDER

7.1 The Tender shall be submitted through the *Electronic Bidding System* not later than the date and time specified for the *Electronic Bidding System* closing. Tenders submitted after *Electronic Bidding System* closing date and time will not be allowed by the *Electronic Bidding System*.

7.2 The time as indicated on the *Electronic Bidding System* shall be the official time for the *Electronic Bidding System* closing.

7.3 DCC is neither liable nor responsible for costs incurred by Tenderers in the preparation, submission, or presentation of their tender. Tenderers will be required to accept on-line the Terms and Conditions for the *Electronic Bidding System*.

## 8. ACCEPTANCE OF TENDER

8.1 It is our intent to award this contract to the Tenderer that submits the lowest compliant tender. However, Defence Construction Canada may accept any tender, whether it is the lowest or not, or may reject any or all tenders.

8.2 Without limiting the generality of paragraph 8.1, Defence Construction Canada may reject a tender if:

8.2.1 the information contained in the certification contemplated in the tender regarding the DCC Procurement Code of Conduct is determined to be untrue in any respect by DCC;

8.2.2 a Tenderer has been declared ineligible or has been suspended by Public Services and Procurement Canada under its *Ineligibility and Suspension Policy* and the period of ineligibility or suspension has not expired;

8.2.3 the Tenderer has failed to comply with the provisions of Section 2 of these instructions;

8.2.4 the bidding privileges of the Tenderer or subcontractor included as part of the tender are suspended or are in the process of being suspended; or

8.2.5 with respect to current or prior transactions with Defence Construction Canada,

.1 the Tenderer is bankrupt or if, for whatever reason, its activities are rendered inoperable for an extended period;

.2 evidence, satisfactory to Defence Construction Canada, of fraud, bribery, fraudulent misrepresentation, or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Tenderer, any of its employees or any subcontractor included as part of its tender;

.3 Defence Construction Canada has exercised, or intends to exercise, the contractual remedy of taking the work out of the contractor's hands with respect to a contract with the Tenderer, any of its employees or any subcontractor included as part of its tender; or

.4 Defence Construction Canada determines that the Tenderer's performance on other contracts is sufficiently poor to jeopardize the successful completion of the requirement being bid on.

8.3 In assessing the Tenderer's performance on other contracts pursuant to paragraph 8.2.5.4, Defence Construction Canada may consider, but not be limited to, such matters as:

8.3.1 the quality of workmanship in performing the Work;

8.3.2 the timeliness of completion of the Work;

8.3.3 the overall management of the Work and its effect on the level of effort demanded of the Corporation and its representatives; and

8.3.4 the completeness and effectiveness of the Contractor's safety program during the performance of the Work.

8.4 Without limiting the generality of paragraphs 8.1, 8.2 and 8.3, Defence Construction Canada may reject any tender based on an unfavourable assessment of the:

8.4.1 adequacy of the tendered price to permit the work to be carried out and, in case of a tender providing unit prices or a combination of lump sum and unit prices, whether each such price reasonably reflects the cost of performing the part of the work to which that price applies;

8.4.2 Tenderer's ability to provide the necessary management structure, skilled personnel, experience, and equipment to perform competently the work under the contract; or

8.4.3 Tenderer's performance on other contracts.

8.5 Defence Construction Canada may, at its sole discretion, waive or cause to be corrected minor irregularities in tenders if Defence Construction Canada determines at its sole discretion that the variation of the tender from the exact requirements set out in the

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Tender Documents can be corrected or waived without being prejudicial to other Tenderers.

8.6 Defence Construction Canada reserves the right, at its sole discretion, to negotiate or invite new tenders, in cases where the lowest acceptable tender exceeds the advertised budget amount. Negotiations or the invitation of new tenders will be conducted as follows:

8.6.1 In the event that the lowest compliant tender exceeds the amount of funding Canada has allocated for the construction phase of the work

.1 by 15% or less, Canada, at its sole discretion, shall either

.1 cancel the tender call;

.2 obtain additional funding and, subject to the provisions of clause 8 of the Instructions to Tenderers, award the Contract to the Tenderer submitting the lowest compliant tender; or

.3 revise the scope of the work accordingly and negotiate, with the Tenderer submitting the lowest compliant tender, a corresponding reduction in its tendered price.

.2 by more than 15%, Canada, at its sole discretion, shall either

.1 cancel the tender call;

.2 obtain additional funding and, subject to the provisions of clause 8 of the Instructions to Tenderers, award the Contract to the Tenderer submitting the lowest compliant tender; or

.3 revise the scope of the work accordingly and invite those who submitted compliant tenders at the original tender call to re-tender the work.

8.6.2 If negotiations or re-tender are undertaken as is contemplated in 8.6.1.1.3 or 8.6.1.2.3, Tenderers shall retain the same subcontractors and suppliers as they carried in their original tender submissions.

8.6.3 If Canada elects to negotiate a reduction in the tendered price as is contemplated in 8.6.1.1.3 and the negotiations fail to reach an agreement, Canada shall then exercise either of the options referred to in 8.6.1.1.1 or 8.6.1.1.2.

8.7 The tender validity period may be extended for a specific period of time, but only upon written request by Defence Construction Canada and only upon agreement of the Tenderer. DCC reserves the right, at its sole discretion, to enter into or terminate negotiations for any adjustments in tender price or completion date if circumstances warrant such an action.

8.8 For the purpose of clauses 8.2, 8.3 and 8.4 above the Tenderer also means person or persons holding controlling interest in the corporation, partnership or sole proprietorship.

8.9 Conflict of Interest – Unfair Advantage

8.9.1 In order to protect the integrity of the procurement process, Tenderers are advised that Defence Construction Canada may reject a tender in the following circumstances:

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.1 If the Tenderer, any of its subcontractors, and of their respective employees or former employees was involved in any manner in the preparation of the bid solicitation;

.2 If the Tenderer, any of its subcontractors, and of their respective employees or former employees had access to information related to the bid solicitation that was not available to other tenderers and that would, in Defence Construction Canada's opinion, give the Tenderer an unfair advantage.

8.9.2 The experience acquired by a Tenderer who is providing or has provided the services described in the bid solicitation (or similar services) will not, in itself, be considered by Defence Construction Canada as conferring an unfair advantage or creating a conflict of interest. The Tenderer, however, remains subject to the criteria established above.

8.9.3 Firms that have been engaged on behalf of DCC to perform consulting, design, estimating or construction phase services related to the work of this Project will be prohibited from either directly or indirectly submitting or participating in the preparation of a bid for this and any subsequent construction contracts related to this Project.

8.9.4 Tenderers who are in doubt about a particular situation should contact the Contracting Authority before tender closing. By submitting a tender, the Tenderer represents that it does not consider itself to be in a conflict of interest nor to have an unfair advantage. The Tenderer acknowledges that it is within Defence Construction Canada's sole discretion to determine whether a conflict of interest or unfair advantage exists.

## 9. ALTERNATIVE MATERIALS & PRICES

9.1 Whenever a material is specified by trade name or by manufacturer's name, the tender shall be based on the use of the named material or on the use of an alternative material which has been accepted, pursuant to a request that has been submitted in accordance with the requirements of the Request for Acceptance of Alternative Materials, DCL 242. During the tender period, alternative materials will be considered provided full technical data is received in writing by the point of contact named in the MERX ad at least ten (10) working days prior to the tender closing date. If any alternative material is approved for the purpose of the tender, an Amendment to the Tender Documents will be issued by Defence Construction Canada.

9.2 Tenderers are not to submit alternative prices for the work or part of the work, except when specifically called for in the Tender Documents.

## 10. CONTRACT SECURITY

10.1 Contract security is required when the tender amount is greater than $500,000 or, if the tender amount is less than $500,000.00, when bid security is required pursuant to paragraph 5.1. Contract security shall be submitted in accordance with GC9 of DCL 32 - General Conditions.

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### 11. TENDER RESULTS

11.1 Following tender closing, tender and award results may be obtained on the MERX website. Award results are also available on the Defence Construction Canada website (https://www.dcc-cdc.gc.ca/industry).

### 12. BID DEPOSITORY

12.1 When called for by the Tender Documents, Tenderers shall obtain tenders for the work specified through the Bid Depository according to local rules and trade definitions.

### 13. TAXES, DUTIES, PERMITS AND FEES

13.1 The tender amount shall include all applicable taxes, duties, permits and fees with the exception of the following, when applicable:

13.1.1 Goods and Services Tax (GST) / Harmonized Sales Taxes (HST) / Quebec Sales Tax (QST)

.1 Tenderers are NOT to include any amounts for the GST, HST or the QST, whichever is applicable, and these taxes shall not be included when calculating the amount of any bid security or contract security that may be required. Any amount levied in respect of the GST, HST or the QST will be billed as a separate item in a progress claim submitted by the Contractor and will be paid to the Contractor in addition to the amount approved by the DCC Representative for work performed under the Contract.

13.1.2 British Columbia, Manitoba, and Saskatchewan Provincial Sales Tax (PST)

.1 Tenderers are NOT to include any amounts for PST and these taxes shall not be included when calculating the amount of any bid security or contract security that may be required. Tenderers are advised that Defence Construction Canada purchases goods and services on behalf of the Department of National Defence and therefore receives an exemption from the payment of PST on the purchase of taxable goods and services in the provinces of British Columbia, Manitoba, and Saskatchewan. Defence Construction Canada will provide the successful Tenderer with the information required to support the exemption (form FIN491 for British Columbia, an RST number for Manitoba and an exemption letter for Saskatchewan).

### 14. INTERNATIONAL SANCTIONS

14.1 Tenderers must ensure that no goods or services that originate, either directly or indirectly, from the countries subject to economic sanctions imposed by Canada, are included in their tender. Details on existing sanctions can be found on the Global Affairs Canada website.

### 15. RECOURSE MECHANISMS

15.1 Any tenderer who believes they have been wronged in connection with this tender may seek redress in accordance with the following procedures:

15.1.1 request, within a reasonable time after notification of the results, written explanations regarding the evaluation of its tender,

15.1.2 challenge the evaluation or award process by submitting a written complaint to DCC. DCC must respond within a reasonable time frame,

15.1.3 appeal to the Canadian International Trade Tribunal (CITT) for a contract subject to trade agreements, or

15.1.4 as a last resort, the tenderer may refer any matter relating to the fairness or legality of the contract award process to the competent courts.

15.2 Tenderers are invited to consult the official CITT website for detailed information on procedures, deadlines, and required forms.

## 16. ELECTRONIC BIDDING

16.1 Definitions:

16.1.1 "*Electronic Bidding System*" means the internet based on-line system designated by DCC through its assigned Service Provider for the collection of tenders.

16.1.2 "Service Provider" means the corporation that is providing the *Electronic Bidding System* to Defence Construction Canada (DCC).

16.2 System Failure

16.2.1 In the event there is a failure of the *Electronic Bidding System* that results in the loss of satisfactory service, the closing of the tender call may be extended or cancelled as indicated by DCC.

16.3 Functionality of a Tenderer's On-line (Computer) System

16.3.1 Every Tenderer or any other person or entity, which uses the *Electronic Bidding System*, must maintain the functionality of its computer system. DCC, its Service Provider and any employee, or agent of any of the foregoing, does not:

.1 assume any responsibility for the functionality of a Tenderer's or any other person's or entity's computer system and internet connection; or

.2 agree to provide any Tenderer or any other person or entity, with an alternate mode or method of submitting its tender.

16.4 Exclusion of Liability – *Electronic Bidding System*

16.4.1 DCC, its Service Provider and any employee, or agent of any of the foregoing, cannot guarantee continual, uninterrupted or error free service as disruptions or malfunctions may delay, interfere with, or disrupt the electronic bidding process, including the online transmission and receipt of tenders. Every Tenderer or any other person or entity, which uses the *Electronic Bidding System*, acknowledges that the submission of tenders is conducted online and relies on hardware and software that may malfunction without warning. No Tenderer, or any other person or entity, shall have any claim for compensation of any kind whatsoever, as a result of the disruption or malfunction of the *Electronic Bidding System* and each Tenderer, or any other person or entity, expressly agrees and acknowledges that it is hereby deemed to have no such claim.

16.5 Terms and Conditions for Electronic Bidding

16.5.1 Acceptance of Use of the *Electronic Bidding System*

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.1 It is understood and agreed that the provision of the tender call and the submission of tenders through the *Electronic Bidding System* satisfies any legal requirement that documents be originals be in writing, be signed or be delivered.

16.5.2 Confidentiality

.1 Tenders submitted through the *Electronic Bidding System* are held in confidence and are not available to DCC until after the tender closing date and time.

16.5.3 Use of the Internet, Email and Computer Systems

.1 It is understood and agreed that if the *Electronic Bidding System* is accessed through the Internet, the user is responsible for reading and complying with any notices, warnings or disclaimers posted or contained thereon.

.2 It is understood and agreed that email is not a guaranteed delivery method and is subject to what is conventionally referred to as anti-spam filters that may impact the delivery of emails to and from DCC and the *Electronic Bidding System*.

.3 It is understood and agreed that the user is solely responsible for ensuring that its computer hardware and software are compatible with that required for the use of the *Electronic Bidding System*.

.4 It is understood and agreed that on-line documents and / or communications may be distorted in the process of transmission or may be displayed differently to different users for technical reasons and that it is the responsibility of the user to ensure the accuracy of all documents and communications.

16.5.4 Privacy and Consent to Use of Name

.1 It is understood and agreed that while using the *Electronic Bidding System* the user may provide certain information about itself. It is further understood and agreed that the Service Provider's Privacy Policy governs the collection and / or use of any such information.

.2 It is understood and agreed that DCC is hereby authorized to make the user's name available to other registered users and authorized users of the *Electronic Bidding System* at any time and in any format for the purpose of meeting the requirements of the *Electronic Bidding System*, including the publication of document request lists and the names of successful Tenderers.

.3 Personal information may be disclosed to:

.1 the Service Provider;

.2 other users in order to facilitate the use of the *Electronic Bidding System* and the tendering process;

.3 an organization or entity engaged by DCC to evaluate a tender for compliance;

.4 a person who, in the reasonable judgment of DCC, is providing or seeking the information as the user's agent; and

.5 any third party or parties, where the user consents to such disclosure or where disclosure is required or permitted by law.

.4 Tenderers are advised that DCC is subject to the provisions of the *Access to Information Act*. Information submitted through the *Electronic Bidding System* may be eligible for disclosure in accordance with the requirements of the Act.

## 17. LANGUAGE OF THE CONTRACT

17.1 The language of the Contract selected by the Tenderer on the *Electronic Bidding System* shall be the language of the Contract and the entire written and verbal communication between the parties with respect to any matters related to the performance of the subject matter of the Contract.

17.2 Unless otherwise specified in the Contract, all contractual documents to which the Contract applies or refers, as well as all deliverables, documents, reports, and results of work, services or goods that the Contractor submits, provides or delivers to DCC or Canada as part of the performance of the Contract, shall be in the language of the Contract selected by the Tenderer on the *Electronic Bidding System*.

17.3 DCC reserves the right to translate, either internally or through a third party, any deliverable produced by the Contractor. In the event that DCC proceeds with translation, the Contractor may be provided with an opportunity to review and comment on the translated deliverable.

## 18. DIRECT DEPOSIT

18.1 Defence Construction Canada (DCC) uses direct deposit, an electronic transfer of funds deposited directly into your bank account, for contract payments. *Contractors* are encouraged to enroll as soon as possible. If you have not already enrolled with DCC, please complete the DCL291-Direct Deposit Enrolment for Contracts located on our web site at https://www.dcc-cdc.gc.ca/industry/forms and submit as per instructions on the form.

## 19. RESPONSIBLE USE OF ARTIFICIAL INTELLIGENCE (AI)

19.1 DCC recognises the potential of generative artificial intelligence (AI) in the preparation of tenders in response to this tender. Tenderers must ensure that any use of artificial intelligence (AI) in the preparation of tenders in response to this tender is carried out in a responsible manner.

19.2 Human responsibility and supervision

19.2.1 The tenderer is responsible for any AI-generated content included in their tender.

19.2.2 DCC is not responsible for errors or omissions in any AI-generated content used in a tender.

19.2.3 Tenderers are therefore encouraged to ensure that any AI-generated results are reviewed by a human reviewer to detect any unexpected or inaccurate results.

19.2.4 Tenderers must be prepared to validate any content included in their tender that is produced using generative AI, including data, statements, and documents

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19.3 Information protection

19.3.1 Tenderers must ensure that sensitive information, including protected, classified or personal information, is not provided to AI systems without prior authorisation from DCC.

19.3.2 Tenderers must not develop, use or deploy artificial intelligence (AI) systems or technologies that infringe on the intellectual property rights of a third party in the preparation of their tender. This includes, but is not limited to, AI models, algorithms, data sets and any results generated by AI systems.

19.3.3 If the use of AI systems by the tenderer results in a data breach, the tenderer must notify DCC immediately.

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## GENERAL CONDITIONS

## GC1 - GENERAL PROVISIONS

1.1 Interpretation

1.1.1 Headings and References

.1 The headings in the Contract documents, other than those in the drawings and specifications, form no part of the Contract but are inserted for convenience of reference only.

.2 A reference made to a part of the Contract by means of numbers preceded by letters is a reference to the particular part of the Contract that is identified by that combination of letters and numbers and to any other part of the Contract referred to therein.

.3 A reference to a paragraph or subparagraph followed by an identifying number, letter or combination thereof is, unless specifically stated otherwise, a reference to the paragraph or subparagraph that forms part of the clause within which the reference is made.

1.1.2 Terminology

In the *Contract*,

.1 "*Canada*", "*Crown*", "*His Majesty*" means His Majesty the King in right of Canada as represented by Defence Construction Canada (DCC);

.2 "*Contract*" means the contract documents referred to as such t*herein* and every other document specified or referred to in any of them as forming part of the *Contract*, all as amended by agreement of the parties;

.3 "*Contract Amount*" means the amount set out in the *Contract* to be payable to the *Contractor* for the *Work*, subject to the terms and conditions of the *Contract*;

.4 "*Contract Security*" means any security given by the *Contractor* to *Canada* in accordance with the *Contract*;

.5 "*Contractor*" means the *person* contracting with DCC to provide or furnish all labour, *Material* and *Plant* for the execution of the *Work* under the *Contract*, and includes the *Contractor*'s *Superintendent* as designated in writing to the *DCC Representative*;

.6 "*DCC Representative*" means the *person* designated in the *Contract*, or by written notice to the *Contractor*, to act as the *DCC Representative* for the purposes of the *Contract*, and includes a *person*, designated and authorized in writing by the *DCC Representative* to the *Contractor*;

.7 "*Final Certificate of Completion*" means a certificate issued by the *DCC Representative* when the *Work* reaches Completion;

.8 "*herein*", "*hereby*", "*hereof*", "*hereunder*" and similar expressions refer to the *Contract* as a whole and not to any particular section or part t*hereof*;

.9 "*Interim Certificate of Completion*" means a certificate issued by the *DCC Representative* when the *Work* reaches Substantial Completion;

.10 "*Lump Sum Arrangement*" means that part of the *Contract* that prescribes a lump sum as payment for performance of the *Work* to which it relates;

.11 "*Material*" includes all commodities, articles, machinery, equipment, fixtures, and things required to be furnished in accordance with the *Contract* for incorporation into the *Work*;

.12 "*Payment Legislation*" means the *Federal Prompt Payment for Construction Work Act*, S.C. 2019, c.29, s.387, and if the Work in being performed in a province that has been designated in accordance with s. 6(1) of the Act, the similar regime applicable in that province;

.13 "*person*" also includes, unless there is an express stipulation in the *Contract* to the contrary, any partnership, proprietorship, firm, joint venture, consortium, or corporation;

.14 "*Plant*" includes all tools, implements, machinery, vehicles, structures, equipment, articles, and things that are necessary for the performance of the *Contract*, other than *Material* and those tools customarily provided by a tradesperson in practicing a trade;

.15 "*Quantities Adjustment Sheet*" is issued by the *DCC Representative* certifying the correctness of the final quantities, prices per unit and values of labour, *Plant* and *Material* performed, used, and supplied by the *Contractor* for the construction of the part of the *Work* to which a *Unit Price Arrangement* applies;

.16 "*Subcontractor*" means a *person* having a direct contract with the *Contractor*, subject to GC3.6 "Subcontracting", to perform a part or parts of the *Work*, or to supply *Material* customized for the *Work*;

.17 "*Superintendent*" means the employee or representative of the *Contractor*

.18 designated by the *Contractor* to act pursuant to GC2.6, "*Superintendent*";

.19 "*Supplementary Conditions*" means the part of the *Contract* that amends or supplements the General Conditions;

.20 "*Supplier*" means a *person* having a direct contract with the *Contractor* to supply *Plant* or *Material* not customized for the *Work*;

.21 "*Unit Price Arrangement*" means that part of the *Contract* that prescribes the product of a price per unit of measurement multiplied by a number of units of measurement for performance of the *Work* to which it relates;

.22 "*Unit Price Table*" means the table of prices per unit set out in the *Contract*;

.23 "*Work*" means, subject only to any express stipulation in the *Contract* to the contrary, everything that is necessary to be done, furnished, or delivered by the *Contractor* to perform the *Contract* in accordance with the contract documents; and

.24 "*Working Day*" means a day other than a Saturday, Sunday, or a statutory holiday that is observed by the construction industry in the area of the place of the *Work*.

## GENERAL CONDITIONS

1.1.3 Application of Certain Provisions

.1 Any provisions of the *Contract* that are expressly stipulated to be applicable only to a *Unit Price Arrangement* are not applicable to any part of the *Work* to which a *Lump Sum Arrangement* applies.

.2 Any provisions of the *Contract* that are expressly stipulated to be applicable only to a *Lump Sum Arrangement* are not applicable to any part of the *Work* to which a *Unit Price Arrangement* applies

1.1.4 Substantial Completion

.1 The *Work* shall be considered to have reached Substantial Completion when

.1 the *Work* or a substantial part t*hereof* has passed inspection and testing and is, in the opinion of the *DCC Representative*, ready for use by *Canada* or is being used for the intended purposes; and

.2 the *Work* is, in the opinion of the *DCC Representative*, capable of completion or correction at a cost of not more than

.1 3% of the first $500,000;

.2 2% of the next $500,000; and

.3 1% of the balance of the *Contract Amount* at the time this cost is calculated.

.2 Where the *Work* or a substantial part t*hereof* is ready for use or is being used for the purposes intended and

.1 the remainder of the *Work* or a part t*hereof* cannot be completed by the time specified in the *Contract*, or as amended in accordance with GC6.5, "Delays and Extension of Time", for reasons beyond the control of the *Contractor*; or

.2 the *DCC Representative* and the *Contractor* agree not to complete a part of the *Work* within the specified time;

the cost of that part of the Work that was either beyond the control of the Contractor to complete or the *DCC Representative* and the Contractor have agreed not to complete by the time specified, shall be deducted from the value of the Contract referred to in paragraph 1.1.4.1.2 of GC1.1.4 and the said cost shall not form part of the cost of the Work remaining to be done in determining Substantial Completion.

1.1.5 Completion

.1 The *Work* shall be deemed to have reached Completion when all labour, *Plant* and *Material* required have been performed, used, or supplied, and the *Contractor* has complied with the *Contract* and all orders and directions made pursuant thereto, all to the satisfaction of the *DCC Representative*.

## GENERAL CONDITIONS

1.2 *Contract* Documents

1.2.1 General

.1 The *Contract* documents are complementary, and what is required by any one shall be as binding as if required by all.

.2 References in the *Contract* documents to the singular shall be considered to include the plural as the context requires.

.3 Nothing contained in the *Contract* documents shall create a contractual relationship between DCC and any *Subcontractor* or *Supplier*, their subcontractors or suppliers, or their agents or employees.

1.2.2 Order of Precedence

.1 In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:

.1 any amendment or variation of the *Contract* documents that is made in accordance with the General Conditions;

.2 any addenda issued prior to tender closing;

.3 Supplementary Conditions;

.4 General Conditions;

.5 Acknowledgement document;

.6 the Tender Form entered directly into the *Electronic Bidding system* duly completed when accepted;

.7 Plans and Specifications.

later dates shall govern within each of the above categories of documents.

.2 In the event of any discrepancy or conflict in the information contained in the Plans and Specifications, the following rules shall apply:

.1 Specifications shall govern over Plans;

.2 dimensions shown in figures on a Plan shall govern where they differ from dimensions scaled from the same Plan; and

.3 Plans of larger scale govern over those of smaller scale.

1.2.3 Security and Protection of Documents and *Work*

.1 The *Contractor* shall guard and protect *Contract* documents, drawings, information, models, and copies t*hereof*, whether supplied by *Canada* or the *Contractor*, against loss or damage from any cause.

.2 The *Contractor* shall keep confidential all information provided to the *Contractor* by or on behalf of *Canada* in connection with the *Work*, and all information developed by the *Contractor* as part of the *Work*, and shall not disclose any such information to any *person* without the written permission of the *DCC Representative*, except that the *Contractor* may disclose to a *Subcontractor*,

authorized in accordance with the *Contract*, information necessary to the performance of a subcontract. This section does not apply to any information that

.1 is publicly available from a source other than the *Contractor*; or

.2 is or becomes known to the *Contractor* from a source other than *Canada*, except any source that is known to the *Contractor* to be under an obligation to *Canada* not to disclose the information.

.3 When the *Contract*, the *Work*, or any information referred to in paragraph 1.2.3.2 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by *Canada*, the *Contractor* shall, at all times, take all measures reasonably necessary for the safeguarding of the *Material* so identified, including such measures as may be further specified elsewhere in the *Contract* or provided, in writing, from time to time by the *DCC Representative*.

.4 Without limiting the generality of paragraphs 1.2.3.2 and 1.2.3.3 of GC1.2.3, when the *Contract*, the *Work*, or any information referred to in paragraph 1.2.3.2 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by *Canada*, *Canada* shall be entitled to inspect the *Contractor*'s premises and the premises of its subcontractors or suppliers and any other *person* at any tier, for security purposes at any time during the term of the *Contract*, and the *Contractor* shall comply with, and ensure that any such subcontractors or suppliers comply with all written instructions issued by the *DCC Representative* dealing with the *Material* so identified, including any requirement that employees of the *Contractor* and its subcontractors and suppliers and any other *person* at any tier execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

.5 The *Contractor* shall safeguard the *Work* and the *Contract*, the Specifications, Plans, drawings, and any other information provided by *Canada* to the *Contractor* and shall be liable to *Canada* for any loss or damage from any causes.

1.3 Status of the *Contractor*

1.3.1 The *Contractor* is engaged under the *Contract* as an independent *Contractor*.

1.3.2 The *Contractor*, its subcontractors and suppliers and any other *person* at any tier and their employees are not engaged by the *Contract* as employees, servants, or agents of *Canada*.

1.3.3 For the purposes of the *Contract* the *Contractor* shall be solely responsible for any and all payments and deductions required to be made by law including those required for Canada or Quebec Pension Plans, Employment Insurance, Worker's Compensation, provincial health or insurance plans, and Income Tax.

1.4 Rights and Remedies

1.4.1 Except as expressly provided in the *Contract*, the duties and obligations imposed by the *Contract* and the rights and remedies available t*hereunder* shall be in addition to

and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

1.5 Time of the Essence

1.5.1 Time is of the essence of the *Contract*.

1.6 Indemnification by the *Contractor*

1.6.1 The *Contractor* shall indemnify and save *Canada* harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by *Canada* or in respect of claims by any third party, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by, or attributable to the activities of the *Contractor* in performing the *Work*, provided such claims are caused by the negligent or deliberate acts or omissions of the *Contractor*, or those for whom it is responsible at law.

1.6.2 The *Contractor*'s obligation to indemnify *Canada* for losses related to first party liability shall be limited to:

.1 In respect to losses for which insurance is to be provided pursuant to GC10.1, "Insurance Contracts", the Commercial General Liability insurance limit for one occurrence as referred to in the "DCL243 - Insurance Conditions".

.2 In respect to losses for which insurance is not required to be provided in accordance with GC10.1, "Insurance Contracts", the greater of the *Contract Amount* or $5,000,000, but in no event shall the sum be greater than $20,000,000.

The limitation of this obligation shall be exclusive of interest and all legal costs and shall not apply to any infringement of intellectual property rights or any breach of warranty obligations.

1.6.3 The *Contractor*'s obligation to indemnify *Canada* for losses related to third party liability shall have no limitation and shall include the complete costs of defending any legal action by a third party. If requested by *Canada*, the *Contractor* shall defend *Canada* against any third-party claims.

1.6.4 The *Contractor* shall pay all royalties and patent fees required for the performance of the *Contract* and, at the *Contractor*'s expense, shall defend all claims, actions or proceedings against *Canada* charging or claiming that the *Work* or any part t*hereof* provided or furnished by the *Contractor* to *Canada* infringes any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in *Canada*.

1.6.5 Notice in writing of a claim shall be given within a reasonable time after the facts, upon which such claim is based, became known.

1.7 Indemnification by *Canada*

1.7.1 Subject to the Crown Liability and Proceedings Act, the Patent Act, and any other law that affects *Canada*'s rights, powers, privileges or obligations, *Canada* shall indemnify and save the *Contractor* harmless from and against all claims, demands,

losses, costs, damage, actions, suits, or proceedings arising out of the *Contractor*'s activities under the *Contract* that are directly attributable to

.1 a lack of or a defect in *Canada*'s title to the *Work* site if owned by *Canada*, whether real or alleged; or

.2 an infringement or an alleged infringement by the *Contractor* of any patent of invention or any other kind of intellectual property occurring while the *Contractor* was performing any act for the purposes of the *Contract* employing a model, plan or design or any other thing related to the *Work* that was supplied by *Canada* to the *Contractor*.

1.8 Laws, Permits and Taxes

1.8.1 The *Contractor* shall comply with all federal, provincial and municipal laws and regulations applicable to the performance of the *Work* or any part t*hereof* including, without limitation, all laws concerning health and the protection of the environment and shall require compliance therewith by all of its subcontractors and suppliers at any tier as if the *Work* were being performed for an owner other than *Canada*. The *Contractor* shall furnish evidence of compliance with such laws and regulations to the *DCC Representative* at such times as the *DCC Representative* may reasonably request.

1.8.2 Unless stipulated otherwise in the *Contract*, the *Contractor* shall obtain and maintain all permits, certificates, licences, registrations, and authorizations required for the lawful performance of the *Work*.

1.8.3 Prior to the commencement of the *Work* at the site, the *Contractor* shall tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the *Work* were being performed for an owner other than *Canada*.

1.8.4 Within ten (10) days of making a tender pursuant to paragraph 1.8.3 of GC1.8, the *Contractor* shall notify the *DCC Representative* of the amount properly tendered and whether or not the municipal authority has accepted that amount.

1.8.5 If the municipal authority has not accepted the amount tendered, the *Contractor* shall pay that amount to *Canada* within six (6) days after the time stipulated in paragraph 1.8.4 of GC1.8.

1.8.6 For the purposes of this clause, "municipal authority" means any authority that would have jurisdiction respecting permission to perform the *Work* if the owner were not *Canada*.

1.8.7 Subject to paragraph 1.8.10, the *Contractor* shall pay any applicable tax arising from or related to the performance of the *Work* under the *Contract* notwithstanding the residency of the *Contractor*.

1.8.8 In accordance with the Statutory Declaration referred to in paragraph 5.5.4 of GC5.5, "*Interim Certificate of Completion*", a *Contractor* who has neither residence nor place of business in the province or territory in which *Work* under the *Contract* is being

performed shall provide *Canada* with proof of registration with the provincial sales tax authorities in the said province.

1.8.9 For the purpose of the payment of any applicable tax or the furnishing of security for the payment of any applicable tax arising from or related to the performance of the *Work*, and notwithstanding the provision that all *Material*, *Plant* and interest of the *Contractor* in all real property, licences, powers and privileges, become the property of *Canada* after the time of purchase in accordance with GC3.10, "*Material Plant* and Real Property Become Property of *Canada*", the *Contractor* shall be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any applicable tax payable, at the time of the use or consumption of that *Material*, *Plant* or interest of the *Contractor* in accordance with the relevant legislation.

1.8.10 If the *Contractor* is not a resident of Canada, *Canada* must, pursuant to the Income Tax Act (Canada) and the regulations provided for thereunder from time to time, withhold, for such time as *Canada* may reasonably deem necessary, 15 percent of the amount to be paid to the *Contractor* for the performance of the *Work* under the *Contract* which was provided in Canada, unless the *Contractor* obtains a valid waiver from the Canada Revenue Agency and provides evidence thereof in writing to the *DCC Representative*. The amount withheld will be held on account for the *Contractor* in respect to any tax liability which may be owed to *Canada*.

1.9 Workers' Compensation

1.9.1 Prior to commencing on-site *Work*, at the time of submitting its first progress claim, at the time of Substantial Completion of the *Work*, and prior to issuance of the *Final Certificate of Completion*, the *Contractor* shall provide evidence of compliance with workers' compensation legislation applicable to the place of the *Work*, including payments due t*hereunder*.

1.9.2 At any time during the term of the *Contract*, when requested by *Canada*, the *Contractor* shall provide such evidence of compliance by the *Contractor*, its subcontractors and any other *person* at any tier and any other *person* performing part of the *Work* who is required to comply with such legislation.

1.10 National Security

1.10.1 If *Canada* determines that the *Work* is of a class or kind that involves national security, *Canada* may order the *Contractor* to

.1 provide *Canada* with any information concerning persons employed or to be employed by the *Contractor* for purposes of the *Contract*; and

.2 remove any *person* from the site of the *Work* if, in the opinion of *Canada*, that *person* may be a risk to the national security;

and the *Contractor* shall comply with the order.

1.10.2 In all contracts with persons who are to be employed in the performance of the *Contract*, the *Contractor* shall make provision for the performance of any obligation that may be imposed upon the *Contractor* under paragraph 1.10.1 of GC1.10.

1.11 Unsuitable Workers

1.11.1 The *DCC Representative* shall instruct the *Contractor* to remove from the site of the *Work* any *person* employed by the *Contractor* for purposes of the *Contract* who, in the opinion of the *DCC Representative*, is incompetent or is guilty of improper conduct, and the *Contractor* shall not permit a *person* who has been removed to return to the site of the *Work*.

1.12 Public Ceremonies and Signs

1.12.1 The *Contractor* shall not permit any public ceremony in connection with the *Work* without the prior consent of the *DCC Representative*.

1.12.2 The *Contractor* shall not erect nor permit the erection of any sign or advertising on the *Work* or its site without the prior consent of the *DCC Representative*.

1.13 Conflict of Interest

1.13.1 It is a term of the *Contract* that no individual, for whom the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service apply, shall derive a direct benefit from the *Contract* unless that individual is in compliance with the applicable post-employment provisions.

1.13.2 Contractors shall not employ DCC employees in activities that might subject DCC employees to demands incompatible with their official duties or cast doubt on their ability to perform their duties objectively.

1.14 Agreements and Amendments

1.14.1 The *Contract* constitutes the entire and sole agreement between the parties with respect to the subject matter of the *Contract* and supersedes all previous negotiations, communications, and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the *Contract*. There are no terms, covenants, representations, statements, or conditions binding on the parties other than those contained in the *Contract*.

1.14.2 The failure of either party at any time to require performance by the other party of any provision *hereof* shall not affect the right thereafter to enforce such provision. Nor shall the waiver by either party of any breach of any covenant, term or condition

*hereof* be taken to be held to be a waiver of any further breach of the same covenant, term, or condition.

1.14.3 The *Contract* may be amended only as provided for in the *Contract*.

1.15 Succession

1.15.1 The *Contract* shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and, subject to GC1.16, "Assignment", permitted assigns.

1.16 Assignment

1.16.1 The *Contractor* shall not make any assignment of the *Contract*, either in whole or in part, without the written consent of the *DCC Representative*.

1.17 No Bribe

1.17.1 The *Contractor* represents and covenants that no bribe, gift, benefit, nor other inducement has been nor shall be paid, given, promised or offered directly or indirectly to any official or employee of *Canada* or to a member of the family of such a *person*, with a view to influencing the entry into the *Contract* or the administration of the *Contract*.

1.18 Certification – Contingency Fees

1.18.1 In this clause

.1 "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government contract or negotiating the whole or any part of its terms;

.2 "employee" means a *person* with whom the *Contractor* has an employer/employee relationship; and

.3 "*person*" includes an individual or a group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyists Registration Act, R.S.C. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

1.18.2 The *Contractor* certifies that it has not directly or indirectly paid nor agreed to pay and covenants that it shall not directly or indirectly pay nor agree to pay a contingency fee for the solicitation, negotiation or obtaining of the *Contract* to any *person* other than an employee acting in the normal course of the employee's duties.

1.18.3 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the *Contract* shall be subject to the accounts and audit provisions of the *Contract*.

1.18.4 If the *Contractor* certifies falsely under this section or is in default of the obligations contained t*herein*, *Canada* may either take the *Work* out of the *Contractor*'s hands in accordance with the provisions of the *Contract* or recover from the *Contractor* by way

of reduction to the *Contract Amount* or otherwise, the full amount of the contingency fee.

1.19 International Sanctions

1.19.1 Persons and companies in *Canada*, and Canadians outside of *Canada* are bound by economic sanctions imposed by *Canada*. As a result, the Government of *Canada* cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

1.19.2 It is a condition of the *Contract* that the *Contractor* not supply to the Government of *Canada* any goods or services which are subject to economic sanctions.

1.19.3 By law, the *Contractor* must comply with changes to the regulations imposed during the life of the *Contract*. During the performance of the *Contract* should the imposition of sanctions against a country or *person* or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the *Contractor*, the *Contractor* may request that the *Contract* be terminated in accordance with GC7.3, "Termination of *Contract*".

1.20 Conduct during the *Contract*

1.20.1 The *Contractor* shall comply with the DCC Procurement Code of Conduct.

1.21 Disclosure of Information

1.21.1 The *Contractor* consents, pursuant to section 30 of the *Defence Production Act* (Canada), to the public disclosure of its legal name and address, the *Contract Amount* and any amendments thereto, and amounts paid by *Canada* under the *Contract*.

## GC2 - ADMINISTRATION OF THE CONTRACT

2.1 DCC Representative's Authority

2.1.1 *Canada* shall designate a *DCC Representative* and shall notify the *Contractor* of the name, address and telephone number of the *DCC Representative*.

2.1.2 The *DCC Representative* shall perform *Canada*'s duties and functions under the *Contract*.

2.1.3 The *DCC Representative* shall be authorized to issue notices, instructions, and directions to the *Contractor* and to accept on behalf of *Canada* any notice, order or other communication from the *Contractor* relating to the *Work*.

2.1.4 The *DCC Representative* shall, within a reasonable time, review and respond to submissions made by the *Contractor* in accordance with the requirements of the *Contract*.

2.2 Interpretation of *Contract*

2.2.1 If, at any time before the *DCC Representative* has issued a *Final Certificate of Completion*, any question arises between the parties about whether anything has been done as required by the *Contract* or about what the *Contractor* is required by

the *Contract* to do, and in particular but without limiting the generality of the foregoing, about

.1 the meaning of anything in the Plans and Specifications;

.2 the meaning to be given to the Plans and Specifications in case of any error t*herein*, omission therefrom, or obscurity or discrepancy in their wording or intention;

.3 whether or not the quality or quantity of any *Material* or workmanship supplied or proposed to be supplied by the *Contractor* meets the requirements of the *Contract*;

.4 whether or not the labour, *Plant* or *Material* performed, used, and supplied by the *Contractor* for performing the *Work* and carrying out the *Contract* are adequate to ensure that the *Work* shall be performed in accordance with the *Contract* and that the *Contract* shall be carried out in accordance with its terms;

.5 what quantity of any of the *Work* has been completed by the *Contractor*; or

.6 the timing and scheduling of the various phases of the performance of the *Work* as specified in the *Contract*;

the question shall be decided, subject to the provisions of GC8, "Dispute Resolution", by *Canada*.

2.2.2 The *Contractor* shall perform the *Work* in accordance with any decisions of the *DCC Representative* that are made under paragraph 2.2.1 of GC2.2 and in accordance with any consequential directions given by the *DCC Representative*.

2.2.3 If the *Contractor* fails to comply with any instruction or direction issued by the *DCC Representative* pursuant to the *Contract*, *Canada* may employ such methods as *Canada* deems advisable to do what the *Contractor* failed to do, and the *Contractor* shall, on demand, pay *Canada* an amount that is equal to the aggregate of all costs, expenses and damages incurred or sustained by *Canada* by reason of the *Contractor*'s failure to comply with such instruction or direction, including the cost of any methods employed by *Canada* in doing what the *Contractor* failed to do.

2.3 Notices

2.3.1 Subject to paragraph 2.3.3 of GC2.3, any notice, order or other communication may be given in any manner, and if required to be in writing, shall be addressed to the party to whom it is intended at the address in the *Contract* or at the last address of which the sender has received written notice in accordance with this section.

2.3.2 Any notice, order or other communication given in writing in accordance with paragraph 2.3.1 of GC2.3 shall be deemed to have been received by either party

.1 if delivered personally, on the day that it was delivered;

.2 if forwarded by mail, on the earlier of the day it was received or the sixth day after it was mailed; and

.3 if forwarded by facsimile or electronic mail, 24 hours after it was transmitted.

2.3.3 A notice given under GC7.1, "Taking the *Work* out of the *Contractor*'s Hands", GC7.2, "Suspension of *Work*" and GC7.3, "Termination of *Contract*", shall be given in writing

and, if delivered personally, shall be delivered, if the *Contractor* is a sole proprietor, to the *Contractor* or, if the *Contractor* is a partnership or corporation, to an officer t*hereof*.

2.4 Site Meetings

2.4.1 In consultation with the *DCC Representative*, the *Contractor* shall arrange site meetings at regular intervals, with all involved parties who are to attend, in order to ensure, among other things, the proper co-ordination of the *Work*.

2.5 Review and Inspection of *Work*

2.5.1 The *DCC Representative* shall review the *Work* to determine if it is proceeding in conformity with the *Contract* and to record the necessary data to make an assessment of the value of *Work* completed. The *DCC Representative* shall measure and record the quantities of labour, *Plant* and *Material* performed, used, or supplied by the *Contractor* in performing the *Work* or any part t*hereof* that is subject to a *Unit Price Arrangement* and, on request, shall inform the *Contractor* of those measurements and permit the *Contractor* to inspect any records pertaining thereto.

2.5.2 The *DCC Representative* shall reject *Work* or *Material* which in the *DCC Representative*'s opinion does not conform to the requirements of the *Contract*, and shall require inspection or testing of *Work*, whether or not such *Work* is fabricated, installed, or completed. If such *Work* is not in accordance with the requirements of the *Contract*, the *Contractor* shall correct the *Work* and shall pay *Canada*, on demand, all reasonable costs and expenses that were incurred by *Canada* in having the examination performed.

2.5.3 The *Contractor* shall provide the *DCC Representative* with access to the *Work* and its site at all times, and at all times shall provide sufficient, safe, and proper facilities for the review and inspection of the *Work* by persons authorized by the *DCC Representative* and any representatives of those authorities having jurisdiction. If parts of the *Work* are in preparation at locations other than the site of the *Work*, the *DCC Representative* shall be given access to such *Work* whenever it is in progress.

2.5.4 The *Contractor* shall furnish the *DCC Representative* with such information respecting the performance of the *Contract* as the *DCC Representative* may require and render every possible assistance to enable the *DCC Representative* to verify that the *Work* is performed in accordance with the *Contract*, carry out any other duties and exercise any powers in accordance with the *Contract*.

2.5.5 If *Work* is designated for tests, inspections, or approvals in the *Contract* or by the *DCC Representative*'s instructions, or by laws or ordinances of the place of the *Work*, the *Contractor* shall give the *DCC Representative* reasonable notice of when such *Work* shall be ready for review and inspection. The *Contractor* shall arrange for and shall give the *DCC Representative* reasonable notice of the date and time of inspections, tests, or approvals.

2.5.6 If the *Contractor* covers, or permits to be covered, *Work* that has been designated for tests, inspections or approvals before such tests, inspections or approvals are made, completed or given, the *Contractor* shall, if so directed by the *DCC Representative*, uncover such *Work*, have the inspections, tests or approvals satisfactorily made,

completed or given and make good the covering of the *Work* at the *Contractor*'s expense.

2.6 Superintendent

2.6.1 Prior to commencing the *Work*, the *Contractor* shall designate a *Superintendent* and shall notify the *DCC Representative* of the name, address, and telephone number of the *Superintendent*. The *Contractor* shall keep the *Superintendent* at the *Work* site during working hours until the *Work* has reached completion.

2.6.2 The *Superintendent* shall be in full charge of the operations of the *Contractor* during the performance of the *Work* and shall be authorized to accept on behalf of the *Contractor* any notice, order or other communication given to the *Superintendent* or the *Contractor* relating to the *Work*.

2.6.3 Upon request of the *DCC Representative*, the *Contractor* shall remove any *Superintendent* who, in the opinion of the *DCC Representative*, is incompetent or has been guilty of improper conduct, and shall forthwith designate another *Superintendent* who is acceptable to the *DCC Representative*.

2.6.4 The *Contractor* shall not substitute a *Superintendent* without the written consent of the *DCC Representative*. If a *Superintendent* is substituted without such consent, the *DCC Representative* shall be entitled to refuse to issue any documentation or certification relating to progress payments, Substantial Completion or Completion of the *Work* until the *Superintendent* has returned to the *Work* site or another *Superintendent* who is acceptable to the *DCC Representative* has been substituted.

2.7 Non-discrimination in Hiring and Employment of Labour

2.7.1 For the purposes of this clause, "*persons*" include the *Contractor*, its subcontractors and suppliers at any tier and their respective employees, agents, licensees or invitees and any other individual involved in the performance of the *Work* or granted access to the *Work* site. A "*person*" includes any partnership, proprietorship, firm, joint venture, consortium, and corporation.

2.7.2 Without restricting the provisions of paragraph 2.6.3 of GC2.6, "*Superintendent*", the *Contractor* shall not refuse to employ and shall not discriminate in any manner against any *person* because

.1 of that *person*'s race, national origin, colour, religion, age, sex, or marital status;

.2 of the race, national origin, colour, religion, age, sex, or marital status of any *person* having any relationship or association with that *person*; or

.3 a complaint has been made or information has been given by or in respect of that *person* relating to an alleged failure by the *Contractor* to comply with paragraphs 2.7.2.1 and 2.7.2.2 of GC2.7.

2.7.3 Within two (2) *Working Day*s immediately following receipt of a written complaint pursuant to paragraph 2.7.2 of GC2.7, the *Contractor* shall

.1 cause to have issued a written direction to the *person* or persons named by the complainant to cease all actions that form the basis of the complaint;

.2 forward a copy of the complaint to *Canada* by registered mail or courier service.

2.7.4 Within twenty-four (24) hours immediately following receipt of a direction from *Canada* to do so, the *Contractor* shall cause to have removed from the site of the *Work* and from the performance of *Work* under the *Contract*, any *person,* or persons whom *Canada* believes to be in breach of the provisions of paragraph 2.7.2 of GC2.7.

2.7.5 No later than thirty (30) days after receipt of the direction referred to in paragraph 2.7.4 of GC2.7, the *Contractor* shall cause the necessary action to be commenced to remedy the breach described in the direction.

2.7.6 If a direction is issued pursuant to paragraph 2.7.4 of GC2.7, *Canada* may withhold from monies that are due and payable to the *Contractor* or setoff pursuant to GC5.9, "Right of Setoff", whichever is applicable, an amount representing the sum of the costs and payment referred to in paragraph 2.7.8 of GC2.7.

2.7.7 If the *Contractor* fails to proceed in accordance with paragraph 2.7.5 of GC2.7, *Canada* shall take the necessary action to have the breach remedied and shall determine all supplementary costs incurred by *Canada* as a result.

2.7.8 *Canada* may make a payment directly to the complainant from monies that are due and payable to the *Contractor* upon receipt from the complainant of

.1 a written award issued pursuant to the federal Commercial Arbitration Act, R.S.C. 1985, c. 17 (2nd Supp.);

.2 a written award issued pursuant to the Canadian Human Rights Act, R.S.C. 1985, c. H-6;

.3 a written award issued pursuant to provincial or territorial human rights legislation; or

.4 a judgement issued by a court of competent jurisdiction.

2.7.9 If the *DCC Representative* is of the opinion that the *Contractor* has breached any of the provisions of this clause, *Canada* may take the *Work* out of the *Contractor*'s hands pursuant to GC7.1, "Taking the *Work* out of the *Contractor*'s Hands".

2.7.10 Subject to paragraph 3.6.7 of GC3.6, "Subcontracting", the *Contractor* shall ensure that the provisions of this clause are included in all agreements and contracts entered into as a consequence of the *Work*.

2.8 Accounts and Audits

2.8.1 The *Contractor* shall, in addition to the requirements expressed in paragraph 3.4.6 of GC3.4, "Execution of the *Work*", maintain full records of the *Contractor*'s estimated and actual cost of the *Work* together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available on request to audit and inspection by *Canada* and the Deputy Receiver General for Canada or by persons designated to act on behalf of either or both of them.

2.8.2 The *Contractor* shall allow any of the persons referred to in paragraph 2.8.1 of GC2.8 to make copies of and take extracts from any of the records and material and shall

furnish such persons or entities with any information those persons or entities may require from time to time in connection with such records and material.

2.8.3 The *Contractor* shall maintain and keep the records intact until the expiration of seven (7) years after the date that a *Final Certificate of Completion* has been issued or until the expiration of such other period of time as *Canada* may direct.

2.8.4 The *Contractor* shall cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the *Contractor* and all persons directly or indirectly having control of the *Contractor* to comply with the requirements of this clause as if they were the *Contractor*.

2.9 Statutory Holidays

2.9.1 Work is not permitted on Statutory Holidays unless there is emergency work required or there are extraordinary circumstances. In those cases, approval of the *DCC Representative* is required to work on Statutory Holidays.

2.9.2 The followings Statutory Holidays are included:

.1 New Year's Day- January 1

.2 Good Friday

.3 Easter Monday

.4 Victoria Day- First Monday preceding May 25

.5 Quebec National Holiday – June 24 (Province od Quebec only)

.6 Canada Day – July 1

.7 Statutory holiday – First Monday of August (Except Quebec)

.8 Labour Day – First Monday in September

.9 National Day of Truth and Reconciliation – September 30

.10 Thanksgiving Day – Second Monday in October

.11 Remembrance Day – November 11

.12 Christmas Day – December 25

.13 Boxing Day – December 26

## GC3 - EXECUTION AND CONTROL OF THE WORK

3.1 Progress Schedule

3.1.1 The Contractor shall

.1 prepare and submit to the *DCC Representative*, prior to the submission of the *Contractor*'s first progress claim, a progress schedule in accordance with the requirements set out in the *Contract*;

.2 monitor the progress of the *Work* relative to the schedule and update the schedule as stipulated by the *Contract* documents;

.3 advise the *DCC Representative* of any revisions to the schedule required as the result of any extension of time for completion of the *Contract* that was approved by the *DCC Representative*; and

.4 prepare and submit to the *DCC Representative*, at the time of issuance of an *Interim Certificate of Completion*, an update of any schedule clearly showing a detailed timetable that is acceptable to the *DCC Representative* for the completion of any unfinished *Work* and the correction of all listed defects.

3.2 Errors and Omissions

3.2.1 The *Contractor* shall report promptly to the *DCC Representative* any errors, discrepancies, or omissions the *Contractor* may discover when reviewing the *Contract* documents. In making a review, the *Contractor* does not assume any responsibility to *Canada* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, discrepancies, or omissions in the *Contract* documents prepared by or on behalf of *Canada* that the *Contractor* did not discover.

3.3 Construction Safety

3.3.1 Subject to GC3.7, "Construction by Other Contractors or Workers", the *Contractor* shall be solely responsible for construction safety at the place of the *Work* and for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. In any emergency, the *Contractor* shall stop the *Work,* make changes, or order extra *Work* to ensure the safety of life and the protection of the *Work* and neighbouring property.

3.3.2 Prior to commencing the *Work*, the *Contractor* shall notify the authorities having jurisdiction for construction safety at the site of the *Work* with respect to the intended commencement of the *Work* and shall provide such authority with whatever additional information may be required by that authority.

3.4 Execution of the *Work*

3.4.1 The *Contractor* shall perform, use, or supply and pay for, all labour, *Plant*, *Material*, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

3.4.2 The *Contractor* shall, at all times, perform the *Work* in a proper, diligent and expeditious manner as is consistent with construction industry standards and in accordance with the progress schedule prepared pursuant to GC3.1, "Progress Schedule", and shall provide sufficient personnel to fulfil the *Contractor*'s obligations in accordance with that schedule.

3.4.3 Subject to paragraph 3.4.4 of GC3.4, the *Contractor* shall have complete care, custody and control of the *Work* and shall direct and supervise the *Work* so as to ensure compliance with the *Contract*. The *Contractor* shall be responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work*.

3.4.4 When requested in writing by the *DCC Representative*, the *Contractor* shall make appropriate alterations in the method, *Plant,* or workforce at any time the *DCC*

*Representative* considers the *Contractor*'s actions to be unsafe or damaging to either the *Work*, existing facilities, persons at the site of the *Work* or the environment.

3.4.5 The *Contractor* shall have sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and for the construction methods used in their erection, operation, maintenance, and removal. The *Contractor* shall engage and pay for registered professional engineering personnel, skilled in the appropriate discipline to perform these functions if required by law or by the *Contract*, and in all cases when such temporary facilities and their methods of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.4.6 The *Contractor* shall keep at least one copy of current *Contract* documents, submittals, reports, and records of meetings at the site of the *Work*, in good order and available to the *DCC Representative*.

3.4.7 Except for any part of the *Work* that is necessarily performed away from or off the site of the *Work*, the *Contractor* shall confine *Plant*, storage of *Material*, and operations of employees to limits indicated by laws, ordinances, permits or the *Contract* documents.

3.5 Material

3.5.1 Unless otherwise specified in the *Contract*, all *Material* incorporated in the *Work* shall be new.

3.5.2 Subject to paragraph 3.5.3 of GC3.5, if a specified reused, refurbished, or recycled item of *Material* is not available, the *Contractor* shall apply to the *DCC Representative* to substitute a similar item for the one specified.

3.5.3 If the *DCC Representative* agrees that the *Contractor*'s application for substitution of a reused, refurbished, or recycled item is warranted, and that the substitute item is of acceptable quality and value to that specified and is suitable for the intended purpose, the *DCC Representative* may approve the substitution, subject to the following:

.1 the request for substitution shall be made in writing to the *DCC Representative* and shall be substantiated by information in the form of the manufacturer's literature, samples and other data that may be required by the *DCC Representative*;

.2 the *Contractor* shall make the request for substitution in a manner that shall not negatively affect the progress schedule of the *Contract* and well in advance of the time the item of *Material* must be ordered;

.3 substitution of *Material* shall be permitted only with the prior written approval of the *DCC Representative*, and any substituted items that are supplied or installed without such approval shall be removed from the site of the *Work* at the expense of the *Contractor*, and specified items installed at no additional cost to *Canada*; and

.4 the *Contractor* shall be responsible for all additional expenses incurred by *Canada*, the *Contractor*, its subcontractors, and suppliers at any tier due to the *Contractor*'s use of the substitute.

## GENERAL CONDITIONS

3.6 Subcontracting

3.6.1 Subject to the provisions of this clause, the *Contractor* may subcontract any part of the *Work* but not the whole of the *Work*.

.1 However, the *Contractor* shall not subcontract to a contractor who holds a restricted license under the *Quebec Building Act* (CQLR, c. B-1.1).

3.6.2 The *Contractor* shall notify the *DCC Representative* in writing of the *Contractor*'s intention to subcontract.

3.6.3 A notification referred to in paragraph 3.6.2 of GC3.6 shall identify the part of the *Work* and the *Subcontractor* with whom the *Contractor* intends to subcontract.

3.6.4 *Canada* may for reasonable cause, object to the intended subcontracting by notifying the *Contractor* in writing within six (6) days of receipt by the *DCC Representative* of a notification referred to in paragraph 3.6.2 of GC3.6.

3.6.5 If *Canada* objects to a subcontracting, the *Contractor* shall not enter into the intended subcontract.

3.6.6 The *Contractor* shall not change, nor permit to be changed, a *Subcontractor* engaged by the *Contractor*, in accordance with this clause, without the written consent of *Canada*.

3.6.7 The *Contractor* shall ensure that all the terms and conditions of the *Contract* that are of general application shall be incorporated in every other contract issued as a consequence of the *Contract*, at whatever tier, except those contracts issued solely to suppliers at any tier for the supply of *Plant* or *Material*.

3.6.8 Neither a subcontracting nor *Canada*'s consent to a subcontracting shall be construed to relieve the *Contractor* from any obligation under the *Contract* or to impose any liability upon *Canada*.

3.7 Construction by Other Contractors or Workers

3.7.1 *Canada* reserves the right to send other contractors or workers, with or without *Plant* and *Material*, onto the site of the *Work*.

3.7.2 When other contractors or workers are sent on to the site of the *Work*, *Canada* shall

.1 enter into separate contracts, to the extent it is possible, with the other contractors under conditions of contract that are compatible with the conditions of the *Contract*;

.2 ensure that the insurance coverage provided by the other contractors is co-ordinated with the insurance coverage of the *Contractor* as it affects the *Work*; and

.3 take all reasonable precautions to avoid labour disputes or other disputes arising from the *Work* of the other contractors or workers.

3.7.3 When other contractors or workers are sent on to the site of the *Work*, the *Contractor* shall

.1 co-operate with them in the carrying out of their duties and obligations;

.2 co-ordinate and schedule the *Work* with the *Work* of the other contractors and workers;

.3 participate with other contractors and workers in reviewing their construction schedules when directed to do so;

.4 where part of the *Work* is affected by or depends upon the *Work* of other contractors or workers for its proper execution, promptly report to the *DCC Representative* in writing and prior to proceeding with that part of the *Work*, any apparent deficiencies in such *Work*. Failure by the *Contractor* to so report shall invalidate any claims against *Canada* by reason of the deficiencies in the *Work* of other contractors or workers except those deficiencies that are not then reasonably discoverable; and

.5 when designated as being responsible for construction safety at the place of work in accordance with the applicable provincial or territorial laws, carry out its duties in that role and in accordance with those laws.

3.7.4 If, when entering into the *Contract*, the *Contractor* could not have reasonably foreseen nor anticipated the sending of other contractors or workers on to the site of the *Work* and provided the *Contractor*

.1 incurs extra expense in complying with the requirements of paragraph 3.7.3 of GC3.7; and

.2 gives *Canada* written notice of a claim for that extra expense within thirty (30) days of the date that the other contractors or workers were sent onto the *Work* or its site;

*Canada* shall pay the *Contractor* the cost of the extra labour, *Plant* and *Material* that was necessarily incurred, calculated in accordance with GC6.4, "Determination of Price".

3.8 Labour

3.8.1 To the extent to which they are available, consistent with proper economy and the expeditious carrying out of the *Work*, the *Contractor* shall, in the performance of the *Work*, employ a reasonable number of persons who have been on active service with the Armed Forces of Canada and have been honourably discharged therefrom.

3.8.2 The *Contractor* shall maintain good order and discipline among the *Contractor*'s employees and workers engaged in the *Work* and shall employ on the site of the *Work* personnel skilled in the tasks assigned.

3.9 Truck Haulage Rates

3.9.1 The *Contractor* must pay the *Supplier* of truck haulage services at least the minimum haul rates established by provincial or territorial legislation and related regulations, in the geographical region in which the majority of the *Work* is located.

3.10 *Material*, *Plant* and Real Property Become Property of *Canada*

3.10.1 Subject to paragraph 1.8.9 of GC1.8, "Laws Permits and Taxes", all *Material* and *Plant* and the interest of the *Contractor* in all real property, licences, powers and privileges purchased, used or consumed by the *Contractor* for the *Work* shall,

immediately after the time of their purchase, use or consumption be the property of *Canada* for the purposes of the *Work* and they shall continue to be the property of *Canada*

.1 in the case of *Material*, until *Canada* indicates that the *Material*s shall not be required for the *Work*; and

.2 in the case of *Plant*, real property, licences, powers, and privileges, until *Canada* indicates that the interest vested in *Canada* t*herein* is no longer required for the purposes of the *Work*.

3.10.2 *Material* or *Plant*, that is the property of *Canada* by virtue of paragraph 3.9.1 of GC3.9, shall not be taken away from the site of the *Work* nor used nor disposed of except for the purposes of the *Work* without the written consent of *Canada*.

3.10.3 *Canada* is not liable for loss of nor damage from any cause to the *Material* or *Plant* referred to in paragraph 3.9.1 of GC3.9, and the *Contractor* is liable for such loss or damage notwithstanding that the *Material* or *Plant* is the property of *Canada*.

3.11 Defective *Work*

3.11.1 The *Contractor* shall promptly remove from the site of the *Work* and replace or re-execute defective *Work* whether or not the defective *Work* has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective *Material*, or damage through carelessness or other act or omission of the *Contractor*.

3.11.2 The *Contractor*, at the *Contractor*'s expense, shall promptly make good other *Work* destroyed or damaged by such removals or replacements.

3.11.3 If, in the opinion of *Canada*, it is not expedient to correct defective *Work* or *Work* not performed as provided for in the *Contract* documents, the *DCC Representative* may deduct from the amount otherwise due to the *Contractor* the difference in value between the *Work* as performed and that called for by the *Contract* documents.

3.11.4 The failure of the *DCC Representative* to reject any defective *Work* or *Material* shall not constitute acceptance of the defective *Work* or *Material*.

3.12 Clean-up of Site

3.12.1 The *Contractor* shall maintain the *Work* and its site in a tidy condition and free from an accumulation of waste material and debris.

3.12.2 Before the issue of an *Interim Certificate of Completion*, the *Contractor* shall remove waste material and debris, and all *Plant* and *Material* not required for the performance of the remaining *Work* and, unless otherwise stipulated in the *Contract* Documents, shall cause the *Work* and its site to be clean and suitable for occupancy by *Canada*.

3.12.3 Before the issue of a *Final Certificate of Completion*, the *Contractor* shall remove all surplus *Plant* and *Material*s and any waste products and debris from the site of the *Work*.

3.12.4 The *Contractor*'s obligations described in paragraphs 3.11.1 to 3.11.3 of GC3.11 do not extend to waste products and other debris caused by *Canada*'s servants, or by

other contractors and workers referred to in GC3.7, "Construction by Other Contractors or Workers".

3.13 Warranty and Rectification of Defects in *Work*

3.13.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the *Contract*, the *Contractor* shall, at the *Contractor*'s expense

.1 rectify and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada* with respect to those parts of the *Work* accepted in connection with the *Interim Certificate of Completion* within twelve (12) months from the date of Substantial Completion; and

.2 rectify and make good any defect or fault that appears in or comes to the attention of *Canada* in connection with those parts of the *Work* described in the *Interim Certificate of Completion* within twelve (12) months from the date of the *Final Certificate of Completion*.

.3 transfer and assign, to *Canada*, any *Subcontractor*, manufacturer, or *Supplier* extended warranties or guarantees implied or imposed by law or contained in the *Contract* covering periods beyond the twelve (12) months stipulated above. Extended warranties or guarantees referred to *herein* shall not extend the twelve (12)-month period w*hereby* the *Contractor*, except as may be provided elsewhere in the *Contract*, must rectify, and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada*.

.4 provide, to *Canada* prior to the issuance of the *Final Certificate of Completion*, a list of all extended warranties and guarantees referred to in paragraph 3.13.1.3 above.

3.13.2 *Canada* may direct the *Contractor* to rectify and make good any defect or fault referred to in paragraph 3.13.1 of GC3.13 or covered by any other expressed or implied warranty or guarantee and the *Contractor* shall rectify and make good such defect within the time stipulated in the direction.

3.13.3 A direction referred to in paragraph 3.13.2 of GC3.13 shall be in writing and shall be given to the *Contractor* in accordance with GC2.3, "Notices".

## GC4 - PROTECTIVE MEASURES

4.1 Protection of *Work* and Property

4.1.1 The *Contractor* shall protect the *Work* and its site against loss or damage from any cause and shall similarly protect all *Material*, *Plant* and real property under the *Contractor*'s care, custody, and control whether or not such *Material*, *Plant* and real property are supplied by *Canada* to the *Contractor*.

4.1.2 The *Contractor* shall provide all facilities necessary for the purpose of maintaining security and shall assist any *person* authorized by *Canada* to inspect or to take security measures in respect of the *Work* and its site.

4.1.3 *Canada* may direct the *Contractor* to do such things and to perform such *Work* as the *DCC Representative* considers reasonable and necessary to ensure compliance with

or to remedy a breach of paragraphs 4.1.1 or 4.1.2 of GC4.1, and the *Contractor*, shall comply with such direction.

4.2 Precautions Against Damage, Infringement of Rights, Fire and Other Hazards

4.2.1 The *Contractor* shall do whatever is necessary to ensure that:

.1 no *person*, property, right, easement nor privilege is injured, damaged, or infringed upon by reasons of the *Contractor*'s activities in performing the *Work*;

.2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted nor endangered by the performance or existence of the *Work*, *Material* or *Plant*;

.3 fire hazards in or about the site of the *Work* are eliminated and any fire is promptly extinguished;

.4 the health and safety of all persons employed in the performance of the *Work* is not endangered by the methods nor means of their performance;

.5 adequate medical services are available to all persons employed on the *Work* or its site at all times during the performance of the *Work*;

.6 adequate sanitation measures are taken in respect of the *Work* and its site; and

.7 all stakes, buoys and marks placed on the *Work* or its site by *Canada* are protected and are not removed, defaced, altered nor destroyed.

4.2.2 *Canada* may direct the *Contractor* to do such things and to perform such *Work* as the *DCC Representative* considers reasonable and necessary to ensure compliance with or to remedy a breach of paragraph 4.2.1 of GC4.2, and the *Contractor* shall comply with the direction of the *DCC Representative*.

4.3 *Material*, *Plant* and Real Property Supplied by *Canada*

4.3.1 Subject to paragraph 4.3.2 of GC4.3, the *Contractor* is liable to *Canada* for any loss of or damage to *Material*, *Plant* or real property that is supplied or placed in the care, custody and control of the *Contractor* by *Canada* for use in connection with the *Contract*, whether or not that loss or damage is attributable to causes beyond the *Contractor*'s control.

4.3.2 The *Contractor* is not liable to *Canada* for any loss or damage to *Material*, *Plant* or real property referred to in paragraph 4.3.1 of GC4.3 if that loss or damage results from and is directly attributable to reasonable wear and tear.

4.3.3 The *Contractor* shall not use any *Material*, *Plant* or real property supplied by *Canada* except for the purpose of performing the *Contract*.

4.3.4 When the *Contractor* fails to make good any loss or damage for which the *Contractor* is liable under paragraph 4.3.1 of GC4.3 within a reasonable time, *Canada* may cause the loss or damage to be made good at the *Contractor*'s expense, and the *Contractor* shall thereupon be liable to *Canada* for the cost t*hereof* and shall, on demand, pay to *Canada* an amount equal to that cost.

4.3.5 The *Contractor* shall keep records of all *Material*, *Plant* and real property supplied by *Canada* as *Canada* requires and shall satisfy *Canada*, when requested, that such

*Material*, *Plant,* and real property are at the place and in the condition in which they ought to be.

4.4 Contaminated Site Conditions

4.4.1 For the purposes of GC4.4, a contaminated site condition exists when a solid, liquid, gaseous, thermal or radioactive irritant or contaminant, or other hazardous or toxic substance or material, including moulds and other forms of fungi, is present at the site of the *Work* to an extent that constitutes a hazard, or potential hazard, to the environment, property, or the health or safety of any *person*.

4.4.2 If the *Contractor* encounters a contaminated site condition of which the *Contractor* is not aware or about which the *Contractor* has not been advised, or if the *Contractor* has reasonable grounds to believe that such a site condition exists at the site of the *Work*, the *Contractor* shall

.1 take all reasonable steps, including stopping the *Work*, to ensure that no *person* suffers injury, sickness, or death, and that neither property nor the environment is injured or destroyed as a result of the contaminated site condition;

.2 immediately notify the *DCC Representative* of the circumstances in writing; and

.3 take all reasonable steps to minimize additional costs that may accrue as a result of any work stoppage.

4.4.3 Upon receipt of a notification from the *Contractor*, *Canada* shall promptly determine whether a contaminated site condition exists, and the *DCC Representative* shall notify the *Contractor* in writing of any action to be taken, or *Work* to be performed, by the *Contractor* as a result of *Canada*'s determination.

4.4.4 If the *Contractor*'s services are required by *Canada*, the *Contractor* shall follow the direction of the *DCC Representative* with regard to any excavation, treatment, removal and disposal of any polluting substance or material.

4.4.5 *Canada*, at *Canada*'s sole discretion, may enlist the services of experts and specialty contractors to assist in determining the existence of, and the extent and treatment of contaminated site conditions, and the *Contractor* shall allow them access and co-operate with them in the carrying out of their duties and obligations.

4.4.6 Except as may be otherwise provided for in the *Contract*, the provisions of GC6.4, "Determination of Price" shall apply to any additional work made necessary because of a contaminated site condition.

## GC5 - TERMS OF PAYMENT

5.1 Interpretation

In these Terms of Payment

**GENERAL CONDITIONS**

5.1.1 The "payment period" means a period of thirty (30) consecutive days or such other longer period as may be agreed between the *Contractor* and *Canada*.

5.1.2 An amount is "due and payable" when it is due and payable by *Canada* to the *Contractor* according to GC5.4, "Progress Payment", GC5.5, "Substantial Completion of the *Work*", or GC5.6 "Final Completion".

5.1.3 An amount is overdue when it remains unpaid on the first day following the day upon which it is due and payable.

5.1.4 The "date of payment" means the date of the negotiable instrument of an amount due and payable by the Receiver General for Canada.

5.1.5 The "Bank Rate" means the rate of interest established by the Bank of Canada as the minimum rate at which it makes short term advances to members of the Canadian Payments Association.

5.1.6 The "Average Bank Rate" means the simple arithmetic mean of the Bank Rate in effect at 4:00 p.m. Eastern Time each day during the calendar month which immediately precedes the calendar month in which payment is made.

5.2 Amount Payable

5.2.1 Subject to any other provisions of the *Contract* and *Payment Legislation*, *Canada* shall pay the *Contractor*, at the times and in the manner *hereina*fter set out, the amount by which the amounts payable by *Canada* to the *Contractor* in accordance with the *Contract* exceed the amounts payable by the *Contractor* to *Canada*, and the *Contractor* shall accept that amount as payment in full satisfaction for everything furnished and done by the *Contractor* in respect of the *Work* to which the payment relates.

5.2.2 When making any payment to the *Contractor*, the failure of *Canada* to deduct an amount payable to *Canada* by the *Contractor* shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the *Contractor*.

5.2.3 Should any payment be made by *Canada* in excess of what is owed to the *Contractor* for the actual work performed, the *Contractor* will reimburse *Canada* the excess immediately, with or without demand, and any amounts outstanding shall bear simple interest at the Average Bank rate plus 3 percent per annum from the date of overpayment until the day prior to the date of repayment by the *Contractor*.

5.2.4 No payment other than a payment that is expressly stipulated in the *Contract* shall be made by Canada to the *Contractor* for any extra expense or any loss or damage incurred or sustained by the *Contractor*.

5.2.5 The successful *Contractor* will be required to furnish a detailed cost breakdown of the *Contract Amount* for the approval of the *DCC Representative*. This cost breakdown, to be submitted prior to or concurrently with the first progress claim, must show separate prices for each phase of the *Work*, as it is required as an agreed basis to

check submitted progress claims. In addition, the *Contractor* will be required to furnish a complete time schedule of the various operations of the *Work*.

5.3 Increased or Decreased Costs

5.3.1 The *Contract Amount* shall not be increased nor decreased by reason of any increase or decrease in the cost of the *Work* that is brought about by an increase or decrease in the cost of labour, *Plant*, *Material,* or any wage adjustment.

5.3.2 Notwithstanding paragraph 5.3.1 of GC5.3, if any change, including a new imposition or repeal, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales, customs or excise tax legislation of the Government of Canada or any Provincial or Territorial legislation, affects the cost of the *Work* to the *Contractor*, and occurs

.1 after the date of submission by the *Contractor* of its tender; or

.2 after the date of submission of the last revision, if the *Contractor*'s tender was revised;

the *Contract Amount* shall be adjusted in the manner provided in paragraph 5.3.3 of GC5.3.

5.3.3 If a change referred to in paragraph 5.3.2 of GC5.3 occurs, the *Contract Amount* shall be increased or decreased by an amount established by an examination by *Canada* of the relevant records of the *Contractor* referred to in GC2.8, "Accounts and Audits", to be the increase or decrease in the cost incurred by the *Contractor* that is directly attributable to that change.

5.3.4 For the purpose of paragraph 5.3.2 of GC5.3, if a tax is changed after the tender closing, but public notice of the change has been given by the Minister of Finance or the corresponding Provincial or Territorial authority before that closing, the change shall be deemed to have occurred before the tender closing.

5.3.5 Notwithstanding paragraphs 5.3.2 to 5.3.4 of GC5.3, no adjustment to the *Contract Amount* in respect of the *Work* or a part t*hereof* shall be made for a change in any imposition referred to in this section that occurs after the date required by the *Contract* for completion of the *Work* or that part of the *Work*.

5.4 Progress Payment

5.4.1 On the expiration of a payment period, the *Contractor* shall deliver to the *DCC Representative*

.1 a written progress claim in accordance with *Payment Legislation* that fully describes any part of the *Work* that has been completed, any *Material* that was delivered to the *Work* site but not incorporated into the *Work*, during that payment period, and any other documents called for under the *Contract*. Contractor Invoices/Progress Claims must also include the following details:

.1 Company name, address, etc.;

.2 "Destination" (Client's address);

.3 Invoice date; invoice number;

.4 DCC Project number; Contract number;

.5 GST or HST (as applicable) registration number;

.6 Period in which services were rendered;

.7 Description of work performed, and amount(s) invoiced; and

.2 a completed and signed statutory declaration containing a declaration that, up to the date of the progress claim, the *Contractor* has complied with all lawful obligations and that, in respect of the *Work*, all lawful obligations of the *Contractor* to its Subcontractors and Suppliers, referred to collectively in the declaration as " subcontractors and suppliers", have been fully discharged.

5.4.2 Within ten (10) days of receipt of a progress claim and statutory declaration from the *Contractor*, the *DCC Representative* shall inspect, or cause to have inspected, the part of the *Work* and the *Material* described in the progress claim, and shall issue a progress report to the *Contractor*, that indicates the following:

.1 the value of the part of the *Work* and the *Material* described in the progress claim that, in the opinion of the *DCC Representative*

.1 is in accordance with the *Contract*; and

.2 was not included in any other progress report relating to the *Contract*.

.2 if in the opinion of *Canada*, part of the *Work* and the *Material* described in the progress claim is not payable under the *Contract*:

.1 a description of that part of the *Work* and the *Material* not payable under the contract;

.2 the amount that will not be paid; and

.3 the reasons for the non-payment.

5.4.3 Subject to GC5.2, "Amount Payable", and paragraph 5.4.5 of GC5.4, *Canada* shall pay the *Contractor* an amount that is equal to

.1 95% of the value that is indicated in *Canada*'s progress report if a labour and material payment bond has been furnished by the *Contractor*; or

.2 90% of the value that is indicated in *Canada*'s progress report if a labour and material payment bond has not been furnished by the *Contractor*.

5.4.4 *Canada* shall pay the amount referred to in paragraph 5.4.3 of GC5.4 not later than twenty-eight (28) days after receipt by the *DCC Representative*

.1 of both a progress claim and a statutory declaration referred to in paragraph 5.4.1 of GC5.4; or

.2 an updated progress schedule, in accordance with GC3.1, "Progress Schedule".

5.4.5 In the case of the *Contractor*'s first progress claim, it is a condition precedent to *Canada*'s obligation under paragraph 5.4.3 of GC5.4 that the *Contractor* has

provided all necessary documentation required by the *Contract* for the first progress claim.

5.5 Substantial Completion of the *Work*

5.5.1 If, at any time before the issuance of a *Final Certificate of Completion*, the *DCC Representative* determines that the *Work* has reached Substantial Completion as described in paragraph 1.1.4.1.2 of GC1.1.4, "Substantial Completion", the *DCC Representative* shall issue an *Interim Certificate of Completion* to the *Contractor*. The *Interim Certificate of Completion* shall state or describe

.1 the date of Substantial Completion;

.2 the parts of the *Work* not completed to the satisfaction of *Canada*; and

.3 all things that must be done by the *Contractor* before a *Final Certificate of Completion* is issued and before the twelve (12)-month warranty period referred to in GC3.13, "Warranty and Rectification of Defects in *Work*", commences for the said parts and all the said things.

5.5.2 The issuance of an *Interim Certificate of Completion* does not relieve the *Contractor* from the *Contractor*'s obligations under GC3.11, "Defective *Work*".

5.5.3 Subject to GC5.2, "Amount Payable", and paragraph 5.5.4 of GC5.5, *Canada* shall pay the *Contractor* the amount referred to in paragraph 5.2.1 of GC5.2, "Amount Payable", less the aggregate of

.1 the sum of all payments that were made pursuant to GC5.4, "Progress Payment";

.2 an amount that is equal to the *DCC Representative*'s estimate of the cost to *Canada* of rectifying defects described in the *Interim Certificate of Completion*; and

.3 an amount that is equal to the *DCC Representative*'s estimate of the cost to *Canada* of completing the parts of the *Work* described in the *Interim Certificate of Completion* other than defects listed t*herein*.

5.5.4 *Canada* shall pay the amount referred to in paragraph 5.5.3 of GC5.5 not later than twenty-eight (28) days after

.1 the date of issue of an Interim Certificate of Completion, and

.2 the Contractor has delivered to the DCC Representative

.1 a statutory declaration containing a declaration by the *Contractor* that up to the date of the Certificate of Interim Completion, the *Contractor* has complied with all lawful obligations, discharged all its lawful obligations to its Subcontractors and Suppliers in respect of the *Work* under the *Contract*, and discharged its lawful obligations referred to in GC1.8, "Laws, Permits and Taxes";

.2 evidence of compliance with workers' compensation legislation in accordance with GC1.9, "Workers' Compensation"; and

.3 an update of the progress schedule in accordance with the requirements of GC3.1, "Progress Schedule".

5.6 Final Completion

5.6.1 When the *DCC Representative* is of the opinion that the *Contractor* has complied with the *Contract* and all orders and directions made pursuant thereto, and that the *Work* has been completed as described in GC1.1.5, "Completion", the *DCC Representative* shall issue a *Final Certificate of Completion* to the *Contractor* and, if the *Work* or a portion of the *Work* is subject to a *Unit Price Arrangement*, the *DCC Representative* shall issue a Certificate of Final *Quantities Adjustment Sheet* that shall, subject to GC8, be binding upon and conclusive between *Canada* and the *Contractor* as to the quantities referred to t*herein*.

5.6.2 Subject to GC5.2, "Amount Payable", and paragraph 5.6.3 of GC5.6, *Canada* shall pay the *Contractor* the amount referred to in GC5.2, "Amount Payable", less the aggregate of the sum of all payments that were made pursuant to GC5.4, "Progress Payment", and GC5.5, "Substantial Completion of *Work*".

5.6.3 *Canada* shall pay the amount referred to in paragraph 5.6.2 of GC5.6 not later than twenty-eight (28) days after

.1 the date of issue of a Final Certificate of Completion; or

.2 the Contractor has delivered to the DCC Representative

.1 a statutory declaration which contains a declaration by the *Contractor* that all of the *Contractor*'s lawful obligations and any lawful claims against the *Contractor* that arose out of the performance of the *Contract* have been discharged and satisfied; and

.2 evidence of compliance with workers' compensation legislation in accordance with GC1.9, "Workers' Compensation".

5.7 Payment Not Binding on *Canada*

5.7.1 Neither acceptance of a progress claim or progress report, nor any payment made by *Canada* under the *Contract*, nor partial or entire use or occupancy of the *Work* by *Canada* shall constitute an acceptance by *Canada* of any portion of the *Work* or *Material* that is not in accordance with the requirements of the *Contract*.

5.8 Claims and Obligations

5.8.1 The *Contractor* shall discharge all the *Contractor*'s lawful obligations and shall satisfy all lawful claims against the *Contractor* arising out of the performance of the *Work* at least as often as the *Contract* requires *Canada* to pay the *Contractor*.

5.8.2 Whenever requested to do so by *Canada*, the *Contractor* shall make a statutory declaration declaring to the existence and condition of any obligations and claims against the *Contractor* arising out of the performance of the *Work*.

5.8.3 In order to discharge lawful obligations of and satisfy lawful claims against the *Contractor* or its Subcontractors arising out of the performance of the *Contract*, *Canada* may pay an amount that is due and payable to the *Contractor* directly to the claimant. Such payment is, to the extent of the payment, a discharge of *Canada*'s

liability to the *Contractor* under the *Contract* and may be deducted from any amount payable to the *Contractor* under the *Contract*.

5.8.4 For the purposes of paragraph 5.8.3 of GC5.8, and subject to paragraph 5.8.6 of GC5.8, a claim or obligation shall be considered lawful when it is so determined by

.1 a court of legal jurisdiction;

.2 an arbitrator duly appointed to arbitrate the claim; or

.3 the written consent of the *Contractor* authorizing payment of the claim or obligation.

5.8.5 If a claim or obligation would have been subject to the provisions of Provincial or Territorial lien legislation or, in the Province of Quebec, the law relating to legal hypothecs had the *Contractor* been performing the *Work* for an entity other than *Canada*

.1 such amount as may be paid by *Canada* pursuant to paragraphs 5.8.3 and 5.8.4 of GC5.8 shall not exceed the amount that the *Contractor* would have been obliged to pay had the provisions of such legislation or law been applicable to the *Work*;

.2 a claimant need not comply with the provisions of such legislation, setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had; and

.3 for the purposes of determining the entitlement of a claimant, the notice required by paragraph 5.8 of GC5.8 shall be deemed to replace the registration or provision of notice after the performance of *work* as required by any applicable legislation and no claim shall be deemed to have expired, become void or unenforceable by reason of the claimant not commencing any action within the time prescribed by such legislation.

5.8.6 The *Contractor* shall, at the request of any claimant, submit to binding arbitration those questions that need to be answered to establish the entitlement of the claimant to payment. The arbitration shall have as parties to it any *Subcontractor* or *Supplier* to whom the claimant supplied *Material*, performed *Work,* or rented equipment should such *Subcontractor* or *Supplier* wish to be adjoined, and *Canada* shall not be a party to such arbitration. Subject to any agreement between the *Contractor* and the claimant, the arbitration shall be conducted in accordance with the governing Provincial or Territorial legislation applicable to the site of the *Work*.

5.8.7 Paragraph 5.8.3 of GC5.8 shall apply only to claims and obligations

.1 the notification of which has set forth the amount claimed to be owing and the *person* who by Contract is primarily liable and has been received by *Canada* in writing before final payment is made to the *Contractor* pursuant to GC5.6, "Final Completion", and within one-hundred and twenty (120) days of the date on which the claimant

.1 should have been paid in full under the claimant's contract with the *Contractor*, its *Subcontractor* or *Supplier* if the claim is for money that was lawfully required to be held back from the claimant; or

.2 performed the last of the services, *Work,* or labour, or furnished the last of the *Material* pursuant to the claimant's contract with the *Contractor* or its *Subcontractor* or *Supplier* where the claim is for money not lawfully required to be held back from the claimant; and

.2 the proceedings to determine the right to payment of which, pursuant to paragraph 5.8.5 of GC5.8, shall have commenced within one year from the date that the notification required by paragraph 5.8.7.1 of GC5.8 was received by *Canada*.

5.8.8 Upon receipt of a notice of claim, *Canada* may withhold, from any amount that is due and payable to the *Contractor* pursuant to the *Contract*, the full amount of the claim or any portion t*hereof*.

5.8.9 *Canada* shall notify the *Contractor* in writing in a timely manner of receipt of any claim and of the intention of *Canada* to withhold funds. At any time thereafter and until payment is made to the claimant, the *Contractor* may be entitled to post, with *Canada*, security in a form acceptable to *Canada* in an amount equal to the value of the claim, and upon receipt of such security *Canada* shall release to the *Contractor* any funds that would be otherwise payable to the *Contractor*, that were withheld pursuant to the provisions of this clause in respect of the claim of any claimant for whom the security stands.

5.9 Right of Setoff

5.9.1 Without limiting any right of setoff or deduction given or implied by law or elsewhere in the *Contract*, *Canada* may set off any amount payable to *Canada* by the *Contractor* under the *Contract*, or under any current contract, against any amount payable to the *Contractor* under the *Contract*.

5.9.2 For the purposes of paragraph 5.9.1 of GC5.9, "current contract" means a contract between *Canada* and the *Contractor*

.1 under which the *Contractor* has an undischarged obligation to perform or supply *Work*, labour, or *Material*; or

.2 in respect of which *Canada* has, since the date of the *Contract*, exercised any right to take the *Work* that is the subject of that contract out of the *Contractor*'s hands.

5.10 Assessments and Damages for Late Completion

5.10.1 For the purposes of this clause

.1 the *Work* shall be deemed to be completed on the date of the *Final Certificate of Completion*; and

.2 the "period of delay" means the number of days commencing on the day fixed for completion of the *Work* and ending on the day immediately preceding the day on which the *Work* is completed but does not include any day within a period of extension granted pursuant to GC6.5, "Delays and Extension of

Time", and any other day on which, in the opinion of the *DCC Representative*, completion of the *Work* was delayed for reasons beyond the control of the *Contractor*.

5.10.2 If the *Contractor* does not complete the *Work* by the day fixed for its completion but completes it thereafter, the *Contractor* shall pay *Canada* an amount equal to the aggregate of

.1 all salaries, wages and travelling expenses incurred by *Canada* in respect of persons overseeing the performance of the *Work* during the period of delay;

.2 the cost incurred by *Canada* as a result of the inability to use the completed *Work* for the period of delay; and

.3 all other expenses and damages incurred or sustained by *Canada* during the period of delay as a result of the *Work* not being completed by the day fixed for its completion.

5.10.3 *Canada* may waive the right of *Canada* to the whole or any part of the amount payable by the *Contractor* pursuant to paragraph 5.10.2 of GC5.10 if, in the opinion of *Canada*, it is in the public interest to do so.

5.11 Delay in Making Payment

5.11.1 Notwithstanding GC1.5, "Time of the Essence", any delay by *Canada* in making any payment when it is due pursuant to GC5 shall not be a breach of the *Contract* by *Canada*.

5.11.2 Subject to paragraph 5.11.3 of GC5.11, *Canada* shall pay to the *Contractor* simple interest at the Average Bank Rate plus 3 percent per annum on any amount that is overdue pursuant to paragraph 5.1.3 of GC5.1, and the interest shall apply from and include the day such amount became overdue until the day prior to the date of payment.

5.11.3 Interest shall be paid without demand by the *Contractor* except that

.1 in respect of amounts that are less than twenty-eight (28) days overdue, no interest shall be paid in respect of payment made within such twenty-eight (28) days unless the *Contractor* so demands after such amounts have become due and payable; and

.2 interest shall not be payable or paid on overdue advance payments, if any.

5.11.4 Unless *Canada* orders the *Contractor* to suspend the *Work* or part of the *Work* pursuant to GC7.2, the *Contractor* must not stop or suspend the *Work* or part of the *Work* pending any payments under the *Contract*.

5.12 Interest on Settled Claims

5.12.1 For the purposes of this clause, a claim means a disputed amount subject to negotiation between *Canada* and the *Contractor* under the *Contract*.

5.12.2 A claim is deemed to have been settled when an agreement in writing is signed by *Canada* and the *Contractor* setting out the amount of the claim to be paid by *Canada* and the items of *Work* for which the said amount is to be paid.

5.12.3 A settled claim is deemed to be outstanding from the day immediately following the date the said claim would have been due and payable under the *Contract* had it not been disputed.

5.12.4 *Canada* shall pay to the *Contractor* simple interest on the amount of a settled claim at the Average Bank Rate plus 3 percent per annum from the date the settled claim was deemed to be outstanding until the day prior to the date of payment.

5.13 Return of Security Deposit

5.13.1 After an *Interim Certificate of Completion* has been issued, and if the *Contractor* is not in breach of nor in default under the *Contract*, *Canada* shall return to the *Contractor* all or any part of a Security Deposit that, in the opinion of the *DCC Representative*, is not required for the purposes of the *Contract*.

5.13.2 After a *Final Certificate of Completion* has been issued, the *DCC Representative* shall return to the *Contractor* the remainder of any security deposit unless the *Contract* stipulates otherwise.

5.13.3 If the security deposit was paid into the Consolidated Revenue Fund of Canada, *Canada* shall pay interest thereon to the *Contractor* at a rate established pursuant to section 21(2) of the Financial Administration Act.

## GC6 - DELAYS AND CHANGES IN THE WORK

6.1 Changes in the *Work*

6.1.1 At any time before issuance of a *Final Certificate of Completion*, the *DCC Representative* may issue orders for additions, deletions or other changes to the *Work*, or changes in the location or position of the whole or any part of the *Work*, if

the addition, deletion, change or other revision is deemed by the *DCC Representative* to be consistent with the general intent of the *Contract*.

6.1.2 An order referred to in paragraph 6.1.1 of GC6.1 shall be in writing and given to the *Contractor* in accordance with GC2.3, "Notices".

6.1.3 Upon receipt of an order, the *Contractor* shall promptly perform the *Work* in accordance with the order as if the order had appeared in and been part of the original *Contract*.

6.1.4 If anything done or omitted by the *Contractor* pursuant to an order increases or decreases the cost of the *Work* to the *Contractor*, payment for the *Work* shall be made in accordance with GC6.4, "Determination of Price".

6.2 Changes in Subsurface Conditions

6.2.1 If, during the performance of the *Work*, the *Contractor* encounters subsurface conditions that are substantially different from the subsurface conditions described in the tender documents supplied to the *Contractor*, or a reasonable assumption of fact based thereon, the *Contractor* shall give notice to *Canada* immediately upon becoming aware of the situation.

6.2.2 If the *Contractor* is of the opinion that the *Contractor* may incur or sustain any extra expense or any loss or damage that is directly attributable to the changed subsurface conditions, the *Contractor* shall within ten (10) days of the date the changed subsurface conditions were encountered, give *Canada* written notice of intention to claim for that extra expense, loss or damage.

6.2.3 If the *Contractor* has given a notice referred to in paragraph 6.2.2 of GC6.2, the *Contractor* shall give *Canada* a written claim for extra expense, loss or damage no later than thirty (30) days after the date that an *Interim Certificate of Completion* is issued.

6.2.4 A written claim referred to in paragraph 6.2.3 of GC6.2 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable *Canada* to determine whether or not the claim is justified, and the *Contractor* shall supply such further and other information for that purpose as *Canada* requires.

6.2.5 If *Canada* determines that a claim referred to in paragraph 6.2.3 of GC6.2 is justified, *Canada* shall make an extra payment to the *Contractor* in an amount that is calculated in accordance with GC6.4, "Determination of Price".

6.2.6 If, in the opinion of *Canada*, the *Contractor* effects a saving of expenditure that is directly attributable to a substantial difference between the information relating to subsurface conditions at the site of the *Work* that is contained in the tender documents, or a reasonable assumption of fact based thereon, and the actual subsurface conditions encountered by the *Contractor*, the *Contract Amount* shall be

reduced by the amount of the saving of expenditure determined in accordance with GC6.4, "Determination of Price".

6.2.7 If the *Contractor* fails to give a notice referred to in paragraph 6.2.2 of GC6.2 and a claim referred to in paragraph 6.2.3 of GC6.2 within the times stipulated, an extra payment shall not be made to the *Contractor* in respect of the occurrence.

6.2.8 *Canada* does not warrant the content expressed in any subsurface report available for the perusal of the *Contractor* that does not form part of the tender and *Contract* documents.

6.3 Human Remains, Archaeological Remains and Items of Historical or Scientific Interest

6.3.1 For the purposes of this clause

.1 "human remains" means the whole or any part of a deceased human being, irrespective of the time of death;

.2 "archaeological remains" are items, artefacts or things made, modified, or used by human beings in antiquity and may include, but not be limited to, stone, wood or iron structures or monuments, dump deposits, bone artefacts, weapons, tools, coins, and pottery; and

.3 "items of historical or scientific interest" are naturally occurring or manufactured objects or things of any age that are not archaeological remains but may be of interest to society because of their historical or scientific significance, value, rarity, natural beauty, or other quality.

6.3.2 If, during the course of the *Work*, the *Contractor* encounters any object, item or thing which is described in paragraph 6.3.1 of GC6.3 or which resembles any object, item or thing described in paragraph 6.3.1 of GC6.3, the *Contractor* shall

.1 take all reasonable steps, including stopping *Work* in the affected area, to protect and preserve the object, item, or thing;

.2 immediately notify the *DCC Representative* of the circumstances in writing; and

.3 take all reasonable steps to minimize additional costs that may accrue as a result of any work stoppage.

6.3.3 Upon receipt of a notification in accordance with paragraph 6.3.2.2 of GC6.3, *Canada* shall promptly determine whether the object, item or thing is one described in, or contemplated by paragraph 6.3.1 of GC6.3, and the *DCC Representative* shall notify the *Contractor* in writing of any action to be performed, or *Work* to be carried out, by the *Contractor* as a result of *Canada*'s determination.

6.3.4 *Canada* may, at any time, enlist the services of experts to assist in the investigation, examination, taking of measurements or other such recordings, placing of permanent protection around or removing of the object, item or thing encountered by the

*Contractor*, and the *Contractor* shall, to the satisfaction of *Canada*, allow them access and co-operate with them in the carrying out of their duties and obligations.

6.3.5 Human remains, archaeological remains and items of historical or scientific interest encountered at the site of the *Work* shall be deemed to be the property of *Canada*.

6.3.6 Except as may be otherwise provided for in the *Contract*, the provisions of GC6.4, "Determination of Price ", and GC6.5, "Delays and Extension of Time", shall apply.

6.4 Determination of Price

6.4.1 Price Determination Prior to Undertaking Changes

.1 If a *Lump Sum Arrangement* applies to the *Contract* or a part t*hereof*, the price of any change shall be the aggregate estimated cost of labour, *Plant* and *Material* that is required for the change as agreed upon in writing by the *Contractor* and *Canada* plus an allowance for supervision, co-ordination, administration, overhead, margin and the risk of undertaking the *Work* within the stipulated amount, which allowance shall be equal to

.1 20% of the aggregate costs referred to *herein* for that portion of the *Work* done by the *Contractor*'s own forces, if the aggregate cost of the *Work* does not exceed $50,000;

.2 15% of the aggregate costs referred to *herein* for that portion of the *Work* that is done by subcontract, if the aggregate cost of the *Work* does not exceed $50,000; or

.3 a negotiated percentage of the aggregate costs referred to *herein* or a negotiated amount

.1 if the aggregate cost of the *Work* exceeds $50,000; or

.2 if the *Contractor* and the *DCC Representative* agree in writing.

.2 If a *Unit Price Arrangement* applies to the *Contract* or a part t*hereof*, the *Contractor* and the *DCC Representative* may, by agreement in writing, add items, units of measurement, estimated quantities and prices per unit to the *Unit Price Table*.

.3 A price per unit referred to in paragraph 6.4.1.2 of GC6.4.1 shall be determined on the basis of the aggregate estimated cost of labour, *Plant* and *Material* that is required for the additional item as agreed upon by the *Contractor* and the *DCC Representative*, plus an allowance determined in accordance with paragraph 6.4.1.1 of GC6.4.1.

.4 To facilitate approval of the price of the change or the additional price per unit as applicable, the *Contractor* shall submit a cost estimate breakdown identifying, as a minimum, the estimated cost of labour, *Plant*, *Material*, each sub*contract Amount*, and the amount of the allowance.

.5 If no agreement is reached as contemplated in paragraph 6.4.1.1 of GC6.4.1, the price shall be determined in accordance with GC6.4.2.

.6 If no agreement is reached, as contemplated in paragraphs 6.4.1.2 and 6.4.1.3 of GC6.4.1, the *DCC Representative* shall determine the class and the unit of

measurement of the item of labour, *Plant* or *Material* and the price per unit shall be determined in accordance with GC6.4.2.

6.4.2 Price Determination Following Completion of Changes

.1 If it is not possible to predetermine, or if there is failure to agree upon the price of a change in the *Work*, the price of the change shall be equal to the aggregate of

.1 all reasonable and proper amounts actually expended or legally payable by the *Contractor* in respect of the labour, *Plant* and *Material* that fall within one of the classes of expenditure described in paragraph 6.4.2.2 of GC6.4.2, that are directly attributable to the performance of the *Contract*;

.2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, in an amount that is equal to 10% of the sum of the expenses referred to in paragraph 6.4.2.1.1 of GC6.4.2; and

.3 interest on the amounts determined under paragraphs 6.4.2.1.1 and 6.4.2.1.2 of GC6.4.2 calculated in accordance with GC5.12, "Interest on Settled Claims;

.2 The cost of labour, *Plant* and *Material* referred to in paragraph 6.4.2.1.1 of GC6.4.2 shall be limited to the following categories of expenditure:

.1 payments to Subcontractors and Suppliers;

.2 wages, salaries, bonuses and, if applicable, travel and lodging expenses of employees of the *Contractor* located at the site of the *Work* and that portion of wages, salaries, bonuses and, if applicable, travel and lodging expenses of personnel of the *Contractor* generally employed at the head office or at a general office of the *Contractor* provided they are actually and properly engaged on the *Work* under the *Contract*;

.3 assessments payable under any statutory authority relating to workers' compensation, employment insurance, pension plan or holidays with pay, provincial health or insurance plans, environmental reviews, and GST/HST collection costs;

.4 rent that is paid for *Plant*, or an amount equivalent to the said rent if the *Plant* is owned by the *Contractor*, that is necessary for and used in the performance of the *Work*, if the rent or the equivalent amount is reasonable and use of that *Plant* has been approved by the *DCC Representative*;

.5 payments for maintaining and operating *Plant* necessary for and used in the performance of the *Work*, and payments for effecting repairs thereto that, in the opinion of the *DCC Representative*, are necessary for the proper performance of the *Contract*, other than payments for any repairs to the *Plant* arising out of defects existing before its allocation to the *Work*;

.6 payments for *Material* that is necessary for and incorporated in the *Work*, or that is necessary for and consumed in the performance of the *Contract*;

.7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the *Plant* and *Material* necessary for and used in the performance of the *Contract*; and

.8 any other payments made by the *Contractor* with the approval of the *DCC Representative* that are necessary for the performance of the *Contract* in accordance with the *Contract* Documents.

6.4.3 Price Determination – Variations in Tendered Quantities

.1 Except as provided in paragraphs 6.4.3.2, 6.4.3.3, 6.4.3.4 and 6.4.3.5 of GC6.4.3, if it appears that the final quantity of labour, *Plant* and *Material* under a price per unit item shall exceed or be less than the estimated tendered quantity, the *Contractor* shall perform the *Work* or supply the *Plant* and *Material* required to complete the item and payment shall be made for the actual *Work* performed or *Plant* and *Material* supplied at the price per unit set out in the *Contract*.

.2 If the final quantity of the price per unit item exceeds the estimated tendered quantity by more than 15%, either party to the *Contract* may make a written request to the other party to negotiate an amended price per unit for that portion of the item which exceeds 115% of the estimated tendered quantity, and to facilitate approval of any amended price per unit, the *Contractor* shall, on request, provide the *DCC Representative* with

.1 detailed records of the actual cost to the *Contractor* of performing or supplying the tendered quantity for the price per unit item up to the time the negotiation was requested; and

.2 the estimated unit cost of labour, *Plant* and *Material* required for the portion of the item that is in excess of 115% of the tendered quantity.

.3 If agreement is not reached as contemplated in paragraph 6.4.3.2 of GC6.4.3, the price per unit shall be determined in accordance with GC6.4.2.

.4 If it appears that the final quantity of labour, *Plant* and *Material* under a price per unit item shall be less than 85% of the estimated tendered quantity, either party to the *Contract* may make a written request to the other party to negotiate a change to the price per unit for the item if

.1 there is a demonstrable difference between the unit cost to the *Contractor* of performing or supplying the estimated tendered quantity and the unit cost to the *Contractor* for performing or supplying the final quantity; and

.2 the difference in unit cost is due solely to the decrease in quantity and not to any other cause.

.5 For the purposes of the negotiation referred to in paragraph 6.4.3.4 of GC6.4.3

.1 the onus of establishing, justifying, and quantifying a proposed change lies with the party making the request for negotiation; and

.2 in no event shall the total price for an item that has been amended as a result of a reduction in quantity pursuant to paragraph 6.4.3.4 of GC6.4.3

exceed the amount that would have been payable to the *Contractor* had 85% of the tendered quantity actually been performed or supplied.

6.5 Delays and Extension of Time

6.5.1 Upon application of the *Contractor* made before the date first fixed for completion of the *Work* or before any other date previously fixed under this clause, *Canada* may extend the time for completion of the *Work* by fixing a new date if the *DCC Representative* determines that causes beyond the control of the *Contractor* have delayed its completion.

6.5.2 The *Contractor*'s application shall be accompanied by the written consent of the bonding company whose bond forms part of the *Contract Security*.

6.5.3 Subject to paragraph 6.5.4 of GC6.5, no payment, other than a payment that is expressly stipulated in the *Contract*, shall be made by *Canada* to the *Contractor* for any extra expense, loss or damage incurred or sustained by the *Contractor* due to delay, whether or not the delay is caused by circumstances beyond the control of the *Contractor*.

6.5.4 If the *Contractor* incurs or sustains any extra expense or any loss or damage that is directly attributable to any neglect or delay that occurs after the date of the *Contract* on the part of *Canada* in providing any information or in doing any act that the *Contract* either expressly requires *Canada* to do or that would ordinarily be done by an owner in accordance with the practice of the trade, the *Contractor* shall give *Canada* written notice of intention to claim for that extra expense or loss or damage within ten (10) *Working Day*s of the date the neglect or delay first occurred.

6.5.5 When the *Contractor* has given a notice referred to in paragraph 6.5.4 of GC6.5, the *Contractor* shall give *Canada* a written claim for the extra expense, loss, or damage no later than thirty (30) days after the date that a *Final Certificate of Completion* is issued and not afterwards.

6.5.6 A written claim referred to in paragraph 6.5.5 of GC6.5 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable *Canada* to determine whether or not the claim is justified and the *Contractor* shall supply such further and other information for that purpose as *Canada* may require.

6.5.7 If *Canada* determines that a claim referred to in paragraph 6.5.5 of GC6.5 is justified, *Canada* shall make an extra payment to the *Contractor* in an amount that is calculated in accordance with GC6.4, "Determination of Price".

6.5.8 If the *Contractor* fails to give a notice referred to in paragraph 6.5.4 and a claim referred to in paragraph 6.5.5 of GC6.5 within the times stipulated, an extra payment shall not be made to the *Contractor* in respect of the occurrence.

## GC7 - DEFAULT, SUSPENSION OR TERMINATION OF CONTRACT

7.1 Taking the *Work* out of the *Contractor*'s Hands

7.1.1 By giving notice in writing to the *Contractor* in accordance with GC2.3, "Notices", *Canada*, without any other authorization, may take all or any part of the *Work* out of

the *Contractor*'s hands, and may employ such means as *Canada* sees fit to have the *Work* completed if the *Contractor*

.1 fails to remedy any delay in the commencement or default in the diligent performance of the *Work* to the satisfaction of *Canada* within six (6) days of *Canada* giving notice to the *Contractor* in writing in accordance with GC2.3, "Notices";

.2 defaults in the completion of any part of the *Work* within the time fixed for its completion by the *Contract*;

.3 becomes insolvent, or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act;

.4 abandons the *Work*;

.5 makes an assignment of the *Contract* without the consent required by GC1.16, "Assignment",

.6 fails to comply with the DCC Procurement Code of Conduct,

.7 is declared ineligible by Public Services and Procurement Canada under their *Ineligibility and Suspension Policy*; or

.8 otherwise fails to observe or perform any of the provisions of the *Contract*.

7.1.2 If the whole or any part of the *Work* is taken out of the *Contractor*'s hands, the *Contractor*'s right to any further payment that is due or accruing due under the *Contract* is, subject only to paragraph 7.1.3 of GC7.1, extinguished, and the *Contractor* is liable to pay *Canada*, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by *Canada* in respect of the *Contractor*'s failure to complete the *Work*.

7.1.3 If the whole or any part of the *Work* that is taken out of the *Contractor*'s hands is completed by *Canada*, *Canada* may pay the *Contractor* the amount, if any, of the holdback or a progress claim as determined by *Canada* that had accrued and was due prior to the date on which the *Work* was taken out of the *Contractor*'s hands and that is not required for the purposes of having the *Work* performed or of compensating *Canada* for any other loss or damage incurred or sustained by reason of the *Contractor*'s default.

7.1.4 The taking of the *Work* or any part t*hereof* out of the *Contractor*'s hands does not relieve the *Contractor* from any obligation under the *Contract* or imposed by law except the obligation to complete the performance of that part of the *Work* that was taken out of the *Contractor*'s hands.

7.1.5 If the *Work* or any part t*hereof* is taken out of the *Contractor*'s hands, all *Plant* and *Material* and the interest of the *Contractor*, or its suppliers or subcontractors at any tier, in all real property, licences, powers and privileges acquired, used or provided by

the *Contractor*, or its suppliers or subcontractors at any tier, under the *Contract* shall continue to be the property of *Canada* without compensation.

7.1.6 When *Canada* certifies that any *Plant*, *Material*, or any interest of the *Contractor* is no longer required for the purposes of the *Work*, or that it is not in the interests of *Canada* to retain that *Plant*, *Material*, or interest, it shall revert to the *Contractor*.

7.1.7 If the *Contractor* has become insolvent or has committed an act of bankruptcy, and has either made a proposal to its creditors or filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, the *Contractor* shall immediately forward a copy of the proposal or the notice of intention to *Canada*.

7.2 Suspension of *Work*

7.2.1 When, in *Canada*'s opinion, it is in the public interest to do so, *Canada* may require the *Contractor* to suspend performance of the *Work* either for a specified or an unspecified period, by the *DCC Representative* giving a notice of suspension in writing to the *Contractor* in accordance with GC2.3, "Notices".

7.2.2 When a notice of suspension is received by the *Contractor*, the *Contractor* shall suspend all operations in respect of the *Work* except those that the *DCC Representative* determines are necessary for the care and preservation of the *Work*, *Plant* and *Material*.

7.2.3 During a period of suspension, the *Contractor* shall not remove any part of the *Work*, *Plant* or *Material* from its site without the consent of the *DCC Representative*.

7.2.4 If a period of suspension is sixty (60) days or less, the *Contractor* shall resume the performance of the *Work* on the expiration of that period, and the *Contractor* is entitled to be paid the extra costs necessarily incurred by the *Contractor* as a result of the suspension, determined in accordance with GC6.4, "Determination of Price".

7.2.5 If a period of suspension is more than sixty (60) days, *Canada* and the *Contractor* may agree that the performance of the *Work* shall be continued by the *Contractor*, and the *Contractor* shall resume performance of the *Work* subject to any terms and conditions agreed upon by *Canada* and the *Contractor*. If *Canada* and the *Contractor* do not agree that performance of the *Work* shall be continued by the *Contractor*, or upon the terms and conditions under which the *Contractor* shall continue the *Work*, the notice of suspension shall be deemed to be a notice of termination pursuant to GC7.3, "Termination of *Contract*".

7.3 Termination of *Contract*

7.3.1 *Canada* may terminate the *Contract* at any time by the *DCC Representative* giving a notice of termination in writing to the *Contractor* in accordance with GC2.3, "Notices".

7.3.2 If the *Contractor* receives a notice of termination, the *Contractor* shall forthwith cease all operations in performance of the *Contract*, subject to any conditions stipulated in the notice.

7.3.3 Subject to paragraph 7.3.4 of GC7.3, if the *Contract* is terminated, *Canada* shall pay the *Contractor* an amount determined to be due to the *Contractor* pursuant to GC6.4, "Determination of Price", less the aggregate of all amounts that were paid to the

*Contractor* by *Canada* and all amounts that are due to *Canada* from the *Contractor* pursuant to the *Contract*.

7.3.4 In no event shall the total amount payable by *Canada* to the *Contractor* exceed the amount, calculated in accordance with GC5, "Terms of Payment", that would have been payable to the *Contractor* had the *Contractor* completed the *Work*.

7.3.5 Payment to the *Contractor*, if any, shall be made as soon as practicable under the circumstances.

7.4 Security Deposit – Forfeiture or Return

7.4.1 If the *Work* is taken out of the *Contractor*'s hands or the *Contractor* is in breach of, or in default under, the *Contract*, *Canada* may convert a security deposit to *Canada*'s own use.

7.4.2 If *Canada* converts a security deposit, the amount realized shall be deemed to be an amount due from *Canada* to the *Contractor* under the *Contract*.

7.4.3 Any balance of the amount realized that remains after payment of all losses, damage and claims of *Canada* and others shall be paid by *Canada* to the *Contractor* if, in the opinion of *Canada*, it is not required for the purposes of the *Contract*.

## GC8 - DISPUTE RESOLUTION

8.1 Interpretation

8.1.1 In these Dispute Resolution, an "arbitral question of law" means a question of law that

.1 is capable of determination by arbitration under the laws of *Canada*;

.2 does not involve interpretation or application of public law of *Canada*, including without limitation any matter of constitutional, administrative, criminal or tax law; and

.3 concerns

.1 the formation, validity, interpretation, application, or enforceability of the Contract;

.2 the performance, breach, termination, or other discharge of the *Contract*;

.3 the rights, duties, obligations, or remedies of parties created by or pursuant to the *Contract*; or

.4 any other issue of private law that may arise between parties relative to performance of the *Contract*.

8.1.2 "dispute" means any disagreement regarding any issue identified by the *Contractor* in the notice submitted to *Canada* in accordance with paragraph 8.3.2 of GC8.3, "Notice of Dispute", and includes any claim by the *Contractor* arising from such disagreement and any counterclaim by *Canada*, but does not include any claim by either party for punitive or exemplary damages, injury to persons, death, or any claim based on an allegation of libel or slander; and

8.1.3 The alternative dispute resolution procedures set out in GC8, do not apply to any claim by *Canada* against the *Contractor* except any counterclaim in a dispute as

defined in paragraph 8.1.2 of GC8.1, including, but not limited to, any claim of setoff regarding any amount due to *Canada* under GC5.10, "Assessment and Damages for Late Completion".

8.1.4 Nothing in this *Contract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be prescribed by the *Payment Legislation*.

8.2 Consultation and Co-operation

8.2.1 The parties agree to maintain open and honest communication throughout the performance of the *Contract*.

8.2.2 The parties agree to consult and co-operate with each other in the furtherance of the *Work* and the resolution of problems or differences that may arise.

8.3 Notice of Dispute

8.3.1 Any difference between the parties to the *Contract* of any nature arising out of or in connection with the *Contract* which could result in a claim by the *Contractor* against *Canada*, and which is not settled by consultation and co- operation as envisaged in GC8.2, "Consultation and Co-operation", shall be resolved in the first instance by *Canada*, whose written decision or direction shall be final and binding subject only to the provisions of GC8. Such written decision or direction includes, but is not limited to, any written decision or direction by *Canada* under any provision of the General Conditions.

8.3.2 The *Contractor* shall be deemed to have accepted the decision or direction of *Canada* referred to in paragraph 8.3.1 of GC8.3 and to have expressly waived and released *Canada* from any claim in respect of the particular matter dealt with in that decision or direction unless, within fifteen (15) *Working Day*s after receipt of the decision or direction, the *Contractor* submits to *Canada* a written notice of dispute requesting formal negotiation under GC8.4, "Negotiation". Such notice shall refer specifically to GC8.4, "Negotiation", and shall specify the issues in contention and the relevant provisions of the *Contract*.

8.3.3 The giving of a written notice in accordance with paragraph 8.3.2 of GC8.3 shall not relieve the *Contractor* from complying with the decision or direction that is the subject of the dispute. Such compliance, however, shall not be construed as an admission by the *Contractor* of the correctness of such decision or direction.

8.3.4 If a dispute is not resolved promptly, *Canada* shall give such instructions as, in *Canada*'s opinion, are necessary for the proper performance of the *Work* and to prevent delays pending a resolution of the matter. Unless *Canada* terminates the *Contract*, orders the *Contractor* to suspend the *Work*, or takes the *Work* out of the hands of the *Contractor*, the *Contractor* shall continue to perform the *Work* in accordance with the provisions and requirements of the *Contract* and the instructions

of *Canada*. Such performance shall not prejudice any claim that the *Contractor* may have.

8.3.5 Nothing in GC8 relieves the *Contractor* from its obligation to provide any other notice required by the *Contract* within the time specified in the *Contract*, including but not limited to, any notice required under GC6.2, "Changes in Subsurface Conditions".

8.4 Negotiation

8.4.1 Within ten (10) *Working Day*s after receipt by *Canada* of a notice referred to in paragraph 8.3.2 of GC8.3, "Notice of Dispute", or within such other period of time as may be mutually agreed to, the parties shall commence formal negotiations in order to resolve the dispute. Negotiations shall occur initially between representatives of the *Contractor* and *Canada* who play a direct supervisory role in the performance, administration, or management of the *Contract*.

8.4.2 If the representatives referred to in paragraph 8.4.1 of GC8.4 are unable to resolve some or all of the issues which are the subject of the negotiations within ten (10) *Working Day*s, the parties shall refer the remaining issues which are in dispute to a second level of negotiation between a principal or principals of the *Contractor* and a senior level manager or senior level managers representing *Canada*.

8.4.3 If negotiations fail to resolve the dispute within thirty (30) *Working Day*s from the date of delivery of the notice referred to in paragraph 8.3.2 of GC8.3, "Notice of Dispute", or within such longer period as may have been agreed to by the parties, the *Contractor* may, by giving written notice to *Canada*, in accordance with GC2.3, "Notices", within ten (10) *Working Day*s from the end of such period, request that mediation be undertaken to assist the parties to reach agreement on the outstanding issues.

8.4.4 If the *Contractor* does not request mediation within the period permitted by paragraph 8.4.3 of GC8.4, the *Contractor* shall be deemed to have accepted the decision or direction of *Canada* under paragraph 8.3.1 of GC8.3, "Notice of Dispute", and to have expressly waived and released *Canada* from any claim in respect of the particular matter dealt with in that decision or direction.

8.5 Mediation

8.5.1 If the *Contractor* has requested mediation in accordance with paragraph 8.4.3 of GC8.4, "Negotiation", mediation shall be conducted in accordance with GC8.10, "Rules for Mediation of Disputes".

8.5.2 If a Project Mediator has not previously been appointed for the purposes of the *Contract*, a Project Mediator shall be appointed in accordance with GC8.10, "Rules for Mediation of Disputes", forthwith after delivery of a notice in accordance with paragraph 8.4.3 of GC8.4, "Negotiation", requesting mediation.

8.5.3 If the dispute has not been resolved within

.1 ten (10) *Working Day*s following the appointment of a Project Mediator in accordance with paragraph 8.5.2 of GC8.5, if a Project Mediator was not previously appointed;

.2 ten (10) *Working Day*s following receipt by *Canada* of a written notice in accordance with paragraph 8.4.3 of GC8.4, "Negotiation", if a Project Mediator was previously appointed; or

.3 such other longer period as may have been agreed to by the parties;

the Project Mediator shall terminate the mediation by giving written notice to the parties stating the effective date of termination.

8.6 Binding Arbitration

8.6.1 If mediation of the dispute is terminated pursuant to the provisions of GC8.5, "Mediation", and

.1 the termination of mediation occurs prior to the applicable date set out in 8.6.4 of GC8.6; and

.2 the disputed issues involve issues of fact or issues of arbitral questions of law or issues of mixed fact and arbitral questions of law;

either party, by giving notice in writing to the other party in accordance with GC2.3, "Notices", may request that the dispute be resolved by binding arbitration pursuant to GC8.6. Binding arbitration will only proceed if both parties have agreed to it.

8.6.2 A notice referred to in 8.6.1 of GC8.6 shall be given within 10 working days of the date of termination of mediation under GC8.5 “Mediation” and shall be in accordance with GC2.3, "Notices".

8.6.3 If no notice is given within the period set out in 8.6.2 of GC8.6, or if the conditions set out in 8.6.1.1 and 8.6.1.2 of GC8.6 are not met, the arbitration provisions set out in GC8.6 do not apply to the dispute.

8.6.4 Unless otherwise agreed, the arbitration of the dispute shall be held in abeyance until the earlier of

.1 the date of issuance of an Interim Certificate of Completion under GC5.5, "Substantial Completion of the Work";

.2 the date the Work is taken out of the *Contractor*'s hands; and

.3 the date of termination of the *Contract*;

and consolidated with all other such disputes into a single arbitration.

8.6.5 Arbitral proceedings under this GC8.6 shall be governed by and conducted in accordance with the Commercial Arbitration Act, R.S. 1985, c. 17 (2nd Supp.) and the provisions of GC8.11, "Rules for Arbitration of Disputes".

8.6.6 For the purposes of calculating time under the Rules for Arbitration referred to in 8.6.5 of GC8.6, arbitration proceedings shall commence on the applicable date set out in 8.6.4 of GC8.6.

8.6.7 Notwithstanding anything else contained in GC8.6, the arbitration provisions in GC8.6 do not apply if the aggregate amount of all claims by the *Contractor* required to be arbitrated on the applicable date set out in 8.6.4 of GC8.6 is less than $25,000.

8.7 Disputes not Subject to Arbitration

8.7.1 Where the arbitration provisions in GC8.6, "Binding Arbitration", do not apply to a dispute as a result of 8.6.3 or 8.6.7 of GC8.6, "Binding Arbitration", either party may take such court action or proceedings as it considers appropriate, including, without limiting the foregoing, all suits that would otherwise have been immediately available to it but for the provisions of these Dispute Resolution Conditions. Subject to the provisions of 8.7.2 of GC8.7, the *Contractor* shall initiate any such action or proceeding no later than three calendar months after the date that a Final Certificate of Completion is issued under GC5.6, "Final Completion", and not afterwards, except where it is otherwise provided by law.

8.7.2 Any action or proceeding resulting from a direction under GC3.13, "Warranty and Rectification of Defects in Work", shall be initiated by the *Contractor* no later than three calendar months after the expiry of the warranty or guarantee period and not afterwards, except where it is otherwise provided by law.

8.8 Confidentiality

8.8.1 All information exchanged during alternative dispute resolution procedures, by whatever means, shall be without prejudice and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during an alternative dispute resolution process.

8.9 Settlement

8.9.1 Any agreement to settle all or any part of a dispute, by whatever means, shall be in writing and be signed by the parties or their authorized representatives.

8.10 Rules for Mediation of Disputes

8.10.1 Interpretation In these Rules

.1 "Coordinator" means the *person* designated by *Canada* to act as the Dispute Resolution Coordinator.

8.10.2 Application

.1 By mutual agreement, the parties may change or make additions to the Rules.

8.10.3 Communication

.1 Written communications pursuant to these Rules shall be given in accordance with GC2.3, "Notices".

8.10.4 Appointment of Project Mediator

.1 The parties to the *Contract* may, by mutual consent, at any time after entry into the *Contract*, appoint a mediator (the "Project Mediator") to conduct mediation proceedings in accordance with these Rules for Mediation of Disputes, in regard to any dispute that may arise with regard to the interpretation, application or administration of the *Contract*. In this case, they shall jointly enter into a contract with the appointed Project Mediator, which contract shall be in a form drafted by the Coordinator and agreed to by the parties.

.2 If the parties do not appoint a Project Mediator pursuant to paragraph 8.10.4.1 of GC8.10.4, the parties shall appoint a Project Mediator within seventeen (17) *Working Day*s following receipt of a written notice from the *Contractor*, in accordance with GC2.3, "Notices", requesting that mediated negotiations be undertaken in accordance with these Rules to assist the parties to reach agreement on any outstanding issues that may be in dispute. Any contract entered into with the appointed Project Mediator shall meet the requirements as set out for the contract described in paragraph 8.10.4.1 of GC8.10.4.

.3 When mediation is requested by the *Contractor* pursuant to paragraph 8.4.3 of GC8.4, "Negotiation", if the parties have previously entered into a contract with a Project Mediator, the parties shall within two (2) days send to both the Project Mediator and the Coordinator

.1 a copy of the notice requesting negotiation under paragraph 8.3.2 of GC8.3, "Notice of Dispute";

.2 a copy of *Canada*'s written position in relation to the notice, the issues in contention and the relevant provisions of the *Contract*; and

.3 a copy of the *Contractor*'s written request for mediation required under paragraph 8.4.3 of GC8.4, "Negotiation".

.4 If the parties have not agreed on a Project Mediator, the parties shall forthwith provide the Coordinator with the written materials referred to in paragraphs 8.10.4.3.1, 8.10.4.3.2 and 8.10.4.3.3 of GC8.10.4 together with a request that the Coordinator assist in the appointment of a mutually acceptable Project Mediator in accordance with these Rules.

.5 Within five (5) *Working Day*s following receipt of the request and materials referred to in paragraph 8.10.4.4 of GC8.10.4, the Coordinator shall provide the parties with a list of qualified private sector mediators obtained from an independent and impartial entity, together with instructions to each party to individually and confidentially select and rank their preferred and fully acceptable choices of mediator in descending order. Each mediator listed shall be impartial and independent of the parties, and shall be an experienced and skilled commercial mediator, preferably with knowledge of the subject matter of the dispute.

.6 Within ten (10) *Working Day*s of receipt of the list referred to in paragraph 8.10.4.5 of GC8.10.4 each party shall comply with the instructions accompanying the list(s) and shall deliver the completed listing to the Coordinator.

.7 Within two (2) *Working Day*s following receipt of the completed listings, the Coordinator shall select the highest common ranked mediator to act as Project Mediator for the purposes of the *Contract*.

.8 In the event of a tie, the Coordinator shall consult both parties to re- evaluate their rankings in order to assist the Coordinator in selecting a Project Mediator acceptable to both parties. If the parties cannot agree upon a Project Mediator, the Coordinator shall forthwith provide the parties with a second list of mediators and the procedure shall be repeated.

.9 If the parties have not previously entered into a contract with a mutually acceptable Project Mediator, the Coordinator shall use reasonable efforts to negotiate a contract with a mutually acceptable Project Mediator on behalf of the parties, which contract shall incorporate or otherwise comply with the provisions of these Rules. If negotiations are unsuccessful, or if for other reason the individual is unwilling or unable to enter into a contract to act as Project Mediator, the Coordinator shall repeat the process with the second-highest common ranked mediator.

.10 The parties agree that, upon successful completion of the negotiations referred to in paragraph 8.10.4.9 of GC8.10.4, they shall jointly enter into a contract with the selected Project Mediator, which contract shall be in a form drafted by the Coordinator and agreed to by the parties.

.11 Upon execution of the contract with the Project Mediator referred to in paragraph 8.10.4.10 of GC8.10.4 the Coordinator shall provide the Project Mediator with copies of the documents referred to in paragraph 8.10.4.3 of GC8.10.4.

8.10.5 Confidentiality

.1 Subject to paragraph 8.10.5.2 of GC8.10.5, and unless otherwise agreed in writing by the parties, the Project Mediator, the parties and their counsel or representatives shall keep confidential all matters and documents disclosed during mediation proceedings except where the disclosure is necessary for any implementation of any agreement reached or is required by law.

.2 Evidence that is independently admissible or discoverable in any arbitral or judicial proceeding shall not be rendered inadmissible or non-discoverable by virtue of its use in mediation proceedings.

.3 Neither party shall make transcripts, minutes, or other records of a mediation conference.

.4 The personal notes and written opinions of the Project Mediator made in relation to mediation are in the Project Mediator's sole possession and control, are confidential, and may not be used in any subsequent proceeding between the

parties or where they are opposed in interest without the express written permission of the parties.

.5 All information exchanged during mediation procedures, by whatever means, shall be without prejudice and shall be treated as confidential by the parties and their representatives, unless otherwise required by law.

8.10.6 Time and Place of Mediation

.1 The Project Mediator, in consultation with the parties shall set the date, time and place of any mediation conference as soon as possible, bearing in mind that, subject to agreement to the contrary between the parties, only ten (10) *Working Day*s are available within which to attempt to settle the dispute.

8.10.7 Representation

.1 Representatives of the parties may be accompanied at the mediation conference by legal counsel or any other *person*.

.2 If the Project Mediator is a lawyer, the Project Mediator shall not provide legal advice to a party during the course of the mediation conference but may recommend that a party obtain independent legal advice before finalizing a settlement agreement.

8.10.8 Procedure

.1 The parties agree to an exchange of all facts, information, and documents upon which they intend to rely in any oral or written presentation during the mediation. This exchange shall be completed no later than two (2) *Working Day*s prior to the date set for a mediation conference.

.2 The Project Mediator shall be free to meet with the parties individually during a mediation conference if the Project Mediator is of the opinion that this may improve the chances of a mediated settlement, and either party may request such an individual meeting at any time.

.3 The parties may agree to extend the ten (10) *Working Day*s available for settlement of the dispute through mediation, and the Project Mediator shall record that agreement in writing.

8.10.9 Settlement Agreement

.1 The parties shall record in writing any settlement agreement reached, with sufficient detail to ensure a clear understanding of

.1 the issues resolved;

.2 any obligations assumed by each party including criteria to determine if and when these obligations have been met; and

.3 the consequences of failure to comply with the agreement reached.

.2 The parties agree to carry out the terms of a settlement agreement as soon as possible and, in any event, within any time periods specified in the agreement.

8.10.10Termination of Mediation

.1 Either party may withdraw from mediation at any time without reason and, in that event, the Project Mediator shall give each party a written notice terminating the mediation and establishing the effective date of termination.

.2 If, in the opinion of the Project Mediator, either party fails to mediate in good faith or fails to comply with the terms of these Rules, or if the Project Mediator, at any time during mediation, is of the opinion that further negotiations will fail to resolve the issues outstanding, the Project Mediator may terminate the negotiations by providing the parties with a written notice of termination, stating t*herein* the Project Mediator's reasons for the termination, and the effective date of termination.

.3 If a dispute has not been resolved within ten (10) *Working Day*s or such other longer period as may have been agreed to by the parties, the Project Mediator shall terminate the mediation by giving written notice to the parties stating the effective date of termination.

8.10.11Costs

.1 The parties agree that they will each be responsible for the costs of their own representatives and advisors and associated travel and living expenses. Fees and expenses of the Project Mediator and all administrative costs of mediation, such as the cost of the meeting room(s), if any, shall be borne equally by the parties.

8.10.12Subsequent Proceedings

.1 The parties shall not rely on or introduce as evidence in any arbitral or judicial proceeding, whether or not such proceeding relates to the subject matter of mediation,

.1 any documents of other parties that are not otherwise producible in those proceedings;

.2 any views expressed or suggestions made by any party in respect of a possible settlement of issues;

.3 any admission made by any party in the course of mediation unless otherwise stipulated by the admitting party; and

.4 the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.

.2 The Project Mediator shall neither represent nor testify on behalf of either of the parties in any subsequent investigation, action or proceeding relating to the issues in mediation proceedings.

.3 The Project Mediator shall not be subpoenaed to give evidence relating to

.1 the Project Mediator's role in mediation; or

.2 the matters or issues in mediation;

.3 in any subsequent investigation, action or proceeding and the parties agree to vigorously oppose any effort to have the Mediator so subpoenaed.

8.11 Rules for Arbitration of Disputes

8.11.1 Interpretation

.1 In these Rules

"claimant" means the *Contractor*;

"Coordinator" means the person designated by *Canada* to act as the Dispute Resolution Coordinator"

"respondent" means *Canada*.

8.11.2 Arbitration Tribunal

.1 Subject to these Rules, and unless otherwise agreed by the parties, the arbitration tribunal shall consist of a single arbitrator ("the Tribunal") who shall be appointed in accordance with the provisions of the Rules.

8.11.3 Application

.1 By mutual agreement, the parties may change or make additions to the Rules.

.2 The scope of the arbitral proceedings shall be limited to the resolution of the dispute submitted to arbitration.

.3 The dispute shall be subject to resolution pursuant to the provisions of these Rules whether or not such resolution requires determination of a question of law if such question of law is an arbitral question of law as defined in the terms and conditions of the *Contract*.

.4 Arbitral proceedings shall be governed by and in accordance with the Commercial Arbitration Act, R.S. 1985, c. 17 (2nd Supp.), the Code referred to therein, and the provisions of these Rules, and, subject only to the provisions of the Commercial Arbitration Act, the parties agree that the determination and award of the Tribunal shall be final and binding on both parties.

.5 The Tribunal shall not decide the dispute ex aequo et bono or as amiable compositeur.

.6 The Tribunal shall decide in accordance with the terms and conditions of the *Contract* and shall take into account the usage of the trade applicable to the transaction.

.7 The costs of the Tribunal and the arbitration shall be shared equally by the parties and each party shall bear its own costs.

8.11.4 Initiation of Proceedings

.1 Either party may submit a dispute to binding arbitration pursuant to GC8.6, "Binding Arbitration", by giving notice in writing to the other party in accordance with GC2.3, "Notices".

.2 The notice referred to in 8.11.4.1 of GC8.11.4 shall contain the following:

.1 a brief description of the Contract;

.2 a statement of the issue(s) in dispute;

.3 a request that the dispute be referred to binding arbitration; and

.3 A copy of the notice referred to in 8.11.4.1 of GC8.11.4 shall be given to the Coordinator at the same time it is given to the other party.

.4 Unless otherwise agreed, the arbitration of the dispute shall be held in abeyance and consolidated with all other such disputes into a single arbitration in accordance with 8.6.4 of GC8.6, "Binding Arbitration".

8.11.5 Appointment of Tribunal

.1 No later than 10 working days following the date of commencement of arbitration proceedings as set out in 8.6.6 of GC8.6, "Binding Arbitration", the Coordinator shall assemble and provide the parties with a list of qualified private sector arbitrators obtained from an independent and impartial entity, together with instructions to each party to individually and confidentially select and rank their preferred and fully acceptable choices of arbitrator in descending order.

.2 Within 10 working days of receipt of the list referred to in 8.11.5.1 of GC8.11.5, each party shall comply with the instructions accompanying the list(s) and shall deliver the completed listing to the Coordinator.

.3 Within 2 working days following receipt of the completed listings, the Coordinator shall select the highest common ranked arbitrator to act as the Tribunal for the purposes of the arbitration.

.4 In the event of a tie, the Coordinator shall consult both parties to re- evaluate their rankings in order to assist the Coordinator in selecting a single arbitrator acceptable to both parties. If the parties cannot agree upon an arbitrator, the Coordinator shall forthwith provide the parties with a second list of arbitrators and the procedure shall be repeated.

.5 In the event that, following the repeated procedure, the Coordinator again fails to select a single arbitrator acceptable to both parties, the Tribunal shall consist of three (3) arbitrators, one arbitrator appointed by each of the parties and the third arbitrator appointed by these two (2) arbitrators.

.6 The Tribunal shall in any event be composed of a person or persons who have experience in the subject matter of the dispute and are independent of either party. Without limiting the generality of the foregoing, the Tribunal shall be at arm's length from both parties and shall not be composed of members of any company, firm, or agency which advises either party, nor shall the Tribunal be composed of a person or persons who are otherwise regularly retained by such parties.

.7 The parties agree that they shall jointly enter into an agreement with the selected Tribunal, which agreement shall be in a form drafted by the Coordinator and agreed to by the parties.

.8 The parties agree that they shall each bear their own costs. Fees and reasonable expenses of the Tribunal and reasonable expenses associated with the conduct of the arbitration shall be borne equally by the parties.

8.11.6 Preliminary Meeting

.1 Unless the parties to the arbitration and the Tribunal otherwise agree, the parties shall meet with the Tribunal within 10 working days of the Tribunal's appointment to

.1 settle the location of premises for proceedings and responsibilities for the arrangement;

.2 verify addresses for the delivery of written communications to each party and to the Tribunal;

.3 present to the Tribunal the issues to be resolved by means of the arbitration;

.4 estimate the length of time the hearing might take and the number of witnesses likely to be produced;

.5 determine if a stenographic record or any other type of recording of proceedings should be kept, or if any particular services, such as interpreters, translations or security measures should be provided; and

.6 determine any other matters pertinent to conduct of the arbitration.

8.11.7 Communications

.1 Subject to 8.11.7.2 of GC8.11.7, the Tribunal shall not communicate with a party to the dispute except in the presence of the other party.

.2 Notwithstanding 8.11.7.1 of GC8.11.7, the Tribunal may communicate with the parties separately for the purpose of establishing procedures to be followed or setting the time of a meeting; other exceptions to the general rule shall only be made with the consent in writing of all parties.

.3 If a communication by the Tribunal to one party is in writing, a copy shall be sent to the other party.

.4 If a party sends any written communication to the Tribunal, a copy shall be sent to the other party.

.5 Any communication that is required or permitted to be given to the Tribunal or either party shall be in writing and may be given by delivering the same by facsimile, electronic mail or by mail, postage prepaid, to the address established for the purposes of the Contract in the case of the parties, and to the address provided by the Tribunal in the case of the Tribunal, and such communication shall be deemed to have been received in accordance with the provisions of GC2.3, "Notices".

8.11.8 Representation

.1 The parties may be represented or assisted by any person during the arbitral proceedings.

8.11.9 Conduct of Proceedings

.1 Subject to the provisions of these Rules, the Tribunal may conduct the arbitration in the manner it considers appropriate. The power conferred upon the

Tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

8.11.10 Place of Arbitration

.1 The Tribunal may meet at any place it considers appropriate for hearing witnesses, experts, or the parties, or for inspection of documents, goods, or other property. The Tribunal shall conduct on-site inspections at the request of either party. Any on-site inspections shall be made in the presence of both parties and their representatives. The proceedings of any on-site inspections shall be recorded as part of the hearing itself.

8.11.11 Time Limitations

.1 The Tribunal may extend or abridge a period of time required in these Rules or fixed or determined by the Tribunal where the Tribunal considers it to be reasonable and appropriate.

.2 Where any proceeding is terminated pursuant to paragraph 25(a) or 32 (2)(a) of the Code referred to in the Commercial Arbitration Act, unless the respondent agrees otherwise in writing, such termination is deemed to be a final award dismissing the claim of the claimant.

8.11.12 Statement of Claim and Defence

.1 Within 10 working days after the Tribunal has been appointed, the claimant shall state, in writing, the facts supporting its claim, points at issue and relief or remedy sought, and shall submit the statement to the respondent, the Coordinator, and the Tribunal.

.2 Within 10 working days after receipt of the statement of claim, the respondent shall state, in writing, its defence in respect of these particulars and any counterclaim and shall submit its statement to the claimant, the Coordinator and the Tribunal.

.3 Within 5 working days after receipt of the statement of defence, the claimant may state, in writing, its response to the defence and to any counterclaim, and shall submit its statement to the respondent, the Coordinator and the Tribunal.

.4 A party may amend or supplement its statements during the course of arbitral proceedings unless the Tribunal considers it inappropriate to allow such amendment or supplement having regard to all circumstances including delay in making the amendment or supplement.

.5 A statement may not be amended if the amended statement would fall outside the scope of the arbitration agreement.

8.11.13 Further Written Statements

.1 The Tribunal may require or permit the presentation of further written statements by the parties and shall fix the periods of time for submitting those statements.

8.11.14Agreed Statement of Facts

.1 Within a time period specified by the Tribunal, the parties shall prepare and file with the Tribunal an agreed statement of facts including but not limited to a chronology of the project, schedules, quantities, and progress payments. The Tribunal shall make itself available, upon reasonable notice, to assist the parties to arrive at agreement on as many facts as possible under the circumstances.

.2 Within a time period specified by the Tribunal, the parties shall prepare and file with the Tribunal a common book of documents including all documents referred to in an agreed statement of facts and in statements of claim, defence, and response.

8.11.15Evidence

.1 Each party shall prove the facts relied upon to support its claim or defence.

.2 Each party shall deliver to the Tribunal and to the other party, within such period of time that the Tribunal determines, a copy of the documents and a summary of the other evidence that party intends to present in support of the facts in issue set out in its statement of claim, defence, or response.

.3 From time to time, the Tribunal may require the parties to produce documents, exhibits and other evidence within such period of time that the Tribunal may determine.

8.11.16Hearings

.1 All statements, documents or other information supplied to, or applications made to, the Tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the Tribunal may rely in making its decision shall be communicated to the parties at least 8 working days prior to its entry in evidence.

.2 The parties shall be given reasonably sufficient advance notice of any hearing of the Tribunal and any meeting of the Tribunal for the purpose of inspection of documents, goods or other property.

.3 If a party intends to give evidence through a witness, the party shall communicate to the Tribunal and to the other party, within such period that the Tribunal determines

.1 the names, addresses and curriculum vitae of each of the witnesses it intends to present; and

.2 the subject upon which those witnesses shall give their testimony.

.4 Each party shall have the right to examine, cross-examine and re-examine all witnesses as appropriate.

.5 All oral hearings and meetings in arbitral proceedings shall be held "in camera".

8.11.17Default

.1 Where, without showing sufficient cause, the claimant fails to communicate its statement of claim in accordance with these Rules or within such further period

of time permitted by the Tribunal under these Rules, the Tribunal shall issue an order terminating the arbitral proceedings with respect to that claim.

.2 An order made under 8.11.17.1 of GC8.11.17 does not affect a counterclaim made in respect of those arbitral proceedings.

.3 Where, without showing sufficient cause, the respondent fails to communicate a statement of defence in accordance with these Rules, or within such further period of time permitted by the Tribunal under these Rules, the Tribunal shall continue the arbitral proceedings without treating that failure in itself as an admission of the claimant's allegations.

.4 Where, without showing sufficient cause, a party fails to appear at an oral hearing or produce documentary evidence, the Tribunal may continue the arbitral proceedings and make the arbitral award on the evidence before it.

8.11.18 Arbitral Decision

.1 Unless otherwise agreed to by the parties, the Tribunal shall make the award no later than 30 days after completion of the arbitration hearings unless that time period is extended for an express period by the Tribunal on written notice to each party, due to illness or other cause beyond the Tribunal's control.

## GC9 - CONTRACT SECURITY

9.1 Obligation to Provide *Contract Security*

9.1.1 The *Contractor* shall, at the *Contractor*'s expense and within fourteen (14) days after the date that the *Contractor* receives notice that the *Contractor*'s tender was accepted by *Canada*, obtain and deliver *Contract Security* to *Canada* in one of the forms prescribed in GC9.2, "Types and Amounts of *Contract Security*".

9.1.2 If the whole or a part of the *Contract Security* provided is in the form of a security deposit, it shall be held and disposed of in accordance with GC5.13, "Return of Security Deposit", and GC7.4, "Security Deposit – Forfeiture or Return".

9.1.3 If a part of the *Contract Security* provided is in the form of a labour and material payment bond, the *Contractor* shall post a copy of that bond at the site of the *Work*.

9.1.4 It is a condition precedent to the release of the first progress payment that the *Contractor* has provided the *Contract Security* as specified *herein*.

9.2 Types and Amounts of *Contract Security*

9.2.1 The Contractor shall deliver to the *DCC Representative*

.1 a performance bond and a labour and material payment bond each in an amount that is equal to not less than 50% of the *Contract Amount*, or;

.2 a security deposit or irrevocable standby letter of credit in an amount that is equal to not less than 20% of the *Contract Amount*.

9.2.2 A performance bond and a labour and material payment bond referred to in paragraph 9.2.1 of GC9.2 shall be in a form and be issued by a bonding or surety company that is approved by *Canada*.

.1 The approved form for the Performance Bond is included in the DCL32 - General Conditions.

.2 The approved form for the Labour and *Material* Payment Bond is included in the DCL32 - General Conditions; and

.3 The performance bond and a labour and material payment bond shall be issued by either of the following:

.1 a provider licensed by the Office of the Superintendent of Financial Institutions (OSFI) to issue surety products;

.1 Canadian domiciled insurers (website at Who We Regulate (osfi-bsif.gc.ca);

.2 For foreign insurers who have been granted an order to insure in Canada (website at Who We Regulate (osfi-bsif.gc.ca);

or

.2 a provider licensed by a provincial or territorial insurance regulatory authority to issue surety products, provided that the contract is taking place in a province or territory in which the surety provider is licensed to issue surety products.

.4 DCC reserves the right to request proof of a license issued by a provincial or territorial authority to offer surety products.

9.2.3 A security deposit referred to in paragraph 9.2.1.2 of GC9.2 shall be in the form of

.1 a bill of exchange, bank draft or money order made payable to the Receiver General for Canada and certified by an approved financial institution or drawn by an approved financial institution on itself; or

.2 bonds of, or unconditionally guaranteed as to principal and interest by, the Government of Canada.

9.2.4 For the purposes of paragraph 9.2.4.1 of GC9.2

.1 a bill of exchange is an unconditional order in writing signed by the *Contractor* and addressed to an approved financial institution, requiring the said institution to pay, on demand, at a fixed or determinable future time a sum certain of money to, or to the order of, the Receiver General for Canada;

.2 if a bill of exchange, bank draft or money order is certified by or drawn on an institution or corporation other than a chartered bank, it must be accompanied by proof that the said institution or corporation meets at least one of the criteria described in paragraph 9.2.5.3 of GC9.2, either by letter or by a stamped certification on the bill of exchange, bank draft or money; and

.3 An approved financial institution is

.1 a corporation or institution that is a member of the Canadian Payments Association as defined in the Canadian Payments Act;

.2 a corporation that accepts deposits that are insured, to the maximum permitted by law, by the Canada Deposit Insurance Corporation or the "Régie de l'assurance-dépôts du Québec";

.3 a corporation that accepts deposits from the public if repayment of the deposit is guaranteed by His Majesty the King in right of a province;

.4 a corporation, association or federation incorporated or organized as a credit union or co-operative credit society that conforms to the requirements of a credit union which are more particularly described in paragraph 137(6) of the *Income Tax Act* (Canada); or

.5 Canada Post Corporation.

9.2.5 Bonds referred to in paragraph 9.2.4.2 of GC9.2 shall be provided on the basis of their market value current at the date of the *Contract*, and shall be

.1 made payable to bearer; or

.2 accompanied by a duly executed instrument of transfer of the bonds to the Receiver General for Canada in the form prescribed by the Domestic Bonds of Canada Regulations; or

.3 registered as to principal, or as to principal and interest, in the name of the Receiver General for Canada pursuant to the Domestic Bonds of Canada Regulations.

9.2.6 An irrevocable standby letter of credit referred to in paragraph 9.2.1 of GC9.2 shall

.1 be an arrangement, however named or described, w*hereby* a financial institution (the "Issuer") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

.1 is to make a payment to, or to the order of, *Canada* as the beneficiary;

.2 is to accept and pay bills of exchange drawn by *Canada*;

.3 authorizes another financial institution to effect such payment or accept and pay such bills of exchange; or

.4 authorizes another financial institution to negotiate against written demand(s) for payment provided that the terms and conditions of the letter of credit are complied with;

.2 state the face amount that may be drawn against it;

.3 state its expiry date;

.4 provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by Canada;

.5 provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face value of the letter of credit;

.6 must provide that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Revision, ICC Publication No. 600. Pursuant to the ICC UCP, a credit is irrevocable even if there is no indication to that effect; and

.7 be issued or confirmed, in either official language in a format left to the discretion of the issuer or confirmer, by an approved financial institution on its letterhead.

## GC10 - INSURANCE

10.1 Insurance Contracts

10.1.1 The *Contractor* shall, at the *Contractor*'s expense, obtain and maintain insurance contracts in respect of the *Work* and shall provide evidence t*hereof* to the *DCC Representative* in accordance with the requirements of the "DCL243 - Insurance Conditions".

10.1.2 The insurance contracts referred to in paragraph 10.1.1 of GC10.1 shall

.1 be in a form, of the nature, in the amounts, for the periods and containing the terms and conditions specified in " DCL243 - Insurance Conditions "; and

.2 provide for the payment of claims under such insurance contracts in accordance with GC10.2, "Insurance Proceeds".

10.2 Insurance Proceeds

10.2.1 In the case of a claim payable under a Builders Risk/Installation (All Risks) insurance contract maintained by the *Contractor* pursuant to GC10.1, "Insurance Contracts", the proceeds of the claim shall be paid directly to *Canada*, and

.1 the monies so paid shall be held by *Canada* for the purposes of the contract, or

.2 if *Canada* elects, shall be retained by *Canada*, in which event they vest in *Canada* absolutely.

10.2.2 In the case of a claim payable under a General Liability insurance contract maintained by the *Contractor* pursuant to GC10.1, "Insurance Contracts", the proceeds of the claim shall be paid by the insurer directly to the claimant.

10.2.3 If an election is made pursuant to paragraph 10.2.1 of GC10.2, *Canada* may cause an audit to be made of the accounts of the *Contractor* and of *Canada* in respect of the part of the *Work* that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between

.1 the aggregate of the amount of the loss or damage suffered or sustained by *Canada*, including any costs incurred in respect of the clearing and cleaning of the *Work* and its site and any other amount that is payable by the *Contractor* to *Canada* under the contract, minus any monies retained pursuant to paragraph 10.2.1.2 of GC10.2; and

.2 the aggregate of the amounts payable by *Canada* to the *Contractor* pursuant to the contract up to the date of the loss or damage.

## GENERAL CONDITIONS

10.2.4 A difference that is established pursuant to paragraph 10.2.3 of GC10.2 shall be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.

10.2.5 When payment of a deficiency has been made pursuant to paragraph 10.2.4 of GC10.2, all rights and obligations of *Canada* and the *Contractor* under the contract shall, with respect only to the part of the *Work* that was the subject of the audit referred to in paragraph 10.2.3 of GC10.2, be deemed to have been expended and discharged.

10.2.6 If an election is not made pursuant to paragraph 10.2.1.2 of GC10.2, the *Contractor* shall, subject to paragraph 10.2.7.of GC10.2, clear and clean the *Work* and its site and restore and replace the part of the *Work* that was lost, damaged, or destroyed at the *Contractor*'s expense as if that part of the *Work* had not yet been performed.

10.2.7 When the *Contractor* clears and cleans the *Work* and its site and restores and replaces the *Work* referred to in paragraph 10.2.6 of GC10.2, *Canada* shall pay the *Contractor* out of the monies referred to in paragraph 10.2.1 of GC10.2 so far as they will thereunto extend.

10.2.8 Subject to paragraph 10.2.7 of GC10.2, payment by *Canada* pursuant to paragraph 10.2.7 of GC10.2 shall be made in accordance with the *Contract,* but the amount of each payment shall be 100% of the amount claimed notwithstanding paragraphs 5.4.3.1 and 5.4.3.2 of GC5.4, "Progress Payment".

DEFENCE CONSTRUCTION CANADA | CONSTRUCTION DE DÉFENSE CANADA

# BID BOND

Bid Bond Nº _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto DEFENCE CONSTRUCTION (1951) LIMITED as Obligee, hereinafter called the Crown, in the amount of

dollars ($ ),

in lawful money of Canada , for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this _____ day of _____, _____

WHEREAS, the Principal has submitted a written tender to the Crown, dated the

this _____ day of _____, _____ for

(Insert description and location of the work)

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if :

(a) the Principal, should his tender be accepted within the period specified by the Crown, or, if no period be specified, within thirty (30) days after closing date of the tender, does execute within a period specified by the Crown, or, if no period be specified therein, within fourteen (14) days after the prescribed forms are presented to him for signature, execute such further contractual documents, if any, as may be required by the terms of the tender as accepted, and does furnish a Performance Bond and a Labour and Material Payment Bond, each in the amount of 50% of the Contract price and satisfactory to the Crown, or other security acceptable to the Crown, or

(b) the Principal does pay to the Crown the difference between the amount of the Principal's tender and the amount of the Contract entered into by the Crown for the work, supplies and services which were specified in the said tender, if the latter amount be in excess of the former,

then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER, that the Surety and the Principal shall not be liable to the Crown for an amount greater than the amount specified in this Bond.

PROVIDED FURTHER that the Surety shall not be subject to any suit or action unless such suit or action is instituted and process therefore served upon the Surety at its Head Office in Canada, within twelve (12) months from the date of this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of

_____
Principal

_____
Witness

_____
Surety

Note: Affix Corporate seal if applicable.

# Labour and Material Payment Bond

Bond No.: _____ Amount: $ _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____

as Principal, hereinafter called the Principal, and _____

as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto DEFENCE CONSTRUCTION (1951) LIMITED as Obligee, hereinafter called the Crown, in the amount of _____ dollars ($ _____ ), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this _____ day of _____, 20 _____.

WHEREAS, the Principal has entered into a Contract with the Crown, dated the _____ day of _____, 20 _____, for _____

_____

which Contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if payment is promptly made to all Claimants who have performed labour or services or supplied material in connection with the Contract and any and all duly authorized modifications and extensions of the Contract that may hereafter be made, notice of which modifications and extensions to the Surety being hereby waived, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

(1) For the purpose of this Bond, a Claimant is defined as one having a direct contract with the Principal or any Subcontractor of the Principal for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone services or rental of equipment (but excluding rental of equipment where the rent pursuant to an agreement is to be applied towards the purchase price thereof) directly applicable to the Contract.

(2) For the purpose of this Bond, no payment is required to be made in respect of a claim for payment for labour or services performed or material supplied in connection with the Contract that represents a capital expenditure, overhead or general administration costs incurred by the Principal during the currency or in respect of the Contract.

(3) The Principal and Surety hereby jointly and severally agree with the Crown that if any Claimant has not been paid as provided for under the terms of his contract with the Principal or a Subcontractor of the Principal before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's labour or service was done or performed or materials were supplied by such Claimant, the Crown may sue on this Bond, have the right to prosecute the suit to final judgement for such sum or sums as may be due and have execution thereon; and such right of the Crown is assigned by virtue of Part VIII of the Financial Administration Act to such Claimant.

(4) For the purpose of this Bond the liability of the Surety and the Principal to make payment to any claimant not having a contract directly with the Principal shall be limited to that amount which the Principal would have been obliged to pay to such claimant had the provisions of the applicable provincial or territorial legislation on lien or privileges been applicable to the work. A claimant need not comply with provisions of such legislation setting out steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had. Any such claimant shall be entitled to pursue a claim and to recover judgement hereunder subject to the terms and notification provisions of the Bond.

(5) Any material change in the Contract between the Principal and the Crown shall not prejudice the rights or interest of any claimant under this Bond who is not instrumental in bringing about or has not caused such change.

(6) No suit or action shall be commenced hereunder by any Claimant:

(a) Unless such Claimant shall have given written notice within the time limits hereinafter set forth to the Principal and the Surety above named, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal and the Surety at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Contract is located. Such notice shall be given

(i) in respect of any claim for the amount or any portion thereof required to be held back from the Claimant by the Principal or by the Subcontractor of the Principal under either the terms of the Claimant's Contract with the Principal or the Claimant's Contract with the Subcontractor of the Principal within one hundred and twenty (120) days after such Claimant should have been paid in full under this Contract;

(ii) in respect of any claim other than for the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the service, work or labour or furnished the last of the materials for which such claim is made under the Claimant's Contract with the Principal or a Subcontractor of the Principal;

(b) After the expiration of one (1) year following the date on which the Principal ceased work on the said Contract, including work performed under the guarantees provided in the Contract;

(c) Other than in a court of competent jurisdiction in the province or district of Canada in which the subject matter of the Contract or any part thereof is situated and not elsewhere, and the parties hereto hereby agree to submit to the jurisdiction of such court.

(7) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

(8) The Surety shall not be entitled to claim any moneys relating to the Contract and the liability of the Surety under this Bond shall remain unchanged and, without restricting the generality of the foregoing, the Surety shall pay all valid claims of Claimants under this Bond before any moneys relating to the Contract held by the Crown are paid to the Surety by the Crown.

(9) The Surety shall not be liable for a greater sum than the amount specified in this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Note: Affix Corporate seal if applicable.

_____

Principal

_____

Witness

_____

Surety

# Performance Bond

Bond No.: _____ Amount: $ _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____

as Principal, hereinafter called the Principal, and _____

as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto DEFENCE CONSTRUCTION (1951) LIMITED as Obligee, hereinafter called the Crown, in the amount of _____ dollars ($ _____ ), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this _____ day of _____, 20 _____.

WHEREAS, the Principal has entered into a Contract with the Crown, dated the _____ day of _____, 20 _____, for _____

_____

which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if the Principal shall well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

(1) Whenever the Principal shall be, and declared by the Crown to be, in default under the Contract, the Surety shall

(a) If the work is not taken out of the Principal's hands, remedy the default of the Principal,

(b) if the work is taken out of the Principal's hands, and the Crown directs the Surety to undertake the completion of the work, complete the work in accordance with the Contract provided that if a contract is entered into for the completion of the work,

(i) it shall be between the Surety and the completing contractor, and

(ii) the selection of such completing contractor shall be subject to the approval of the Crown,

(c) if the work is taken out of the Principal's hands and the Crown, after reasonable notice to the Surety, does not direct the Surety to undertake the completion of the work, assume the financial responsibility for the cost of completion in excess of the moneys available to the Crown under the Contract,

(d) be liable for and pay all excess costs of completion of the Contract, and

(e) not be entitled to any Contract moneys earned by the Principal, up to the date of his default on the Contract and any holdbacks relating to such earned Contract moneys held by the Crown, and the liability of the Surety under this Bond shall remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Crown, any Contract moneys earned by the Principal or holdbacks related thereto held by the Crown may be paid to the Surety by the Crown.

(2) The Surety shall not be liable for a greater sum than the amount specified in this Bond.

(3) No suit or action shall be instituted by the Crown herein against the Surety pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

Principal

Witness

Surety

Note: Affix Corporate seal if applicable.

# INSURANCE CONDITIONS


| Item | Heading | Page |
|---|---|---|
| 1 | INDEMNIFICATION | 2 |
| 2 | INSURED | 2 |
| 3 | PERIOD OF INSURANCE | 2 |
| 4 | PROOF OF INSURANCE | 2 |
| 5 | NOTIFICATION | 2 |
| 6 | PAYMENT OF DEDUCTIBLE | 2 |
| 7 | COMMERCIAL GENERAL LIABILITY | 3 |
| 8 | BUILDERS RISK – ALL RISKS OR INSTALLATION FLOATER – ALL RISKS | 4 |

# INSURANCE CONDITIONS

Except as otherwise directed by Amendment to the Tender Documents, the Contractor shall, at the Contractor's expense, maintain all insurance required of these Insurance Conditions.

1 INDEMNIFICATION

1.1 The insurance coverage required by the provisions of these Insurance Conditions shall in no way limit the Contractor's obligations under the General Conditions of the contract. Any additional coverage the Contractor may deem necessary to fulfill the Contractor's obligations under the aforesaid General Conditions shall be at the Contractor's own discretion and expense.

2 INSURED

2.1 Each insurance policy shall insure the Contractor, and shall include as an Additional Insured, Defence Construction (1951) Limited.

3 PERIOD OF INSURANCE

3.1 Unless otherwise directed in writing by the DCC Representative, the policies required hereunder shall be effective from the date of contract award and shall be maintained until the day of issue of the DCC Representative's Final Certificate of Completion.

4 PROOF OF INSURANCE

4.1 Immediately following notification of contract award and preceding the start of any on-site work, the Contractor shall have the Contractor's insurance broker or agency provide written confirmation (electronic transmission) as directed by the DCC Representative.

4.2 Within thirty (30) days after acceptance of the Contractor's tender, the Contractor is required to deposit with the DCC Representative a Certificate of Insurance Form DCL 232 of all contracts of insurance maintained by the Contractor pursuant to the requirements of these Insurance Conditions.

4.3 The Certificate of Insurance noted in 4.2 shall disclose all warranties, endorsements or exclusions that deviate substantially from standard IBC 2100, 4042 and 4047 forms.

Note that the Certificate of Insurance must be completed by the Insurer, not the Broker.

5 NOTIFICATION

5.1 Each insurance policy shall contain a provision that thirty (30) days prior written notice shall be given by the Insurer to Defence Construction (1951) Limited, as additional insured, in the event of any material change in, cancellation of, expiration of coverage, or amendment restricting coverage specific to this contract.

6 PAYMENT OF DEDUCTIBLE

6.1 The amount of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Contractor.

## INSURANCE CONDITIONS

7 COMMERCIAL GENERAL LIABILITY

7.1 The policy shall be written on a form that does not deviate substantially from IBC 2100, the Commercial General Liability Policy.

7.2 This policy shall provide for limits of liability of not less than $5,000,000 inclusive, for Bodily Injury and Property Damage for any one occurrence or series of occurrences arising out of one cause and not less than $5,000,000 for personal injury.

7.3 The policy shall include but not necessarily be limited to the following coverages:

7.3.1 All premises, property and operations necessary or incidental to the performance of this contract.

7.3.2 Personal Injury.

7.3.3 Bodily Injury and Property Damage on an "occurrence" basis.

7.3.4 “Broad Form" Property Damage including the loss of use of property.

7.3.5 Removal or weakening of support of any property, building or land whether such support be natural or otherwise.

7.3.6 Elevator liability, including escalators, hoists, and similar devices.

7.3.7 Contingent Employer's Liability.

7.3.8 Owner's and Contractor's Protective Liabilities.

7.3.9 Blanket Contractual Liability.

7.3.10 Completed Operations and Products Liability.

7.3.11 Cross Liability – The insurance as is afforded by this policy shall apply in respect to any claim or action brought against any one Insured by any other Insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. The inclusion herein of more than one Insured shall not operate to increase the limit of the Insurer's Liability.

7.4 The policy shall be endorsed to include the following exposures or hazards if the work is subject thereto:

7.4.1 blasting

7.4.2 pile driving and caisson work

7.4.3 underpinning

7.4.4 risks associated with the activities of the Contractor on an active airport

7.4.5 demolition

7.4.6 marine risks including piers, wharves and docks

7.4.7 radioactive contamination resulting from the use of commercial isotopes

7.5 The insurance shall continue for a period of at least one year beyond the date of the DCC Representative's Final Certificate of Completion for the Completed Operations Hazard.

7.6 The policy shall be issued with a deductible amount of not more than $10,000.00 per occurrence.

## INSURANCE CONDITIONS

8 BUILDERS RISK – ALL RISKS OR INSTALLATION FLOATER – ALL RISKS

8.1 The policy shall be written to insure the work on an "All Risks" basis granting coverage that does not deviate substantially from IBC Forms 4042 and 4047, as amended from time to time.

8.2 The policy shall provide that the proceeds thereof are payable to Defence Construction (1951) Limited or as Defence Construction (1951) Limited may direct.

8.3 The Contractor shall do such things and execute such documents as are necessary to effect payment of the proceeds.

8.4 The amount of insurance shall not be less than the sum of the contract value plus the declared value (if any) set forth in the contract documents of all material and equipment supplied by Canada at the site of the project to be incorporated into and to form part of the finished work.

8.5 The policy shall be issued with a deductible amount of not more than $10,000.00.

8.6 The policy shall contain a provision whereby the Insurer grants permission of the continuing use and occupancy of the premises (which are the subject of the work under this contract) for the usual purposes, necessary or incidental to such premises.

# DEFENCE CONSTRUCTION (1951) LIMITED

## INSURER'S CERTIFICATE OF INSURANCE

(To be signed by Insurer (not broker) and delivered to Defence Construction (1951) Limited within thirty (30) days following acceptance of Tender)

**CONTRACT**

| **Description of Work** | **Contract No.** | **Award Date** |
|---|---|---|
| **Location** | | |

**INSURER**

| |
|---|
| Name |
| Address |

**BROKER**

| |
|---|
| Name |
| Address |

**INSURED**

| |
|---|
| Name of Contractor |
| Address |

**ADDITIONAL INSURED**

| |
|---|
| Canada as represented by Defence Construction (1951) Limited |
| Address |

This document certifies that the following policies of insurance are at present in force covering all operations of the Insured, in connection with the contract made between the Insured and Defence Construction (1951) Limited and in accordance with the Insurance Conditions.

| **Policy** | | | | **Limits of Liability** | **Deductible** |
|---|---|---|---|---|---|
| **Type** | **Number** | **Inception Date yyyy-mm-dd** | **Expiry Date yyyy-mm-dd** | | |
| **Commercial General Liability** | | | | | |
| **Builders' Risk "All Risks"** | | | | | |
| **Installation Floater "All Risks"** | | | | | |
| | | | | | |

**Warranties, endorsements, exclusions:(List only those that deviate substantially from standard IBC 2100, 4042 and 4047 forms)**

The Insurer agrees to notify Defence Construction (1951) Limited in writing thirty (30) days prior to any material change in, cancellation of, or amendment restricting coverage specific to this contract.

| **Name of Insurer's Officer or Authorized Employee** | **Signature** | **Date (yyyy-mm-dd)** |
|---|---|---|
| | | **Telephone Number** |

Issuance of this Certificate shall not limit or restrict the right of Defence Construction (1951) Limited to request at any time duplicate certified copies of said Insurance policies.

# "REQUEST FOR ACCEPTANCE" OF ALTERNATIVE MATERIALS

| | | |
|---|---|---|
| **Project** | DCC Project no. : | Location : |
| | Project title : | |
| | Tender closing date : | |
| **Requestor** | Name of requestor : | |
| | Address of requestor : | |
| | E-mail address : | Telephone no. : |
| | Date of request : | |

**Currently specified product/equipment**

| Product/equipment name | Manufacturer/supplier | Plan or specification no. |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

**Alternative product/equipment offered**

| Product/equipment name | Manufacturer/supplier | Model no. |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| Reason for the request : | | |
| NOTE: Attach detailed descriptions, technical data sheets, etc., as supporting data. | | |

**Technical authority**

| | |
|---|---|
| Date of receipt : | Assessed by : |
| Accepted : ☐ | Rejected : ☐ |
| Comments: (In case of rejection or impact on costs or deadlines) | |

**DCC Representative**

| | |
|---|---|
| Name of representative : | Date of receipt of the assessment : |
| Date of transmission of the decision to the tenderer/contractor : | |

# "REQUEST FOR ACCEPTANCE"

# OF ALTERNATIVE MATERIALS

## 1. GENERAL INFORMATION

Acceptable equipment or products are defined in the contract documents.

Applicants are all manufacturers, suppliers or contractors wishing to have replacement equipment or products accepted.

The evaluator is the designer who specified the desired equipment or product in the contract documents.

## 2. REQUEST FOR ACCEPTANCE

Send approval requests to the DCC point of contact named in the MERX ad or to the named DCC Representative for the contract.

### 2.1 Requests for acceptance submitted before tender closing

DCC must receive a Request for acceptance at least ten (10) working days before the tender closing date. If the replacement material or product is accepted for the purposes of the tender, all tenderers will be informed by means of an amendment to the tender documents. Any request submitted too late to allow for review and subsequent issuance of an amendment will be returned to the requestor.

### 2.2 Requests for acceptance submitted after contract award

A request for acceptance submitted after the contract has been awarded will ONLY be accepted if it comes from the Contractor and will only be considered if the specified material or product is no longer manufactured or cannot be obtained within a timeframe that allows the contract schedule to be met. The decision of the DCC Representative on the acceptability of the replacement material or product and the amount of the related credit is final. The request for acceptance of replacement equipment or product must be accompanied by a commitment that the use of such equipment or product will not delay the completion date and that any additional costs attributable to the use of such equipment or product will be borne by the Contractor.

## 3. PROCEDURE

Items offered as acceptable substitutes must be described in concise and precise terms. Complete and up-to-date data supporting each product or material offered must accompany each application for approval. This data must include all relevant documents (test reports, performance tables, design calculations, detailed drawings, or detailed manufacturer specifications). Test reports from independent laboratories or the manufacturer's own test facilities will be accepted. Acceptability will be determined by evaluating the material submitted. All deviations from the specifications or plans and relating to the design, function, dimensions, composition or method of manufacture applicable to the material or product proposed for 'acceptance' must be fully described. Deviations will only be permitted if they are noted in an addendum to the tender documents or in a change order to the contract.

## 4. CONDITIONS D'AGRÉMENT

Acceptance of replacement equipment or products by the evaluator shall not exempt the Contractor from the requirement to comply with all the terms and conditions stipulated in the contract documents, nor from accepting all additional indirect costs that may be incurred through the use of the accepted equipment or products, whether or not such costs are apparent at the time of acceptance.

DEFENCE CONSTRUCTION CANADA | CONSTRUCTION DE DÉFENSE CANADA

DCL 80 (R2020-08)

*CONTRACTOR PERFORMANCE EVALUATION REPORT FORM (CPERF)*
*Refer to DCL81 for Guidelines*

Type of CPERF Final

| Contract No.: | Project No.: | Client Reference No.: |
|---|---|---|
| Description of Work: | | |
| Contractor's Business Name: | | Contractor's Site Superintendent: |
| Contractor's Business Address: | | |

| **DCC REPRESENTATIVE** | **CONTRACT INFORMATION** | |
|---|---|---|
| Name: | Contract Award Amount: | Final Amount: |
| Telephone No.: | Contract Award Date: | No. of Change Orders: |
| E-mail Address: | Substantial Completion Date: | Interim Certificate Date: |
| The following criteria are to be assessed by considering, at minimum, the considerations listed in Annex A. | Completion Date: | Final Certificate Date: |

| **ADMINISTRATION / CONTRACT MANAGEMENT** | **CATEGORY** | **SCALE** | **POINTS** |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | 15 |

| **EXECUTION / PROJECT MANAGEMENT** | | | |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | 15 |

| **QUALITY OF WORKMANSHIP** | | | |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | 15 |

| **TIMELINESS** | | | |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | 15 |

| **HEALTH AND SAFETY** | | | |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | 15 |

| **INDUSTRIAL SECURITY** | | | |
|---|---|---|---|
| | Unacceptable<br>Not Satisfactory<br>Satisfactory<br>Superior | 0-5<br>6-10<br>11-16<br>17-20 | N/A |
| | | **Total Points:** | 75 |
| | | **Overall Percentage Score:** | 75% |

**General Comments**

**DCC Representative**

| Name: | Title: | Signature and Date: |
|---|---|---|
| | | |

## ANNEX A – MINIMUM CRITERIA CONSIDERATIONS

### ADMINISTRATION / CONTRACT MANAGEMENT

Did the Contractor:
- in the time frame specified, provide its contract security and Insurance Certificate fully executed where applicable
- submit an appropriate Cost Breakdown in a timely manner
- provide a comprehensive work plan and adhere to its milestones
- submit progress claims in the correct format, accurately represent the work successfully completed, and material delivered to the site but not yet installed, for each payment period
- submit a notarized Statutory Declaration correctly completed with each progress claim
- submit an updated Scheduled if so specified
- maintain a complete set of project records on site, including approved shop drawings, change orders, as-builts and O&M manuals
- provide shop drawings promptly and were they of sufficient detail
- promptly provide reasonable quotations with appropriate detail, for changes to the original scope of work
- provide O&M manuals prior to commencement of commissioning activities
- provide reasonable schedule updates in accordance with the contract, or requested by DCC during the course of the project, including deficiency repair phase
- provide all monthly, quarterly and annual reports as well as all other required deliverable in a timely manner - *FM specific*

### EXECUTION / PROJECT MANAGEMENT

Did the Contractor:
- promptly commence the Work
- employ a knowledgeable Site Superintendent
- order material promptly and in such a way as to expedite the progress of the Work
- effectively manage and complete all Division 1 work site activities
- effectively coordinate and manage the work of its subcontractors
- notify the DCC Representative of all its subcontracting activities
- cooperate with other contractors sent onto the site of the work
- remove a superintendent or unsuitable worker when requested by the DCC Representative to do so
- establish effective quality control procedures
- interpret the contract documents accurately
- cooperate when issued directions by the DCC Representative
- provide information promptly when requested to do so
- require additional input from DCC staff above that which is normal for a project of similar size and nature
- to the best of your knowledge, pay subcontractors and suppliers in a timely fashion
- effectively protect the Work
- promptly correct defective work as the project progressed
- satisfactorily clean the work site periodically and at the completion of the project
- provide help desk capability that effectively receives and records customer calls/request and follows up on responsive actions - *FM specific*
- properly manage all job activities including scheduled maintenance, demand maintenance (maintenance AWRs) and project requests (project AWRs) - *FM specific*
- promptly initiate and effectively manage the procurement of AWRs - *FM specific*
- effectively manage the Contractor and Consultant Source Lists/ pertaining to AWRs - *FM specific*
- provided effective and viable solutions/recommendations to demand and projects AWRs, gain share initiatives and expenditure planning - *FM specific*

### QUALITY OF WORKMANSHIP

The quality of services as well as the quality of the materials and equipment incorporated in the Work must meet the requirements set out in the Statement of Work and Drawings and Specifications. The Evaluator shall consider how the workmanship compares with :
- The norms in the area in which the work was carried out
- The Contractor's compliance with any quality provisions outlined in the Statement of Work and Drawings and Specification
- The quality of workmanship provided by other contractors on similar projects in the same or similar facility(ies)

### TIMELINESS

The Evaluator shall consider:
- whether the Contractor made an effective effort to meet the scheduled completion date as stipulated in the contract
- whether the Contractor made an effective effort to clean up deficiencies and damages caused by the Work, in a reasonable time
- whether it is necessary to recommend assessment and damages for latecompletion
- the impact the completion date has on the Client's operational requirements
- whether the Contractor effectively managed the site during a suspension or termination of the work to mitigate any additional costs to DCC
- whether the Contractor dealt promptly with any claims fromcreditors
- whether the Contractor expedited, and co-operated in, the settlement of all disputes
- whether the Contractor made an effort to meet the service response times established in the contract - *FM specific*
- whether the Contractor complied with all warranty provisions up to the date of the CPERF

Note: If justified, final CPERFs can be revised to reflect contractor performance during the warranty period.

For the purpose of evaluating the contractor's time performance, consideration must be given to conditions beyond the contractor's control, including DCC/ Consultant / Client Performance, e.g.:
- availability of, and access to, the site
- changes in soil or site conditions
- weather extremes
- strikes
- material / equipment supply problems originating from manufacturers / suppliers
- quality of plans and specifications
- major change(s) in scope
- cumulative effect of changes
- was DCC able to meet its obligations?
- timely decisions, clarifications, approvals
- delays caused by other contractors in the same facility

### HEALTH AND SAFETY

The effectiveness to which the contractor managed and administered the occupational health and safety provisions as stipulated in the Contract Documents; those required by provincial/territorial legislation; and those that would otherwise be applicable to the site of the work.

Did the Contractor:
- provide DCC with a copy of its health and safety program, site specific hazard assessment and emergency procedures prior to commencement of the work
- obtain all applicable permits, including but not limited to: provincial / territorial notification of project, Hot Works, Confined Spaces, Lock Out/Tag Out, Dig/Excavation
- respond in a timely manner to any non-compliance safety issues noted by DCC or a representative of the authority having jurisdiction
- provide on-site personnel's daily/weekly health and safety inspection reports and meeting documentation, specified in the Contract Documents and/or provincial/territorial requirements
- investigate and report to DCC health and safety incidents in a timely manner
- implement a safety program in a proactive manner
- provide emergency response/preparedness capability at all site/building/real property assets under contract
- provide a competent Superintendent that:
    - is qualified in health and safety matters because of her/his knowledge, training and experience
    - is familiar with and applies the provincial / territorial legislative requirements specific to the site of the work
    - remedies any potential or actual danger of health and safety to those employed at the work site

### INDUSTRIAL SECURITY

The effectiveness with which the contractor managed and administered the industrial security provisions as stipulated in the Contract Documents. Did the Contractor:
- require additional input from DCC staff above that which is normal for a project requiring industrial security
- provide a Security Implementation Plan prior to the commencement ofwork
- promptly provide their Request for Visit form
- effectively coordinate and manage the Sub-SRCL, CISD letter, and Request for Visit forms for their Subcontractors
- provide documentation for processing well in advance of VCR expiration dates to ensure they don't expire (if applicable)
- comply with the provisions of SRCL and Security Classification Guide (if applicable)
- effectively manage site access and monitor control as per their Security Implementation Plan (i.e. site access control, sign in and out, verification of security)
- conduct and document site specific security meetings with records provided to DCC
- have any security breaches while undertaking the Contract
- advise DCC immediately of any security incidents
- provide incident reports within 1 working day (if applicable)

The Evaluator shall consider:
- if the timeliness of obtaining Sub-SRCL and CISD letter was due to factors beyond the Contractor's control, and
- whether the contractor made an effective effort to ensure there were no security breaches during the contract.

# PERFORMANCE EVALUATION GUIDELINES

## 1 INTRODUCTION

1.1 Contracts put in place by DCC include measurable performance standards and requirements.

1.2 This document describes the performance evaluation review process that applies to all DCC contracts.

1.3 The performance evaluation has several benefits:

1.3.1 It provides all parties with a common understanding of the standards applied and method used to measure performance on DCC contracts.

1.3.2 It supports the monitoring and communication of performance throughout the contract in a fair and consistent manner.

1.3.3 It enables DCC to acknowledge good performers and to take appropriate actions with firms who are not meeting the requirements of a contract.

## 2 PERFORMANCE EVALUATION PROCESS

2.1 Contractor/Consultant/ Design-Builder Performance Evaluation Report Forms (CPERF/ DBPERF) have been developed to support the various types of DCC contracts. The applicable CPERF/DBPERF is referenced within the contract documents.

2.2 Prior to Completion, “Interim” CPERF(s)/ DBPERF(s) may be completed by DCC to communicate and document performance issues. A “Final” CPERF/ DBPERF will be completed and issued following Completion of the contract or when work is removed from the firm as a result of a default.

2.3 A “Final” CPERF/ DBPERF may be re-issued at the end of the warranty period if there has been a failure by the firm to action any warranty-related work.

2.4 On design consultant contracts, an Interim CPERF will be issued at the end of the Design Phase and the Tender Phase, followed by a Final CPERF when Construction Phase Services are completed.

2.5 Each category of performance is evaluated with consideration to the minimum criteria listed in Annex A to the CPERF/ DBPERF. Specific comments will be provided to support all scores that fall outside the 11 to 16 scale, while general comments are provided in support of scores falling within the 11 to 16 scale.

## 3 PERFORMANCE EVALUATION CRITERIA

3.1 The performance evaluation criteria are summarized in Table 1 below. The points allocated for each category are noted on the CPERF/ DBPERF and are used to establish an overall percentage score.

**Table 1-Performance Evaluation Criteria**

| Contractor (CN, SC & FM) | Administration/ Contract Management | Execution / Project Management | Quality of Workmanship | Timeliness | Health & Safety | Industrial Security |
|---|---|---|---|---|---|---|
| Consultant (KN) | Administration/ Management | Cost Control | Quality of Work / Design/Study | Time | Quality of TPS / CPS / Quality of Result | Industrial Security |
| Design-Builder (MDB) | Quality of PM Services | Quality of Design Services | Quality of Work | Timeliness | Health & Safety | Industrial Security |

## PERFORMANCE EVALUATION GUIDELINES

### 4 ACTIONS RESULTING FROM AN "Unacceptable" SCORE OR FAILING CPERF

4.1 Bidding privileges will be suspended if:

4.1.1 A CPERF/ DBPERF score is less than 30%; or

4.1.2 A point score of 5 or less is received in any single category on a CPERF/ DBPERF.

4.2 CPERFs/ DBPERFs with a score of less than 51% overall will result in the issuance of:

4.2.1 A warning indicating that if another unsatisfactory rating is received it will result in a suspension of bidding privileges; or

4.2.2 A suspension of bidding privileges (for a 2nd score less than 51%).

4.3 Suspension of bidding privileges will be conveyed to the suspended firm as a formal notice in writing from a DCC Senior Manager. The "Suspension" letter will include specific reference to the categories of poor performance, the duration of the suspension and the requirements for reinstatement. Suspensions may be limited to a specific timeframe or may be indefinite. For bidding privileges to be reinstated the timeframe of the suspension must have expired (if applicable) and the firm must demonstrate that they have met the requirements for reinstatement.

### 5 APPEAL PROCESS

5.1 While an appeal of a "Suspension" letter is under review, the suspension of bidding / opportunity privileges is upheld.

5.2 The appeal must be submitted to the National Director, Contract Management in writing, within ten (10) business days of receiving an unsatisfactory CPERF/ DBPERF.

5.3 The National Director, Contract Management will review the appeal and may request additional information from the firm if required. Following review, the National Director will advise the firm in writing if any adjustments to the CPERF/ DBPERF will be made. No further appeals to adjust the CPERF/ DBPERF will be considered.

# DCC's PROCUREMENT CODE OF CONDUCT

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## 1. CONTEXT AND PURPOSE

1.1 Defence Construction Canada (DCC) is a Crown corporation that was created pursuant to the *Defence Production Act* for the specific purpose of delivering defence infrastructure projects for which it serves as the contracting authority on behalf of the Department of National Defence, the Canadian Armed Forces and the Communications Security Establishment.

1.2 DCC is committed to open, fair and transparent procurement and real property transactions. A strong government-wide Integrity Regime has been put in place by Public Services and Procurement Canada (PSPC) to ensure that the Government does business with ethical suppliers in Canada and abroad. This regime helps to foster ethical business practices, ensure due process for suppliers and uphold the public trust in the procurement process.

1.3 DCC's Procurement Code of Conduct (PCC) incorporates by reference PSPC's *Ineligibility and Suspension Policy* and any directives issued further to the policy, which form part of the Integrity Regime. The policy sets out when and how a supplier may be declared ineligible or suspended from doing business with the government.

1.4 The PCC provides suppliers with a clear statement of expectations to ensure a basic understanding of their responsibilities during the procurement process as well as throughout the implementation of the work.

1.5 The PCC reflects the *Ineligibility and Suspension Policy* and is framed by the principles set out in the *Financial Administration Act*, the *Criminal Code*, the *Competition Act* and the *Lobbying Act*, as well as other relevant legislative, regulatory and policy instruments relating specifically to procurement.

1.6 By providing a single point of reference to key responsibilities, DCC is making the measures easier to find and understand in light of an overall commitment to the highest standards of ethical conduct. The PCC will be reviewed as necessary to ensure DCC continues to meet this objective.

## 2. THE PROCUREMENT PROCESS: OPENNESS, FAIRNESS AND TRANSPARENCY

2.1 At DCC, fairness, openness and transparency are assured through compliance or alignment with relevant legislation, regulations, agreements, policies and guidelines, including the *Financial Administration Act*, the *Government Contracts Regulations*, the *Public Servants Disclosure Protection Act*, various Treasury Board of Canada Secretariat policies and Canada's international and domestic trade agreements, such as the World Trade Organization's *Agreement on Government Procurement*, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and the Canadian Free Trade Agreement (CFTA). In addition, DCC's procurement activities are governed by land claims agreements with Canada's Aboriginal peoples.

2.2 In addition to the legal provisions, the tenets of fairness, openness and transparency are amplified in DCC's procurement policies and procedures, including DCC's *Code of Business Conduct* for employees.

## 3. APPLICATION

3.1 The PCC applies to suppliers who, in relation to the procurement of goods, services, real property or construction, have submitted, or may submit, an offer to contract or who have

been awarded a contract by DCC. Suppliers are persons, which includes individuals, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly-owned, as well as directors, officers and key employees.

3.2 Further, a person is a supplier's affiliate if, directly or indirectly, either one controls the other, a third party controls both, both are under common control or both are controlled by third parties that are affiliated with each other. Refer to the definitions of "affiliate" and "control" in the *Ineligibility and Suspension Policy*.

3.3 Specific classes of contracts are exempt from the application of the *Ineligibility and Suspension Policy*. Refer to the policy for more details.

## 4. RESPONSIBILITIES OF DCC EMPLOYEES

4.1 DCC employees are committed to adhering to DCC's *Code of Business Conduct* as well as the Treasury Board of Canada Secretariat's *Values and Ethics Code for the Public Sector*. DCC's *Code of Business Conduct* covers such issues as values and ethics, standards of conduct and conflict of interest.

## 5. RESPONSIBILITIES OF SUPPLIERS

5.1 Suppliers must respond to DCC's bid solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the bid or contract documents and submit bids and enter into contracts only if they will fulfill all obligations of the contract.

5.2 Suppliers are obliged to alert DCC of any factual errors that they discover in bid solicitations and of any changes affecting the list of names of directors or owners during the contract period.

5.3 Suppliers, potential suppliers and their affiliates are prohibited from:

5.3.1 directly or indirectly, paying or agreeing to pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the contract if the payment of the fee would require the individual to file a return under section 5 of the *Lobbying Act*;

5.3.2 corruption, collusion, bid-rigging or any other anti-competitive activity under the *Competition Act* in the bidding process, real property transactions, the performance of work, the supply of goods or the rendering of services;

5.3.3 any activity that has resulted or could result in being convicted of an offence under any of the provisions listed in the *Ineligibility and Suspension Policy*.

5.4 Suppliers shall comply with applicable Government of Canada security and confidentiality requirements.

5.5 To help ensure that the entire procurement process conforms to the highest standards of ethical conduct, suppliers are required to avoid any action that would jeopardize the ability of DCC's employees to respect their obligations under DCC's *Code of Business Conduct*. While it is impossible to foresee every situation that could give rise to a real, perceived or potential conflict of interest, suppliers should, for example, not offer or give DCC employees gifts, hospitality or other benefits that may have a real or perceived influence on their objectivity in carrying out their official duties or that may place them under a real or perceived obligation to the donor.

5.6 A supplier that is bidding on, or has been awarded, a contract must abide by the obligations contained in the PCC, which form part of the contract.

5.7 A supplier shall comply, to the satisfaction of PSPC, with the terms and conditions of an administrative agreement entered into with PSPC pursuant to the *Ineligibility and Suspension Policy*.

## 6. PERIOD OF INELIGIBILITY OR SUSPENSION

6.1 The period of ineligibility or suspension for contract award for a supplier or potential supplier is determined pursuant to the *Ineligibility and Suspension Policy*.

## 7. PUBLIC INTEREST EXCEPTION

7.1 The Public Interest Exception applies in circumstances where DCC determines that entering into a contract with an ineligible or suspended supplier is in the public interest.

7.2 The reasons for invoking a Public Interest Exception include, but are not limited to, the following:

7.2.1 the need to respond to an emergency where delay would be injurious to the public interest;

7.2.2 the supplier is the only person capable of performing the contract;

7.2.3 the contract is essential to maintain sufficient emergency stocks in order to safeguard against possible shortages; and

7.2.4 not entering into the contract with the supplier would have a significant adverse impact on the health, national security, safety, public security or economic or financial well-being of the people of Canada or the functioning of any portion of the federal public administration.

7.3 The exception is applied on a case-by-case basis by DCC.

7.4 When a Public Interest Exception is invoked, an administrative agreement between PSPC and the supplier is required.

## 8. TREATMENT OF EXISTING CONTRACTS AFTER CONVICTION

8.1 If a supplier is convicted of an offence under any of the provisions listed in the *Ineligibility and Suspension Policy* during the performance of a contract, DCC retains the right to terminate the contract or real property agreement for default. Suppliers will be afforded an opportunity to show cause as to why the termination should not be exercised.

8.2 An administrative agreement between the supplier and PSPC will be required if a decision is taken to not terminate the contract or real property agreement. This will require third party monitoring of the terms of the agreement.

## 9. SUBCONTRACTORS

9.1 A supplier cannot enter into a contract with an ineligible or suspended subcontractor. Refer to the process described in the *Ineligibility and Suspension Policy* to verify the status of prospective first-tier subcontractors.

9.2 Should a supplier require the services of an ineligible or suspended subcontractor, they will have to obtain the advance written approval of DCC.

9.3 Any supplier that knowingly enters into a contract with an ineligible or suspended subcontractor without obtaining the advance written approval of DCC will be declared ineligible in accordance with the *Ineligibility and Suspension Policy*.

9.4 Suppliers must ensure that contracts with first-tier subcontractors include provisions to abide by the obligations contained in the PCC.

## 10. REMEDIES

10.1 Any disputes regarding the interpretation or application of the PCC should first be resolved using the dispute resolution clauses in the contracts. DCC will consider all alternative dispute resolution mechanisms that are appropriate to a situation, including facilitated negotiation, mediation and non-binding or binding arbitration, before considering litigation.

10.2 The Canadian International Trade Tribunal (CITT) has jurisdiction to conduct inquiries into complaints by potential suppliers concerning DCC procurements that are covered by trade agreements. Potential suppliers, who believe they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts subject to the trade agreements, may lodge a formal complaint with the CITT. The CITT, which is a court of record and has, as regards evidence and the enforcement of its orders, all powers of a superior court of record, may review all aspects of a procurement action up to and including contract award.

## 11. ADMINISTRATION

11.1 The *Ineligibility and Suspension Policy*, as it applies to DCC's procurement activities, is administered jointly by DCC and PSPC pursuant to a Memorandum of Understanding, which governs the duties and responsibilities of each party.

## 12. PUBLIC LIST

12.1 PSPC produces and maintains a public Ineligibility and Suspension List. The list contains the names of suppliers, other than individuals, that were determined to be ineligible, or have been suspended, under the Integrity Regime. For information regarding ineligible or suspended individuals, inquiries must be made to the Registrar of Ineligibility and Suspension.

## 13. KEY CONTACT

13.1 Inquiries regarding the PCC may be made to: Martine Cote, Service line leader Contract Service.

13.2 Issues related to PCC compliance may be brought to the attention of President's Office.