



SUPPLEMENTARY CONDITIONS FOR INDIGENOUS BENEFITS PLAN (IBP)

The following amends or supplements the General Conditions – DCL32 of the *Contract*.

1. GC1 GENERAL PROVISIONS

.1 Reference GC1.1.2 and **INSERT** the following:

- .25 “*Indigenous Benefits Plan*” or “*IBP*” means the portion of the value of the *Contract* that is set-aside for *Indigenous Business* participation (either through subcontracting or work done by the *Contractor’s* own forces) and under which the *Contractor* commits to ensuring the *IBP Amount* of the *Work* will be performed by duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon in the *Contract*;
- .26 “*IBP Amount*” means the dollar (\$) value for the portion of the *Work* that is performed by one (1) or more duly qualified *Indigenous Businesses* and/or *Indigenous persons*, as defined in the Supplemental Conditions, pursuant to the *Indigenous Benefit Plan*. Where the *Indigenous Benefit Plan* establishes a minimum percentage of the value of the *Work*, the *IBP Amount* is calculated by applying that percentage to the *Contract Amount* and is satisfied by the aggregate value of eligible *Work* performed by *Indigenous Businesses* and/or *Indigenous persons*. The *IBP Amount* may also be expressed as an amount submitted as part of a Tenderer’s Tender.
- .27 “*Indigenous Business*” means an enterprise that is a sole proprietorship, limited company, cooperative, partnership, or not-for-profit organization, or band as defined by the Indian Act (Canada):
- in which *Indigenous Persons* have majority ownership and control meaning at least 51 percent (%); and
 - is registered in good standing on the *Indigenous Business Directory*; and
 - if a *Joint Venture* is formed between Indigenous and non-Indigenous Business(es), the *Indigenous Business(es)* which form party to the *Joint Venture* shall have at least 51 percent (%) ownership and control of the *Joint Venture*;
- .28 “*Indigenous Business Directory*” or “*IBD*” means the registry of *Indigenous Businesses* maintained by Indigenous Services Canada (or a successor entity thereof);
- .29 “*Indigenous Person*” means, for the purpose of the *Contract*, a Canadian citizen who is ordinarily resident in Canada and who is:
- registered under the Indian Act (Canada); or
 - included on a Band List pursuant to the Indian Act (Canada); or
 - a member of an affiliate of the Métis National Council or the Congress of Aboriginal Peoples; or
 - enrolled under a comprehensive land claims agreement; or
 - a member of an Indigenous group with a comprehensive land claim that has been accepted by the Government of Canada; or

- acknowledged by an established Indigenous community in Canada as having Indigenous ancestry;

.30 “*Joint Venture*” means a business undertaking established by two (2) or more Tenderers who combine their money, property, knowledge, expertise, or other resources in a single joint business enterprise, sometimes referred to as a consortium, to perform the *Work*.

2. GC5 TERMS OF PAYMENT

.1 Reference GC5.4. Progress Payment, **INSERT** new GC5.4.1.3:

“5.4.1.3 a report on the *Contractor’s* progress on the provision and maintaining of the *Indigenous Benefits Plan* for that payment period (*Indigenous Benefits Plan* report). The report shall be submitted in accordance with Annex A - (Indigenous Benefits Achievement Certification) to the *Supplementary Conditions*.”

.2 Reference GC5.4.2, **DELETE** “Within ten (10) days of receipt of a progress claim and statutory declaration from the *Contractor*” and **REPLACE** with “Within ten (10) days of receipt of a progress claim, statutory declaration, and a report on the *Contractor’s* progress on the delivery of the *Indigenous Benefits Plan* referred to in paragraph 5.4.1.3 of GC5.4”.

.3 Reference GC5.4.4.1, **DELETE** “of both a progress claim and a statutory declaration” and **REPLACE** with “of a progress claim, statutory declaration, and a report on the *Contractor’s* progress on the delivery of the *Indigenous Benefits Plan*”.

3. GC11 INDIGENOUS BENEFITS PLAN

.1 **INSERT** new GC11:

“GC11 Indigenous Benefits Plan:

11.1 The *Contractor* shall ensure the *Indigenous Benefits Plan* is provided and maintained in accordance with the *Contract*, including but not limited to in accordance with the *Contractor’s* commitment to meet the *IBP Amount* of the *Work* by one (1) or more duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon under the *Contract*.

11.1.1 Any *Contractor/Subcontractor* performing a part or parts of the *Work*, pursuant to the *Indigenous Benefit Plan* must be a duly qualified *Indigenous Business* at the time of performance of said *Work*, or part thereof, in order for said *Work*, or part thereof, to qualify as being captured by the *IBP Amount* and to be attributed to the *Contractor’s IBP Amount* commitment.

11.2 Should the *Work* reach Completion (as contemplated under the *Contract*) and the *Contractor* has failed to ensure the provision and maintaining of the *Indigenous Benefits Plan* in accordance with the *Contract*, including but not limited to in accordance with the *Contractor’s* commitment to meet the *IBP Amount* of the *Work* by one (1) or more duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon under the *Contract*, the *Contractor* will receive a maximum final score of “Not Satisfactory” on its final Contractor Performance Evaluation

Report Form (CPERF) for "Execution/Project Management".

- 11.3 Resource Plan and Integrity of the *Indigenous Benefits Plan*.
- 11.3.1 The *Contractor* shall submit, 14 calendar days after *Contract* award, a Resource Plan, in a form satisfactory to the *DCC Representative* acting reasonably, which is aligned with the *Contractor's* project schedule that demonstrates the *Contractor's IBP Amount* can be met (or exceeded) until the *Work* reaches Completion (as contemplated under the *Contract*). The Resource Plan shall include (i) a list of *Indigenous Businesses* (including the *Contractor* if the *Contractor* is an *Indigenous Business*) that will perform, or are performing, a part or parts of the *Work*, pursuant to the *Contractor's Indigenous Benefit Plan*, (ii) a monthly breakdown that describes the *IBP Amount* target for each calendar month of the project until the *Work* reaches Completion (as contemplated under the *Contract*), and (iii) such other information as may be requested by the *DCC Representative* from time to time in their sole discretion.
- 11.3.2 The *Contractor* must compile and retain detailed records as to its level of success in ensuring the provision and maintaining of the *Indigenous Benefit Plan*, including but not limited to with respect to the *Contractor's* commitment to meet the *IBP Amount* of the *Work* by one (1) or more duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon under the *Contract*.
 - 11.3.2.1 The *Contractor* must also maintain and preserve the records described under GC11.3.2 for audit purposes in accordance with the *General Conditions*.
- 11.3.3 The *Contractor* shall forthwith provide such evidence (whether in the form of documentation, records or otherwise), as may be requested by the *DCC Representative* from time to time in their sole discretion, to substantiate or confirm the *Contractor* is ensuring the provision and maintaining of the *Indigenous Benefits Plan* as agreed upon in the *Contract*.
 - 11.3.3.1 Evidence that may be requested by the *DCC Representative* pursuant to GC11.3.3 may include, without limitation, certified copies of any contract between the *Contractor* and a *Subcontractor* entered into in connection with the *Indigenous Benefit Plan*, certified copies of any invoices or cheques paid to a *Subcontractor* in connection with the *Indigenous Benefit Plan*, or certified copies of any records compiled and retained pursuant to GC11.3.3.
- 11.3.4 The *DCC Representative* may from time to time in their sole direction verify on-site activities at the site of the *Work* to assess or observe the provision and maintaining of the *Indigenous Benefits Plan*.
- 11.3.5 The *DCC Representative* may consult the *Indigenous Business Directory* from time to time in their sole direction to verify the *Indigenous Business* registration and standing status of any *Indigenous Business* that is identified by the *Contractor* as performing or having performed the *Work*, or part thereof, pursuant to the *Indigenous Benefit Plan*.
- 11.3.6 If requested by the *DCC Representative*, the *Contractor* will forthwith engage (at the *Contractor's* expense) a duly qualified independent professional approved by the *DCC Representative* in writing to audit and verify whether the *Indigenous Benefit Plan* has been provided and maintained as agreed upon in the *Contract* (including but not limited to in accordance with the *Contractor's*

commitment to meet the *IBP Amount* of the *Work* by one (1) or more duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon under the *Contract*).

- 11.3.7 The *Contractor* shall report their progress on ensuring the provision and maintaining of the *Indigenous Benefits Plan* with each progress claim, as required by GC5.4.”

11.4 Subcontractors

- 11.4.1 The *Contractor* must notify and, where applicable, bind in writing each *Subcontractor* performing the *Work*, or part thereof, pursuant to the *Indigenous Benefit Plan* with respect to the applicable requirements of the *Contract* and the *Indigenous Benefit Plan*.
- 11.4.2 In addition to the *Contractor's* obligations under GC11.4.1, the *Contractor's* contract with any *Subcontractor* performing *Work*, or part thereof, pursuant to the *Indigenous Benefit Plan* must include, without limitation, a provision under which the *Subcontractor* agrees to: (i) upon request, forthwith provide the *Contractor* and *Canada* with information substantiating its qualification as an *Indigenous Business*, and (ii) authorize the *Contractor* to have one (1) or more audits performed from time to time by a duly qualified independent professional approved by the *DCC Representative* in writing to examine the *Subcontractor's* records to verify the information provided.

11.5 Indigenous Benefit Plan Deviations

- 11.5.1 Notwithstanding the *Contractor's* reporting obligations contemplated under GC11.3, the *Contractor* must, upon (i) knowledge that the *Contractor's Indigenous Benefit Plan* commitments under the *Contract* may not be met or (ii) knowledge of any deviation, or suspected deviation, between the *Contractor's Indigenous Benefit Plan* commitments under the *Contract* and the *Contractor's* performance with respect to ensuring the provision and maintaining of the *Indigenous Benefit Plan* in accordance with the *Contract*, forthwith inform the *DCC Representative* in writing of such in sufficient detail to the *DCC Representative's* satisfaction, acting reasonably.

11.5.1.1 The *Contractor* must forthwith provide such additional information or additional explanation to the *DCC Representative* with respect to any information provided by the *Contractor* pursuant to GC11.5.1, as may be requested by the *DCC Representative* from time to time in their sole discretion.

- 11.5.2 Upon request of the *DCC Representative*, the *Contractor* must forthwith provide and propose to the *DCC Representative* a written corrective action plan, in sufficient detail to the *DCC Representative's* satisfaction, acting reasonably, to resolve or address (at the *Contractor's* expense) the subject matter of the information provided by the *Contractor* pursuant to GC11.5.1 as identified in the *DCC Representative's* request. If accepted by the *DCC Representative*, the corrective action plan will be incorporated into the *Contract* by change order issued pursuant to GC6.1, and at such time, the *Contractor* will be authorized to implement said corrective action plan. For greater certainty, the *DCC Representative* is under no obligation to accept any such corrective action plan regardless of its content or justification.

11.6 IBP Commitments Are Contractual Obligations

- 11.6.1 For greater certainty, the *Contractor's* commitments under the *Indigenous Benefit Plan*, including but not limited to, with respect to the *Contractor's*

commitment to meet the *IBP Amount* of the *Work* by one (1) or more duly qualified *Indigenous Businesses* at such times, under such terms and conditions, and for such duration as agreed upon under the *Contract*, are for all intents and purposes deemed contractual obligations of the *Contractor* under the *Contract*. Any reduction or deviation in ensuring the provision and maintaining of benefits as contemplated under the *Indigenous Benefit Plan* may be considered by *Canada*, from time to time in its sole discretion, as any other failure by the *Contractor* to meet one (1) or more of its contractual obligations under the *Contract*.

End of Supplementary Conditions