

COAA EPC Contract
(Engineering, Procurement and Construction Contract)

Between

*

- and -

*

Effective Date: *

Note to Users: This EPC Contract contains a number of blanks to be completed on a project-specific basis. These blanks are indicated by: *. There are also notes within the text which require further consideration of the specific project requirements before completing.

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- Appendix A – Owner’s Requirements
- Appendix B – Compensation
- Appendix C – Policy and Guidelines
- Appendix D – Warranty Items Procedure
- Appendix E – Liquidated Damages
- Appendix F – Incentive Fee
- Appendix G – Forms
- Appendix H – Dispute Resolution Procedure
- Appendix I – Key Personnel [**NTD: Use if not in *Execution Plan***]

Engineering, Procurement and Construction Contract

This *Contract* is made effective this * day of *, 20*

Between

*
the “*Contractor*”

- and -

*
the “*Owner*”

Introduction:

A. The *Contractor* has agreed to perform the *Work* for the *Owner* as set out in this *Contract*, on the terms and conditions set forth in this *Contract*;

IN CONSIDERATION of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1 - Definitions and Appendices

1.1 The following terms, wherever capitalised and italicised in the *Contract*, or in any document produced pursuant to the terms of the *Contract*, shall have the following meanings:

- (a) *Appendix* or *Appendices*, as the case may be, means one or more of the schedules attached to and incorporated in this *Contract* as set forth in Section 1.2;
- (b) *As-Built Drawings* means the controlled and complete set of documents upon which the *Contractor* records each and every instance of differences between the *Work* as executed and the *Work* as designed and depicted in the documents issued by the *Contractor* for *Construction Work*;
- (c) *Change* means any change in, addition to, or deletion from the *Owner's Requirements*, *Owner's Specified Materials and Subcontractors*, the *Milestones*, or the *Contract Time*;
- (d) *Change Directive* means a written instruction from the *Owner* directing a *Change*;
- (e) *Change Order* means a written order signed by both the *Contractor* and the *Owner* authorizing a *Change*;
- (f) *Change Quotation* means a written quotation from the *Contractor* for an adjustment in the *Contract Time*, *Milestones* or the *Compensation*, or both;

- (g) *Commencement Date* means the date that the *Work* is to commence, which, at the effective date of this *Contract*, is *, 20*;
- (h) *Commissioning after Functional Completion* means those commissioning duties of the *Owner* and of the *Contractor* that shall take place after *Functional Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *Contractor*;
- (i) *Commissioning before Functional Completion* means those commissioning duties of the *Owner* and of the *Contractor* that shall take place before *Functional Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *Contractor*;
- (j) *Compensation* means the compensation which the *Owner* shall pay for performance of the *Work* in accordance with Appendix B – Compensation;
- (k) *Confidential Information* means all information relating to the *Work* and any process or technology relating thereto, and information relating to the nature of the *Contractor's* and the *Owner's* business and affairs, which either party directly or indirectly receives or acquires from the other party, or the other party's representative, either in writing or verbally, including information in the *Contract*, or through observation of the *Owner's Site*, the *Work Site*, the *Work* or work performed by *Other Contractors*, except information falling into any one or more of the following categories:
- (i) information which the receiving party can show was in its possession on a non-confidential basis before receipt or acquisition of the information from the other party;
 - (ii) information which is lawfully in the public domain at the time of the receiving party's receipt or acquisition of the information from the other party, other than from the *Owner's Requirements* or through the process of proposal calls or performing the *Work*;
 - (iii) information which, after the receiving party's receipt or acquisition of the information from the other party, becomes part of the public domain through no act of the receiving party or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or
 - (iv) information which, after receipt or acquisition of the information from the other party, is lawfully obtained by the receiving party from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.
- (l) *Construction Work* means delivery, fabrication, assembly, construction, testing, commissioning and correction, including professional and technical personnel,

labour, supervision, administration, materials, transportation, supplies, tools, equipment, and such other work and materials necessary to be performed or supplied to meet the requirements of the *Contract*, including any work which is not expressly described in the *Contract* but which is nevertheless necessary for the proper execution of the *Work*, but does not include *Engineering Services* or *Procurement Services*;

- (m) *Contemplated Change Notice* means a written notice from the *Owner* advising the *Contractor* that the *Owner* is contemplating a *Change*;
- (n) *Contract* means:
 - (i) this Engineering, Procurement and Construction Contract;
 - (ii) *Change Orders* and *Change Directives*;
 - (iii) *Execution Plan*; and
 - (iv) other documents which come into existence and are incorporated into the *Contract* pursuant to the terms of this *Contract*;
- (o) *Contract Time* means the period of time from the *Commencement Date* to the *Scheduled Functional Completion Date*;
- (p) *Contractor* means *;
- (q) *Contractor's Representative* means that person identified as such in Section 48.2, or an approved replacement;
- (r) *Deficiency* means any portion of the *Work* that has not been performed in accordance with the *Owner's Requirements*, the *Contract* or the *Law*;
- (s) *Engineering Services* means those services described in the *Owner's Requirements* and provided by the *Contractor* for the design, planning and engineering of the *Project*, but does not include *Construction Work* or *Procurement Services*;
- (t) *Event of Force Majeure* means any occurrence, other than the financial capability of a party or an event constituting a delay under Article 32 - Delays Caused by the Contractor or Article 33 - Delays not Caused by the Contractor, which prevents or delays a party from performing its obligations under the *Contract* (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not, at the time the *Contract* was executed, have reasonably contemplated happening and which at the time of such occurrence, is beyond the reasonable control of the party required by the *Contract* to perform such obligation and such party is unable to reasonably prevent or provide against such occurrence;

- (u) *Execution Plan* means the programme developed by the *Contractor* for the *Work* in accordance with Section 4.2 and which shall be updated from time to time as may be required by the *Owner* and which shall include, but not be limited to:
 - (i) the organisation to be established by the *Contractor* for carrying out the *Work*, including, but not limited to, the identities and curriculum vitae of *Key Personnel*, or if not yet identified, then the titles of the positions that will be held by *Key Personnel*;
 - (ii) the sequences and methods for the performance of the *Work*; and
 - (iii) a detailed schedule with dates for the completion of *Milestones*;
- (v) *Facilities* means the physical works engineered, procured and constructed as a result of the *Work* being performed;
- (w) *Final Completion Notice* means that notice in the form contained in Appendix G – Forms issued by the *Owner* to the *Contractor* pursuant to Section 20.2 certifying completion and acceptance of the *Work* under the *Contract*;
- (x) *Functional Completion* means that date when the *Work*, or a *System*:
 - (i) has passed the required *Performance Tests* that are stipulated in the *Owner's Requirements* to be performed before *Functional Completion*; and
 - (ii) is certified by the *Owner's Representative* pursuant to Section 19.4 as being complete or ready to be put into service, or being used for the purpose intended and a *Functional Completion Certificate* is issued;
- (y) *Functional Completion Certificate* means that notice, in the form attached hereto as Appendix G – Forms, issued by the *Owner* to the *Contractor* pursuant to Section 19.4, certifying achievement of *Functional Completion* and identifying the date that the *Owner* takes over the *Work*;
- (z) *Goods* means any goods, supplies, materials or equipment required as part of the *Work*, or to perform the *Work*, and which are supplied or fabricated by the *Contractor*, but do not include *Procured Goods*;
- (aa) *Hazardous Material* means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined under applicable law, as well as any prescribed product under the Nuclear Safety and Control Act (Canada);
- (bb) *Incentive Fee* means that fee that shall be paid by the *Owner* to the *Contractor*, if applicable, and which is set out in Appendix F – Incentive Fee;

- (cc) *Inspection and Test Plan* means the plan for inspection and testing, which shall be prepared by either the *Owner* or the *Contractor* as specified in the *Owner's Requirements*;
- (dd) *Key Personnel* means the *Contractor's* key personnel for the *Work* identified in Appendix I – Key Personnel [NTD: Use if not in *Execution Plan*], or if not determined before the execution of this *Contract*, identified in an organisational chart in accordance with Article 15 - Key Personnel and approved by the *Owner*;
- (ee) *Law* means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, permits and licenses thereunder, which apply to or otherwise affect the *Work*, the *Owner* or the *Contractor* with respect to the *Work*, or the property of the *Owner* or the *Contractor*, real or personal, including, but not limited to, all environmental, occupational, health and safety laws;
- (ff) *Liquidated Damages* means those damages, if applicable, agreed by the parties to be a genuine pre-estimate of damages in the event the *Performance Guarantees* are not met or the *Work* is not completed in the *Contract Time* and which are set out in Appendix E – Liquidated Damages;
- (gg) *Milestone* or *Milestones* means, as the case may be, one or more milestones that the *Contractor* must meet as set forth in the *Owner's Requirements*;
- (hh) *Other Contractors* means the contractors, consultants, or engineers retained by the *Owner*, to perform any work or services at, or related to, the *Owner's Site*, other than the *Contractor*;
- (ii) *Owner* means *;
- (jj) *Owner's Representative* means that person identified as such in Section 48.1 which may include a consultant hired by the *Owner*, if so designated, or that person's designated replacement;
- (kk) *Owner's Requirements* means the description of the scope, standards, design criteria, *Performance Guarantees*, *Milestones* and the programme of work set out in Appendix A – Owner's Requirements, as amended by any *Changes*;
- (ll) *Owner's Site* means the *Owner's* land upon which the *Work Site* is located and which may have on it other projects by *Other Contractors* or existing facilities, activities or operations;
- (mm) *Owner's Specified Materials and Subcontractors* means those materials, goods, products, processes, equipment and subcontractors specified in the *Owner Requirements* to be used in, or to be incorporated into, the *Work* by the *Contractor*;
- (nn) *Performance Guarantees* means the performance guarantees set out in the *Owner's Requirements*;

- (oo) *Performance Tests* mean the performance tests set out in the *Owner's Requirements* for the purpose of determining achievement of the *Performance Guarantees* for the *Work*, and such other tests as may be agreed between the *Owner* and *Contractor* in order to compare actual performance of the *Work* with the *Performance Guarantees*;
- (pp) *Policies* means the policies of the *Owner* as attached in Appendix C – Policy and Guidelines;
- (qq) *Procured Goods* means those goods, supplies, materials or equipment obtained by the *Contractor* for incorporation in, or to perform, the *Construction Work*, and procured by the *Contractor* as part of its *Procurement Services*;
- (rr) *Procurement Services* means the procurement of *Procured Goods* performed by the *Contractor*, which may be performed as agent of the *Owner*, or for the *Contractor* on its own account, as stipulated in the *Owner's Requirements*;
- (ss) *Project* means *; **[NTD: Insert name of Project]**
- (tt) *Proprietary Information* means all inventions, discoveries, improvements and technical information not in the public domain, which the *Contractor*, *Subcontractors*, or their respective employees or agents who are performing the *Work*, may conceive of, reduce to practice or develop during the *Contract Time* or within 12 months thereafter, as a result of *Confidential Information*;
- (uu) *Records* means the books, statements, records and accounts pertaining to the *Contract* and the performance of the *Work*, whether in paper or electronic form;
- (vv) *Safety Plan* means the plan, as specified in the *Owner's Requirements*, which includes, but is not limited to, safety performance requirements, mitigation plans, training and orientation requirements, site safety and access rules, reporting and safety meeting frequency, site cleanliness requirements and other occupation health and safety requirements and compliance issues;
- (ww) *Scheduled Functional Completion Date* means the date on which the *Work* is scheduled to achieve *Functional Completion*, which, at the effective date of this *Contract*, is *, 20*;
- (xx) *Subcontractors* means any subcontractors, consultants, suppliers or vendors hired by the *Contractor* to perform any portion of the *Work* or supply any *Goods*;
- (yy) *Suspended Work* means any *Work*, or portion thereof, which the *Owner* has suspended pursuant to Article 34 - Suspension;
- (zz) *System* means any component system of the *Work*, or any part thereof as the context requires; **[NTD: This definition is to be reviewed on a project-specific basis and components are to be identified in the Owner's Requirements.]**

- (aaa) *Warranty Item* means any *Deficiency* that is identified after the *Functional Completion Certificate* is issued or is incorporated into the *Functional Completion Certificate* to be remedied after *Functional Completion*;
- (bbb) *Warranty Period* commences on the date of *Functional Completion* of the *Work* or *System*, or part thereof to, and continues for * months from the date of *Functional Completion* as stated in the *Functional Completion Certificate*;
- (ccc) *Work* means all *Engineering Services*, project management, *Procurement Services*, *Goods*, *Construction Work* and those duties allocated to the *Contractor* in the *Commissioning before Functional Completion* and *Commissioning after Functional Completion*, as may be necessary to fulfill the *Owner's Requirements* and includes anything that is ancillary or necessary by implication to fulfill the *Owner's Requirements*;
- (ddd) *Work Day* means any day, except for a Saturday, Sunday, a general holiday or a holiday which is observed in the construction industry in Alberta, or defined as a holiday in a collective agreement pertaining to the *Work Site*; and **[NTD: This definition should be revised on a project-specific basis.]**
- (eee) *Work Site* means those lands where the *Project* is located and which are legally and municipally described as such in the *Owner's Requirements*.

1.2 The following schedules attached hereto shall form part of and are incorporated in this *Contract*:

- (a) Appendix A – Owner's Requirements
- (b) Appendix B – Compensation
- (c) Appendix C – Policy and Guidelines
- (d) Appendix D – Warranty Items Procedure
- (e) Appendix E – Liquidated Damages
- (f) Appendix F – Incentive Fee
- (g) Appendix G – Forms
 - Key Employee Confidentiality, Proprietary Information and Consent Agreement
 - Change Order
 - Change Directive
 - Functional Completion Notice
 - Final Completion Notice
 - Release and Certificate of Final Payment
 - Statutory Declaration
- (h) Appendix H – Dispute Resolution Procedure
- (i) Appendix I – Key Personnel **[NTD: Use if not in Execution Plan]**

[NTD: List any additional Appendices]

Article 2 - Interpretation and Order of Precedence

- 2.1 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.
- 2.2 The headings and sub-headings of the *Contract* are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the *Contract*.
- 2.3 If there is a conflict in the *Contract*, the order of precedence of documents, from highest to lowest, shall be:
- (a) this Engineering, Procurement and Construction Contract, excluding the *Appendices*;
 - (b) *Change Orders* and *Change Directives*;
 - (c) Appendix A – Owner’s Requirements;
 - (d) Appendix B – Compensation;
 - (e) Appendix C – Policy and Guidelines; and
 - (f) all other *Appendices*.
- 2.4 The following shall, in all instances, apply:
- (a) for documents revised by either party and approved by the *Owner*, the latest revision shall govern;
 - (b) figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
 - (c) drawings of larger scale shall govern over those of smaller scale of the same date; and
 - (d) specifications shall govern over drawings regardless of time.
- 2.5 Wherever this *Contract* requires an action to be performed or an obligation to be undertaken, such action or obligation shall be performed in a reasonable manner by the party taking the action or fulfilling its obligation.

Article 3 - Owner’s Requirements

- 3.1 The *Owner’s Requirements* shall describe the scope of the *Work*.

- 3.2 The *Owner's Requirements* shall specify the requirements of the *Safety Plan* and identify the party, or parties, responsible for the development and implementation of the *Safety Plan*.
- 3.3 Subject to Section 13.9, all conflicts with respect to the interpretation of the *Owner's Requirements* shall be resolved by the *Owner's Representative*.

Article 4 - General Requirements of the Work

- 4.1 The scope of the *Work* includes correction of defects and *Deficiencies* by the *Contractor* in accordance with the *Contract*.
- 4.2 By the date or dates specified in the *Owner's Requirements*, the *Contractor* shall prepare and submit to the *Owner* a detailed *Execution Plan* for the performance of all or any part of the *Work* required under the *Contract*. The *Contractor* shall control the progress of the *Work* to achieve compliance with the *Execution Plan*.
- 4.3 In the execution of the *Work* the *Contractor* shall comply with, and the completed *Work* shall comply with, the *Law*, including, without limitation, applicable building codes, technical standards, building construction and environmental regulations and the standards specified in the *Contract*.
- 4.4 References in the *Contract* to applicable codes, standards or regulations shall be understood to be references to the edition applicable on the date of the *Contract*, unless stated otherwise. If substantially changed or new applicable codes, standards or regulations come into force after the date of the *Contract*, the *Contractor* shall submit a *Change Quotation* for compliance to those new codes, standards or regulations to the *Owner's Representative*. Any *Change* in the *Work*, the *Contract Time* or the *Compensation* as a result shall be dealt with under Article 13 - Changes.
- 4.5 The *Contractor* accepts the *Owner's Site*, the *Work Site* and the obligation to perform the *Work* in the condition existing at the effective date of this *Contract* and acknowledges that it has investigated and satisfied itself as to:
- (a) the nature of the *Work*;
 - (b) the location of and all conditions relating to the *Owner's Site* and the *Work Site*, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions but excluding subsurface or other physical conditions, unless disclosed by the *Owner*;
 - (c) all environmental risks, conditions, *Law* and restrictions applicable to the *Contractor* or the *Work* that may affect the *Work*; and
 - (d) the magnitude of the *Work*.
- 4.6 The *Contractor* accepts the obligation to perform the *Work* and acknowledges that it has investigated and accepts:

- (a) the general character, quality, quantity and availability of equipment and materials required to execute and complete the *Work*; and
 - (b) all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the *Work*.
- 4.7 Any failure by the *Contractor* to discover matters which affect, or could affect, the *Work* shall not relieve the *Contractor* from its obligations under the *Contract* or otherwise affect the *Contract Time* or the *Compensation*.
- 4.8 The *Owner* reserves the right to award separate contracts to *Other Contractors* for work to be performed at the *Work Site* and to perform work with its own forces at the *Work Site*. In such event, the *Contractor* shall co-ordinate and schedule the *Work* with the work of the *Other Contractors* and the *Owner's* own forces, and the *Contractor* shall share access to and use of the *Work Site* to accommodate the work of *Other Contractors*. If work performed by *Other Contractors* as directed by the *Owner* interferes with the *Work* performed by the *Contractor*, the *Contractor* may issue a *Change Quotation* in accordance with Section 13.9.
- 4.9 The *Contractor* shall co-operate fully with the *Owner*, *Other Contractors* and all other parties with whom the *Contractor* or *Owner* may be involved during the performance of the *Work*. The *Contractor* shall supervise its employees and *Subcontractors* and inspect their work to ensure that the *Work* conforms in each and every respect to the *Owner's Requirements* and in accordance with Section 10.1.
- 4.10 Approval of the *Engineering Services*, acceptance of any part of the *Goods*, *Procured Goods* or the *Construction Work* by the *Owner*, or payment to the *Contractor*, or any one or more of them, shall not relieve the *Contractor* from its responsibilities under the *Contract*, whether pursuant to any of the warranties or guarantees expressed or implied herein, or otherwise.
- 4.11 As required by the *Owner's Requirements*, the *Contractor* shall provide the *Owner* with written reports detailing the status of the *Work* and all issues relating to the *Work*, promptly upon the request of the *Owner*, and shall attend meetings as required by the *Contract*, or as otherwise requested by the *Owner's Representative*.
- 4.12 The *Contractor* shall have those responsibilities for managing the *Work* as stipulated in the *Owner's Requirements*, including, but not limited to:
- (a) cost monitoring, scheduling and reporting to the *Owner*;
 - (b) scheduling the *Work* and monitoring and reporting on the progress of the *Work* relative to the *Milestones* to the *Owner*;
 - (c) coordination, scheduling and supervision of *Subcontractors*;
 - (d) coordination and management of transportation and related services for the *Work*;

- (e) management of the *Work* to ensure the *Work* is performed in an efficient and coordinated manner; and
 - (f) preparation of reports and attendance at meetings with the *Owner*.
- 4.13 The *Contractor* shall ensure that no activities or actions are undertaken in the performance of the *Work*, or otherwise by the *Contractor*, which would adversely affect, restrict or limit in any way the continued operation of the *Owner's* other facilities which are in operation, unless required to perform the *Work*, done in accordance with the *Execution Plan* and authorized in writing by the *Owner's Representative*.
- 4.14 In the performance of the *Work*, the *Contractor* shall give due consideration to the interest and property of others wherever involved, and shall carry out and perform the *Work* in a manner which shall cause the minimum of inconvenience, injury, and damage to others.
- 4.15 The *Owner* shall provide and the *Contractor* shall abide by all documents provided by the *Owner* relating to the *Owner's Site*, including, but not limited to, any special restrictions and conditions contained in any easement, regulatory board order, crossing agreement, or other permit relating to the *Work Site*.
- 4.16 The *Contractor* shall restore, at its expense, all property damaged in the performance of the *Work* including, without limitation, buildings, fences, hedges, roads, railroads, bridges, culverts, drainage ditches, irrigation ditches and levees, unless such restoration is specifically identified in the *Owner's Requirements* and, in which case, the restoration shall be performed in accordance with the *Owner's Requirements*.
- 4.17 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the *Contract*, defects or *Deficiencies* in the *Work* and of any inconsistencies between the *Contract* and the *Law*, of which they become aware. The *Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies, defect or *Deficiencies*. If the *Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any defects or *Deficiencies* in the *Work*, it shall resolve all such inconsistencies with the *Owner* before proceeding with the affected portion of the *Work*. If the *Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any defects or *Deficiencies* in the *Work*, and proceeds without resolution with the *Owner*, the *Contractor* shall proceed at the *Contractor's* own risk and expense and waives all rights to claim against the *Owner* for the same.
- 4.18 All documents and drawings prepared as part of the *Work* shall be in English.

Article 5 - Engineering Services

- 5.1 The *Contractor* shall perform the *Engineering Services* and be responsible for the design and engineering necessary to execute the *Work*. The *Engineering Services* shall be prepared under the supervision of the *Contractor's* qualified professional engineers licensed by the Association of Professional Engineers, Geologists and Geophysicists of

Alberta. All final plans, specifications, reports or documents of a professional nature shall be signed by and stamped or sealed with the stamp or seal of:

- (a) the professional member or licensee who prepared them or under whose supervision and control they were prepared; or
 - (b) the professional member or licensee who thoroughly reviewed and accepted professional responsibility for them.
- 5.2 The professional members referred to in Section 5.1 shall be available to meet with the *Owner's Representative* at all reasonable times during the *Contract Time* and *Warranty Period*.
- 5.3 The *Owner* shall have the right of inspection and review of the design drawings and specifications at all reasonable times. No inspection, or failure to inspect, by the *Owner* shall relieve the *Contractor* of the *Contractor's* obligations under the *Contract*.
- 5.4 Prior to commencement of the *Performance Tests*, the *Contractor* shall prepare, and submit to the *Owner's Representative*, operation and maintenance manuals in accordance with the *Owner's Requirements*. The *Work* shall not be considered to be completed for the purposes of achieving *Functional Completion* until such operation and maintenance manuals have been submitted to the *Owner's Representative*.
- 5.5 The *Contractor* shall:
- (a) prepare, and keep up-to-date, the *As-Built Drawings*;
 - (b) record the exact locations of each of these differences, sizes and details of the *Construction Work* as executed, with cross-references to relevant specifications and other requirements on the *As-Built Drawings*;
 - (c) keep the *As-Built Drawings* on the *Work Site*;
 - (d) during the *Contract Time*, provide the *Owner* with access to the *As-Built Drawings*; and
 - (e) upon completion of the *Work*, or at such other time as may be determined by the *Owner*, submit the *As-Built Drawings* and copies to the *Owner's Representative* in accordance with the *Owner's Requirements*.

Article 6 - Owner's Specified Materials and Subcontractors

- 6.1 Where the *Owner's Requirements*, a *Change Order* or a *Change Directive* is issued directing the *Contractor* to use the *Owner's Specified Materials and Subcontractors*, the *Contractor* shall review the *Owner's Specified Materials and Subcontractors* to determine whether such materials are acceptable to meet the *Engineering Services* and *Construction Work* and can be made available for procurement without interfering with the achievement of the *Milestones*.

- 6.2 If the *Contractor* determines that the *Owner's Specified Materials and Subcontractors* are acceptable for the *Work*, then the *Owner's Specified Materials and Subcontractors* shall be used and incorporated in the *Work* in the same manner as those materials and pieces of equipment proposed by the *Contractor* and the *Contractor* shall take responsibility for the *Owner's Specified Materials and Subcontractors* and all warranty provisions that apply thereto; or
- 6.3 If the *Contractor* determines that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, then the *Contractor* shall give notice to the *Owner* that the *Owner's Specified Materials and Subcontractors* are not suitable for the *Work*, which notice will provide details of the reasons why the *Owner's Specified Materials and Subcontractors* are not acceptable for use or incorporation into the *Work*.
- 6.4 Where the *Contractor* has provided notice to the *Owner* that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, the *Owner* shall promptly notify the *Contractor* of the *Owner's* decision as to whether or not to include the *Owner's Specified Materials and Subcontractors* in the *Work*.
- 6.5 If the *Owner* chooses to direct the *Contractor* to use the *Owner's Specified Materials and Subcontractors* after the *Contractor* has notified the *Owner* that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, then the *Owner* shall take full responsibility for the *Owner's Specified Materials and Subcontractors*, including any warranty claims and damages that may occur from the use or incorporation of the *Owner's Specified Materials and Subcontractors*.

Article 7 - Procurement Services

- 7.1 As specified in the *Owner's Requirements*, the *Contractor* shall perform the *Procurement Services* either as agent for the *Owner*, or for its own account, or both, as applicable.
- 7.2 Where specified in the *Owner's Requirements*, the *Contractor* shall provide *Procurement Services* using such selected vendor lists and *Owner's Specified Materials and Subcontractors* as directed by the *Owner*.
- 7.3 Payment of invoices for *Procured Goods* shall be made in accordance with the *Owner's Requirements*.
- 7.4 Where the *Contractor* performs the *Procurement Services* as agent of the *Owner*, the *Contractor* shall carry out the *Owner's* instructions and shall act:
- (a) in good faith and in the best interests of the *Owner* and the *Project*,
 - (b) within the scope of the agency specified in this Article 7 - Procurement Services and the *Owner's Requirements*.
- 7.5 Where the *Contractor* performs the *Procurement Services* as agent of the *Owner*, the appointment of the *Contractor* as the *Owner's* agent shall be limited as follows:
- (a) to the specifications contained in the *Owner's Requirements*;

- (b) the *Contractor* shall not enter into any agreement, contract, settlement or arrangement with any person, firm or corporation, or other enterprise imposing any compromise, legal obligation or liability of any kind whatsoever on the *Owner*, unless such is in accordance with this *Contract* or unless it has prior specific written authority to do so from the *Owner*;
- (c) the *Procurement Services* performed by the *Contractor* shall only relate to the *Project* and the *Contractor* shall not act as agent for the *Owner* in any other respect;
- (d) the *Procurement Services* shall be on commercial terms and conditions previously approved by the *Owner* and the *Contractor* shall not modify or change any of the terms and conditions approved by the *Owner* without the *Owner's* prior written consent, which consent may be withheld at the *Owner's* sole discretion;
- (e) the *Procurement Services* by the *Contractor* shall be in accordance with the *Contractor's* internal approval process, but subject always to the final written approval of the *Owner's Representative*;
- (f) title to all *Procured Goods* shall be in the *Owner's* name; and
- (g) all warranties and guarantees relating to the *Procured Goods* shall be made to the *Owner* and shall be enforceable by the *Owner*.

7.6 Where the *Contractor* performs the *Procurement Services* as agent of the *Owner*, the *Owner* shall:

- (a) provide to the *Contractor* sufficient instructions and guidelines to enable the *Contractor* to effect delivery, receiving and handling into and within the *Owner's* system of materials handling and warehousing; and
- (b) provide to the *Contractor* instructions and guidelines that identify the levels of review and approval required by the *Owner* in relation to the *Procured Goods*.

7.7 In accordance with the *Owner's Requirements*, the *Contractor* shall submit any required samples for the *Owner's Representative's* approval, together with any relevant information. The *Contractor* shall also submit for the *Owner's Representative's* approval, manufacturer's standard samples of materials (with relevant information) and any additional samples instructed by the *Owner's Representative*. All samples shall be labelled as to origin and intended use in the *Work*. For each part of the *Work*, construction shall not commence prior to receipt of such approval to the relevant samples.

Article 8 - Construction Work

8.1 The *Contractor* shall perform the *Construction Work* in accordance with the *Contract*.

8.2 Except for those materials, services and equipment to be provided by the *Owner* and described in Appendix A – *Owner's Requirements*, the *Contractor* shall supply or cause

to be supplied all services, equipment and materials required for the proper execution and completion of the *Construction Work*.

- 8.3 Subject to Section 25.5, the *Contractor* shall take full responsibility for the adequacy, stability and safety of the *Work* and the *Work Site* operations under its control, of all methods of construction and of all of the *Construction Work*, unless the *Contractor* has received written instructions from the *Owner's Representative* absolving the *Contractor* of responsibility.

Article 9 - Commissioning

- 9.1 The duties of the *Owner* and of the *Contractor* in relation to *Commissioning before Functional Completion* and *Commissioning after Functional Completion*, together with the *Milestones* to be reached for commissioning, are as set out in the *Owner's Requirements*.

Article 10 - Contractor's Representations

- 10.1 The *Contractor* shall:

- (a) perform the *Work* in a professional, efficient and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the *Contract* and in accordance with sound and currently accepted design, engineering, procurement, construction and commissioning practices normally employed in industrial construction similar to the *Work*;
- (b) perform the *Work* in a safe and environmentally sound manner and in compliance with the *Law*;
- (c) ensure that the title to any and all *Goods* and those *Procured Goods* supplied by the *Contractor* shall, upon delivery to the *Work Site*, be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever;
- (d) ensure equipment and materials furnished, manufactured or fabricated by the *Contractor*, or its *Subcontractors*, for incorporation into the *Work*, shall:
 - (i) be free from all latent and other defects or *Deficiencies*;
 - (ii) meet the specifications in the *Contract*, if so specified, and if not specified then be of the quality best suited for the required operating conditions and intended use and purpose of the materials and services; and
 - (iii) shall be fit for the purpose for which the equipment and materials have been manufactured or fabricated;
- (e) perform the *Work* to meet the *Owner's Requirements*;
- (f) comply with the *Contract*, including, but not limited to, all time schedules set out in, or called for by, the *Contract* or the *Execution Plan*; and

- (g) ensure the *Work* shall be fit for its intended purpose as specified in the *Owner's Requirements*.

10.2 The *Contractor* represents and warrants to the *Owner* that:

- (a) it has the experience, resources, personnel and capability to perform the *Work*;
- (b) it is duly incorporated and validly existing under the laws of the jurisdiction(s) of its incorporation and is registered to carry on business in the Province of Alberta;
- (c) it has all required permits, licenses and authorizations necessary to carry on its business; and
- (d) the *Contractor* has the right to use, employ and incorporate in the *Work* those things or ideas to which the *Contractor* gives the *Owner* a license under Section 28.4.

Article 11 - Contract Time

11.1 Subject to any *Change Order* or *Change Directive*, the *Contractor* shall commence the *Work* on the *Commencement Date* and shall achieve *Functional Completion* of all of the *Work* by the *Scheduled Functional Completion Date*.

11.2 The *Contractor* shall, unless otherwise provided for in this *Contract* or altered by any *Change Order* or a *Change Directive*, perform the *Work* in accordance with the *Execution Plan*.

11.3 If a party fails to meet its obligations set out in this *Contract* in a timely manner, the other party may raise the failure of a timely action as provided for in Appendix H – Dispute Resolution Procedure; however, in such case the parties shall continue to perform the *Work* and their respective obligations under this *Contract* while the matter is being resolved.

Article 12 - Payment

12.1 As full and complete compensation for the *Work*, the *Owner* shall pay the *Contractor* the *Compensation* pursuant to the terms of Appendix B – Compensation which shall in no event exceed the *Compensation* payable in accordance with the *Contract*, as adjusted by any *Change Order*.

12.2 The *Contractor* shall prepare and submit invoices for all *Work* performed in accordance with Appendix B – Compensation.

12.3 As a condition precedent to each progress payment to the *Contractor* by the *Owner*, the *Contractor* shall deliver to the *Owner*:

- (a) a Workers' Compensation Board Clearance Certificate; and
- (b) a Statutory Declaration, in the form set out in Appendix G – Forms.

12.4 The *Owner* shall retain from all payments due and payable to the *Contractor* an amount equal to 10% of the value of the *Work* actually done and materials furnished by the *Contractor* in accordance with the Builders' Lien Act (Alberta).

12.5 When the *Contractor* has substantially performed the *Work*, as substantial performance is defined in the Builders' Lien Act (Alberta), the *Contractor* shall issue and deliver to the *Owner* a certificate of substantial performance in accordance with the Builders' Lien Act (Alberta). The *Contractor* shall post the certificate of substantial performance in accordance with the Builders' Lien Act (Alberta).

12.6 If:

- (a) a certificate of substantial performance is issued for a subcontract;
- (b) the period designated for the release of holdback pursuant to the Builders' Lien Act (Alberta) has expired from the date of issue of that certificate of substantial performance; and
- (c) no builders' lien has been registered against the title to the *Work Site* or any part of the *Work*;

the amount that the *Owner* shall retain under Section 12.4 shall be reduced by 10% of the value of the *Work* actually done and materials actually furnished under the subcontract at the date of issue of the Certificate of Substantial Performance in respect thereof.

12.7 If:

- (a) a certificate of substantial performance is issued for the *Contract*;
- (b) the period designated for the release of holdback pursuant to the Builders' Lien Act has expired from the date of issue of the Certificate of Substantial Performance; and
- (c) no builder's lien has been registered against the title to the *Work Site* or any part of the *Work*;

the amount that the *Owner* shall retain under Section 12.4 shall be reduced by 10% of the value of the *Work* actually done and materials actually furnished under the *Contract* at the date of issue of the Certificate of Substantial Performance.

12.8 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award of arbitration or judgment of a court, interest at the rate of *% per annum compounded semi-annually on any unpaid amounts shall also become due and be payable.

Article 13 - Changes

13.1 The *Owner* shall have the right, at any time, to make a *Change*.

- 13.2 When a *Change* is proposed by the *Owner*, then the *Owner* shall provide a *Contemplated Change Notice* to the *Contractor* describing the proposed *Change*.
- 13.3 The *Contractor*, upon receipt of a *Contemplated Change Notice*, shall within * *Work Days* provide the *Owner's Representative* with a *Change Quotation* which shall include a method of adjustment or an amount of adjustment to the *Compensation*, if any, and any adjustment in the *Contract Time* for the proposed *Change*.
- 13.4 Following receipt of a *Change Quotation*, the *Owner* shall within * *Work Days* either agree to the adjustments in the *Contract Time* and the *Compensation* or to the method to be used to determine the adjustments, or give the *Contractor* notice that the *Change Quotation* is not acceptable.
- 13.5 If the *Change Quotation* is agreed to, then the *Owner* shall issue a *Change Order* recording the *Change*, which shall be signed by the *Owner* and the *Contractor*. The value of the *Work* performed as a result of a *Change Order* shall be included in invoices for payment given by the *Contractor* in accordance with the terms of payment in Appendix B – Compensation and shall identify those portions of the invoice charged for the *Change Order*.
- 13.6 If the *Owner* requests the *Contractor* to provide a *Change Quotation* and subsequently elects not to proceed with the *Change*, the *Contractor* shall be reimbursed in accordance with Appendix B – Compensation, or as otherwise agreed between the parties, for its reasonable costs incurred including design and engineering services, and the *Owner* shall issue a *Change Order* for these costs.
- 13.7 If the *Owner* requires the *Contractor* to proceed with the *Change* before the *Owner* and the *Contractor* agree, or, if the *Owner* and the *Contractor* have failed to agree upon the adjustment in *Contract Time* and the *Compensation*, then the *Owner* shall issue a *Change Directive* directing the *Contractor* to proceed with the *Work*.
- 13.8 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the *Change* and:
- (a) keep daily records of the time, materials and equipment employed in the *Change* and shall submit such records to the *Owner's Representative* on a daily basis;
 - (b) the *Compensation* shall be adjusted in accordance with the rates set forth in Appendix B – Compensation; if applicable, or as negotiated by the parties, or failing such resolution, shall be settled in accordance with Appendix H – Dispute Resolution Procedure; and
 - (c) the *Contract Time* shall be adjusted by agreement between the *Owner* and the *Contractor*, or shall be settled in accordance with Appendix H – Dispute Resolution Procedure.
- 13.9 If, during the performance of the *Work*, the *Contractor* is of the opinion that any instruction, interpretation, decision or direction from the *Owner* should have, but has not,

resulted in a *Contemplated Change Notice* or *Change Directive* being issued, the *Contractor* shall give the *Owner* * *Work Days* notice with a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation* required. If the *Contractor* does not issue a *Change Quotation* within the specified time, then the *Contractor* shall have no claim for any claim against the *Owner* attributable to that instruction, interpretation, decision or direction.

- 13.10 If the *Owner* receives a *Change Quotation* from the *Contractor* pursuant to Section 13.9, the *Owner* shall promptly consider the *Change Quotation* and immediately issue a *Change Order*, *Change Directive* or advise the *Contractor* in writing that the *Contractor's* request is denied. If the *Contractor* disputes the *Owner's* decision, the *Contractor* shall, before proceeding with the *Work*, provide notice to the *Owner* disputing the *Owner's* decision, but in all cases, the *Contractor* shall proceed with the *Work*. In such event, the *Contractor* shall keep daily records in accordance with Section 13.8(a), in respect of the disputed work. The *Contractor's* entitlement to an adjustment in the *Contract Time* and the *Compensation* shall then be resolved in accordance with Appendix H – Dispute Resolution Procedure.
- 13.11 No modification, addition, deletion or other revision to the *Owner's Requirements* shall be binding on either party unless set out in a *Change Order*, required by a *Change Directive* or determined by Appendix H – Dispute Resolution Procedure. Neither the keeping of daily records in respect of disputed work nor the signing of those records by the *Owner's Representative* shall be considered an admission of entitlement to payment by the *Owner*. Such records, if signed by the *Owner*, shall only constitute the *Owner's* agreement that the time, materials and equipment were spent or employed in respect of the *Work* for which a *Change Directive* has been issued, or in respect of the *Work* in relation to which the *Contractor* has given notice of a dispute pursuant to Section 13.9.
- 13.12 The *Contractor* shall include in its *Change Quotation* all costs and changes in *Contract Time* reasonably expected to result from a *Change* including any impact costs or costs of acceleration.
- 13.13 If the *Contractor* encounters actual subsurface or other concealed physical conditions at the *Work Site* which are materially different from any representations of existing conditions made in the *Owner's Requirements*, then the *Contractor* shall provide notice to the *Owner* within 5 *Work Days* of encountering the conditions and shall allow the *Owner* the opportunity for inspection before the conditions are further disturbed. If the *Contractor* fails to provide such notice to the *Owner* within the specified time then the *Contractor* shall have no claim for any additional costs or delays attributable to such subsurface or concealed physical conditions.
- 13.14 The *Owner* shall promptly investigate the conditions described by the *Contractor* pursuant to Section 13.13 and if the actual conditions encountered by the *Contractor* at the *Work Site* differ materially from the conditions represented in the *Owner's Requirements* so as to substantially increase the cost to the *Contractor* or impact the *Contract Time*, then the *Owner* shall issue a *Change Order* to cover the increased cost and *Contract Time*.

Article 14 - Personnel

- 14.1 All communications between the *Owner* and the *Contractor* and all documents of whatever kind submitted to the *Owner* by the *Contractor* and its *Subcontractors* shall be in the English language. All of the *Contractor's* and the *Subcontractors'* personnel that deal with or communicate with the *Owner* shall be fluent in the English language. All training and supervision of the *Owner's* operating personnel shall be in the English language.
- 14.2 The *Contractor* shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision, and if requested by the *Owner*, accredited or enrolled in a program for accreditation, in the manner specified by the *Owner* in the *Owner's Requirements*.
- 14.3 At the *Owner's* request, the *Contractor* shall reassign, replace or remove personnel who, in the *Owner's* opinion, acting in good faith, negatively affect the efficiency, safety or *Scheduled Functional Completion Date* of the *Work* or who have committed a violation of the *Policies*.
- 14.4 The *Contractor* shall not employ, or continue to employ, non-Canadian workers in Canada, except in compliance with the Immigration Act (Canada) and regulations, as amended from time to time. The *Contractor* shall obtain and produce to the *Owner's Representative* valid and subsisting employment authorizations with respect to all non-Canadian workers to be used to perform the *Work*.

Article 15 - Key Personnel

- 15.1 If not agreed to before the execution of the *Contract*, the *Contractor* shall submit a proposed organisational chart for the *Owner's* approval, as part of the *Execution Plan*. The organisational chart shall show the *Key Personnel* and other supervisory and staff personnel who shall be executing the *Work*, together with their respective job titles.
- 15.2 The *Owner* shall identify any of the *Key Personnel* to which the *Owner* objects within 14 *Work Days* and if the *Owner* does not provide the *Contractor* with its objections to the *Key Personnel*, the *Owner* shall be deemed to have accepted the *Key Personnel*.
- 15.3 If the *Owner* objects to any of the *Key Personnel* in accordance with Section 15.2, then the *Contractor* will promptly prepare a new organisational chart identifying the *Key Personnel* for the *Owner's* approval. This process shall be repeated until the *Owner* approves the *Key Personnel*.
- 15.4 Once the *Owner* has approved the organizational chart identifying the *Key Personnel*, the *Contractor* shall within * *Work Days* arrange for each of the *Key Personnel* to complete and execute an agreement in the form of the Key Employee Confidentiality Proprietary Information and Consent Agreement, attached as part of Appendix G – Forms.

- 15.5 Subject to Section 15.6, the *Contractor* shall not, without the *Owner's* consent, make any changes to the *Key Personnel* or an organisational chart that has been approved by the *Owner*.
- 15.6 If any *Key Personnel* leave the *Contractor's* workforce, the *Contractor* shall forthwith replace such *Key Personnel* with personnel possessing those qualifications necessary for the proper performance of the functions to which assigned. Where the *Compensation* for *Work*, or part thereof, is based on a reimbursable basis, then the *Owner* shall have the right to determine if the replacement personnel is suitable to the *Owner*, and if not suitable, the *Contractor* shall provide further replacement personnel until the *Owner* determines that the replacement person is suitable to the *Owner*.

Article 16 - Subcontracts and Assignment

- 16.1 The *Contractor* shall provide notice to the *Owner* of its intention to subcontract the performance of any *Work* or the supply of equipment and materials and of the intended *Subcontractor* before entering into any subcontract. The *Owner* may for reasonable cause, and acting in good faith, object to the use of a proposed *Subcontractor* and require the *Contractor* to obtain another *Subcontractor*. Any reviews or approvals by the *Owner* pursuant to the provisions of this Article or elsewhere in this *Contract* shall not release or relieve the *Contractor* of any of its obligations under this *Contract* or create any contractual relations between the *Owner* and any *Subcontractor*. The *Contractor* shall require any *Subcontractor* to agree to be bound by this *Contract* and to abide by the *Owner's* requirements for safety and loss management.
- 16.2 Prior to the *Commencement Date*, the *Contractor* shall provide the *Owner's Representative* with a list of the names and addresses of all *Subcontractors* and others who the *Contractor* proposes to perform any part of the *Work*. The *Contractor* shall provide the *Owner's Representative* with any proposed changes to this list during the *Contract Time*.
- 16.3 Subject to Article 6 - *Owner's Specified Materials and Subcontractors*, the *Contractor* shall be fully responsible for any part of the *Work* performed by *Subcontractors* and for the acts or omissions of *Subcontractors* and all persons either directly or indirectly employed by them, to the same extent as the *Contractor* is for its own acts or omissions. Without in any way limiting the *Contractor's* obligations pursuant to the provisions of this Article or elsewhere under this *Contract*, the *Contractor* shall secure compliance with and enforce, at its own expense, for the benefit of the *Owner*, each of the contracts concluded by the *Contractor* with *Subcontractors*.
- 16.4 The *Contractor* shall not assign the *Contract*, or any part thereof, without the prior approval of the *Owner*.
- 16.5 The *Owner* may assign this *Contract* including all rights and obligations hereunder, at any time without the prior agreement of the *Contractor*, provided that the *Owner* shall remain liable for the *Owner's* obligations under this *Contract*, unless the *Contractor* provides its consent to release the *Owner*, which consent shall not be unreasonably withheld.

- 16.6 The *Contractor* shall enforce the warranty obligations of its *Subcontractors*, and upon the request of the *Owner*, shall assign any warranty to the *Owner*. All contracts between the *Contractor* and its *Subcontractors* shall provide that warranties given by the *Subcontractor* shall be given to both the *Contractor* and the *Owner* and the warranties may be enforced by either the *Contractor* or the *Owner*.
- 16.7 The *Contractor* shall request and use its best efforts to obtain for the benefit of the *Owner*, the best warranties and guarantees that it is possible to secure from its *Subcontractors* without impact to cost and, as a minimum, shall obtain and provide to the *Owner* the warranties required by the *Contract*. The *Contractor* shall do all things and provide all assistance reasonably necessary to enable the *Owner* to enforce warranties and guarantees provided by its *Subcontractors*.

Article 17 - Inspection and Testing

- 17.1 The *Inspection and Test Plan* shall be prepared by the party specified in the *Owner's Requirements* as having responsibility for the preparation of it and shall be followed when any inspection or testing of the *Work* is performed.
- 17.2 At all times during the progress of the *Work*, the *Owner* shall have the right to inspect or witness any part of the *Work*.
- 17.3 The *Contractor* shall inspect and be solely responsible for the inspection of all workmanship, materials and equipment furnished by itself or its *Subcontractors* in respect of the *Work*, to ensure conformity in each and every respect to the *Contract* and the *Law* and to ensure that good and proper construction practices are followed and that the *Work* is performed in a safe and environmentally sound manner.
- 17.4 If the *Law* requires testing of any part of the *Work*, the *Contractor* shall provide the *Owner* with sufficient advance notice of the arrangements for the test.
- 17.5 If the *Owner's Requirements* require any test to be performed or witnessed by the *Owner*, the *Contractor* shall provide the *Owner's Representative* with sufficient advance notice of its readiness for the test and the *Owner* shall then promptly perform or witness the test. If the *Owner* fails to witness the test when scheduled, any re-testing required by the *Owner* shall constitute a *Change*.
- 17.6 If any portion of the *Work* is closed or covered by the *Contractor* without the *Owner's* permission and before the *Owner* has been given the opportunity to perform or witness a required test, then, if required by the *Owner*, that portion of the *Work* shall be opened or uncovered for testing and re-closed or recovered, all at the *Contractor's* expense and without increasing the *Contract Time*.
- 17.7 Any *Work* which must be tested shall not be considered ready for inspection by the *Owner* until the *Contractor* has satisfied itself and notified the *Owner's Representative*, that, in the *Contractor's* opinion, that portion of the *Work* can successfully pass the test.

- 17.8 Any inspection, testing or witnessing of any of the *Work* or tests by the *Owner*, or omission or failure on the part of the *Owner* to inspect or test any of the *Work* shall not be construed to be an acceptance of any such *Work*, or as relieving the *Contractor* of its responsibilities pursuant to the *Contract* or the *Law*.
- 17.9 The *Contractor* shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the *Work*, whether purchased, rented, manufactured or fabricated by, or under the direction of the *Contractor*, or otherwise provided by the *Contractor* or *Subcontractors*, are safe, environmentally sound and maintained in good condition, capable of performing their required functions. In the case of tools, meters and other devices which require calibration, the *Contractor* shall ensure that such calibration is performed on the frequency recommended by the manufacturer and in accordance with normal industry practice.
- 17.10 The *Owner* reserves the right to inspect all tools and equipment brought on to the *Work Site* at any time during the progress of the *Work*. The *Owner's Representative* may require the *Contractor* to supply a qualified, independent engineering evaluation or certification that any item in question is suitable for its intended purpose, or to reject any item and require replacement with a proper and suitable item which is satisfactory to the *Owner's Representative*. If any tool or item of equipment is deemed by the *Owner* to be unsafe, environmentally unsound or incapable of doing the work for which it is intended, then the *Contractor* shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at the *Contractor's* expense.
- 17.11 The *Owner* may, at any time during the progress of the *Work*, conduct inspections or tests on any part thereof, to determine whether the *Work* is in accordance with the *Owner's Requirements*. Such tests shall be at the sole expense of the *Owner*, unless the result of a *Performance Test* determines that the *Work* is not in accordance with the *Owner's Requirements*, in which case the *Contractor* shall reimburse the *Owner* for such *Performance Test* and redo or repair the *Work* ready for a new *Performance Test* to be performed by the *Owner*.
- 17.12 Where the *Owner's Requirements* specify that the *Contractor* shall prepare, or the *Owner's Requirements* are silent on the point, then the *Contractor* shall develop and provide to the *Owner*, for the *Owner's* review and approval, an *Inspection and Test Plan* in time to allow the *Owner* to perform the inspections completed by this Article 17 - Inspection and Testing.

Article 18 - Performance Tests

- 18.1 If *Performance Tests* are specified in the *Owner's Requirements*, this Article shall apply.
- 18.2 *Performance Tests* may be stipulated in the *Owner's Requirements* to be performed before, after, or both before and after *Functional Completion* and shall be performed by that party specified in the *Owner's Requirements*.
- 18.3 Where the *Owner's Requirements* stipulate that one or more of the *Performance Tests* shall be performed after *Functional Completion*, the *Owner* shall pay the *Contractor* for

the *Work*, in accordance with this *Contract*, upon *Functional Completion*, and may, as stipulated in the *Owner's Requirements*, hold back security until the *Work* passes the *Performance Tests*.

- 18.4 Unless otherwise stipulated in the *Owner's Requirements*:
- (a) the *Owner* shall provide the necessary labour, materials, electricity, fuel, heat, chemicals, disposal of fluids and materials and water for the *Performance Tests*;
 - (b) the *Contractor* shall carry out the *Performance Tests* in accordance with the manuals provided by the *Contractor* under Section 5.4; and
 - (c) the *Contractor* shall provide such guidance as specified in the *Owner's Requirements* during the course of such *Performance Tests*.
- 18.5 When the *Contractor* considers that the *Work*, or any *System*, will pass the *Performance Tests*, the *Contractor* shall notify the *Owner* that the *Contractor* may perform the *Performance Tests* on, or to, the *Work* or a *System*.
- 18.6 If the *Work* or a *System*, or part thereof, passes one or more *Performance Tests*, the *Owner* shall promptly give notice acknowledging the success of the same to the *Contractor*.
- 18.7 If the *Work* or a *System* or part thereof, fails to meet one or more *Performance Tests*, the *Owner* shall promptly provide a notice of such failure to the *Contractor* and the *Owner* may:
- (a) reject such *Work* or *System*, or part thereof, which has failed to pass a *Performance Test*; or
 - (b) conditionally accept such *Work* or *System*, or part thereof, on conditions which shall be stated in the notice to the *Contractor*.
- 18.8 If the *Work* or a *System*, or part thereof, fails one or more of the *Performance Tests*, then the *Contractor* shall:
- (a) reimburse the *Owner* for all the *Owner's* direct costs in performing such failed *Performance Tests*;
 - (b) prepare a report to the *Owner*, for the *Owner's* approval, proposing the alterations the *Contractor* will make to the *Work* or *System*, or part thereof, to bring the *Work* or *System* to a condition which the *Contractor* considers will pass the *Performance Tests*;
 - (c) redo or repair the *Work* or *System*, or part thereof, and repair any damage to the *Work* or *System* caused by the same in failing to meet the *Performance Test*, to make such *Work* or *System*, or part thereof, ready for a repeat of the failed *Performance Tests*.

- 18.9 If the *Work* or a *System*, or part thereof, fails to pass one or more *Performance Tests* as a result of actions or omissions by the *Owner*, the *Owner* shall promptly issue a *Change Order* providing a *Change* in the *Contract Time* or the *Compensation*, or both, as the case may be, to the *Contractor* for such *Performance Tests* and the *Contractor* shall proceed with its obligations relating to the *Performance Tests* as set out in the *Owner's Requirements*.
- 18.10 If any revenue is generated from any of the *Performance Tests*, such revenue shall be to the account of the *Owner*.

Article 19 - Functional Completion

- 19.1 If the *Work* is divided into *Systems*, the *Contractor* shall be entitled to apply for a *Functional Completion Certificate* for each *System*.
- 19.2 The *Contractor* may apply by notice to the *Owner's Representative* for a *Functional Completion Certificate* not earlier than 14 days before the *Work* or a *System* will, in the *Contractor's* opinion, be complete and ready for taking over by the *Owner*. Such notice shall include the *Deficiencies* which are acknowledged by the *Contractor*.
- 19.3 After receipt of the *Contractor's* application for a *Functional Completion Certificate*, the *Owner's Representative* shall, within 28 days after the receipt of the same:
- (a) reject the application, giving reasons and specifying the *Work* required to be done by the *Contractor*, which reasons shall specify Category "A" *Deficiencies*, related to the *Work* or *System* for which the application is made, and which, if not remedied, will prevent the *Owner* from testing, commissioning or starting-up the *Facilities*, and the Category "B" *Deficiencies*, related to the *Work* or *System* for which the application is made, which will not prevent the *Owner* from testing, commissioning or starting-up the *Facilities*; or
 - (b) issue the *Functional Completion Certificate* to the *Contractor*, stating the date on which the *Work* or a *System* was completed in accordance with the *Contract*, attaching a list of Category "B" *Deficiencies*, related to the *Work* or *System* for which the application is made, and which if not remedied will not prevent the *Owner* from testing, commissioning or starting-up the *Facilities*, and the *Contractor* shall cease to be liable for, and shall relinquish care, custody and control of, such *Work* or *System* from the date of the *Functional Completion Certificate* and responsibility shall pass to the *Owner*.
- 19.4 If the *Owner* determines that the *Work*, or a *System*, does not meet *Functional Completion*, as set out in the *Owner's Requirements*, the *Owner* shall provide a notice to the *Contractor* as specified in Section 19.3(a) and the *Owner's Representative* may:
- (a) order further repetition of *Performance Tests* specified to be performed before *Functional Completion* in the *Owner's Requirements*, or other tests necessary to determine *Functional Completion*; or

- (b) issue a *Functional Completion Certificate*, in which case, if the *Owner* so requires, the *Compensation* shall then be reduced by such amount as may be agreed by the *Owner* and the *Contractor* (in full satisfaction of such failure only), and the *Contractor* shall then proceed in accordance with the *Contractor's* other obligations under the *Contract*.
- 19.5 If the *Owner's Representative* fails either to issue the *Functional Completion Certificate* or to reject the *Contractor's* application within the period of 28 days, the *Functional Completion Certificate* shall be deemed to have been issued on the date specified by the *Contractor* for *Functional Completion* in the notice in accordance with Section 19.2.
- 19.6 Where the *Contractor's* application for a *Functional Completion Certificate* is rejected by the *Owner* in accordance with 19.3(a), the *Contractor* shall not re-apply for a *Functional Completion Certificate* under Section 19.2 until the Category "A" *Deficiencies* are remedied.
- 19.7 The *Owner* shall not use any part of the *Work* unless the *Owner's Representative* has issued a *Functional Completion Certificate* for such part, or a *Functional Completion Certificate* has been deemed to have been issued in accordance with Section 19.5.
- 19.8 If the *Contractor* is prevented from carrying out a *Performance Test* by a cause for which the *Owner* or one or more *Other Contractors* are responsible, the *Contractor* shall notify the *Owner* within 48 hours of such delay and if the *Contractor* is further prevented during the next 48 hours from doing so, the *Owner* shall issue a *Change Order* to compensate the *Contractor* for a *Change in Compensation* or *Contract Time*, as may be applicable.
- 19.9 After a *Functional Completion Certificate* is issued, either for a *System* or the whole of the *Work*, the *Owner* may continue to identify *Deficiencies*. Where *Deficiencies* are identified after issuance of a *Functional Completion Certificate*, the procedure for dealing with and resolving such *Deficiencies* shall be as set forth in Appendix D – Warranty Items Procedure.

[NTD: Appendix D – Warranty Items Procedure is a flow chart. This Appendix must be modified on a Project-Specific basis and the flow chart is only included as one example of how to deal with *Deficiencies*.]

Article 20 - Final Completion

- 20.1 It is a condition precedent to the issuance of a *Final Completion Notice* that the *Contractor* satisfy each of the following requirements:
- (a) the *Work* has been fully completed in accordance with the terms and conditions of this *Contract*;
- (b) all *Deficiencies* with respect to the *Work* have been remedied to meet the requirements of the *Contract*;
- (c) all obligations of the *Contractor* to other parties in relation to the *Work*, for which the *Owner* could in any way be held responsible, have been fully satisfied; and

- (d) the *Contractor* has delivered to the *Owner* the following:
- (i) a statutory declaration in the form included in Appendix G – Forms and modified as required to include the following:
 - (a) the amount of final sums payable;
 - (b) the date the *Contractor* completed the *Work*, to evidence the expiration of the term for filing liens; and
 - (c) the full payment of all payrolls and other similar indebtedness, and all other sums and obligations whatsoever incurred by the *Contractor* in carrying out the *Work*, including, without limitation, payments to *Subcontractors* or for materials or equipment;
 - (ii) a Workers’ Compensation Board clearance certificate;
 - (iii) any *As-Built Drawings* and operations manuals for which the *Contractor* is responsible;
 - (iv) assignments of any warranties provided by manufacturers or suppliers of materials;
 - (v) written evidence of good standing from union representatives, if any; and
 - (vi) a Release and Certificate of Final Payment, in the form provided in Appendix G – Forms, releasing all of the *Contractor's* claims against the *Work* and the *Owner* arising under or by virtue of this *Contract*, other than such claims, if any, as may be expressly identified by their nature and amount by the *Contractor* in the Release and Certificate of Final Payment, or as attached as an attachment thereto.

20.2 When conditions precedent set out in Section 20.1 have been met by the *Contractor*, the *Owner* shall issue to the *Contractor* a *Final Completion Notice*.

Article 21 - Liquidated Damages

[NTD: This Article to be used and modified on a project-specific basis.]

21.1 *Liquidated Damages* shall be paid by the *Contractor* to the *Owner* in accordance with Appendix E – Liquidated Damages.

21.2 Subject to the *Contractor's* obligations pursuant to Section 32.1, *Liquidated Damages* shall be the *Owner's* sole remedy to claim from the *Contractor* for any damages due to delay or failure to meet *Performance Guarantees*.

21.3 In the event that the *Contractor* does not complete the *Work* or reach *Functional Completion*, then the limit of the damages for delay or failure to meet *Performance Guarantees* that the *Owner* shall be entitled to is the aggregate of the *Liquidated Damages*.

Article 22 - Incentive Fee

[NTD: This Article to be used and modified on a project-specific basis.]

22.1 The *Incentive Fee* shall be paid to the *Contractor* by the *Owner* in accordance with Appendix F – Incentive Fee.

Article 23 - Warranty

23.1 If a defect in the *Facilities* is discovered during the *Warranty Period* and if the *Owner* has notified the *Contractor* in writing of such *Deficiency* no later than 30 days after the expiry of the *Warranty Period*, the *Contractor* shall, at its own risk and expense:

(a) remedy without delay, and in a manner satisfactory to the *Owner*, such defect;

[NTD: The parties are to negotiate the applicability of the following warranties on a project-specific basis:

- **repair or replace any portion of the *Facilities* damaged as a result of such defect or damaged by the remedy of such defect;**
- **repair or replace all equipment, materials, supplies, or work performed by *Other Contractors*, damaged as a result of such defect, or damaged by the remedy of such defect; and**
- **repair or replace any property, including but not limited to land belonging to the *Owner*, or others, which is damaged as a result of the defect or damaged by the remedy of such defect.]**

23.2 Should the *Contractor* fail to remedy a defect, or commence a remedy on a defect, in accordance with Section 23.1, within 7 days of the *Owner* providing a notice to the *Contractor* to remedy the same, the *Owner* may proceed with any activities necessary to remedy the defect and the *Contractor* shall be liable to and shall indemnify the *Owner* for any and all reasonable costs and expenses incurred by the *Owner* in doing so and the *Owner* may retain and deduct such amount from payments or other monies due, or which may become due, to the *Contractor*, howsoever arising.

23.3 The *Contractor* further warrants any and all corrective actions it performs in respect of defects appearing during the *Warranty Period* for a period of * months from completion of the remedial work.

23.4 The *Contractor* shall immediately advise the *Owner's Representative* of any defects in workmanship, defects, errors, omissions or mistakes in the *Work* that it discovers or becomes aware of during the *Contract Time* or the *Warranty Period*.

23.5 The *Contractor* shall perform its warranty obligations set forth in this Article 23 - Warranty in a manner that keeps disruptions to the *Owner's* continued operations at a minimum.

23.6 Neither acceptance of the *Work* by the *Owner*, nor payment for performance of the *Work*, shall relieve the *Contractor* from any responsibility for defects in the *Work*.

Article 24 - Compliance with Law

24.1 The *Contractor* shall act in accordance with all *Policies* and the *Law* and with a view to the timely and cost effective completion of the *Work* in accordance with the *Milestones*.

24.2 Where there is a change in the *Law* after the effective date of this *Contract*, the *Contractor* shall be responsible for ensuring that the *Work* complies with the *Law*, but any time or cost associated with such change shall be to the account of the *Owner*. If the *Contractor* considers such change to be a *Change*, the *Contractor* may make a claim for such *Change* under Section 13.9.

24.3 The *Contractor* shall comply with and shall ensure that its employees and agents comply with and shall contractually require its *Subcontractors* and their respective employees and agents to comply with all applicable *Law* in connection with the *Work*.

24.4 The *Contractor* shall obtain from governmental authorities or other third parties, and pay for, those licenses, permits and approvals required by the *Law* and the *Contract* to perform the *Work*, except those licenses, permits and approvals required with respect to the land-use aspects of the *Work* to be performed on the *Work Site*, and except for any licenses, permits and approvals required by the *Contract* to be obtained by the *Owner* as stipulated in Appendix A – Owner’s Requirements.

24.5 Subject to Section 24.2, if the *Contractor* discovers any variance between the *Law* and any materials purchased or supplied by the *Contractor* or *Subcontractors*, the *Contractor* shall promptly notify the *Owner* before proceeding with the part of the *Work* affected, and shall make the necessary revisions to the materials to comply with the *Law*, at the *Contractor’s* expense.

Article 25 - Safety and Loss Management

25.1 The *Owner* and the *Contractor* are committed to safety and the application of loss management principles in the conduct of their business. The parties recognize that excellence in safety and loss management can only be achieved through the active participation of everyone, including *Subcontractors* and their respective employees, consultants and agents.

25.2 The *Contractor* shall have the highest regard for safety, emergency procedures and loss management at all times during the performance of the *Work*. Accordingly, the *Contractor* shall at all times be responsible for safety and loss management in the performance of the *Work*, including, but not limited to, protecting the employees of the *Owner*, the *Contractor*, *Other Contractors*, *Subcontractors*, visitors to the *Work Site* and the general public from injury or death and protecting the *Work Site*, the *Owner’s* property and the property of third parties from loss or damage. Without limiting the generality of the foregoing, the *Contractor* shall comply with all safety requirements specified in the *Contract*.

[NTD: This clause is drafted for a project where the Contractor has exclusive control of the Work Site. Modify as necessary on a project-specific basis.]

- 25.3 The *Contractor* shall comply with the *Safety Plan* and any *Policies* relating to safety, emergency and loss management.
- 25.4 All employees of the *Contractor* and *Subcontractors* and all *Work Site* visitors must successfully complete any of the *Owner's* safety orientation courses and other similar courses stipulated in the *Owner's Requirements* before being allowed access to the *Work Site*, and it shall be the *Contractor's* responsibility to ensure that they have done so.
- 25.5 Subject to Section 25.6, * **[NTD: Insert Owner, Contractor or the name of the Other Contractor, as applicable.]** shall be the “prime contractor”, as that term is defined in the Occupational Health and Safety Act (Alberta), for the *Work* as stipulated in the *Owner's Requirements*.
- 25.6 Where the *Contractor* is stipulated as the “prime contractor” for the purposes of the Occupational Health and Safety Act (Alberta) in the *Owner's Requirements*, the *Owner* may take over the role of “prime contractor” at any time as may be stipulated in the *Owner's Requirements*.
- 25.7 For all *Work* performed on the *Work Site*, the *Contractor* shall have an alcohol and drug policy that is at least equivalent to the requirements set out in the Construction Owners Association of Alberta Alcohol and Drug Guidelines and Work Rule or shall comply with the Construction Owners Association of Alberta Alcohol and Drug Guidelines and Work Rule, current as of the effective date of this *Contract*.
- 25.8 The *Contractor* shall ensure that its, and its *Subcontractors'* employees and agents, attending at the *Work Site* complete the Construction Safety Training System (CSTS) instituted by the Alberta Construction Safety Association, together with any renewable training necessary to maintain CSTS certification, and are in possession of accredited documentation proving the successful completion of CSTS topics 1 through 12 inclusive.

Article 26 - Work Area and Clean Up

- 26.1 The *Contractor* shall be responsible for keeping all its working and storage areas clean, orderly and secure.
- 26.2 The *Owner* is not responsible for theft, loss or damage to the *Contractor's* tools, equipment or materials howsoever caused, except where caused by the negligent act or omission of the *Owner* or those for whom in *Law* it is responsible.
- 26.3 The *Contractor* shall not, and shall ensure that its *Subcontractors* do not, use, transport, or store *Hazardous Material* at the *Work Site* except with the prior approval of the *Owner's Representative*. All *Hazardous Material* used, transported or stored shall be dealt with in accordance with, and the *Contractor* shall comply with, the *Law*, the *Contract* and the *Policies*.

26.4 During the performance of the *Work*, the *Contractor* shall comply fully with the *Contract* and the *Owner's* safety and emergency guidelines and publications regarding clean up. The *Contractor* shall clean up, remove and dispose of all surplus materials, containers, trash and debris resulting from the *Work*. Upon completion of the *Work*, or earlier termination of the *Contract*, the *Contractor* shall promptly clean up and remove all equipment, tools and surplus materials from the *Work Site* as specified by the *Owner* and shall leave the *Work Site* clean and ready for the *Owner's* use and occupancy.

Article 27 - Title and Responsibility

27.1 Except for any proprietary processes of the *Contractor* listed in Appendix A – *Owner's* Requirements, all of the *Work* shall belong to the *Owner*, and accordingly the *Contractor* shall have no proprietary right or interest in the *Work*. The *Contractor* shall not use, copy or disclose any of the *Owner's* Requirements or the *Work* for any purpose other than performing the *Work*. Subject to the foregoing, the *Contractor* may retain for its own records a copy of the plans and specifications.

27.2 Notwithstanding Section 27.1, where a technology, process or work method belongs to, or is developed by the *Contractor* or *Subcontractor* and is not the result of *Confidential Information* provided by the *Owner*, the proprietary rights to that technology, process or work method shall remain with the *Contractor* or *Subcontractor*. Where proprietary rights remain with a party other than the *Owner*, then the *Owner* and its assignees shall, and are hereby granted, the right and irrevocable license without charge to have, retain and use information in respect thereof, for the purpose of the *Work* and the operation, repair, maintenance, re-building or renovation of the *Work* or any portion thereof.

27.3 Notwithstanding Section 27.1, or any other provision of the *Contract*, the *Contractor* shall be responsible for possession of the *Engineering Services* until received by the *Owner*. If the *Engineering Services*, or any part thereof is lost, damaged or destroyed prior to receipt by the *Owner*, then the *Engineering Services*, or portion thereof, as applicable, shall be promptly redone and replaced by the *Contractor*, at its expense, unless the loss, damage, or destruction was caused by the *Owner* or persons for whom in *Law* it is responsible.

27.4 Subject to the *Owner's* rights under Section 16.5, the *Owner* agrees that it shall not:

- (a) sell to third parties the *Engineering Services*, except as part of the sale of the *Project*;
- (b) use the *Engineering Services* to build other facilities, plants or structures of a similar nature or purpose; or

[NTD: The COAA Contracts Committee could not reach consensus on this sub-clause. Generally speaking, the *Owners* could not agree to this sub-clause as drafted. On the other hand, the *Contractors* were concerned that there may be liability or defence costs associated with the use of the *Contractor's* documents on projects not part of this *Contract*. The COAA Contracts Committee discussed drafting a provision stating that the *Owner* could use the *Engineering Services* on

other projects and the Contractor would not be liable, but could not reach consensus on an indemnification for the Contractor arising from third party claims.]

- (c) distribute the *Engineering Services*, to third parties except for the purpose of operating, maintaining, repairing or replacing, re-building or renovating the *Owner's* property encompassing or relating to the *Work*, or, for the purpose of performing other work directly related to the *Work*.
- 27.5 The title to all *Work* completed or in the course of construction at the *Work Site* and all *Goods*, except tools and equipment owned or rented by the *Contractor* or *Subcontractors* and not intended to be incorporated into the *Work*, shall become the property of the *Owner* upon the earlier of payment by the *Owner* on account thereof or delivery to the *Work Site*.
- 27.6 Notwithstanding the provisions of Section 27.5, until the *Owner* has issued a *Functional Completion Certificate* or a *Final Completion Notice*, whichever is earlier, the *Contractor* shall retain all risk with respect to and be responsible for:
- (a) all items supplied by the *Contractor* or its *Subcontractors* which are to be incorporated into the *Work* or used in performance of the *Work*;
 - (b) all items supplied by the *Owner* to the *Contractor* for incorporation into the *Work* or for use in performing the *Work*;
 - (c) all temporary structures or facilities used in the performance of the *Work*; and
 - (d) any *Work* completed or in progress.
- 27.7 No materials, supplies or equipment incorporated into the *Work* shall be subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the seller, or any other party.

Article 28 - Patents and Licenses

- 28.1 The *Contractor* shall indemnify and save the *Owner* harmless from all claims costs and demands, including legal fees on a solicitor-and-own-client (indemnity) basis, arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied by the *Contractor*, or its *Subcontractors*, in the performance of the *Work*.
- 28.2 The *Owner* shall indemnify and save the *Contractor* harmless from all claims and demands, including legal fees on a solicitor-and-own-client (indemnity) basis arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied or specified for use by the *Owner* to the *Contractor* for use in connection with the *Work*.
- 28.3 The *Contractor* shall promptly give notice to the *Owner* if the *Contractor* has or acquires knowledge of any patent, trademark, copyright or industrial design or similar right under which an action could reasonably be expected to be maintained because of the use or

purchase by the *Owner* of equipment, machinery, materials, compositions, processes, methods or designs incorporated or to be incorporated by the *Contractor* as part of the *Work*. Following notification to the *Owner*, the *Contractor* shall not incorporate any such equipment, machinery, materials, compositions, processes, methods or designs into any plans, drawings, specification or other documents, or use the same in connection with the *Work* without the *Owner's* prior approval.

- 28.4 The *Contractor* grants the *Owner* a non-exclusive, royalty-free, perpetual, irrevocable license for the purpose of operating and maintaining the *Facilities*:
- (a) to use any and all patents, industrial designs, copyrights, designs, process and technology related to the *Work*, that the *Contractor* owns or controls; and
 - (b) to make, have made and use the equipment, machinery, materials, compositions, designs, methods and processes supplied by the *Contractor* under the *Contract*.
- 28.5 The rights granted to the *Owner* by the *Contractor* under Section 28.4 shall be assignable by the *Owner* to any party to whom the *Owner* may transfer all or part of title to the *Work* or the *Project*.
- 28.6 The *Owner* shall be entitled, at its own expense, to participate in or conduct the defence of any claim with respect to which it is entitled to indemnity under Section 28.1 or in respect of which it is required to indemnify the *Contractor* under Section 28.2 and to settle any claim for which it has accepted responsibility but the *Owner* shall not be liable to indemnify any other party for payment of any settlement unless it has consented to the settlement.

Article 29 - Confidential Information and Publicity

- 29.1 Each party shall keep all *Confidential Information* in confidence and shall not disclose it to others without the prior approval of the other party. The *Contractor* shall not use the *Confidential Information*, except in performance of the *Work*.
- 29.2 Notwithstanding Section 29.1, the *Contractor* may disclose *Confidential Information* to those of its employees, *Subcontractors* and their respective employees to whom disclosure is required in order for the *Contractor* to perform the *Work*, provided the *Contractor* shall ensure that its employees and agents comply with, and shall contractually require its *Subcontractors* and their respective employees and agents to comply with Section 29.1.
- 29.3 The *Contractor* shall not disclose any of the *Owner's Requirements* or the *Work* to others without the prior approval of the *Owner's Representative*, except as necessary to perform the *Work*.
- 29.4 Notwithstanding Section 29.1 or Section 29.3, *Confidential Information* may be disclosed by a party if that party is required to disclose the *Confidential Information* as a result of an arbitrator appointed under Appendix H – Dispute Resolution Procedure or an order of a court of competent jurisdiction. If disclosure is required by an arbitrator or an order of

a court, the disclosing party shall provide the other party with immediate notice of such arbitration or court order and shall only disclose the minimum amount of *Confidential Information* to comply with the arbitration or court order.

- 29.5 The *Contractor* shall not use the *Owner's* name, or the names of any of its affiliates (as defined in the Business Corporations Act (Alberta) and the registered or unregistered trademarks of the *Owner* or its affiliates in any slogans or otherwise in any advertising or promotional materials or publicity releases, and shall not take, permit to be taken or use any photographs of the *Work Site*, without the prior approval of the *Owner's Representative*.

Article 30 - Proprietary Information

- 30.1 Subject to Section 27.1, where a technology, process or work method has been developed by the *Contractor* or its *Subcontractors* arising out of the *Work*, that is not the result of the *Owner's Confidential Information* or the *Owner's Requirements*, the proprietary rights to that technology, process or work method shall remain with the *Contractor* or its *Subcontractors*, as the case may be. Where proprietary rights remain with a party other than the *Owner*, the *Owner* and its assigns, shall have the right, and are hereby granted the right, to have and to retain a copy for their own use, and to use, any *Engineering Services, As-Built Drawings* or other information, for the purpose of the *Work* or the operation, repair, maintenance, replacement, re-building or renovations of the *Facilities*.
- 30.2 The *Contractor* shall keep and maintain adequate and current records of all *Proprietary Information*.
- 30.3 Subject to Section 30.1, the *Contractor* shall keep all *Proprietary Information* in confidence, shall not use it, or any part of it except in the performance of the *Work* and shall not disclose it to others, without the *Owner's* prior consent.

Article 31 - Force Majeure

- 31.1 Either the *Owner* or the *Contractor* may claim that an *Event of Force Majeure* has taken place, by giving the other party verbal notice within 24 hours of the *Event of Force Majeure*, and, in addition, notice, together with a proposed plan of corrective action to resolve or minimize the effect of the *Event of Force Majeure*, within 48 hours of the *Event of Force Majeure*.
- 31.2 If the *Owner* has given a notice of an *Event of Force Majeure*, or the *Owner* agrees with a notice of an *Event of Force Majeure* issued by the *Contractor* that the *Work* or a portion thereof is affected by an *Event of Force Majeure*, then the *Owner* shall:
- (a) cause the *Contractor* to complete the *Work*, with such time adjustments to the *Contract Time* as are required by the *Event of Force Majeure*; or
 - (b) suspend the *Work* or any portion thereof in accordance with Article 34 - Suspension; or

- (c) terminate the *Contract* or any portion thereof in accordance with Section 35.1 and Section 36.5(e).
- 31.3 If the *Owner* does not agree that the *Work* or any portion of the *Work* is affected as a result of an *Event of Force Majeure* for which the *Contractor* has given notice under Section 31.2, then the *Contractor* shall complete the *Work* in accordance with the *Execution Plan* and may request an adjustment to the *Contract Time* and the *Compensation* in the manner provided in Section 13.9.
- 31.4 If an *Event of Force Majeure* exists and continues for a period in excess of * continuous *Work Days* and results in substantially all of the *Work* being stopped or suspended during that period, the *Contractor* may terminate the *Contract* and the *Owner* shall pay the *Contractor* for the *Work* performed to the date of termination.
- 31.5 Any delay or failure on the part of either the *Owner* or the *Contractor* which is a result of an *Event of Force Majeure*, shall not constitute default hereunder or give rise to any claim for damages or result in any increase to the *Compensation*.

Article 32 - Delays Caused by the Contractor

- 32.1 If the *Contractor* is responsible for a delay in the progress of the *Work*, or fails to complete any portion of the *Work* within the time limits set forth in the *Execution Plan*, then the *Contractor* shall, at no additional cost to the *Owner*, provide a recovery plan and perform whatever acts are required or requested by the *Owner's Representative* to make up the lost time and to avoid any further delay in the performance of the *Work*, including, without limitation, work overtime, and acquire and use any necessary additional labour and equipment.

Article 33 - Delays not Caused by the Contractor

- 33.1 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner* or *Other Contractors*, contrary to the provisions of the *Contract*, then the *Contract Time* shall be extended for such reasonable time as may be necessary to allow the *Contractor* to make up the delay.
- 33.2 If the *Contractor* is delayed in the performance of the *Work* by an order issued by a court or other public authority having jurisdiction, providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended as agreed by the parties or as resolved under Appendix H – Dispute Resolution Procedure.
- 33.3 If the *Contractor* is forced to shut down all or a portion of its operation by reason of:
- (a) any act or omission of the *Owner* or of any *Other Contractor*;
 - (b) failure of the *Owner* to provide the *Work Site*; or
 - (c) an error or omission in the *Owner's Requirements*; then

the *Contractor* shall give to the *Owner* notice of such shut-down, within 6 hours of such shut-down, indicating the number and classification of persons and number and description of equipment affected thereby.

- 33.4 In the event of a delay pursuant to Section 33.3, the *Contractor* shall be reimbursed by the *Owner* in accordance with the rates set out in Appendix B – Compensation or its reasonable costs incurred.
- 33.5 No claim for delay and no extension of time on account of delay shall be made by the *Contractor* unless notice of claim with a *Change Quotation* is given to the *Owner* not later than * *Work Days* after the commencement of delay, provided however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.

Article 34 - Suspension

- 34.1 In addition to any other right that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time or times, by notice to the *Contractor* specifying the effective date of the suspension, require the *Contractor* to suspend the *Work*, or any portion thereof.
- 34.2 Upon providing notice under Section 34.1, the *Owner* shall arrange to immediately discuss with the *Contractor* the specific requirements of the suspension and whether or not the *Owner* anticipates that demobilization, remobilization or idle equipment or personnel will occur as a result of the suspension.
- 34.3 Upon receiving notice, the *Contractor* shall discontinue the *Suspended Work*, place no further purchase orders or subcontracts with respect to the *Suspended Work*, and promptly make reasonable efforts to obtain suspension terms satisfactory to the *Owner* with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the *Suspended Work*. The *Contractor* shall continue to perform all other portions of the *Work* which have not been suspended by the *Owner*.
- 34.4 Where requested by the *Owner*, the *Contractor* shall advise the *Owner* of:
- (a) the number of the *Contractor's* personnel made idle by the suspension;
 - (b) the labour costs resulting from the *Contractor's* personnel made idle by the suspension;
 - (c) transportation costs for the *Contractor's* personnel released during the suspension;
 - (d) the equipment made idle and associated equipment costs resulting from the suspension; and
 - (e) any other costing, labour, material or equipment information relating to the suspension that the *Owner* may require.
- 34.5 The *Owner* may at any time authorize resumption of the *Suspended Work* or any part thereof, by giving the *Contractor* reasonable notice specifying the part of the *Suspended*

Work to be resumed and the effective date of such resumption. The *Contractor* shall resume the *Suspended Work* on the date and to the extent specified in the notice provided that if the date for resumption is more than * days after the date of suspension, the *Contractor* may, by *Change Quotation* given within * days of receipt of the notice of resumption, request a *Change Order* deleting the *Suspended Work* from the *Contract*.

- 34.6 The *Contractor* shall use its employees, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the *Suspended Work*. During the period of *Suspended Work*, the *Contractor* shall secure and protect the *Suspended Work* and all materials and equipment to be used or incorporated therein.
- 34.7 In relation to *Suspended Work*, the *Owner* shall reimburse the *Contractor* for those costs, exclusive of profit, reasonably incurred by the *Contractor* as a direct result of the suspension of the *Work* in accordance with Appendix B – Compensation. The *Owner* shall not be liable for any damages or loss of profits on account of the *Suspended Work* or any part thereof, or the deletion of *Suspended Work* from the *Contract*.

Article 35 - Termination for Convenience

- 35.1 In addition to any other rights that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time, terminate the *Contract*, the *Work* or any portion thereof by giving notice to the *Contractor* specifying the *Work* or portion thereof to be terminated and the effective date of the termination.
- 35.2 Upon receipt of a notice under Section 35.1, the *Contractor* shall discontinue the *Work* in accordance with the notice, and shall take whatever steps are necessary or desirable to terminate the *Work* in a safe, cost effective and timely manner with due consideration to environmental impacts. The *Contractor* shall continue to perform all other portions of the *Work* not terminated, if any, in accordance with the *Contract*. The *Owner* shall reimburse the *Contractor* for those costs reasonably incurred by the *Contractor* as a direct result of the termination of the *Contract*, the *Work*, or any portion thereof.

[NTD: The COAA Contracts Committee recommends that the parties consider that no lost profit be paid on the termination portion of the *Work*.]

Article 36 - Termination for Cause

- 36.1 Without limiting the generality of Section 35.1, the *Owner* may immediately terminate the *Contract* by notice to the *Contractor* in any of the following circumstances:
- (a) if the *Contractor* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *Contractor*;
 - (b) if an order is made or resolution is passed for the winding up or liquidation of the *Contractor*;

- (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *Contractor* or any of the *Contractor's* property;
 - (d) if the *Contractor* ceases to carry on business in the ordinary course; and
 - (e) if a creditor takes possession of any of the *Contractor's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *Contractor*.
- 36.2 Upon receipt of a notice pursuant to Section 36.1, the *Contractor* shall discontinue the *Work* in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs associated with the termination of the *Work*.
- 36.3 In addition to any rights the *Owner* may have at *Law*, if the *Contractor* is in default in carrying out any of the terms, conditions, covenants or obligations of the *Contract*, or has made a false representation, declaration or warranty, the *Owner* may give the *Contractor* notice of default.
- 36.4 Where the *Owner* gives the *Contractor* a notice of default pursuant to Section 36.3, the *Contractor* shall have * *Work Days* immediately following receipt of the notice, or such longer time as the *Owner* determines to be reasonable and has specified in the notice of default or has subsequently agreed upon in writing, to remedy such default, or commence to prosecute a remedy. If the *Contractor* fails to remedy the default, the *Owner* may by * *Work Days* notice to the *Contractor* terminate the whole or any part of the *Contract*.
- 36.5 In the event the *Contract* or any portion of the *Work* is terminated pursuant to Section 36.1 or Section 36.4:
- (a) the *Contractor* shall discontinue the *Work* in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the *Owner* associated with the termination of the *Work* and the *Owner* shall not be liable for those costs incurred by the *Contractor* as a result of the termination of the *Work*;
 - (b) the *Owner* shall have the right to take possession of the *Goods* and the *Contractor's* equipment, materials and plant and shall have the right to use the same to complete the *Work*;
 - (c) the *Contractor* shall execute and deliver to the *Owner* all documents required by the *Owner*, and shall take all steps required by the *Owner*, to assign to and fully vest in the *Owner* the rights and benefits of the *Contractor* under existing agreements with the *Contractor's* *Subcontractors*, which are related to the *Work*.
 - (d) the *Owner* may complete or have others complete the *Work* at the *Contractor's* expense;
 - (e) the *Owner* shall pay the *Contractor* for all *Work* satisfactorily performed to the date of termination, in accordance with Article 12 - Payment, less the sum of any monies already paid to the *Contractor* and any additional cost, loss or expense,

including legal fees on a solicitor-and-own-client (indemnity) basis, that the *Owner* incurs, suffers or sustains, including any amount the *Owner* must pay to obtain satisfactory completion of the *Work* by others;

- (f) the *Owner* shall not be liable for any penalties, damages or loss of profits as a result of the termination of the *Work* or the *Contract* by the *Owner*.

36.6 The *Contractor* may immediately terminate the *Contract* by notice to the *Owner* in any of the following circumstances:

- (a) if the *Owner* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *Owner*;
- (b) if an order is made or resolution is passed for the winding up or liquidation of the *Owner*;
- (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *Owner* or any of the *Owner's* property;
- (d) if the *Owner* ceases to carry on business in the ordinary course; and
- (e) if a creditor takes possession of any of the *Owner's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *Owner*.

36.7 Subject to a legitimate dispute between the parties, or a dispute being pursued in accordance with Appendix H – Dispute Resolution Procedure, should the *Owner* be in material default of its obligations under this *Contract*, the *Contractor* may provide a notice in * *Work Days* to the *Owner* that should the material default not be remedied, or the *Owner* commence to prosecute a remedy in relation to the material default, that the *Contractor* may suspend or terminate the *Contractor's* obligations under the *Contract*.

36.8 The rights and remedies provided in this Article 36 - Termination for Cause are in addition to the rights and remedies provided by the *Law*, or under any other provision of the *Contract*.

Article 37 - Taxes

37.1 The *Contractor* shall be responsible for the payment of:

- (a) all taxes imposed by reason of the performance or completion of the *Work* including but not limited to license, permit and registration fees and the *Contractor's* income, profit, franchise, business, and personal property taxes;
- (b) all employment taxes and contributions imposed by the *Law* or required to be paid on behalf of the employees of the *Contractor* or its *Subcontractors*, including but not limited to taxes and contributions for income tax, workers' compensation,

unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance;

- (c) all taxes, other than property taxes, on the *Work Site* and arising out of the *Work*, to the date of *Functional Completion*; and
- (d) all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment to be supplied by the *Contractor* and used in performance of or incorporated into the *Work*, except for goods and services tax payable by the *Owner* with respect to payments due to the *Contractor*.

37.2 Any increase in taxes and charges described in Section 37.1(a) and Section 37.1(b) shall be the sole responsibility of the *Contractor*. In the event of an increase in taxes or charges described in Section 37.1(c), the *Contractor* shall be entitled to a *Change Order* altering the *Compensation* to account for the difference between the amount of tax that would have been payable by the *Contractor* as of the effective date of this *Contract* and the actual amount of tax that becomes payable as a result of the tax increase.

37.3 The *Contractor* shall indemnify and hold the *Owner* harmless from any liability resulting from the failure of the *Contractor* or its *Subcontractors* to make timely payments of the items referred to in this Section or such similar items for which the *Contractor* is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the *Contractor*.

Article 38 - Workers' Compensation

38.1 The *Contractor* shall ensure all its employees and representatives engaged in the performance of the *Work* are registered for workers' compensation coverage in accordance with the statutory requirements of the Province of Alberta.

38.2 The *Contractor* shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers' Compensation Act (Alberta) and upon failure to do so, the *Owner*, in addition to any other rights it may have at *Law* or under the *Contract*, may retain the amount of such assessment or contribution from the *Compensation*.

38.3 The *Contractor* shall indemnify and save harmless the *Owner* from all workers' compensation assessments due by the *Contractor* in relation to the *Work*.

38.4 Prior to the performance of any *Work*, before the release of the holdback, and upon request by the *Owner* at any other time, the *Contractor* shall provide, or cause to be provided, evidence:

- (a) that it has an account with the Workers' Compensation Board (WCB) by providing a WCB "Certificate Letter";
- (b) in the form of a WCB "Letter of Clearance", that its account is in good standing and that it has paid any assessments made by the WCB in relation to the *Work*; and

(c) of any of the above in respect of any *Subcontractor*.

Article 39 - Liens

39.1 The *Contractor* shall at all times reimburse, protect, indemnify and save free and harmless the *Owner*, the *Work Site* and the other lands and property of the *Owner* from and against all liens and claims made or liability incurred by the *Owner* on account of the *Work* performed or materials supplied by employees of the *Contractor* and *Subcontractors*, or on account of an exaggerated lien filed by the *Contractor*, including, without limitation, legal fees on a solicitor-and-own-client (indemnity) basis. The *Contractor* shall cause any such lien or claim which may be filed or made, to be released and discharged forthwith at the expense of the *Contractor*. If the *Contractor* fails to release or obtain the release and discharge of any such lien or claim, then the *Owner* may, but shall not be obliged to, discharge, release or otherwise deal with the lien or claim, and the *Contractor* shall pay any and all costs and expenses incurred by the *Owner* in so releasing, discharging or otherwise dealing with the claim or lien, including but not limited to, legal fees on a solicitor-and-own-client (indemnity) basis. Any amounts so paid by the *Owner* may be deducted from any amounts due to the *Contractor* whether under the *Contract* or otherwise.

Article 40 - Survival

40.1 If the *Contract* or any part of the *Work* is terminated pursuant to Article 35 - Termination for Convenience or Article 36 - Termination for Cause, then Article 23 - Warranty shall survive such termination, and the *Warranty Period*, with respect to the *Work* or *System* which has received a *Functional Completion Certificate*, shall remain in effect notwithstanding the termination of this *Contract*.

40.2 Any terms, covenants, provisions or conditions of the *Contract* which expressly or by their nature survive the termination of the *Contract* shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

Article 41 - Liability and Indemnity for Third Party Claims

41.1 The *Contractor* shall be liable to and shall indemnify, and hold harmless the *Owner*, its officers, directors, employees, consultants and agents for all losses, damages and expenses, including legal fees on a solicitor-and-own-client (indemnity) basis, which they or any of them may incur as a result of claims, demands, actions or proceedings made or taken against them by persons not party to the *Contract* for:

- (a) any acts or omissions in connection with the performance, purported performance or non-performance of the *Contract* or of the *Work* by the *Contractor* or its *Subcontractors* or their respective employees or agents;
- (b) any acts or omissions of the *Owner*, *Other Contractors* or their respective employees or agents, or in connection with such acts or omissions, while acting

under the direction and control of the *Contractor*, its *Subcontractors* or their respective employees or agents; or

- (c) any liability, claims, damages, costs and expenses arising from the failure of the *Contractor* or its *Subcontractors*, or their respective employees or agents to comply with the *Law*.
- 41.2 The *Contractor* shall, at its sole expense, if requested by the *Owner*, defend those persons entitled to be indemnified pursuant to Section 41.1. The *Owner* shall have the right, if it so elects, to participate in any such defence and the *Contractor* shall have the right to settle claims to a maximum of \$* without first consulting with the *Owner* and thereafter only with the consent of the *Owner*.
- 41.3 In the event that the *Owner* considers that the failure by the *Contractor* to settle any claim, demand, action or proceeding to which it or others are entitled to be indemnified by the *Contractor* would be detrimental to its interests, it may so notify the *Contractor*. If, within 10 *Work Days* of the notice, the *Contractor* fails to conclude a settlement with the claimant, or fails to advise the *Owner* that a settlement would prejudice the *Contractor's* insurance coverage for such claim, demand, action or proceeding, then the *Owner* may settle the claim, demand, action or proceeding in such amount as it considers reasonable and the *Contractor* shall immediately pay to the *Owner* all or such portion of the amount so paid in settlement as the *Owner* designates as the *Contractor's* liability. However such settlement by the *Owner* shall not require the *Contractor* to repay the *Owner* where the *Contractor* notified the *Owner* that such settlement would prejudice the *Contractor's* insurance coverage for such claim, demand, action or proceeding.
- 41.4 The *Owner* shall indemnify and hold harmless the *Contractor*, its *Subcontractors*, and their respective officers and directors from and against all claims, demands, losses, damages, expenses, actions and proceedings made or taken by persons not party to the *Contract* and which arise on account of and are attributable to the *Owner's* obligations hereunder, including, without limitation any action for which the *Owner* must indemnify the *Contractor* pursuant to Section 28.2.
- 41.5 In the event that the *Owner* accepts the responsibility to indemnify the *Contractor*, its *Subcontractors*, officers and directors pursuant to Section 41.3, then it shall be entitled to retain and instruct counsel to act for and on behalf of those persons and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been provided. The *Contractor* shall and shall cause any indemnified party to co-operate in all respects in contesting any third party claim for which the *Owner* has accepted responsibility.

Article 42 - Liability and Indemnity

- 42.1 The *Contractor* shall be liable to and shall indemnify the *Owner* for all losses, damages and expenses on account of:

- (a) all physical damage caused by the *Contractor* or its *Subcontractors* to the *Work*, the *Work Site*, the property of the *Owner* or *Other Contractors* or property under the care, custody or control of the *Owner* or *Other Contractors*; and
- (b) the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the *Owner's Site*, irrigation canals or facilities, ditches or equipment relating thereto caused by or resulting from the actions howsoever of the *Contractor* or its *Subcontractors*.

42.2 Subject to Section 42.4, except for *Liquidated Damages* and except to the extent to which coverage is provided by a policy or policies of insurance, as applicable, the *Contractor*, its *Subcontractors*, and their respective officers and directors shall not be liable to the *Owner*, or anyone claiming through or under it, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

- (a) special, punitive, indirect, economic or consequential loss or damage;
- (b) loss of use, whether complete or partial, of the *Work* or existing facilities of the *Owner* or third parties;
- (c) loss of product;
- (d) loss of revenue, overhead and profit; or
- (e) loss of any contract that may be suffered by the *Owner*.

42.3 Notwithstanding any other provision of the *Contract*, the *Contractor's* total aggregate liability to the *Owner* shall be limited to \$*.

[NTD: Section 42.3 is to be used only where the parties choose not to include *Liquidated Damages* in the *Contract*. In addition, if Section 42.3 is to be incorporated, the COAA Contracts Committee suggests that the parties negotiate whether the following indemnities obligations of the *Contractor* should be carved-out of the cap: Section 28.1 (intellectual property infringement); Section 39.1 (liens); Section 41.1 (third party claims); Section 45.3 (independent contract indemnity); obligations relating to workers' compensation premiums if the *Owner* is held accountable; and any taxes payable by the *Contractor* for which the *Owner* is held accountable.]

42.4 In the event of a sale by the *Owner* of the *Work Site*, the *Owner* agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by and to afford to the *Contractor* the benefit of Sections 42.2 and 42.3.

Article 43 - Insurance Provided by Contractor

43.1 The *Contractor* shall, and shall ensure that its *Subcontractors* shall, without limiting any of the obligations or liabilities under the *Contract*, continuously carry during the performance of the *Work* and any time the *Contractor* or its *Subcontractors* are on the

Work Site, at their own expense and cost, the following insurance coverage with limits where applicable not less than those shown in the respective items as set out below:

- (a) workers' compensation coverage for all employees engaged in the *Work* in accordance with the statutory requirements of the Province of Alberta;
- (b) employer's liability coverage for all employees engaged on the *Work Site* and not covered by workers' compensation, in the amount of \$*;
- (c) automobile liability insurance covering all licensed motor vehicles owned or leased having a limit of not less than \$* inclusive per occurrence for bodily injury, death, and damage to property;
- (d) aircraft and watercraft liability insurance covering all owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work* having a limit of not less than \$* inclusive per occurrence for bodily injury, death, and damage to property and not less than \$* for aircraft passenger hazard;
- (e) property and contractor's equipment insurance covering property, equipment, tools and construction machinery owned, rented or leased by and to be used for the performance of the *Work*, excluding all machinery, materials and supplies at the *Work Site* or in transit thereto and intended to become a part of the finished *Work*, for the full replacement cost value of such property on an "all risks" basis; **[NTD: Where the *Owner* elects to insure the equipment used by the *Contractor* and leased on a common basis for the *Work Site* by the *Contractor* and *Other Contractors*, this paragraph should be amended to reflect the same.]**
- (f) professional errors & omissions insurance in an amount not less than \$* each claim and in the aggregate for the *Project* covering the period from start of *Engineering Services* until *Functional Completion* of the *Work* and for a further discovery period of * years from the issuance of the *Functional Completion Certificate* for the entire *Work*.

43.2 Where a claim is paid by the insurer in respect of losses for which coverage is provided under Section 43.1, the *Contractor* shall be responsible for the deductibles relating to insurance proceeds under the insurance required pursuant to Sections 43.1(b), 43.1(c), 43.1(d), 43.1(e) and 43.1(f).

43.3 The *Contractor* shall, and shall ensure that its *Subcontractors* shall:

- (a) provide the *Owner* with certificates of insurance for the policies described in Section 43.1 within * *Work Days* of written notice of award of the *Contract* or prior to the commencement of the *Work*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within * *Work Days* of their expiry date where such policies expire prior to *Functional Completion*;

- (b) place all policies with insurers which are licensed to provide insurance in the Province of Alberta with an A.M. Best rating no less than *, and in a form acceptable to the *Owner*;
- (c) ensure that such policies provide for at least 30 days prior written notice to the *Owner* of cancellation or change that is material to the *Contract*;
- (d) require that the dollar amount of the deductible in the policies for any one loss shall be subject to the approval of the *Owner*;
- (e) with the exception of the insurance as required by Section 43.1(c), ensure that all insurance provided by the *Contractor* and its *Subcontractors* pursuant to Section 43.1 is primary and not contributory with, or in excess of, any other insurance carried by the *Owner*;
- (f) require that a waiver of subrogation in favour of the *Owner*, its officers, directors, employees, consultants and agents in respect of the insurance coverage required under Section 43.1(e); and
- (g) ensure that the *Owner* is added as an additional insured with respect to liability arising out of the *Contractor* or its *Subcontractors* performance of the *Work* and the insurance coverage provided pursuant to Section 43.1(d) and Section 43.1(f).

43.4 If the *Contractor* or its *Subcontractors* fail to furnish the *Owner* with a certificate of insurance for each policy required to be obtained and continually carried, or if after furnishing the certificates of insurance, the policies lapse, are cancelled, or are materially changed, then in every case the *Owner* may, but shall not be obligated to, obtain and maintain such insurance in the name of the *Contractor* or any *Subcontractor*. The cost thereof (including *Subcontractor's* insurance costs) shall be payable by the *Contractor* to the *Owner* on demand, and the *Owner* may at its election deduct the cost from any monies which are due or may become due to the *Contractor*.

43.5 Neither the providing of insurance by the *Contractor* in accordance with the requirements of this Article 43 - Insurance Provided by Contractor, nor the insolvency, bankruptcy, or failure of any insurance company to pay any claim shall be held to relieve the *Contractor* from any other provisions of the *Contract* with respect to liability of the *Contractor*, or otherwise.

Article 44 - Insurance Provided by Owner

[NTD: Every project has different risks and risk management strategies; these insurance provisions should be used as a guideline only.]

44.1 The *Owner* shall obtain and, during the progress of the *Work*, maintain in force the policies of insurance described in this Article 44 - Insurance Provided by Owner, with the *Owner* as named insured and with the *Contractor* and its *Subcontractors* as unnamed insureds. The actual policies of insurance may be examined by the *Contractor* upon

request to the *Owner*. This insurance applies only to the *Work* performed in connection with the *Contract*:

- (a) course of construction and transit insurance to a limit of the value of the full replacement cost of the *Work* covering all risks of direct physical loss or damage to the *Work, Goods* and *Procured Goods*, including temporary or off-site storage and project lay-down areas, and all temporary structures used in the erection of the *Work* including while in transit to and from the *Work Site* or in storage while at the *Work Site*, before and during erection and until completed and while awaiting tests and during testing and commissioning until issuance of a *Final Completion Notice*; **[NTD: The description of the property insured may be modified depending upon the scope of work, allocation of responsibilities for testing and commissioning. Where the *Owner* elects to insure the equipment used by the *Contractor* and leased on a common basis for the *Work Site* by the *Contractor* and *Other Contractors*, this paragraph should be amended to reflect the same. The scope of coverage should specify if transit insurance is to include inland or marine transit.]**
- (b) commercial general liability insurance covering any operations in connection with the *Contract* on an occurrence basis with a combined single limit not less than \$* inclusive of each accident or occurrence for bodily injury, including death, personal injury and damage to property, including loss of use thereof and in the aggregate for products and completed operations; such coverage shall include but not be limited to the following:
 - (i) blanket contractual liability;
 - (ii) sudden and accidental pollution liability;
 - (iii) products and completed operations including a provision that such coverage is to be maintained for a period not less than * months from the date of issuance of the *Functional Completion Certificate*;
 - (iv) broad form completed operations;
 - (v) employers liability;
 - (vi) non-owned automobile liability;
 - (vii) broad form property damage;
 - (viii) blasting, pile driving, caisson work, underground work (XCU coverage); and
 - (ix) cross liability and severability of interest; and

44.2 Where a claim is paid by the insurer in respect of losses for which coverage is provided under Section 44.1:

- (a) the *Contractor* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Work* until a *Functional Completion Certificate* is issued;
 - (b) the *Owner* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Work* after a *Functional Completion Certificate* is issued;
 - (c) **[NTD: Optional]** the *Owner* shall be responsible for the deductibles relating to insurance proceeds for damage to equipment used by the *Contractor* and leased on a common basis for the *Work Site* by the *Contractor* and *Other Contractors*;
 - (d) the *Owner* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Owner's* property, other than as provided for in 44.2(a) and 44.2(b); and
 - (e) the negligent party or parties shall be responsible for the deductibles relating to insurance proceeds for damage to third parties.
- 44.3 All insurance policies provided by the *Owner* shall be written to prohibit the insurer from obtaining subrogation or transfer of rights in respect of any claim under such policies against the *Contractor*, *Subcontractors*, or their employees, directors or officers who are employed in the performance of the *Work*.
- 44.4 The *Owner* shall:
- (a) provide the *Contractor* with certificates of insurance for the policies described in Section 44.1 within * *Work Days* of written notice of award of the *Contract* or prior to the commencement of the *Work*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within * *Work Days* of their expiry date where such policies expire prior to *Functional Completion*; and
 - (b) ensure that such policies provide for at least 30 days prior written notice to the *Contractor* of cancellation or change that is material to the *Contract*.
- 44.5 The *Owner* makes no representation or warranty with respect to the extent or adequacy of the insurance protection to be provided by it described in Article 44 - Insurance Provided by Owner and the *Contractor* and its *Subcontractors* shall satisfy themselves as to the coverage afforded by such policies and the adequacy thereof. The furnishing of this insurance by the *Owner* shall not limit any of the obligations or liabilities of the *Contractor* or *Subcontractors* as expressed elsewhere in the *Contract*.
- 44.6 The *Contractor* shall not be entitled to any *Compensation* to duplicate the insurance coverage provided by the *Owner* pursuant to this Article 44 - Insurance Provided by Owner.
- 44.7 The *Compensation* shall not include the cost of premiums for the insurance to be provided by the *Owner*.

- 44.8 The insurance protection provided by the *Owner* in accordance with Article 44 - Insurance Provided by Owner insurance shall be primary with respect to any loss or damage which at the time of the occurrence is covered by the *Owner's* insurance policies.
- 44.9 It is mutually agreed that all losses shall be adjusted by a firm or firms of general insurance adjusters to be named by the *Owner* and the *Owner* has the sole right to act as agent on behalf of the *Contractor* in the settlement of any claim(s) under the policies to be provided by the *Owner* pursuant to Article 44 - Insurance Provided by Owner. The *Owner* makes no representation or warranty with respect to the extent or adequacy of the insurance protection provided by it to the *Contractor*.

[NTD: The appointment of a control adjuster for purposes of adjusting insurance claims is subject to the approval of the insurer(s). This clause should be optional and incorporated only once it has been determined that a control adjuster has been appointed and agreed to by insurer(s).]

Article 45 - Independent Contractor

- 45.1 For the purposes of the *Contract* and the *Work*, the *Contractor* shall be an independent contractor and not the agent or employee of the *Owner*, except to the extent that the *Owner's Requirements* specify that the *Contractor* shall act as the *Owner's* agent in relation to some, or all, of the *Procurement Services*.
- 45.2 All persons employed or retained by the *Contractor* in connection with the performance of its obligations shall be its employees or those of its *Subcontractors*, as the case may be, and not the employees or agents of the *Owner* in any respect.
- 45.3 The *Contractor* shall indemnify and hold harmless the *Owner*, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including legal fees on a solicitor-and-own-client (indemnity) basis, which may be incurred by the *Owner* as a result of any determination by any tribunal or court that any personnel provided by the *Contractor* pursuant to the terms of this *Contract* are for any purposes agents or employees of the *Owner*, except to the extent that the *Owner's Requirements* specify that the *Contractor* shall act as the *Owner's* agent in relation to some, or all, of the *Procurement Services*.
- 45.4 The *Contractor* shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on the *Owner*, except as provided for in this *Contract*, as authorized in writing by the *Owner* or in connection with the performance of the *Procurement Services* where the *Owner's Requirements* specify that the *Contractor* shall act as the *Owner's* agent in relation to some, or all, of the *Procurement Services*.

Article 46 - Conflict of Interest

- 46.1 The *Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the *Owner's* best interests. This obligation shall apply to the activities of the *Contractor* and its *Subcontractors* and their

respective employees and agents, in their relations or dealings with the employees of the *Owner* and their families, and other third parties, arising from the *Contract* or the performance of the *Work*. The efforts made by the *Contractor* in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent *Subcontractors* and their respective employees from offering, or providing entertainment, gifts, loans, payments or other considerations to the *Owner's* employees, consultants and agents or their family members.

Article 47 - Audit Access

- 47.1 The *Contractor* shall preserve the *Records* in good order during the *Contract Time* and for a period of * years thereafter.
- 47.2 The *Contractor* shall permit authorized representatives of the *Owner* to review the *Records* at all reasonable times during the *Contract Time*, and for a period of two years thereafter for the purposes of:
- (a) determining the *Contractor's* compliance with all of the terms of the *Contract*, including, but not limited to:
 - (i) Article 13 - Changes and Article 32 - Delays Caused by the Contractor; and
 - (ii) the *Policies*; and
 - (b) verifying of all *Work* performed and all reimbursable costs and other charges payable under the *Contract*.
- 47.3 Where the *Compensation* is not on a cost reimbursable basis, the *Contractor* may black-out any information in the *Records* relating to price before access is given to the *Owner*.

Article 48 - Representatives and Notices

- 48.1 The *Owner's Representative* is *. The *Owner's Representative* has the authority to bind the *Owner* on all matters relating to the *Work* and the *Contract*, and all communications to or with the *Owner's Representative* shall be deemed to be communications to or with the *Owner*.
- 48.2 *Contractor's Representative* is *. The *Contractor* shall not change the *Contractor's Representative*, except with the prior approval of the *Owner*. The *Contractor's Representative* has the authority to bind the *Contractor* on all matters relating to the *Work* and the *Contract*, and all communications to or with *Contractor's Representative* shall be deemed to be communications to or with the *Contractor*.
- 48.3 Unless otherwise specifically indicated in the *Contract*, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to the *Contract*, shall be in writing and shall be communicated to the *Contractor's Representative* or the *Owner's Representative*, as the case may be, and shall be delivered by personal delivery, courier or facsimile to the parties at the addresses and facsimile numbers shown below:

(a) *Contractor:*

Address:

Attention:

Fax:

(b) *Owner:*

Address:

Attention:

Fax:

48.4 Either party may change its contact information for the purposes of Section 48.3 by providing the other party with 10 days notice of such a change.

48.5 Invoices and all supporting documentation shall be mailed or delivered to the address shown below:

Address:

Attention:

Fax:

48.6 E-mail, where such electronic transmission meets the minimum requirements set forth in the Electronic Transactions Act (Alberta) may be used for communication between the parties, but e-mail shall not be used for the communication of a notice which is prescribed by the *Contract*.

Article 49 - General

49.1 No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

49.2 No waiver of any right, power or privilege by a party shall limit or affect that party's rights with respect to any breach of the *Contract* by the other party.

49.3 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to the *Contract*.

49.4 If a court of competent jurisdiction determines that any provision of this *Contract* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the *Contract*.

- 49.5 All of the covenants and agreements herein contained on the part of either party shall apply and enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.
- 49.6 Each of the parties hereby represents and warrants that it has the power and authority to enter into the *Contract* and to perform all of its obligations hereunder.
- 49.7 The *Contract* constitutes the entire agreement between the parties with respect to the *Work* and supersedes and replaces all previous communications, representations and agreements, either written or verbal.
- 49.8 This *Contract* shall be governed by and construed in accordance with the laws of the Province of Alberta, and, subject to Appendix H – Dispute Resolution Procedure, the parties attorn to the jurisdiction of the Courts of the Province of Alberta.
- 49.9 This *Contract* shall be executed by the parties, or their representatives, in person with original signatures, but may be executed in counterpart. Subsequent documents may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this *Contract*, by their duly authorized officers, as of the effective date indicated on the first page.

Owner:

Per:

Name:

Per:

Name:

[apply corporate seal]

Contractor:

Per:

Name:

Per:

Name:

[apply corporate seal]