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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ADDENDA

Appendix A – Owner’s Requirements
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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 *

(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, 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 0% 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
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
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;
- 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.
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...]

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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.
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
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;
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;

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;

require that the dollar amount of the deductible in the policies for any one loss shall be subject to the approval of the Owner;

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;

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

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).

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.

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.]

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:
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: 

______________________________  Contractor: 

______________________________

Per: 

______________________________  Per: 

______________________________

Name: 

______________________________  Name: 

______________________________

Name: 

[apply corporate seal]  [apply corporate seal]