

STIPULATED PRICE CONTRACT

Made effective as of the ____ day of _____, 20__

CONTRACT NO. _____

BETWEEN

(the "*Owner*")

and

(the "*Contractor*")

COVERING

(Work Description)

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THIS CONTRACT made effective as of _____, 20____

BETWEEN:

_____ a body corporate, registered pursuant to the laws of
the Province of Alberta (hereinafter called "the *Owner*")

and

_____ a body corporate, registered pursuant to the laws
of the Province of Alberta (hereinafter called the "*Contractor*")

STIPULATED PRICE CONTRACT

PREAMBLE:

WHEREAS the *Contractor* has agreed to perform the *Work* for the *Owner* as set out in this *Contract*, on the terms and conditions contained herein;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

GC 1-DEFINITIONS AND INTERPRETATION

1.1 The following italicized terms, wherever used in any *Contract Document* or in any amendment thereto, mean:

1.1.1 *Bid Documents* means the bid documents issued by the *Owner* in response to which bids are invited for the performance of the *Work*;

1.1.2 *Camp Accommodation* means accommodation, including meals, at any site designated by the *Owner*;

1.1.3 *Change* means any change in, addition to, or deletion from the *Work*;

1.1.4 *Change Directive* means a written instruction from the *Owner* directing a *Change*;

1.1.5 *Change Order* means a written order signed by both the *Contractor* and the *Owner* authorizing a *Change*;

1.1.6 *Change Quotation* means a written quotation from the *Contractor* for an adjustment in the *Contract Price* or *Contract Time*, or both;



**CONSTRUCTION OWNERS ASSOCIATION
OF ALBERTA**

- 1.1.7 *Commencement Date* means the date that the *Work* is to commence as set out in GC 4.1;
- 1.1.8 *Contemplated Change Notice* means a written notice from the *Owner* of a contemplated *Change*;
- 1.1.9 *Contract* or *Contract Documents* means this Stipulated Price Contract together with the schedules listed in GC 1.2, *Change Orders*, *Bid Documents* and all drawings, plans and specifications listed therein; **[Note to Draft: *Bid Documents* have been included in this definition, but may not be appropriate in each case]**
- 1.1.10 *Contract Price* means the total amount payable to the *Contractor* for the performance of the *Work*, as set out in Schedule "B" - Payment for Work;
- 1.1.11 *Contract Time* means the period of time from the *Commencement Date* to the completion date as set forth in GC 4;
- 1.1.12 *Contractor's Prepared Documents* means all plans, shop drawings, other drawings, specifications, calculations, reports, opinions, notes, models, bid documents, software, data and other documents prepared by the *Contractor* pursuant to this *Contract* whether written or stored electronically;
- 1.1.13 *Contractor's Representative* means that person identified as such in GC 33.3 or an approved replacement;
- 1.1.14 *Event of Force Majeure* means any occurrence, other than the financial capability of a party or an event constituting a delay under GC 19, 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 of bidding have reasonably contemplated happening and is unable to prevent or provide against;
- 1.1.15 *Final Completion Notice* means that notice issued by the *Owner* to the *Contractor* pursuant to GC 9.3, certifying completion and acceptance of the *Work* under this *Contract*;
- 1.1.16 *Functional Completion* means that date when the *Work* (or a component system thereof as defined in the *Contract Documents*) has been completed and is ready to be turned over by the *Contractor* to the *Owner* in accordance with the *Work Schedule* and certified by the *Owner's Representative* as being ready for operation;
- 1.1.17 *General Conditions* means the terms and conditions contained in this Stipulated Price Contract and sometimes abbreviated as GC;
- 1.1.18 *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 Energy Act* (Canada);

- 1.1.19 *Key Personnel* means those personnel so identified in Schedule "A" - Scope of Work;
- 1.1.20 *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 *Owner* or the *Contractor* with respect to the *Work*, or the property of the *Owner* or the *Contractor*, real or personal, or any part thereof, including but not limited to all environmental, occupational, health and safety laws;
- 1.1.21 *Milestone Dates* means those dates set out in Schedule "A" - Scope of Work;
- 1.1.22 *Non-Canadian Workers* means persons other than Canadian citizens, permanent residents or persons who meet the requirements of the exemption provisions set forth in the *Immigration Act* (Canada) and regulations, as amended from time to time;
- 1.1.23 *Other Contractors* means any third party contractors, consultants, or engineers retained by the *Owner*, to perform any work or services, related to the *Work Site*;
- 1.1.24 *Owner's Confidential Information* means all information relating to the *Work* and any process, technology or system relating thereto, the design, construction, operation, maintenance or any other aspect of the *Owner's Site*, or relating to the nature of the *Owner's* business and affairs, which the *Contractor* directly or indirectly receives or acquires from the *Owner* or the *Owner's Representative* or anyone on behalf of the *Owner* or the *Owner's Representative*, either in writing or verbally, or through observation of the *Owner's Site* or the *Work*, except information falling into any one or more of the following categories:
- 1.1.24.1 information which the *Contractor* can show was in the *Contractor's* possession on a non-confidential basis prior to the *Contractor's* receipt or acquisition thereof from the *Owner*;
- 1.1.24.2 information which is lawfully in the public domain at the time of the *Contractor's* receipt or acquisition thereof from the *Owner* as aforesaid;
- 1.1.24.3 information which, after the *Contractor's* receipt or acquisition thereof from the *Owner*, becomes part of the public domain through no act of the *Contractor* 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
- 1.1.24.4 information which, after receipt or acquisition thereof from the *Owner*, is lawfully obtained by the *Contractor* 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.

Specific information shall not be considered to be within the scope of any of the exceptions listed above merely because it is included with general information within the scope of the above exceptions;

- 1.1.25 *Owner's Representative* means that person identified as such in GC 33.2 or a designated replacement and may include a consultant hired by the *Owner* if so designated;
- 1.1.26 *Owner's Site* means the lands municipally described as:
-
- and legally described as:
-
-
- 1.1.27 *Project Mediator* means the person appointed pursuant to GC 30.3;
- 1.1.28 *Proprietary Information* means all inventions, discoveries, improvements and technical information not in the public domain, which the *Contractor*, *Subcontractors* or *Suppliers*, 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 6 months thereafter, as a result of *Owner's Confidential Information*;
- 1.1.29 *Records* means both paper and electronic books, statements, records and accounts pertaining to this *Contract* and the performance of the *Work*;
- 1.1.30 *Site Minutes* means those minutes recorded by the *Owner's Representative* at site meetings attended by the *Owner* and the *Contractor*;
- 1.1.31 *Specified Substance* has the meaning given in any published *Owner's* regulations, guidelines or publications applicable to the *Work* issued for the use and disposal of substances;
- 1.1.32 *Subcontractors* means any contractors or consultants hired by the *Contractor* in accordance with this *Contract* to perform any portion of the *Work*;
- 1.1.33 *Suspended Work* has the meaning ascribed thereto in GC 20.1;
- 1.1.34 *Suppliers* means any third party retained by the *Contractor* to supply equipment, materials or both for any portion of the *Work*;
- 1.1.35 *Warranty* means those warranties set forth in GC 25;
- 1.1.36 *Warranty Period* means that period of time set forth in GC 25.2;
- 1.1.37 *Work* means all labour, supervision, administration, materials, transportation, supplies, tools, equipment, temporary facilities, storage facilities, and such other work and materials, necessary to be performed or supplied for the work required by the *Contract Documents* including the work described in Schedule "A" - Scope of Work, and including any work which is not expressly described in the *Contract* but which is

nevertheless necessary for the proper execution of the work required by the *Contract Documents*;

- 1.1.38 *Work Day* means any day, except for a Saturday, Sunday, statutory holiday or a holiday which is observed in the construction industry generally in the area of the *Work Site* or defined as a holiday in a collective agreement pertaining to the *Work Site* [**Note to Draft: This definition may be subject to change depending on the project requirements**];
- 1.1.39 *Work Schedule* means a detailed schedule for performance of the *Work* as referred to in GC 7.10;
- 1.1.40 *Work Site* means the site(s) or location(s) where all or any of the *Work* is to be performed on the *Owner's Site*.

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

Schedule "A" - Scope of Work

Schedule "B" - Payment for Work

Schedule "C" - Release and Certificate of Final Payment

Schedule "D" - Technical Specifications

Schedule "E" - Statutory Declaration

Schedule "F" – Key Employee Confidentiality, Proprietary Information and Consent Agreement

[Note to Draft: List any additional schedules]

GC 2 - WORK

2.1 The *Contractor* shall perform the *Work* in accordance with the *Contract Documents*. The *Contractor* shall supply or cause to be supplied all services, equipment and materials required for the proper execution of the *Work* and shall comply with, observe and perform all provisions of the *Contract* applicable to the *Contractor*.

GC 3 - PAYMENT

3.1 As full and complete compensation for performance of the *Work*, the *Owner* shall pay the *Contractor* the *Contract Price* in accordance with Schedule "B" - Payment for Work.

3.2 The *Contractor* shall prepare and submit invoices for all *Work* performed hereunder, in accordance with Schedule "B" - Payment for Work.

3.3 The *Owner* shall retain from all payments due and payable to the *Contractor* hereunder an amount equal to 10% of the value of the *Work* actually done and materials furnished by the *Contractor* according to the provisions of the *Builders Lien Act* of Alberta.

3.4 If:

3.4.1 a certificate of substantial performance is issued for a subcontract,

3.4.2 the period designated for the release of holdback pursuant to the *Builders' Lien Act* has expired from the date of issue of that certificate of substantial performance, and no builders' lien has been registered against the title to the *Owner's Site*,

the amount that the *Owner* is required to retain under GC 3.3 is 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.

3.5 If:

3.5.1 a certificate of substantial performance is issued for the *Contract*,

3.5.2 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

3.5.3 no builders' lien has been registered against the title to the *Owner's Site*, the amount the *Owner* shall retain under GC 3.3 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.

3.6 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 ____ % per cent per annum, compounded semi-annually on any unpaid amounts shall also become due and be payable.

GC 4 - CONTRACT TIME

4.1 The *Contractor* shall commence the *Work* on _____, _____, and, perform the *Work* in accordance with the *Work Schedule* and shall achieve the *Milestone Dates* set out in Schedule "A" - Scope of Work, and except as otherwise provided herein, shall finally complete the *Work* on or before _____, _____.

4.2 The provisions of this *Contract* shall survive the completion of the *Work*.

GC 5 - CONTRACT DOCUMENTS

5.1 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the *Contract Documents*, and of any inconsistencies between the *Contract Documents* 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. If the *Contractor* discovers any inconsistencies in the *Contract Documents*, or between the *Contract Documents* and the *Law*, it shall resolve all such inconsistencies with the *Owner* before proceeding with the affected portion of the *Work*.

5.2 Subject to GC 26.3 and GC 26.4, if any of the *Contractor's Prepared Documents* are incorrect or inconsistent with any of the other *Contract Documents* or the *Law*, then the *Contractor* shall be liable to and shall indemnify the *Owner* for all losses, costs, damages and expenses whatsoever which the *Owner* may incur as a result of any errors or inconsistencies therein.

5.3 Subject to *Changes* made in accordance with GC 8, the *Contractor* shall not deviate from the specifications or requirements stated in the *Contract Documents*.

5.4 Subject to the provisions of GC 5.5 and GC 8.7, all conflicts in these *Contract Documents* including, but not limited to those contemplated in GC 5.1, may, in the *Owner's* sole discretion be resolved solely by the *Owner's Representative*. The *Contractor* shall not work on that portion of the *Work* which is affected until the conflict has been resolved and the *Owner* has authorized the *Contractor* to proceed with such *Work*.

5.5 In the event of a conflict or inconsistency among or between the *Contract Documents*, the following shall apply:

- 5.5.1 the *General Conditions*, including the attached schedules shall govern over the *Bid Documents*;
- 5.5.2 for documents as revised by either party and approved by the *Owner*, the latest revisions shall govern;
- 5.5.3 figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
- 5.5.4 drawings of larger scale shall govern over those of smaller scale of the same date;
- 5.5.5 specifications issued by the *Owner* shall govern over all drawings regardless of date; and
- 5.5.6 the *General Conditions* shall govern over all other *Contract Documents*, including the schedules attached hereto.

[Note to Draft: If Supplementary General Conditions are used, then replace 5.5.6 and add 5.5.8]

5.5.7 subject to GC 5.5.7, the *General Conditions* shall govern over all other *Contract Documents*, including the schedules attached hereto; and

5.5.8 supplementary general conditions shall govern over the *General Conditions*.

GC 6 - PERSONNEL

6.1 The *Contractor* shall provide a sufficient number of qualified personnel to enable timely and proper execution and completion of the *Work*. All such personnel shall be competent, literate in English and qualified by education, training, experience and in all other respects capable of carrying out the tasks to which each is assigned.

6.2 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 *Contract Documents*.

6.3 At the *Owner's* request, the *Contractor* shall reassign, replace or remove personnel who, in the *Owner's* sole discretion, do not meet the requirements of GC 6.1 or GC 6.2, or who have committed a violation of the *Owner's* regulations and procedures, including but not limited to safety, security, camp or site regulations or procedures.

6.4 Prior to the *Commencement Date*, the *Contractor* shall submit a proposed organizational chart for the *Owner's* approval. The organizational chart shall show the *Key Personnel* and the other supervisory and staff personnel who shall be executing the *Work*, together with their respective job titles. The *Contractor* shall not, without the *Owner's* consent, make any changes to the *Key Personnel* on an organizational chart that has been approved by the *Owner*. If any *Key Personnel* leave the *Contractor's* workforce, the *Contractor* shall forthwith replace such *Key Personnel* with personnel suitable to the *Owner* and of at least comparable qualifications.

6.5 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*.

GC 7 - PERFORMANCE

7.1 The *Contractor* accepts the *Owner's Site*, the *Work Site* and the obligation to perform the *Work* in the condition existing at the close of tenders and acknowledges that it has investigated and satisfied itself as to:

7.1.1 the nature of the *Work*;

7.1.2 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, geographical conditions;

- 7.1.3 the general character, quality, quantity and availability of equipment and materials required to execute and complete the *Work*;
- 7.1.4 all environmental risks, conditions, *Law* and restrictions applicable to the *Contractor* or the *Work* that might affect the *Work*;
- 7.1.5 all conditions affecting labour, including, without limitation, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the *Work*; and
- 7.1.6 the magnitude of the construction work required to execute and complete the *Work*;

and any failure by the *Contractor* to discover matters which affect or could affect the *Work* shall not relieve the *Contractor* from its obligations under this *Contract* or otherwise affect the *Contract Price*.

7.2 The *Contractor* and the *Owner* shall co-operate fully with each other and *Other Contractors* and *Suppliers*, and all other parties with whom the *Contractor* and the *Owner* may be involved during the performance of the *Work*.

7.3 The *Owner* reserves the right to award separate contracts to *Other Contractors* to be performed at the *Work Site* and to perform work with its own forces at the *Work Site*, in which case the *Owner* 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 the *Work Site* to accommodate the work of *Other Contractors* and of the *Owner's* own forces.

7.4 The *Contractor* agrees that it shall:

- 7.4.1 efficiently and expeditiously perform all *Work* in a good and workman-like manner and in accordance with this *Contract*;
- 7.4.2 exercise in its performance of the *Work*, that standard of care and skill normally exercised by contractors performing this type of construction work; and
- 7.4.3 perform the *Work* in a safe and environmentally sound manner and in compliance with applicable *Law*.

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

- 7.5.1 it has the experience, resources, personnel and capability to expeditiously and diligently perform the *Work* and this *Contract*;
- 7.5.2 it is duly incorporated and validly existing under the laws of the Province of Alberta; **[Note to Draft: To be deleted if *Contractor* is not incorporated]**
- 7.5.3 it has all required permits, licenses and authorizations necessary to carry on its business and to be obtained by it to conduct the *Work*; and

7.5.4 the title to any and all materials, supplies and equipment which are to be provided by the *Contractor* for incorporation into the *Work* shall upon delivery to the *Work Site* be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever.

7.6 The *Contractor* shall supervise its employees, *Subcontractors* and *Suppliers* and inspect their work to ensure that such work and the *Work* conforms in each and every respect to the *Contract Documents* and to good and proper construction practices.

7.7 Neither acceptance of any part of the *Work* by the *Owner*, nor payment to the *Contractor*, shall relieve the *Contractor* from its responsibilities under this *Contract*, whether pursuant to any of the warranties or guarantees expressed or implied herein, or otherwise.

7.8 The *Contractor* shall provide the *Owner* with verbal or written reports in reasonable detail promptly upon the reasonable request of the *Owner*, and shall attend meetings as required by the *Contract Documents*, or as otherwise requested by the *Owner's Representative*.

7.9 The *Contractor* shall ensure that no activities or actions are undertaken in the performance of the *Work* by the *Contractor*, its *Subcontractors* or *Suppliers*, which would adversely affect, restrict or limit in any way, the continued operation of the *Owner's* facilities or plant which are in operation, unless required to perform the *Work* and done in accordance with the *Work Schedule* or otherwise authorized by the *Owner's Representative*.

7.10 Prior to the *Commencement Date*, and when otherwise requested by the *Owner's Representative*, the *Contractor* shall prepare a detailed *Work Schedule* satisfactory to the *Owner*, acting reasonably, for the performance of all or any part of the *Work* required under the *Contract Documents*. The *Contractor* shall control the progress of the *Work* to achieve compliance with the *Work Schedule*.

GC 8 - CHANGES

8.1 The *Owner* shall have the right, at any time, to make *Changes*.

8.2 When a *Change* is proposed or required, the *Owner* shall provide a *Contemplated Change Notice* to the *Contractor* describing the proposed *Change*.

8.3 The *Contractor*, upon receipt of a *Contemplated Change Notice*, shall promptly provide the *Owner's Representative* with a *Change Quotation* which shall include a method of adjustment or an amount of adjustment to the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed *Change*.

8.4 The *Owner* shall promptly following receipt of the *Change Quotation* either agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, or give the *Contractor* notice that the *Change Quotation* is not acceptable. If the *Change Quotation* is agreed to, then the *Owner* shall immediately issue a *Change Order* recording the *Change*, which shall be signed by the *Owner* and the *Contractor*. The value of *Work* performed as a result of a *Change Order* shall be included in invoices for payment given in accordance with the terms of payment in Schedule "B" - Payment for Work.

8.5 If the *Owner* requires the *Contractor* to proceed with the *Change* before the *Owner* and the *Contractor* agree, or where the *Owner* and *Contractor* have failed to agree upon the adjustment in *Contract Price* and *Contract Time*, the *Owner* shall issue a *Change Directive*.

8.6 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the *Change*, and:

8.6.1 the *Contractor* shall keep daily records signed by the *Owner's Representative* of the time, materials and equipment employed in the *Change*; and

8.6.2 the *Contract Price* shall be adjusted in accordance with Schedule "B"- Payment for Work for *Changes* and *Change Directives*; and

8.6.3 the *Contract Time* shall be equitably adjusted by agreement between the *Owner* and *Contractor*, and if agreement cannot be reached, then the dispute shall be settled in accordance with GC 30.

8.7 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 any adjustment in the *Contract Price* and *Contract Time* required. The *Owner* shall promptly consider the *Change Quotation* and immediately issue a *Change Order*, *Change Directive* or advise the *Contractor* 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 shall promptly proceed to perform the *Work*. The *Contractor* shall keep daily records, to be signed by the *Owner's Representative*, of the time, materials and equipment employed in respect of the disputed *Work*. The *Contractor's* entitlement to an adjustment in the *Contract Price* and *Contract Time* shall then be resolved under GC 30.

8.8 No modification, additions, deletions or other revisions to this *Contract*, including Schedules "A" - Scope of Work, "B" - Payment for Work and "D" - Technical Specifications, shall be binding on either party unless set out in a *Change Order* or required by a *Change Directive*. 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 as an admission of entitlement to payment by the *Owner* but shall constitute a record of the time, materials and equipment employed in respect of the work for which a *Change Directive* has been issued or the *Contractor* has given notice of a dispute.

8.9 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.

8.10 If the *Contractor* encounters actual subsurface or other concealed physical conditions at the *Work Site* which are materially different from the conditions represented to exist in the *Contract Documents*, 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.

8.11 The *Owner* shall promptly investigate the conditions described by the *Contractor* and if the actual conditions encountered by the *Contractor* at the *Work Site* differ materially from the conditions represented in the *Contract Documents* so as to substantially increase the cost to the *Contractor* or the time to perform the *Work*, then the *Owner* shall issue a *Change Order* to cover the increased cost and changed time to perform the *Work*.

GC 9 - COMPLETION & ACCEPTANCE

9.1 Upon notice to the *Contractor*, the *Owner* shall have the right to take possession of and use for any purpose any partially completed portion of the *Work*. The taking of possession or use shall not be deemed to be the *Owner's* acknowledgement of completion and acceptance of that portion of the *Work* or the *Owner's* concurrence that such *Work* conforms to the *Contract* and shall not limit or waive the *Contractor's* responsibility with respect thereto pursuant to this *Contract* or otherwise.

9.2 When the *Contractor* has completed the *Work*, or a component system thereof as defined in the *Contract Documents* ready to be turned over to the *Owner* for operation in accordance with the *Work Schedule*, it may give the *Owner's Representative* notice that the *Work*, or a component system thereof, has achieved *Functional Completion*. Within ___ *Work Days* of receipt of that notice, the *Owner's Representative* shall either issue a *Functional Completion* certificate or give notice to the *Contractor* of the reasons why the *Work*, or component system thereof, has not achieved *Functional Completion*. Neither certification by the *Owner's Representative* that the *Work*, or a component system thereof, has reached *Functional Completion* or the acceptance by the *Owner* of the *Work*, or a component system thereof, as being ready for operation shall relieve the *Contractor* of any of its obligations under this *Contract*, or otherwise.

9.3 After the *Contractor* has completed all *Work* under this *Contract* and corrected all known deficiencies, it shall give the *Owner's Representative* notice that the *Work* has been finally completed. Within ___ *Work Days* of receipt of that notice, the *Owner's Representative* shall either issue a *Final Completion Notice*, or give notice to the *Contractor* of the deficiencies to be remedied before a *Final Completion Notice* can be issued. In the latter case, the foregoing procedure with respect to the deficiencies shall be repeated until the *Owner's Representative* issues the *Final Completion Notice*. Notwithstanding the foregoing, the *Owner's* issuance of the *Final Completion Notice* shall not relieve the *Contractor* of any of its obligations under this *Contract*, or otherwise.

[Note to Draft: The following General Condition 9.4 is optional and places an onus on the Contractor that is higher than required by the previous draft]

9.4 The parties agree that it is a condition precedent to the issuance of a *Final Completion Notice* and to the release of the holdback that the *Contractor* satisfy each of the following requirements:

9.4.1 the *Work* has been fully completed in accordance with the terms and conditions of this *Contract*;

- 9.4.2 all deficiencies with respect to the *Work* have been remedied to the satisfaction of the *Owner*;
- 9.4.3 all obligations to other parties in relation to the *Work* for which the *Owner* or the *Contractor* could in any way be held responsible have been fully satisfied; and
- 9.4.4 the *Contractor* has delivered to the *Owner* the following:
- 9.4.4.1 a statutory declaration in the form included in Schedule "E" - Statutory Declaration 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;
 - (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 contractors or for materials or equipment; and
 - (d) compliance of the *Contractor* with all *Law*;
 - 9.4.4.2 a Workers' Compensation Board clearance certificate;
 - 9.4.4.3 any as-built drawings and operations manuals for which the *Contractor* is responsible;
 - 9.4.4.4 assignments of any warranties provided by manufacturers or suppliers of materials;
 - 9.4.4.5 written evidence of good standing from union representatives, if any; and
 - 9.4.4.6 a release in the form provided in Schedule "C" - Release and Certificate of Final Payment of all claims against the *Work* and the *Owner* arising under and by virtue of this *Contract* other than such claims, if any, as may with the consent of the *Owner* be specifically excepted by the *Contractor* in the preparation of such release, in amounts which shall be set forth therein.

GC 10 - INSPECTION

10.1 At all times during the progress of the *Work*, the *Owner* shall have the right to inspect or witness any part of the *Work*.

10.2 The *Contractor* shall inspect and be solely responsible for the inspection of all workmanship, materials and equipment furnished by the *Contractor*, *Subcontractors* or *Suppliers* in respect of the *Work*, to ensure conformity in each and every respect to the requirements of the *Contract Documents* 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.

10.3 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.

10.4 If the *Contract Documents* 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*. 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 requested by the *Owner*, that portion of the *Work* shall be opened or uncovered for testing and re-closed or re-covered, all at the *Contractor's* expense.

10.5 The *Contractor* shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the *Work*, whether purchased, rented or otherwise, provided by the *Contractor*, *Subcontractors* or *Suppliers*, are in a safe, environmentally sound and good condition, capable of performing the functions for which they are intended and used. The *Owner* shall have the right to inspect all tools and equipment brought on to the *Owner's Site* at any time during the progress of the *Work*. If any tool or item of equipment is, in the *Owner's* sole judgment, acting reasonably, unsafe, environmentally unsound or incapable of doing the work for which it is intended, the *Contractor* shall repair or replace it with a safe, environmentally sound and capable tool or item of equipment at the *Contractor's* expense.

10.6 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 *Work* can successfully pass the test.

10.7 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 this *Contract* or otherwise.

GC 11 - COMPLIANCE WITH LAW

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

11.2 Subject to GC 26, the *Contractor* shall:

11.2.1 be liable for; and, in addition

11.2.2 indemnify and hold harmless the *Owner* and its officers, directors, employees, consultants and agents from and against,

any liability, claims, damages, costs and expenses arising from the failure of the *Contractor*, *Subcontractors* or *Suppliers*, or their respective employees or agents to comply with the *Law*, including but not limited to any additional costs for *Work* to be redone as a result of the breach of *Law*.

11.3 The *Contractor* shall obtain from governmental authorities or other third parties, and pay for those licenses, permits and approvals required by the *Law* or by the *Contract* for the *Work*, except those licenses, permits and approvals required with respect to the land-use aspects of the *Work* to be performed on the *Owner's Site*, and except for those licenses, permits and approvals to be obtained by the *Owner* as listed in Schedule "A" - Scope of Work.

11.4 If the *Contractor* discovers any variance between the *Law* and any materials purchased or supplied by the *Contractor*, *Subcontractors* or *Suppliers*, then 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.

GC 12 - SAFETY & LOSS MANAGEMENT

12.1 The parties are committed to safety and the application of loss management principles in the performance of the *Work*. The *Contractor* shall perform the *Work* in a safe manner so as to comply in all respects with the safety, emergency and loss management regulations, guidelines and publications communicated by the *Owner* to the *Contractor* as part of the *Bid Documents* or otherwise for use by the *Contractor* in preparing its bid. The *Owner* shall make available to the *Contractor*, its published safety, emergency and loss management regulations, guidelines and publications, including, but not limited to, any *Owner's* loss management publication, and the *Contractor* shall perform the *Work* in a safe manner so as to comply therewith in all respects.

12.2 The *Contractor* shall place the highest importance on safety, emergency 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*, *Subcontractors*, *Suppliers* and *Other Contractors* and the general public from injury or death and protecting 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 other safety requirements, if any, as specified in Schedule "A" - Scope of Work.

12.3 All employees of the *Contractor*, *Subcontractors* and *Suppliers* must successfully complete any *Owner's* safety orientation courses and other similar courses as the *Owner* may require, before being allowed access to the *Owner's Site*, and it shall be the *Contractor's* responsibility to ensure that they have done so.

GC 13 - WORK AREA & CLEAN UP

13.1 The *Owner* may designate space at the *Owner's Site* for the *Contractor's* working and storage areas. The *Contractor* shall be responsible for keeping these areas clean, orderly and secure.

13.2 The *Owner* is not responsible for theft, loss or damage to the *Contractor's* tools, equipment or materials howsoever caused, except for the negligent act or omission of the *Owner* or those for whom in *Law* it is responsible.

13.3 The *Contractor* shall not, and shall ensure that its *Subcontractors* and *Suppliers* do not use, transport, or store *Hazardous Material* on the *Owner's 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 the *Law*, the *Contract* and all of the *Owner's* published regulations, guidelines or publications regarding *Hazardous Material*. The *Contractor* shall also comply with the *Contract* and the *Owner's* published regulations, guidelines or publications in respect of on-site use and disposal of *Specified Substances* at the *Owner's Site*.

13.4 During the performance of the *Work*, the *Contractor* shall comply fully with the *Contract* and the *Owner's* safety and emergency regulations, guidelines and publications regarding clean up. The *Contractor* shall clean up, remove and dispose of all surplus materials, containers, trash and debris from the *Work*. Upon completion of the *Work*, or earlier termination of this *Contract*, the *Contractor* shall promptly clean up and remove all of its 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.

GC 14 - TITLE & RESPONSIBILITY

14.1 All of the *Contract Documents* and *Contractor's Prepared Documents* shall belong to the *Owner*, and accordingly the *Contractor* shall have no proprietary right or interest in the *Contract Documents* or *Contractor's Prepared Documents*. The *Contractor* shall not use, copy or disclose any of the *Contract Documents* and *Contractor's Prepared Documents* for any purpose other than performing the *Work*. Subject to the foregoing, the *Contractor* may retain for its own records a copy of the *Contract Documents* and the *Contractor's Prepared Documents*.

14.2 Notwithstanding GC 14.1 or any other provision of this *Contract*, the *Contractor* shall be responsible for possession of all *Contractor's Prepared Documents* completed or in progress until received by the *Owner*. If any of the *Contractor's Prepared Documents* are lost, damaged or destroyed prior to receipt by the *Owner*, then such *Contractor's Prepared Documents* shall be promptly redone and replaced by the *Contractor*, at the *Contractor's* expense unless the loss, damage or destruction was caused by the *Owner* or persons for whom in *Law* it is responsible.

14.3 Subject to the *Owner's* rights pursuant to GC 29.4, the *Owner* agrees that it shall not sell to third parties any of the *Contractor's Prepared Documents* nor shall it distribute any of the *Contractor's Prepared Documents* to third parties except for the purpose of operating, maintaining, repairing, replacing, re-building or renovating the *Owner's* property resulting from the *Work*.

14.4 The title to all *Work* completed or in the course of construction at the *Owner's Site* and the title to all materials, equipment and supplies furnished or fabricated by the *Contractor* in connection with the *Work*, 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 therefor or delivery to the *Work Site*.

14.5 Notwithstanding the provisions of GC 14.4, and except for any portion of the *Work* for which the *Owner* has taken possession as contemplated by GC 9.1, the *Contractor* shall retain all risk with respect to and be responsible for:

- 14.5.1 all items furnished by the *Contractor*, *Subcontractors* or *Suppliers* which are to be incorporated into the *Work* or used in the performance of the *Work*;
- 14.5.2 all items supplied by the *Owner* to the *Contractor* for incorporation into the *Work* or for use in performing the *Work*;
- 14.5.3 all temporary structures or facilities used in the performance of the *Work*; and
- 14.5.4 any *Work* completed or in progress

until the *Owner* has issued either a *Functional Completion* certificate or a *Final Completion Notice*, in which case the risk shall pass to the *Owner* with respect to the *Work* covered thereby.

14.6 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 supplier thereof.

GC 15 - PATENTS & LICENSES

15.1 The *Contractor* shall indemnify and save the *Owner* harmless from all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs 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*, its *Subcontractors* or *Suppliers*, in the performance of the *Work*.

15.2 The *Owner* shall indemnify and save the *Contractor* harmless from all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs 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*.

15.3 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, specifications or other documents, or use the same in connection with the *Work* without the *Owner's* prior approval.

15.4 The *Contractor* grants the *Owner* a non-exclusive, royalty-free, perpetual, irrevocable license:

- 15.4.1 to use any and all patents, industrial designs, copyrights and technology related to the *Work*, that the *Contractor* owns or controls, subject to the *Contractor's* legal right to do so; and

15.4.2 to make, have made and use the equipment, machinery, materials, compositions, designs, methods and processes supplied by the *Contractor* under this *Contract*, subject to the *Contractor's* legal right to do so.

GC 16 - CONFIDENTIAL INFORMATION & PUBLICITY

16.1 The *Contractor* shall keep all of the *Owner's Confidential Information* in confidence and shall not disclose it to others without the prior approval of the *Owner's Representative*. The *Contractor* shall not use the *Owner's Confidential Information*, except in performance of the *Work*.

16.2 Notwithstanding GC 16.1, the *Contractor* may disclose the *Owner's Confidential Information* to those of its employees, *Subcontractors* and *Suppliers* 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 *Suppliers* and their respective employees and agents to comply with GC 16.1.

16.3 The *Contractor* shall have all *Key Personnel* [**Note to Draft: expand if necessary**] execute Schedule "F" – Key Employee Confidentiality, Proprietary Information and Consent Agreement within 10 *Work Days* of the *Contractor* executing this *Contract*.

16.4 The *Contractor* shall not disclose any of the *Contract Documents* or the *Contractor's Prepared Documents* to others without the prior approval of the *Owner's Representative*, except as necessary to perform the *Work*.

16.5 The *Contractor* shall not use the *Owner's* name, registered or unregistered trademarks or any of the *Owner's* slogans in any advertising or promotional materials or publicity releases, and shall not take or permit to be used, any photographs of the *Owner's Site*, without the prior written approval of the *Owner's Representative*.

GC 17 - PROPRIETARY INFORMATION

17.1 The *Contractor* shall promptly disclose all *Proprietary Information* to the *Owner*, shall assign all of its right, title and interest in and to the *Proprietary Information* to the *Owner*, and shall execute all such documents and take such other actions as the *Owner* may consider necessary or desirable with respect to the *Proprietary Information*.

17.2 The *Contractor* shall keep and maintain adequate and current records of all *Proprietary Information*.

17.3 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 written consent.

17.4 Notwithstanding GC 14.1, or anything provided in GC 17, where a technology, process or work method has been developed by the *Contractor*, *Subcontractor* or *Supplier*, arising out the *Work*, that is not the result of *Owner's Confidential Information*, the proprietary rights to that technology, process or work method shall remain with the *Contractor*, *Subcontractor* or *Supplier*, as the case may be. Where proprietary rights remain with a party other than the *Owner*, the *Owner* shall, and is hereby granted the right to have and to retain a copy for its own use and to use any drawings, *Contractor's Prepared Documents* or other information in respect thereof, for the purpose of the *Work* or the operation, repair, maintenance, replacement, re-building or renovation of the *Work*.

GC 18 - FORCE MAJEURE

18.1 Either the *Owner* or *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 notice, together with a proposed plan of corrective action in writing to resolve or minimize the effect of the *Event of Force Majeure*, within 48 hours of the *Event of Force Majeure*.

18.2 If the *Owner* has given notice of an *Event of Force Majeure* or agrees with the *Contractor* that the *Work* or any portion thereof is affected as a result of an *Event of Force Majeure*, then the *Owner* shall:

18.2.1 cause the *Contractor* to complete the *Work*, with such adjustments to *Contract Time* as are required by the *Event of Force Majeure*;

18.2.2 suspend the *Work* or any portion thereof in accordance with GC 20; or

18.2.3 terminate this *Contract* or any portion thereof in accordance with GC 21.1 and GC 21.5.

18.3 If the *Owner* does not agree that the *Work* or any portion thereof is affected as a result of an *Event of Force Majeure* for which the *Contractor* has given notice under GC 18.2, then the *Contractor* shall complete the *Work* in accordance with the *Work Schedule* and may request an adjustment to the *Contract Price* and *Contract Time* in the manner provided in GC 8.7.

18.4 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.

18.5 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. Subject to GC 18.4, an *Event of Force Majeure* shall not result in any increase to the *Contract Price*.

GC 19 - DELAYS

19.1 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner* or anyone employed or engaged by the *Owner* directly or indirectly, contrary to the provisions of the *Contract Documents*, or by the *Owner* taking possession of or using any partially completed portion of the *Work* pursuant to GC 9.1 ahead of the *Work Schedule*, then the *Contract Time* shall be extended for such reasonable time as may be necessary to allow the *Contractor* to make up the delay. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

19.2 If the *Contractor* is delayed in the performance of the *Work* by an order issued by a court or other public authority having jurisdiction and 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 for such reasonable time as the *Owner* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

19.3 No claim for delay and no extension of time on account of delay shall be made for delay unless notice with a *Change Quotation* is given to the *Owner* not later than ____ *Work Days* after the commencement of delay, providing however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.

GC 20 - SUSPENSION

20.1 In addition to any other rights that the *Owner* may have pursuant to this *Contract*, or in *Law*, the *Owner* may in the exercise of its sole discretion, 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 (the "*Suspended Work*"). 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 *Work* which is not *Suspended Work*.

20.2 The *Owner* may at any time authorize resumption of the *Suspended Work* or any part thereof, by giving the *Contractor* reasonable notice specifying the part of the *Suspended Work* to be resumed and the effective date of such resumption. The *Contractor* shall resume the *Suspended Work* on the date and to the extent specified in the notice provided that if the date for resumption is more than ____ days after the date of suspension, the *Contractor* may, by *Change Quotation*, given within ____ days of receipt of the notice of resumption, request a *Change Order* in the manner provided in GC 8.7 deleting the *Suspended Work* from the *Contract* and adjusting the *Contract Price* and *Contract Time* on account of the suspension and deletion of the *Suspended Work*.

20.3 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 suspension of the *Work*, the *Contractor* shall secure and protect the *Suspended Work* and all materials and equipment to be used or incorporated therein.

20.4 The *Owner* shall issue a *Change Order* to reimburse the *Contractor* for those direct costs reasonably incurred by the *Contractor* as a result of the *Suspended Work*. Except where the *Suspended Work* has been deleted as set forth in GC 20.2, under no circumstances shall the *Owner* be liable for any damages or loss of profits on account thereof.

GC 21 - TERMINATION

21.1 In addition to any other rights that the *Owner* may have pursuant to this *Contract*, or in *Law*, the *Owner* may at any time, in the exercise of its sole discretion, terminate this *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. Upon receipt of such notice, the *Contractor* shall discontinue the *Work* in accordance with the notice, and shall take such whatever steps may be necessary or desirable to minimize the costs associated with the termination of the *Work*. The *Contractor* shall continue to perform all portions of the *Work* not terminated, if any, in accordance with this *Contract*. Except in the event that this *Contract* is terminated in accordance with GC 18, 21.2 or 21.3, the *Owner* shall reimburse the *Contractor* for those costs reasonably incurred by the *Contractor* as a direct result of the termination of this *Contract*, the *Work*, or any portion thereof.

21.2 Not so as to limit the generality of GC 21.1, the *Owner* may in its sole discretion terminate this *Contract* by notice to the *Contractor*, in any of the following circumstances:

- 21.2.1 if the *Contractor* becomes insolvent or makes a general assignment 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*;
- 21.2.2 if an order is made or resolution is passed for the winding up or liquidation of the *Contractor*;
- 21.2.3 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;
- 21.2.4 if the *Contractor* ceases to carry on in the ordinary course of business;
- 21.2.5 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*; or
- 21.2.6 if the *Contractor* fails or refuses at any time to comply with the provisions of GC 11 or GC 12.

Upon receipt of such notice, 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*.

21.3 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 this *Contract*, or has made a false representation, declaration or warranty, the *Owner* may give the *Contractor* notice of default. The *Contractor* shall have ___ *Work Days* following receipt of the notice, or such longer time as the *Owner* has specified in the notice of default, within which to remedy the default. If the *Contractor* fails to rectify the default in the time required, the *Owner* may, by notifying the *Contractor*, terminate the whole or any part of the *Contract*.

In the case of any default which would reasonably require more than the time allowed to rectify the default, the *Contractor* shall be deemed to have rectified the default if, within the allowed time, it has submitted to the *Owner* a schedule for rectification of the default which the *Owner* has accepted and the *Contractor* has commenced rectification and thereafter promptly and diligently and continuously proceeded with the rectification of the default, in accordance with the approved schedule. If the *Owner* does not accept the schedule of rectification, the *Contract* shall be terminated in accordance with the notice of termination provided by the *Owner* to the *Contractor*. If the *Owner* accepts the schedule of rectification, but the *Contractor* does not complete the rectification of the default within *Owner*-approved schedule, the *Owner* may, by ___ *Work Days* notice in writing to the *Contractor*, terminate the whole or any part of the *Contract*.

Upon receiving a notice of termination, 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*. The *Owner* shall not be liable for those costs incurred by the *Contractor* as a result of the termination of the *Work*.

21.4 In the event this *Contract* or any portion of the *Work* is terminated, the *Owner* may complete or have others complete the *Work*. Subject always to GC 3.3, if this *Contract* is terminated pursuant to GC 21.2 or GC 21.3, the *Owner* shall pay the *Contractor* for all *Work* satisfactorily performed to the date of termination, less the sum of all monies already paid to the *Contractor* and all costs the *Owner* must pay in excess of the *Contract Price* to obtain satisfactory completion of the *Work* by others.

21.5 Upon termination of this *Contract* or the *Work* or any part thereof, 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* all right, title and interest of the *Contractor* under existing agreements with the *Contractor's* *Subcontractors* and *Suppliers*, which are related to the *Work*.

21.6 The *Owner* shall not be liable for any penalties, damages or loss on account of anticipated profits as a result of the termination of the *Work* or this *Contract* by the *Owner*. The rights and remedies provided in this GC 21 are in addition to the rights and remedies provided by the *Law*, or under any other provision of this *Contract*.

21.7 If the *Owner* becomes insolvent or makes a general assignment 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*, the *Contractor* may, without prejudice to any other right or remedy it may have, by giving the *Owner* written notice, immediately terminate the *Contract*.

21.8 If the *Owner* fails to make a payment to the *Contractor* when due and payable under this *Contract*, the *Contractor* may give the *Owner* notice of default. If the *Owner* has not cured the default within 5 *Work Days*, or is not contesting the *Contractor's* entitlement to payment in good faith, then the *Contractor* may suspend the further performance of the *Work*, without prejudice to all other rights and remedies it may have at *Law*. In the event that the *Owner* remains in default of payment for a further period of 14 *Work Days* after suspension of the *Work* by the *Contractor*, the *Contractor* may terminate the *Contract*, without prejudice to all other rights and remedies it may have at *Law*. The *Owner* shall be liable for and pay to the *Contractor* all amounts on account of *Work* performed to the date of suspension hereunder, the *Contractor's* reasonable charges incurred during the period that the *Work* was suspended, and, in the event of termination, the *Contractor's* loss of profit on the balance of the uncompleted *Work*.

GC 22 - TAXES

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

22.1.1 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;

22.1.2 all employment taxes and contributions imposed by the *Law* or required to be paid on behalf of the employees of the *Contractor*, *Subcontractors* or *Suppliers*, 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; and

22.1.3 all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment supplied by the *Contractor* for use in the performance of or to be incorporated into the *Work*, except for goods and services tax payable by the *Owner* with respect to payments due to the *Contractor*.

22.2 Any increase in taxes and charges described in GC 22.1.1 and GC 22.1.2 shall be the sole responsibility of the *Contractor*. In the event of a change in taxes or charges described in GC 22.1.3, a *Change Order* shall be issued changing the *Contract Price* 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 change in the tax.

22.3 The *Contractor* shall indemnify and hold harmless the *Owner* from any liability resulting from the *Contractor's*, *Subcontractors'* or *Suppliers'* failure to make timely payments of the items referred to in this GC 22 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*.

GC 23 - WORKERS' COMPENSATION

23.1 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* of Alberta and upon failure to do so, the *Owner*, in addition to any other rights it may have at *Law* or under this *Contract*, may retain the amount of such assessment or contribution from the *Contract Price*.

23.2 Prior to the *Commencement Date*, before release of the holdback, and at any other time at the *Owner's* request, the *Contractor* shall arrange to have the Workers' Compensation Board of Alberta send a clearance letter to the *Owner's Representative*, verifying that all required assessments and contributions have been paid, or such assessments and contribution are not required to be paid, by the *Contractor*, *Subcontractors* and *Suppliers*.

GC 24 - LIENS

24.1 The *Contractor* shall at all times reimburse, protect, indemnify and save free and harmless the *Owner*, the *Owner's Site* and the other lands and property of the *Owner* from and against all liens, claims made or liability incurred by the *Owner* on account of the *Work* performed or materials supplied by *Subcontractors* or *Suppliers*, 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 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 the *Contractor* whether under this *Contract* or otherwise.

GC 25 - WARRANTIES

25.1 The *Contractor* represents and warrants that:

25.1.1 all *Work* performed by the *Contractor* or any of its *Subcontractors* shall:

25.1.1.1 comply with the *Contract Documents* and the instructions of the *Owner*;

25.1.1.2 be performed in a safe and environmentally sound manner in compliance with applicable *Law*; and

25.1.1.3 be performed in accordance with all time schedules set out in or called for by the *Contract Documents*; and

25.1.2 all materials and equipment furnished by the *Contractor*, *Subcontractors* or *Suppliers* shall:

25.1.2.1 meet the specifications in the *Contract Documents* 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 of sufficient size and capacity for the *Work*; and

25.1.2.2 be safe and environmentally sound.

25.2 The *Contractor* warrants that, for a period of ___ years (or such other time as provided in Schedule "A" - Scope of Work) from the earlier of the date of *Functional Completion* or the date of the *Final Completion Notice*, the *Work* (or the component system in the case of a *Functional Completion Notice* issued in respect of a component system) is and shall be free from any and all defects and deficiencies in workmanship performed and, materials and equipment supplied by the *Contractor*, its *Subcontractors* or *Suppliers*.

25.3 During the *Warranty Period*, the *Contractor* shall promptly repair, replace and make good all defects in the *Work* and correct all deficiencies, errors, omissions and mistakes with respect to the *Work* (or any component system) at its own cost by re-performing the *Work* or repairing or replacing any materials or equipment, if any, which do not comply with the *Contract*. The *Contractor* shall do so in a manner that minimizes disruptions to the *Owner's* continued operations. Notwithstanding the foregoing, the *Owner* may, in the case of emergency or the failure of the *Contractor* to perform the requested warranty work in a timely manner, make or cause to be made the necessary corrections, repairs or replacements and charge the cost of the same to the *Contractor* provided that where practical, the *Owner* shall provide the *Contractor* with the opportunity to make the necessary corrections, repairs or replacements.

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

25.5 The *Warranty* given hereby shall apply to the re-performance of any *Work* or the repair or replacement of materials or equipment pursuant to GC 25.3, and the *Warranty Period* shall again run from the time of the completion of the work performed under *Warranty*.

25.6 If this *Contract* or any part of the *Work* is terminated pursuant to GC 21, then this GC 25 shall survive such termination, and the *Warranty Period* with respect to completed *Work* shall commence upon the effective date of termination.

GC 26 - LIABILITY & INDEMNIFICATION

26.1 The *Contractor* shall be liable to the *Owner*, its officers, directors, employees, consultants and agents for all losses, damages and expenses whatsoever which they or any of them may incur and in addition shall indemnify, and hold harmless, the *Owner*, its officers, directors, employees, consultants and agents from and against all proceedings, claims, losses, damages and expenses whatsoever, including solicitor and own client (indemnity) costs, which may be brought against or incurred by the *Owner*, or any of its officers, directors, employees, consultants and agents, as a result of claims, demands, actions or proceedings made or taken by persons not party to this *Contract* for:

26.1.1 any acts or omissions in connection with the performance, purported performance or non-performance of this *Contract* or of the *Work* by the *Contractor*, *Subcontractors*, *Suppliers* or their respective employees or agents; or

26.1.2 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*, *Subcontractors*, *Suppliers* or their respective employees or agents.

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

26.2.1 all physical damage caused by the *Contractor*, its *Subcontractors* or *Suppliers* or their respective employees or agents to property of the *Owner* or *Other Contractors*, or property under the care, custody or control of the *Owner* or *Other Contractors*; and

26.2.2 the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the *Owner's Site* or facilities or equipment relating thereto caused by or resulting from the actions howsoever of the *Contractor*, its *Subcontractors* or *Suppliers*, or their respective employees or agents,

to the limit of the greater of the extent of amounts recoverable under a policy or policies of insurance required to be maintained by the *Contractor*, or provided by the *Owner*, pursuant to the provisions of this *Contract*, and \$_____, and the *Contractor* shall have no liability on this account for any loss, damage and expense in excess thereof.

26.3 Except to the extent to which indemnity is provided by a policy or policies of insurance, neither the *Contractor* nor its *Subcontractors*, *Suppliers* or their respective employees or agents shall have any liability to the *Owner*, its officers, directors, employees, consultants and agents, whether in tort (including but not limited to negligence or breach of statutory duty) or otherwise unless a notice has been given to the *Contractor* in writing within a period of 10 years from the date of the *Final Completion Notice* setting forth details of the intended claim and the identity of the parties against whom it is to be made.

26.4 Notwithstanding anything else in this *Contract*, the *Contractor*, its *Subcontractors*, *Suppliers*, and their respective officers, directors, employees, consultants and agents 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:

26.4.1 special or consequential loss or damage;

26.4.2 loss of use, whether complete or partial, of the *Work* or existing facilities of the *Owner* or third parties;

26.4.3 loss of product;

26.4.4 loss of revenue, overhead and profit; or

26.4.5 loss of any contract that may be suffered by the *Owner*,

except to the extent of amounts recoverable under a policy or policies of insurance required to be maintained by the *Contractor*, or provided by the *Owner*, pursuant to the provisions of this *Contract*, provided however that in the event of the failure by the *Contractor* to complete the *Work* by the *Contract Time* the liability of the *Contractor* under this GC 26.4 shall be limited only to the greater of the insurance recoverable and \$_____.

[Note to Draft: Optional]

26.5 In the event of a sale by the *Owner* of the *Owner's Site*, the *Owner* agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by, and to afford the *Contractor* the benefit of, GC 26.4.

26.6 The *Owner* shall indemnify and hold harmless, including indemnity for legal costs on a solicitor and own client (indemnity) basis, the *Contractor*, its *Subcontractors*, *Suppliers*, and their respective officers, directors, employees, consultants and agents from and against all claims, demands, actions and proceedings made or taken by persons not parties to this *Contract* and which arise on account of and are attributable to the *Owner's* obligations hereunder, including, without limitation:

26.6.1 a lack of or defect in title or an alleged lack of or defect in title to the *Owner's Site*;

26.6.2 an environmental condition at the *Work Site* which is the responsibility of the *Owner*;

26.6.3 *Hazardous Materials* supplied by the *Owner* and while under its care and control;

26.6.4 an action for which the *Owner* must indemnify the *Contractor* pursuant to GC 15.2;
or

26.6.5 defective machinery, equipment, products, processes or mechanisms provided by the *Owner* to the *Contractor* for the performance of or incorporation into the *Work*.

26.7 In the event that the *Owner* accepts the responsibility to indemnify the *Contractor*, its officers, directors, employees, consultants or agents pursuant to GC 26.5, 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.

GC 27 - INSURANCE

27.1 Without in any way limiting the liability of the *Contractor* or its obligation to indemnify the *Owner* under this *Contract*, the *Contractor* shall, at its own expense, obtain prior to the *Commencement Date* and maintain during the *Contract Time*, the following types of insurance coverage, naming the *Contractor* as the insured, in the following minimum amounts:

27.1.1 automobile liability insurance which provides coverage to a minimum limit of \$2,000,000.00 per occurrence against any and all claims for bodily injury including, without limitation, passenger hazard and property damage for all vehicles used by the *Contractor*, its employees or agents in connection with the *Work*, including non-owned vehicles;

[Optional - Use only if Section 27.6 has been deleted]

27.1.2 course of construction including transit insurance covering the *Work* against physical loss or damage equal to the current value of the *Contract* and the value of all materials, equipment and supplies delivered to the *Work Site* for incorporation into the *Work*, subject to policy terms, conditions and exclusions, and subject to a \$_____ deductible. This policy shall identify the *Owner*, the *Contractor*, *Subcontractors* and *Suppliers* and their respective officers, employees and agents as additional named insureds with respect to the *Work* to be performed pursuant to this *Contract*, and shall cover loss or damage to the *Work*, including all materials, equipment and supplies delivered to the *Work Site* for incorporation into the *Work*;

[Optional]

27.1.3 aircraft and watercraft liability insurance with respect to owned and non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, with limits of liability of not less than \$2,000,000.00 for the accidental injury or death of one or more persons or damage to or destruction of property as a result of one accident or occurrence; and

27.1.4 insurance covering loss or damage to construction machinery, tools and equipment used by the *Contractor* for the performance of the *Work*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may, in writing, waive the equipment insurance requirement.

[Optional for Owner or Contractor]

27.2 The *Owner* [**or Contractor**] shall maintain during the *Contract Time* a comprehensive general liability insurance policy, including completed operations for a period of not less than 12 months from the date of the *Final Completion Notice*, naming the *Owner*, *Contractor*, *Subcontractors*, *Suppliers* and their respective employees and agents as named insureds. The policy shall contain a "cross-liability" clause so that the *Owner*, *Contractor*, *Subcontractors*, *Suppliers* and their respective officers, employees and agents are insured in the same manner and to the same extent as if individual policies had been issued to each.

[Optional – Use if Owner provides CGL coverage]

27.3 Subject always to the specific wording of the policy, the definitions, limits, coverage and exclusions contained therein, the policy referred to in GC 27.2 shall, in general terms, include the following features:

27.3.1 a combined single limit of not less than \$_____ for each occurrence or accident;

27.3.2 coverage for damages due to bodily injury (including death at any time resulting therefrom) and personal injuries sustained by any person as well as injury to or destruction of property arising out of any operations in connection with this *Contract*; and

27.3.3 a deductible amount of no more than \$_____ per occurrence.

27.4 The *Contractor* agrees that notification of any claim or possible claim to be made relating to the insurance provided by the *Owner* shall be provided by the *Contractor* to the *Owner's Representative* as soon as possible and in any event not more than 3 *Work Days* after the *Contractor* becomes aware of the occurrence of the event to which the claim relates.

27.5 The *Owner* and the *Contractor* agree and the *Contractor* shall ensure that its *Subcontractors* agree that the insurer has the right to make such investigation, negotiation and settlement of any claim or suit relating to the policy discussed in GC 27.2 as may be deemed expedient by the insurer.

[Optional]

27.6 The *Owner* shall provide course of construction including transit insurance covering the *Work* against physical loss or damage equal to the current value of the *Contract*, subject to policy terms, conditions and exclusions, and subject to a \$_____ deductible. This policy shall identify the *Owner*, the *Contractor*, *Subcontractors* and *Suppliers* and their respective officers, employees and agents as additional named insureds with respect to the *Work* to be performed pursuant to this *Contract*, and shall cover loss or damage to the *Work* including all materials, equipment and supplies delivered to the *Work Site* for incorporation into the *Work*.

27.7 The deductibles for the insurance policies referred to above, shall, unless otherwise specified, be standard deductibles for such policies and the party causing the loss shall be solely responsible for payment of the amount of any deductible.

27.8 The *Contractor* shall provide certified copies of the insurance policies it is required to place and maintain under this *Contract* if requested by the *Owner's Representative*.

GC 28 - INDEPENDENT CONTRACTOR

28.1 For the purposes of this *Contract* and the *Work*, the *Contractor* shall be an independent contractor and not the agent or employee of the *Owner*. Accordingly, all persons employed or retained by the *Contractor* in connection with the performance of its obligations hereunder shall be its employees or those of its *Subcontractors* or *Suppliers*, as the case may be, and not the employee or agent of the *Owner* in any respect.

28.2 The *Contractor* shall have no authority whatsoever to make any statement, representation or commitment of any kind, nor to take any action, which may be binding on the *Owner*, except as may be expressly provided for herein, or as expressly authorized in writing by the *Owner*.

GC 29 - SUBCONTRACTS & ASSIGNMENTS OF CONTRACT

29.1 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* or *Supplier* before entering into any subcontract. The *Owner* may for reasonable cause object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to obtain another *Subcontractor* or *Supplier*. Any reviews or approvals by the *Owner* pursuant to the provisions of this GC 29 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* or *Supplier*. The *Contractor* shall require any *Subcontractor* or *Supplier* to agree to be bound by these *General Conditions* and Schedule "A" - Scope of Work and to abide by the *Owner's* requirements for safety and loss management.

29.2 Prior to the *Commencement Date*, the *Contractor* shall provide the *Owner's Representative* with a list of the names and addresses of all *Subcontractors*, *Suppliers* and others who have performed or shall perform any of the *Work*. The *Contractor* shall provide the *Owner's Representative* with any proposed changes to this list during the *Contract Time*. The *Contractor* shall, upon the request of the *Owner*, assign to the *Owner* all warranties provided by *Subcontractors* and *Suppliers*.

29.3 The *Contractor* shall be fully responsible for any part of the *Work* performed by *Subcontractors* or *Suppliers* and for the acts or omissions of *Subcontractors* and *Suppliers* 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 GC 29 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* and *Suppliers*.

29.4 The *Contractor* shall not assign this *Contract* or any part thereof without the prior approval of the *Owner*. 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 assignee agrees to be bound by this *Contract*.

29.5 The *Contractor* shall enforce the warranty obligations of its *Subcontractors* and *Suppliers*. All contracts between the *Contractor* and its *Subcontractors* and *Suppliers* shall provide that warranties given by the *Subcontractor* or *Supplier* shall be given to both the *Contractor* and the *Owner* and the warranties may be enforced by either the *Contractor* or the *Owner*.

29.6 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* and *Suppliers* and, as a minimum, shall obtain and provide to the *Owner* the warranties required by the *Contract Documents*. 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* and *Suppliers*.

GC 30 - DISPUTE RESOLUTION

30.1 In the event of disagreement between the parties as to the performance of the *Work* or the interpretation, application or administration of the *Contract Documents*, the *Contractor* shall perform the *Work* as directed by the *Owner's Representative*. All differences between the parties not resolved by the decision of the *Owner's Representative* and all disputes and claims of either party arising out of the *Contract* and its performance shall be settled in accordance with this GC.

30.2 The parties shall make all reasonable efforts to resolve all disputes and claims by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

30.3 Either party shall be entitled by notice to the other to call for the appointment of a *Project Mediator*, in which case the parties shall within 10 *Work Days* thereafter jointly nominate a *Project Mediator*. If the parties do not agree on the appointment of a *Project Mediator*, then either party may request the Chair of the Alberta Arbitration and Mediation Society to appoint a *Project Mediator*, who when so appointed shall be deemed acceptable to the parties and to have been appointed by them.

30.4 The parties shall submit in writing their dispute to the *Project Mediator*, and afford to the *Project Mediator* access to all records, documents and information the *Project Mediator* may request. The parties shall meet with the *Project Mediator* at such reasonable times as may be required and shall, through the intervention of the *Project Mediator*, negotiate in good faith to resolve their dispute. All proceedings involving a *Project Mediator* are agreed to be without prejudice, and the cost of the *Project Mediator* shall be shared equally between the parties.

30.5 If the dispute has not been resolved within ___ days after the appointment of the *Project Mediator* either party may by notice to the other withdraw from the mediation process.

30.6 All disputes, claims and differences not settled as herein provided, arising out of or in connection with the *Contract* or in respect of any defined legal relationship associated with it or derived from it, shall be referred to and finally resolved by arbitration in accordance with the *Alberta Arbitration Act*. The arbitral tribunal shall be composed of one arbitrator where the subject of the dispute, claim or difference relates primarily to whether work required to be performed is within the scope of the *Work* or the *Contractor* has met the required specifications of the *Contract*, and the *Work* has not yet been completed when the matter is referred to arbitration. In all other cases the arbitral tribunal shall be composed of 3 arbitrators, one appointed by each party who shall select the third who shall act as chair.

GC 31 - CONFLICT OF INTEREST

31.1 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*, *Subcontractors* and *Suppliers* 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 this *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 its employees or agents from offering, or providing entertainment, gifts, loans, payments or other considerations to the *Owner's* employees, consultants and agents or their family members.

GC 32 - AUDIT ACCESS

32.1 The *Contractor*, shall keep and preserve the *Records* during the *Contract Time* and for a period of 4 years thereafter.

32.2 For the purposes of determining the *Contractor's* compliance with all of the terms of this *Contract*, including, but not limited to GC 8, 19 and 21 and for verification of all *Work* performed and all reimbursable costs and other charges payable under this *Contract*, including but not limited to, claims and suspension or termination charges, 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 4 years thereafter. The provisions of this GC 32.2 pertain only to the determination of the *Contractor's* compliance with the *Contract* and with verification of reimbursable costs and charges payable under this *Contract* and do not apply to any fixed price portion of the *Contract*.

GC 33 - REPRESENTATIVES & NOTICES

33.1 Any and all of the *Owner's* approvals are required to be in writing and to be given by the *Owner's Representative*.

33.2 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*.

33.3 *Contractor's Representative* is _____. *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*.

33.4 Unless otherwise specifically indicated in this *Contract*, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to this *Contract*, shall be in writing and shall be delivered personally to the *Contractor's Representative* or the *Owner's Representative*, as the case may be, faxed or electronically transmitted, where such electronic transmission meets the minimum requirements set forth in any legislation governing the electronic transmission of documents pursuant to this *Contract*, to the other party at the addresses shown below:

33.4.1 Contractor:

Attention: _____
Telephone: _____
Fax: _____

33.4.2 Owner:

Attention: _____
Telephone: _____
Mail Drop: _____
Fax: _____

33.5 Either party may change its address or fax number for notice by providing the other party with 10 days notice.

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

Attention: _____
Telephone: _____
Fax: _____

GC 34 - GENERAL

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

34.2 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 this *Contract* by the other party.

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

34.4 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 this *Contract*.

34.5 Time is and shall continue to be of the essence of this *Contract*.

34.6 All of the covenants and agreements herein contained on the part of either party shall apply to, enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.

34.7 Each of the parties hereby represents and warrants that it has the power and authority to carry on its business and to enter into this *Contract* and to perform all of its obligations hereunder.

34.8 This *Contract* constitutes the entire agreement between the parties with respect to the *Work* and supersedes all previous communications, representations, warranties and agreements, either written or verbal.

34.9 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.

34.10 The terms "herein", "hereunder", "hereto" and similar expressions refer to this *Contract*, and not to any particular GC or paragraph of this *Contract*.

34.11 Where reference is made to a "schedule", the reference is to a schedule of this *Contract* and all schedules shall be deemed to be a part hereof.

34.12 Where reference is made to a "day", "week", "month" or "year", the reference is to a calendar day, week, month or year, unless the context indicates otherwise.

34.13 The headings and sub-headings of GC's contained herein are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of this *Contract* or any of its provisions.

34.14 Any terms, covenants, provisions or conditions of this *Contract* which expressly or by their nature survive the termination of this *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.

34.15 This *Contract* shall be governed by and construed in accordance with the laws of the Province of Alberta, and the parties attorn to the jurisdiction of the Courts of the Province of Alberta.

34.16 This *Contract* shall be executed by the parties, or their representatives, in person with original signatures. Subsequent *Contract Documents* may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

IN WITNESS WHEREOF the parties have duly executed this *Contract* as of the date on the first page of this *Contract*.

Per: _____

Per: _____

Contractor: _____ c/s

Per: _____

Per: _____

Contractor: _____ c/s