

Construction Contract

Project Name:

Location:

Project Number:

Contract Number:

Government of the Northwest Territories



(Revised September 2009)

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ARTICLES OF AGREEMENT

These Articles of Agreement, effective on the _____ day of _____ 20__.

BETWEEN:

(the "Owner")
AND

OF THE FIRST PART

(the "Contractor")

OF THE SECOND PART

witness that in consideration for the mutual promises and obligations contained in the contract, the Owner and the Contractor covenant and agree as follows:

A1 CONTRACT DOCUMENTS

1.1 Subject to A1.4 and A1.5 the documents forming the contract between the Owner and the Contractor, referred to herein as the contract documents, are these Articles of Agreement and all of those documents referred to in Appendix A of the Tender and:

1.1.1 any Addenda issued during the Tender period and identified in Clause 2 of the Tender Form,

1.1.2 any amendment or variation of the contract documents that is made in accordance with the General Conditions.

1.2 The Owner hereby designates _____ as the Owner's Representative for _____ of _____

1.3 In the contract:

1.3.1 "Fixed Price Arrangement" means that part of the contract that prescribes a lump sum as payment for performance of the work to which it relates; and

1.3.2 "Unit Price Arrangement" means that part of the contract that prescribes the product of a price multiplied by a number of units of measurement of a class as payment for performance of the work to which it relates.

1.4 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Unit Price Arrangement are not applicable to any part of the work to which a Fixed Price Arrangement is applicable.

1.5 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Fixed Price Arrangement are not applicable to any part of the work to which a Unit Price Arrangement is applicable.

A2 DATE OF COMPLETION OF WORK AND DESCRIPTION OF WORK

2.1 The Contractor shall, between the effective date of these Articles of Agreement and the _____ day of _____, 20_____, in a careful and workmanlike manner, diligently perform and complete the following work:

which is more particularly described in the Plans and Specifications.

A3 CONTRACT AMOUNT

3.1 Subject to any increase, decrease, deduction, reduction or set-off that may be made under the contract, the Owner shall pay the Contractor at the times and in the manner that is set out or referred to in the Agreement:

3.1.1 The sum of \$ _____ in consideration for the performance of the work or the part thereof that is subject to a Fixed Price Arrangement.

3.1.2 A sum that is equal to the aggregate of the products of the number of units of measurement of each class of labour, plant and material that is set out in a Final Certificate of Measurement referred to in GC43.6 multiplied in each case by the appropriate unit price that is set out in the Unit Price Table "Appendix E" in consideration for the performance of the work or the part thereof that is subject to a Unit Price Arrangement.

3.2 For the information and guidance of the Contractor and the person administering the contract on behalf of the Owner, but not so as to constitute a warranty, representation or undertaking of any nature by either party, it is estimated that the total amount payable by the Owner to the Contractor for the part of the work to which a Unit Price Arrangement is applicable will not exceed \$_____.

3.3 A3.1.1 is applicable only to a Fixed Price Arrangement.

3.4 A3.1.2 and A3.2 are applicable only to a Unit Price Arrangement.

A4 UNIT PRICE TABLE

4.1 The Owner and the Contractor agrees that Appendix "D" of the Tender is the Unit Price Table for the purposes of the contract.

4.2 The Unit Price Table that is set out in A4.1 designates the part of the work to which a Unit Price Arrangement is applicable.

4.3 The part of the work that is not designated in the Unit Price Table referred to in A4.2 is the part of the work to which a Fixed Price Arrangement is applicable.

A5 FINANCIAL ADMINISTRATION ACT 1987 - Section 46

The attention of the Contractor is drawn to the following statutory provision:

"It is a condition of every contract made by or on behalf of the Government requiring an expenditure that an expenditure pursuant to the contract will be incurred only if there is a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required under the contract."

SIGNED, SEALED AND DELIVERED in the presence of:

Contractor Contractor's Full Legal Business Name and Address:

_____ Seal

Facsimile No. _____

E-Mail Address _____

Signature

Name

Date

Title

Signature

Witness

Name

Name

Title

Title

Owner Owner's Full Business Name and Address:

Facsimile No. _____

E-Mail Address _____

Signature

Date

Name

Witness

Title

Title

END OF ARTICLES OF AGREEMENT

TERMS OF PAYMENT

TP1 AMOUNT PAYABLE - GENERAL

- 1.1 Subject to any other provisions of the contract, the Owner shall pay the Contractor, at the times and in the manner hereinafter set out, the amount by which:
 - 1.1.1 the aggregate of the amounts described in TP2 exceeds
 - 1.1.2 the aggregate of the amounts described in TP3, andthe Contractor shall accept that amount as payment in full satisfaction for everything furnished and done by him in respect of the work to which the payment relates.

TP2 AMOUNT PAYABLE TO THE CONTRACTOR

- 2.1 The amounts referred to in TP1.1.1 are the aggregate of:
 - 2.1.1 the amounts referred to in the Articles of Agreement, and
 - 2.1.2 the amounts, if any, that are payable to the Contractor pursuant to the General Conditions.

TP3 AMOUNTS PAYABLE TO THE OWNER

- 3.1 The amounts referred to in TP1.1.2 are the aggregate of the amounts, if any, that the Contractor is liable to pay the Owner pursuant to the contract.
- 3.2 When making any payment to the Contractor, the failure of the Owner to deduct an amount referred to in TP3.1, from an amount referred to in TP2 shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the Contractor.

TP4 TIME OF PAYMENT

- 4.1 For the purposes of these Terms of Payment, "payment period" means a period of 30 consecutive days or such other interval as is agreed between the Contractor and the Owner.
- 4.2 The Contractor shall, on the expiration of a payment period, deliver to the Owner in respect of that payment period a written progress claim that fully describes any part of the work that has been completed, and any material that was delivered to the work site but not incorporated into the work, during that payment period.
- 4.3 The Owner shall, not later than ten days after receipt by him of a progress claim referred to in TP4.2:
 - 4.3.1 inspect the part of the work and the material described in the progress claim, and
 - 4.3.2 issue a progress report, which may take the form of an endorsement on the progress claim, a copy of which will be given to the Contractor, that indicates the value of the part of the Work and the material described in the progress claim that, in his opinion:
 - 4.3.2.1 is in accordance with the contract, and
 - 4.3.2.2 was not included in any other progress report relating to the contract.

- 4.4 Subject to TP1, the Owner shall pay the Contractor in accordance with applicable statutes the amounts stipulated hereunder. Northern Contractors' (as defined by the Business Incentive Policy of the G.N.W.T.) claims will become due and payable 20 days after receipt by the Owner of the claim specified in TP4.2. Claims from other Contractors will become due and payable 30 days after receipt by the Owner of the claim specified in TP4.2:
- 4.4.1 an amount that is equal to 95% of the value that is indicated in that progress report if a labour and material payment bond has been furnished by the Contractor, or
- 4.4.2 an amount that is equal to 90% of the value that is indicated in that progress report if a labour and material payment bond has not been furnished by the Contractor.
- 4.5 Subject to TP1 and TP4.6, the Owner shall, not later than 20 days for Northern Contractors (as defined by the Business Incentive Policy of the G.N.W.T.) or 30 days for other Contractors after the date of issue of a Substantial Certificate of Completion referred to in GC43.2, pay the Contractor the amount referred to in TP1 less the aggregate of:
- 4.5.1 the sum of all payments that were made pursuant to TP4.4,
- 4.5.2 an amount that is equal to the Owner's estimate of the cost to the Owner of rectifying defects described in the Substantial Certificate of Completion, and
- 4.5.3 an amount that is equal to the Owner's estimate of the cost to the Owner of completing the parts of the work described in the Substantial Certificate of Completion other than the defects referred to in TP4.5.2.
- 4.6 It is a condition precedent to the Owner's obligation under TP4.5 that:
- 4.6.1 the Contractor has made and delivered to the Owner a statutory declaration described in TP4.7 in respect of a Substantial Certificate of Completion referred to in GC43.2, and
- 4.6.2 the Contractor has complied with the various requirements to provide local and northern involvement reports as required in Appendix "C" to the Contractor's Tender Submission Form.
- 4.7 A statutory declaration referred to in TP4.6 and TP4.9 shall be submitted on the attached form. Substitutes will not be accepted.
- 4.8 Subject to TP1 and TP4.9, the Owner shall, not later than 20 days for Northern Contractors (as defined by the Business Incentive Policy of the G.N.W.T.) or 30 days for other Contractors after the date of issue of a Final Certificate of Completion referred to in GC43.1, pay the Contractor the amount referred to in TP1 less the aggregate of:
- 4.8.1 the sum of all payments that were made pursuant to TP4.4, and
- 4.8.2 the sum of all payments that were made pursuant to TP4.5.
- 4.9 It is a condition precedent to the Owner's obligation under TP4.8 that the Contractor has made and delivered a statutory declaration to the Owner as described in TP4.7 in respect of a Final Certificate of Completion referred to in GC43.1.

TP5 PROGRESS REPORT AND PAYMENT THEREUNDER NOT BINDING ON THE OWNER

- 5.1 Neither a progress report referred to in TP4.3 nor any payment made by the Owner pursuant to these Terms of Payment shall be construed as an admission by the Owner that the work, material or any part thereof is complete, is satisfactory or is in accordance with the contract.

TP6 DELAY IN MAKING PAYMENT

- 6.1 Notwithstanding GC6 any delay by the Owner in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of the contract by the Owner.
- 6.2 When the Owner delays in making a payment that is due pursuant to TP4.4, TP4.5 and TP4.8, the Contractor shall be entitled to receive interest on the amount that is overdue in accordance with the GNWT's Financial Administration Manual Section 1805.
- 6.3 The Contractor shall not be entitled to receive interest on any other amount that is unpaid including, without limitation, an amount that is calculated in accordance with GC49.

TP7 RIGHT OF SET-OFF

- 7.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the contract, the Owner may set-off any amount payable to the Owner by the Contractor under this contract or under any current contract against any amount payable to the Contractor under this contract or under any current contract.
- 7.2 For the purposes of this Terms of Payment, "current contract", means a contract between the Owner and the Contractor:
 - 7.2.1 under which the Contractor has an undischarged obligation to perform or supply work, labour or material, or
 - 7.2.2 in respect of which the Owner has, since the date on which the Articles of Agreement were made, exercised any right to take the work that is subject of the contract out of the Contractor's hands.

TP8 PAYMENT IN EVENT OF TERMINATION

- 8.1 If the contract is terminated pursuant to GC40, the Owner shall pay the Contractor any amount that is lawfully due and payable to the Contractor as soon as is practicable under the circumstances.

TP9 INTEREST ON SETTLED CLAIMS

- 9.1 The Owner shall pay to the Contractor interest on the amount of a settled claim in accordance with the GNWT's Financial Administration Manual Section 1805 from the date the claim is settled.
- 9.2 For the purposes of TP9.1 a claim is deemed to have been settled when an agreement in writing is signed by the Owner and the Contractor setting out the amount of the claim to be paid by the Owner and the items of work for which the said amount is to be paid.
- 9.3 For the purposes of TP9 a claim means a disputed amount subject to negotiation between the Owner and the Contractor under the contract.

Certificate of Completion

STATUTORY DECLARATION

THE MATTER OF a contract bearing

between the Government of the NWT and

(Insert full name of contractor.)

herein the Contractor,

for _____

(Briefly describe the work to be performed.)

dated the _____ day of _____, 20_____

and

IN THE MATTER OF the Certificate of Completion relating thereto

TO WIT:

I, _____ of _____
(Print or type full name of declarant.) (Declarant's city of residence.)

DO SOLEMNLY DECLARE:

(1) That I am _____
(Print or type declarant's position or title with the Contractor or state that the declarant is the Contractor.)

And as such have a personal knowledge of the said contract and of the facts and matters stated herein.

(2) That all assessments and levies under The Unemployment Insurance Act, The Workers' Compensation Act or other social or labour legislation in respect of the said contract have been fully paid.

(3) That all subcontractors, labourers and suppliers of materials and equipment whatsoever who have entered into agreements to supply goods or services which have been incorporated into the construction of this project have been fully paid except for contractual holdbacks and the further amount(s), if any, which is (are) listed below which is (are) being withheld from the subcontractor(s) listed herein, due to legitimate dispute(s) arising out of the performance, or lack of performance, of the work by the listed subcontractor(s):

Subcontractor(s)	Amount(s) in Dispute and being withheld
_____	_____
_____	_____
_____	_____
_____	_____

and the following amounts, if any which are being withheld pending payment to the Contractor by the Owner:

Subcontractor(s)	Amount(s) Being Withheld
_____	_____
_____	_____
_____	_____
_____	_____

And I make this SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the LAWS OF CANADA and the NORTHWEST TERRITORIES.

DECLARED before me at _____ this _____

day of _____, 20 _____

(Signature of declarant.)

(Signature of person before whom declaration is made.)

(Print name of person before whom declaration is made.)

A Notary Public, Commissioner, etc. _____

(Please state clearly authority for receiving solemn declarations - notaries to affix notary seal.)

NOTE 1. Where the Contractor is a corporation or a partnership, declarant's position in the corporation or partnership, and the corporation or partnership name should be clearly shown in No. 1.

NOTE 2. Where the Contractor is an individual he must make the declaration himself. Where the Contractor is a partnership the declaration must be made by one of the partners. Where the Contractor is an incorporated company, the declaration must be made by the President, Vice-President, Secretary Treasurer or a Director. If any other person makes the declaration, two copies of the by-law issued under the corporation seal, authorizing the individual to execute documents must be submitted with the first declaration of each contract.

If this declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

The following excerpts of the Criminal Code of Canada are hereby brought to the attention of the Declarant:

122. "Everyone who, not being a witness in a judicial proceeding but being permitted, authorized or required by law to make a statement by affidavit, by solemn declaration or orally under oath, makes in such statement, before a person who is authorized by law to permit it to be made before him, an assertion with respect to a matter of fact, opinion, belief or knowledge, knowing that the assertion is false, is guilty of an offense and is liable to imprisonment for fourteen years.

122.1 (1) Everyone who, not being specially permitted, authorized or required by law to make a statement by affidavit, by solemn declaration or orally under oath, makes in such a statement, before a person who is authorized by law to permit it to be made before him, an assertion with respect to a matter of fact, opinion, belief or knowledge, knowing that the assertion is false, is guilty of an offense punishable on summary conviction."

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GENERAL CONDITIONS

GC1 INTERPRETATION

- 1.1 In the contract:
 - 1.1.1 where reference is made to a part of the contract by means of numbers preceded by letters, the reference shall be construed to be a reference to the particular part of the contract that is identified by that combination of letters and numbers and to any other part of the contract referred to therein.
 - 1.1.2 "contract" means the contract documents referred to in the Articles of Agreement.
 - 1.1.3 "contract security" means any security given by the Contractor to the Owner in accordance with the contract.
 - 1.1.4 "Engineer" means the officer or employee of the Owner who is designated pursuant to the Articles of Agreement and includes a person specially authorized by the Engineer to perform, on the Engineer's behalf, any of the Engineer's functions under the contract and is so designated in writing to the Contractor.
 - 1.1.5 "material" includes all commodities, articles and things required to be furnished by or for the Contractor under the contract for incorporation into the work.
 - 1.1.6 "person" includes, unless there is an express stipulation in the contract to the contrary, any partnership, proprietorship, firm, joint venture, consortium, corporation.
 - 1.1.7 "plant" includes all animals, tools, implements, machinery, vehicles, buildings, structures, equipment and commodities, articles and things other than material, that are necessary for the due performance of the contract.
 - 1.1.8 "subcontractor" means a person to whom the Contractor has, subject to GC4, subcontracted the whole or any part of the work.
 - 1.1.9 "substantial performance" as defined in the lien legislation applicable to the Place of Work. If such legislation is not in force, is not applicable or does not contain such definition, substantial performance shall have been reached when work is ready for use or is being used for the purpose intended and is so certified by the Engineer.
 - 1.1.10 "superintendent" means the employee of the Contractor who is designated by the Contractor to act pursuant to GC18.
 - 1.1.11 "work" includes, subject only to any express stipulation in the contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contract.
- 1.2 The headings in the contract documents, other than in the Plans and Specifications, form no part of the contract but are inserted for convenience of reference only.
- 1.3 In interpreting the contract, in the event of discrepancies or conflicts between anything in the Plans and Specifications and the General Conditions, the General Conditions govern.
- 1.4 In interpreting the Plans and Specifications, in the event of discrepancies or conflicts between:
 - 1.4.1 the Plans and Specifications, the Specifications govern.
 - 1.4.2 the Plans, the Plans drawn with the largest scale govern.
 - 1.4.3 figured dimensions and scaled dimensions, the figured dimensions govern.

GC2 SUCCESSORS AND ASSIGNS

- 2.1 The contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC3 ASSIGNMENT OF CONTRACT

3.1 The contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the Owner.

GC4 SUBCONTRACTING BY CONTRACTOR

4.1 Subject to this General Condition, the Contractor may subcontract any part of the work so long as such subcontracting is consistent with the information provided through Tender Appendix B.

4.2 The Contractor shall notify the Engineer of his intention to subcontract. (Tender Appendix B-1)

4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.

4.4 The Engineer may, within six days of receipt by him of a notification referred to in GC4.2, object to the intended subcontracting.

4.5 If the Engineer objects to a subcontracting pursuant to GC4.4, the Contractor shall not enter into the intended subcontract.

4.6 The Contractor shall not, without the written consent of the Owner change a subcontractor who has been engaged by him in accordance with this General Condition and the Tender Form.

4.7 All the terms and conditions of this contract that are of a general application shall be incorporated in every other contract, except those contracts issued solely for the supply of plant or material, issued as a consequence of this contract.

4.8 Neither a subcontracting nor the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the contract or to impose any liability upon the Owner.

GC5 AMENDMENTS

5.1 No amendment or change in any of the provisions of the contract shall have any force or effect until it is reduced to writing.

GC6 NO IMPLIED OBLIGATIONS

6.1 No implied terms or obligations of any kind by or on behalf of the Owner shall arise from anything in the contract and the express covenants and agreements therein contained and made by the Owner are the only covenants and agreements upon which any rights against the Owner are to be founded.

6.2 The contract supersedes all communications, negotiations and agreements, either written or oral, relating to the work that were made prior to the date of the contract.

GC7 TIME OF ESSENCE

7.1 Time is of the essence of the contract.

GC8 INDEMNIFICATION BY CONTRACTOR

8.1 The Contractor shall indemnify and save the Owner harmless from and against all claims, demands, losses, damages, actions, suits or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, his servants, agents, and subcontractors in performing the work including an infringement or an alleged infringement of patent of invention or any kind of intellectual property.

8.2 For the purposes of GC8.1, "activities" includes but is not limited to any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC9 INDEMNIFICATION BY THE OWNER

- 9.1 The Owner shall, subject to any law that affects the Owner's rights, powers, privileges or obligations, indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of his activities under the contract that are directly attributable to:
- 9.1.1 lack of or a defect in the Owner's title to the work site whether real or alleged, or
 - 9.1.2 an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the work that was supplied by the Owner to the Contractor.

GC10 NOTICES

- 10.1 Any notice, consent, order, decision, direction or other communication, other than a notice referred to in GC10.4, that may be given to the Contractor pursuant to the contract may be given as per 10.2.
- 10.2 Any notice, consent, order, decision, direction or other communication required to be given in writing, to any party pursuant to the contract shall, subject to GC10.4, be deemed to have been effectively given:
- 10.2.1 to the Contractor, if delivered personally to the Contractor or the Contractor's Superintendent, or forwarded by courier, mail, e-mail, or facsimile to the Contractor at the address set out in Articles of Agreement.
 - 10.2.2 to the Owner, if delivered personally to the Engineer, or forwarded by mail, courier, e-mail, or facsimile to the Engineer at the address set out in the Articles of Agreement.
- 10.3 Any such notice, consent, order, decision, direction or other communication given in accordance with GC10.2 shall be deemed to have been received by either party:
- 10.3.1 if delivered personally, on the day that it was delivered.
 - 10.3.2 if forwarded by mail or courier, on the earlier of the day it was received and the sixth day after it was mailed.
 - 10.3.3 if forwarded by e-mail or facsimile, 24 hours after it was transmitted.
- 10.4 A notice given under GC37, GC39 and GC40, if delivered personally, shall be delivered to the Contractor if the Contractor is doing business as a sole proprietor or, if the Contractor is a partnership or corporation, to an officer thereof.

GC11 MATERIAL, PLANT AND REAL PROPERTY SUPPLIED BY THE OWNER

- 11.1 Subject to GC11.2 and GC61, the Contractor is liable to the Owner for any loss or damage to material, plant or real property that is supplied or placed in the care, custody and control of the Contractor by the Owner for use in connection with the contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control.
- 11.2 The Contractor is not liable to the Owner for any loss or damage to material, plant or real property referred to in GC11.1 if that loss or damage results from and is directly attributable to reasonable wear and tear.
- 11.3 The Contractor shall not use any material, plant or real property referred to in GC11.1 except for the purpose of performing this contract.
- 11.4 When the Contractor fails to make good any loss or damage for which he is liable under GC11.1 within a reasonable time after being required to so by the Engineer, the Engineer may cause the loss or damage to be made good at the Contractor's expense, and the Contractor shall thereupon be liable to the Owner for the cost thereof and shall, on demand, pay to the Owner an amount equal to that cost.
- 11.5 The Contractor shall keep such records of all material, plant and real property referred to in GC11.1 as the Engineer from time to time requires and shall satisfy the Engineer, when requested, that such material, plant and real property are at the place and in the condition in which they ought to be.

GC12 MATERIAL, PLANT AND REAL PROPERTY BECOME THE PROPERTY OF THE OWNER

- 12.1 All material and plant and the interest of the Contractor in all real property, licenses, powers and privileges purchased, used or consumed by the Contractor for the contract shall, after the time of their purchase, use or consumption be the property of the Owner for the purposes of the work and they shall continue to be the property of the Owner.
- 12.1.1 In the case of material until the Engineer indicates that he is satisfied that it will not be required for the work.
- 12.1.2 In the case of plant, real property, licenses, powers and privileges, until the Engineer indicates that he is satisfied that the interest vested in the Owner therein is no longer required for the purposes of the work.
- 12.2 Material or plant that is the property of the Owner by virtue of GC12.1 shall not be taken away from the work site or used or disposed of except for the purposes of the work without the written consent of the Engineer.
- 12.3 Subject to GC61, the Owner is not liable for loss of or damage from any cause to the material or plant referred to in GC12.1 and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of the Owner.

GC13 MUNICIPAL PERMITS

- 13.1 The Contractor shall, within 30 days after the date of the contract, tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the work were being performed for a person other than the GNWT.
- 13.2 Within 10 days of making a tender pursuant to GC13.1, the Contractor shall notify the Engineer of his action and of the amount tendered and whether or not the municipal authority has accepted that amount.
- 13.3 If the municipal authority does not accept the amount tendered pursuant to GC13.1, the Contractor shall pay that amount to the GNWT within 6 days after the time stipulated in GC13.2.
- 13.4 For the purposes of GC13.1 to GC13.3, "municipal authority" means any authority that would have jurisdiction respecting permission to perform the work if the Owner were not the GNWT.
- 13.5 Notwithstanding the residency of the Contractor, the Contractor shall pay any applicable tax arising from or related to the performance of the work under the contract.

GC14 PERFORMANCE OF WORK UNDER DIRECTION OF ENGINEER

- 14.1 The Contractor shall:
- 14.1.1 permit the Engineer to have access to the work and its site at all times during the performance of the contract and the Contractor shall provide proper facilities for such access and inspections which may include photographic or electronic recording of the work.
- 14.1.2 furnish the Engineer with such information respecting the performance of the contract as he may require.
- 14.1.3 give the Engineer every possible assistance to enable the Engineer to carry out his duty to see that the work is performed in accordance with the contract and to carry out any other duties and exercise any powers specially imposed or conferred on the Engineer under the contract.

GC15 COOPERATION WITH OTHER CONTRACTORS

- 15.1 Where, in the opinion of the Engineer, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations:
- 15.1.1 if, the sending onto the work or its site of other contractors or workers pursuant to GC15.1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract, and

- 15.1.2 if, the Contractor incurs, in the opinion of the Engineer, extra expense in complying with GC15.1, and
- 15.1.3 if, the Contractor has given the Engineer written notice of his claim for the extra expense referred to in GC15.1.2 within 10 days of the date that the other contractors or workers were sent onto the work or its site,

the Owner shall pay the Contractor the cost calculated in accordance with GC46 to GC49, of the extra labour, plant and material that was necessarily incurred.

GC16 EXAMINATION OF WORK

- 16.1 If, at any time after the commencement of the work but prior to the expiry of the warranty period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the contract, the Engineer may have that work examined by an expert of his choice.
- 16.2 If, as a result of an examination of the work referred to in GC16.1, it is established that the work was not performed in accordance with the contract, then, in addition to and without limiting or otherwise affecting any of the Owner's rights and remedies under the contract either at law or in equity, the Contractor shall pay the Owner, on demand, all reasonable costs and expenses that were incurred by the Owner in having that examination performed.

GC17 CLEARING OF SITE

- 17.1 The Contractor shall maintain the work and its site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any directions of the Engineer.
- 17.2 Before issuing of a Certificate of Substantial Completion referred to in GC43.2, the Contractor shall remove all the plant and material not required for the performance of the remaining work, and all waste material and other debris, and shall cause the work and its site to be clean and suitable for occupancy or use by the Owner's servants, unless otherwise stipulated in the contract. The Contractor shall, as directed by the Owner, take down all signs erected during construction.
- 17.3 Before issuing of a Final Certificate referred to in GC43.1, the Contractor shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- 17.4 The Contractor's obligations described in GC17.1 to GC17.3 do not extend to waste material and other debris caused by the Owner's servants or contractors and workers referred to in GC15.1.

GC18 CONTRACTOR'S SUPERINTENDENT

- 18.1 The Contractor shall, forthwith upon the award of the contract, designate a Superintendent.
- 18.2 The Contractor shall forthwith notify the Engineer of the name, address and telephone number of a superintendent designated pursuant to GC18.1.
- 18.3 A superintendent designated pursuant to GC18.1 shall be in full charge of the site of the work and the operations of the Contractor, his servants, agents, and subcontractors in the performance of the work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the Contractor that may be given to the superintendent under the contract.
- 18.4 The Contractor shall, until the work has been completed, keep a competent superintendent at the work site during working hours.
- 18.5 The Contractor shall, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and shall forthwith designate another superintendent who is acceptable to the Engineer.
- 18.6 Subject to GC18.5, the Contractor shall not substitute a superintendent without the written consent of the Engineer.
- 18.7 A breach by the Contractor of GC18.6 entitles the Engineer to refuse to issue any certificate referred to in GC43 until the superintendent has returned to the work site or another superintendent who is acceptable to the Engineer has been substituted.

GC19 NATIONAL SECURITY

- 19.1 If the Owner is of the opinion that the work is of a class or kind that involves the national security, he may order the Contractor:
- 19.1.1 to provide him with any information concerning persons employed or to be employed by him for purposes of the contract, and
 - 19.1.2 to remove any person from the work and its site if, in the opinion of the Owner, that person may be a risk to the national security.
- 19.2 The Contractor shall, in all contracts with persons who are to be employed in the performance of the contract, make provision for his performance of any obligation that may be imposed upon him under GC18 to GC20.
- 19.3 The Contractor shall comply with an order of the Owner under GC19.1.

GC20 UNSUITABLE WORKERS

- 20.1 The Contractor shall, upon written request of the Engineer, remove any person employed by the Contractor for purposes of the contract who, in the opinion of the Engineer, is incompetent or has conducted himself improperly, and the Contractor shall not permit a person who has been removed to return to the work site.

GC21 INCREASED OR DECREASED COSTS

- 21.1 The amount set out in the Articles of Agreement shall not be increased or decreased by reason of any increase or decrease in the cost of the work that is brought about by an increase or decrease in the cost of labour, plant or material or any wage adjustment arising pursuant to the Labour Conditions.
- 21.2 Notwithstanding GC21.1, and GC34, an amount set out in the Articles of Agreement shall be adjusted in the manner provided in GC21.3, if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act or the Customs Tariff:
- 21.2.1 occurs after the date of the submission by the Contractor of his tender for the contract,
 - 21.2.2 applies to material, and
 - 21.2.3 affects the cost to the Contractor of that material.
- 21.3 If a change referred to in GC21.2 occurs, the appropriate amount set out in the Articles of Agreement shall be increased or decreased by an amount equal to the amount that is established by an examination of the relevant records of the Contractor referred to in GC50 to be the increase or decrease in the cost incurred that is directly attributable to that change.
- 21.4 For the purpose of GC21.2, where a tax is changed after the date of submission of the tender but public notice of the change has been given by the Owner before that date, the change shall be deemed to have occurred before the date of submission of the tender.

GC22 LABOUR AND MATERIAL

- 22.1 The Contractor shall use Canadian labour and material in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work.

GC23 PROTECTION OF WORK AND DOCUMENTS

- 23.1 The Contractor shall guard or otherwise protect the work and its site, and protect the contract, specifications, plans, information, material, plant and real property, whether or not they are supplied by the Owner to the Contractor, against loss or damage from any cause, and he shall not use, issue, disclose or dispose of them without the written consent of the Owner, except as may be essential for the performance of the work.

- 23.2 If any document or information given or disclosed to the Contractor is assigned a security rating by the person who gave or disclosed it, the Contractor shall take all measures directed by the Engineer to be taken to ensure the maintenance of the degree of security that is ascribed to that rating.
- 23.3 The Contractor shall provide all facilities necessary for the purpose of maintaining security, and shall assist any person authorized by the Owner to inspect or to take security measures in respect of the work and its site.
- 23.4 The Engineer may direct the Contractor to do such things and to perform such additional work, as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC23.1 to GC23.3.

GC24 PUBLIC CEREMONIES AND SIGNS

- 24.1 The Contractor shall not permit any public ceremony in connection with the work without the prior consent of the Owner.
- 24.2 The Contractor shall not erect or permit the erection of any sign or advertising on the work or its site without the prior consent of the Engineer.

GC25 PRECAUTIONS AGAINST DAMAGE, INFRINGEMENT OF RIGHTS, FIRE AND OTHER HAZARDS

- 25.1 The Contractor shall, at his own expense, do whatever is necessary to ensure that:
- 25.1.1 no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the contract.
 - 25.1.2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the work or plant.
 - 25.1.3 fire hazards in or about the work or its site are eliminated and any fire is promptly extinguished.
 - 25.1.4 the proper care and storage of propane cylinders on the job site is in accordance with the NWT Fire Prevention Act. A copy of the NWT Fire Prevention Act is available on the GNWT website. (www.gov.nt.ca).
 - 25.1.5 the health and safety of all persons employed in the performance of the work is not endangered by the method or means of its performance.
 - 25.1.6 adequate medical services are available to all persons employed on the work or its site at all times during the performance of the work.
 - 25.1.7 adequate sanitation measures are taken in respect of the work and its site.
 - 25.1.8 all stakes, buoys and marks placed on the work or its site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed.

Without limiting any of the foregoing, the Contractor shall take all actions required or necessary to ensure compliance by all persons employed in the performance of the work or at the site of the work, including the employees of the Contractor and subcontractors and their employees, with the Safety Act, R.S.N.W.T. 1988, c.S-1 and the regulations enacted pursuant thereto.

- 25.2 The Engineer may direct the Contractor to do such things and to perform such additional work, as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC25.1.
- 25.3 The Contractor shall, at his own expense, comply with a direction of the Engineer made under GC25.2.

GC26 CONTRACT SECURITY

- 26.1 The Contractor shall obtain and deliver contract security to the Engineer in accordance with the provisions of GC26 to GC28.
- 26.2 If the whole or a part of the contract security referred to in GC26.1 is in the form of a security deposit; it shall be held and disposed of in accordance with GC42 and GC44.
- 26.3 If a part of the contract security referred to in GC26.1 is in the form of a labour and material payment bond the Contractor shall post a copy of that bond on the work site.

GC27 OBLIGATION TO PROVIDE CONTRACT SECURITY

- 27.1 Where the contract amount referred to in the Articles of Agreement is:
 - 27.1.1 less than \$100,000 the Contractor is not required to provide contract security.
 - 27.1.2 \$100,000 or greater the Contractor shall, at his own expense, provide one or more of the forms of contract security prescribed in GC28.
- 27.2 If the Contractor is required to provide contract security pursuant to GC28, the security shall be delivered to the Engineer within 14 days after the date that the Contractor receives notice that his tender or offer was accepted by the Owner.

GC28 PRESCRIPTION OF ACCEPTABLE CONTRACT SECURITY

- 28.1 If the Contractor is required to provide contract security pursuant to GC27, the Owner shall accept from the Contractor one or more of the forms of security prescribed herein.
- 28.2 A Contractor shall deliver to the Owner:
 - 28.2.1 a performance bond and a labour and material payment bond each in an amount that is equal to not less than 50% of the contract amount referred to in the Articles of Agreement, or
 - 28.2.2 a security deposit in an amount that is equal to 10% of the contract amount referred to in the Articles of Agreement.
- 28.3 The Contractor shall deliver a performance bond and a labour and material payment bond referred to in GC28.2:
 - 28.3.1 the performance bond shall be in a form as approved by the Treasury Board of Canada - Federal Performance Bond and issued in favour of the Owner by a surety approved by Owner
 - 28.3.2 the labour and material bond shall be in a form approved by the Treasury of Canada - Federal Labour and Material Bond or in the standard construction form CCDC 222-2002 of the Canadian Construction Document Committee and issued in favour of the Owner by a surety approved by Owner.
- 28.4 A security deposit referred to in GC28.2.2 shall be drawn on a bank, credit union or trust company to which the Bank Act or the Quebec Savings Banks Act applies in the form of:
 - 28.4.1 "a letter of irrevocable guarantee" in the form authorized by the contract authority payable to the Owner, or
 - 28.4.2 a certified cheque, bank draft or personal money order made payable to the Owner.
- 28.5 The "letter(s) of irrevocable guarantee" referred to in GC28.4.1 shall be held uncashed until 14 days prior to their expiry date, unless the expiry date is extended for a further term, beyond the contract completion date stated in the Articles of Agreement.
- 28.6 The certified cheque, bank draft, personal money order as referred to in GC28.4.2 shall be deposited by the Owner into the Owner's bank account.

GC29 CHANGES IN THE WORK

- 29.1 Subject to GC5, the Engineer may, at any time before he issues his Final Certificate of Completion:
- 29.1.1 order work or material in addition to that provided for in the Plans and Specifications.
 - 29.1.2 delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Plans and Specifications or in any order made pursuant to GC29.1.1, if that additional work or material, deletion, or change is, in the Engineer's opinion, consistent with the general intent of the original contract.
- 29.2 The Contractor shall perform the work in accordance with such order, dispensations and changes that are made by the Engineer pursuant to GC29.1 from time to time as if they had appeared in and been part of the Plans and Specifications.
- 29.3 The Engineer shall determine whether or not anything done or omitted by the Contractor pursuant to an order, dispensation or change referred to in GC29.1 increased or decreased the cost of the work to the Contractor.
- 29.4 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been increased, the Owner shall pay the Contractor the increased cost that the Contractor necessarily incurred calculated in accordance with GC46 to GC49.
- 29.5 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been decreased, the Owner shall reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost caused by the deletion or change and calculated in accordance with GC46 to GC49.
- 29.6 An order, dispensation or change referred to in GC29.1 shall be in writing, signed by the Engineer and given to the Contractor in accordance with GC10.

GC30 INTERPRETATION OF CONTRACT BY ENGINEER

- 30.1 If, at any time before the Engineer has issued a Final Certificate of Completion referred to in GC43.1, any question arises between the parties about whether anything has been done as required by the contract or about what the Contractor is required by the contract to do, and, in particular but without limiting the generality of the foregoing, about:
- 30.1.1 the meaning of anything in the Plans and Specifications,
 - 30.1.2 the meaning to be given to the Plans and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention,
 - 30.1.3 whether or not the quality or quantity of any material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the contract,
 - 30.1.4 whether or not the labour, plant or material provided by the Contractor for performing the work and carrying out the contract are adequate to ensure that the work will be performed in accordance with the contract and that the contract will be carried out in accordance with its terms,
 - 30.1.5 what quantity of any kind of work has been completed by the Contractor, or
 - 30.1.6 the timing and scheduling of the various phases of the performance of the work,
- the question shall be decided by the Engineer whose decision shall be final and conclusive in respect of the work.
- 30.2 The Contractor shall perform the work in accordance with any decisions of the Engineer that are made under GC30.1 and in accordance with any consequential directions given by the Engineer.

GC31 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK

- 31.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at Contractor's expense:

- 31.1.1 rectify and make good any defect or fault that appears in the work or comes to the attention of the Owner with respect to those parts of the work accepted in connection with the Substantial Completion referred to in GC43.2 within 12 months from the date of the Substantial Completion.
- 31.1.2 rectify and make good any defect or fault that appears in or comes to the attention of the Owner in connection with those parts of the work described in the Substantial Completion referred to in GC43.2 within 12 months from the date of the Final Certificate of Completion referred to in GC43.1.
- 31.2 The Engineer may direct the Contractor to rectify and make good any defect or fault referred to in GC31.1 or covered by any other expressed or implied warranty or guarantee.
- 31.3 A direction referred to in GC31.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor, and shall be given to the Contractor in accordance with GC10.
- 31.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC31.2 within the time stipulated therein.
- 31.5 The Contractor shall be responsible for obtaining product warranties in excess of one year on behalf of the Owner from the manufacturer. These product warranties shall be issued by the manufacturer to the benefit of the Owner.

GC32 NON-COMPLIANCE BY CONTRACTOR

- 32.1 If the Contractor fails to comply with any decision or direction given by the Engineer pursuant to GC17, GC23, GC25, GC30 or GC31, the Engineer may employ such methods, as he deems advisable to do that which the Contractor failed to do.
- 32.2 The Contractor shall, on demand, pay the Owner an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the Owner by reason of the Contractor's failure to comply with any decision or direction referred to in GC32.1, including the cost of any methods employed by the Engineer pursuant to GC32.1.

GC33 PROTESTING ENGINEER'S DECISIONS

- 33.1 The Contractor may, within ten (10) days after the communication to him of any decision or direction referred to in GC32.1, protest that decision or direction.
- 33.2 A protest referred to in GC33.1 shall be in writing, contain full reasons for the protest, be signed by the Contractor and be given to the Owner by delivery to the Engineer.
- 33.3 If the Contractor gives a protest pursuant to GC33.2, any compliance by the Contractor with the decision or direction that was protested shall not be construed as an admission by the Contractor of the correctness of that decision or direction or prevent the Contractor from taking whatever lawful action he considers appropriate in the circumstances.
- 33.4 If the Contractor gives a protest pursuant to GC33.2, the Engineer shall review the information submitted, consult with the parties and make reasonable efforts to obtain agreement between the Owner and the Contractor regarding the protest. The parties agree that, both during and after the performance of the work, each of them shall use their best efforts to resolve any disputes arising between them by amicable negotiations, and shall provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations. The Engineer may request the parties to refer the matter to more senior levels of management within their organizations, in an effort to resolve the protest.
- 33.5 Where either party disputes the decision of the Engineer then either party may, within fourteen days, notify the other party of its intention to refer the matter to the Referee in accordance with GC62. No referral may be made unless such notice is given. Notices shall be copied to the Engineer for information.

- 33.6 If the Engineer has given notice of his decision as to a matter in dispute to the parties and no notice of intention to refer the matter to the Referee has been given by either the Owner or the Contractor within thirty days, the Engineer's decision shall become final and binding upon the parties.
- 33.7 No act by the claimant shall be construed as a renunciation or waiver of any of its rights or recourses provided the claimant has given the required notices and carried out the instructions specified. The presentation of a dispute shall not be grounds for delay or interruption of the work.
- 33.8 The giving of a protest by the Contractor pursuant to GC33.2 shall not relieve him from complying with the decision or direction that is the subject of the protest.
- 33.9 Subject to GC33.10, the Contractor shall take any action referred to in GC33.3 within three months after the date that a Final Certificate of Completion is issued and not afterwards.
- 33.10 The Contractor shall take any action referred to in GC33.3, resulting from a direction under GC31 within three months after the expiry of a warranty or guarantee period and not afterwards.
- 33.11 Subject to GC33.12, if the Owner determines that the Contractor's protest is justified, the Owner shall pay the Contractor the cost of the additional labour, plant and material necessarily incurred by the Contractor in carrying out the protested decision or direction.
- 33.12 Costs referred to in GC33.11 shall be calculated in accordance with GC47 to GC49.

GC34 CHANGES IN SOIL CONDITIONS AND NEGLIGENCE OR DELAY BY THE OWNER

- 34.1 Subject to GC34.2 no payment, other than a payment that is expressly stipulated in the contract, shall be made by the Owner to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.
- 34.2 If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to;
- 34.2.1 a substantial difference between the information relating to soil conditions at the work site that is contained in the Plans and Specifications or other documents supplied to the Contractor for his use in preparing his tender or a reasonable assumption of fact based thereon made by the Contractor, and the actual soil conditions encountered by the Contractor at the work site during the performance of the contract, or
- 34.2.2 any neglect or delay that occurs after the date of the contract on the part of the Owner in providing any information or in doing any act that the contract either expressly requires the Owner to do or that would ordinarily be done by an owner in accordance with the usage of the trade,
- the Contractor shall, within ten days of the date the actual soil conditions described in GC34.2.1 were encountered or the neglect or delay described in GC34.2.2 occurred, give the Engineer written notice of intention to claim for that extra expense or that loss or damage.
- 34.3 When the Contractor has given a notice referred to in GC34.2, he shall give the Engineer a written claim in accordance with GC10 for extra expense or loss or damage within 30 days of the date that a Final Certificate of Completion referred to in GC43.1 is issued and not afterwards.
- 34.4 A written claim referred to in GC34.3 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable the Engineer to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as the Engineer requires from time to time.
- 34.5 If the Engineer determines that a claim referred to in GC34.3 is justified; the Owner may make an extra payment to the Contractor in an amount that is calculated in accordance with GC46 to GC49.
- 34.6 If, in the opinion of the Engineer, an occurrence described in GC34.2.1 results in a saving of expenditure by the Contractor in performing the contract, the amount set out in the Articles of Agreement shall, subject to the GC34.7, be reduced by an amount that is equal to the saving.

- 34.7 The amount of the saving referred to GC34.6 shall be determined in accordance with GC46 to GC49.
- 34.8 If the Contractor fails to give a notice referred to in GC34.2 and a claim referred to in GC34.3 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.

GC35 EXTENSION OF TIME

- 35.1 Subject to GC35.2, the Engineer may, on the application of the Contractor made before the day fixed by the Articles of Agreement for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date, if in his opinion, causes beyond the control of the Contractor have delayed its completion.
- 35.2 An application referred to in GC35.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

GC36 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION

- 36.1 For the purposes of this General Condition:
- 36.1.1 the work shall be deemed to be completed on the date that a Substantial Certificate of Completion referred to in GC43.2 is issued, and
 - 36.1.2 "period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the work and ending on the day immediately preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC35.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the Contractor.
- 36.2 If the Contractor does not complete the work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the Contractor shall pay the Owner an amount equal to the aggregate of:
- 36.2.1 all salaries, wages, and traveling expenses incurred by the Owner in respect of persons overseeing the performance of the work during the period of delay,
 - 36.2.2 the cost incurred by the Owner as a result of the inability to use the completed work for the period of delay, and
 - 36.2.3 all other expenses and damages incurred or sustained by the Owner during the period of delay as a result of the work not being completed by the day fixed for its completion.
- 36.3 The Owner may waive its right to the whole or any part of the amount payable by the Contractor pursuant to GC36.2 if, in the opinion of the Owner, it is in the public interest to do so.

GC37 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

- 37.1 The Owner may, at its sole discretion, by giving a notice in writing to the Contractor in accordance with GC10, take all or any part of the work out of the Contractor's hands, and may employ such means as the Owner sees fit to have the work completed if the contractor:
- 37.1.1 has not, within six days after receiving notice given by the Owner or the Engineer in accordance with GC10.1, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer.
 - 37.1.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract.
 - 37.1.3 has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act.
 - 37.1.4 has abandoned the work.
 - 37.1.5 has made an assignment of the contract without the consent required by GC3.1.

- 37.1.6 has otherwise failed to observe or perform any of the provisions of the contract.
- 37.2 If the Contractor has become insolvent or has committed an act of bankruptcy, and has either made a proposal to its creditors or filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, the Contractor shall immediately forward a copy of the proposal or the notice of intention to the Owner.
- 37.3 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC37.1:
- 37.3.1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC37.4, extinguished, and
- 37.3.2 the Contractor is liable to pay the Owner, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Owner in respect of the Contractor's failure to complete the work.
- 37.4 If the whole or any part of the work that is taken out of the Contractor's hands pursuant to GC37.1 is completed by the Owner, the Engineer shall determine the amount, if any, of a holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the Contractor's hands and that is not required for the purposes of having the work performed or of compensating the Owner for any other loss or damage incurred or sustained by reason of the Contractor's default.
- 37.5 The Owner may pay the Contractor the amount determined not to be required pursuant to GC37.3.
- GC38 EFFECT OF TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS**
- 38.1 The taking of the work or any part thereof out of the Contractor's hands pursuant to GC37 does not operate so as to relieve or discharge him from any obligation under the contract or imposed upon him by law except the obligation to complete the performance of that part of the work that was taken out of his hands.
- 38.2 If the work or any part thereof is taken out of the Contractor's hands pursuant to GC37, all plant and material and the interest of the Contractor in all real property, licenses, powers and privileges acquired, used or provided by the Contractor under the contract shall continue to be the property of the Owner without compensation to the Contractor.
- 38.3 When the Engineer certifies that any plant, material, or any interest of the Contractor referred to in GC38.2 is no longer required for the purposes of the work, or that it is not in the interests of the Owner to retain that plant, material, or interest, it shall revert to the Contractor.
- GC39 SUSPENSION OF WORK**
- 39.1 The Owner may, when in his opinion it is in the public interest to do so, require the Contractor to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension in writing to the Contractor in accordance with GC10.
- 39.2 When a notice referred to in GC39.1 is received by the Contractor in accordance with GC10 he shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.
- 39.3 The Contractor shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.
- 39.4 If a period of suspension is 30 days or less, the Contractor shall, upon the expiration of that period resume the performance of the work and he is entitled to be paid the extra cost, calculated in accordance with GC47 to GC49, of any labour, plant and material necessarily incurred by him as a result of the suspension.
- 39.5 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor agree that the performance of the work will be continued by the Contractor, the Contractor shall resume performance of the work subject to any terms and conditions agreed upon by the Owner and the Contractor.

39.6 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor do not agree that performance of the work will be continued by the Contractor or upon the terms and conditions under which the Contractor will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC40.

GC40 TERMINATION OF CONTRACT

40.1 The Owner may terminate the contract at any time by giving a notice of termination to the Contractor in accordance with GC10.

40.2 When a notice referred to in GC40.1 is received by the Contractor in accordance with GC10, he shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the contract.

40.3 If the contract is terminated pursuant to GC40.1, the Owner shall pay the Contractor, subject to GC40.4, an amount equal to:

40.3.1 the cost to the Contractor of all labour, plant and material supplied by him under the contract up to the date of termination in respect of a contract or part thereof for which a Unit Price Arrangement is stipulated, in the contract, or

40.3.2 the lesser of:

40.3.2.1 an amount, calculated in accordance with the Terms of Payment, that would have been payable to the Contractor had he completed the work, and

40.3.2.2 an amount that is determined to be due to the Contractor pursuant to GC48 in respect of a contract or part thereof for which a Fixed Price Arrangement is stipulated in the contract,

less the aggregate of all amounts that were paid to the Contractor by the Owner and all amounts that are due to the Owner from the Contractor pursuant to the contract.

40.4 If the Owner and the Contractor are unable to agree about an amount referred to in GC40.3 that amount shall be determined by the method referred to in GC49.

GC41 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR

41.1 The Owner may, in order to discharge lawful obligations of and satisfy claims against the Contractor or a subcontractor arising out of the performance of the contract, pay any amount that is due and payable to the Contractor pursuant to the contract directly to the obligees of and the claimants against the Contractor or subcontractor but such amount if any, as is paid by the Owner shall not exceed that amount which the Contractor would have been obliged to pay to such claimant had the provisions of the Territorial lien legislation been applicable to the work. Any such claimant need not comply with the provisions of such legislation setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which claimant might have had.

41.2 The Owner will not make any payment as described in GC41.1 unless and until that claimant shall have delivered to the Owner:

41.2.1 a binding and enforceable Judgement or Order of a court of competent jurisdiction setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the Territorial lien legislation had such legislation been applicable to the work, or

41.2.2 a final and enforceable award of an arbitrator setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the applicable Territorial lien legislation, had such legislation been applicable to the work, or

41.2.3 the consent of the Contractor authorizing a payment.

For the purposes of determining the entitlement of a claimant pursuant to GC41.2.1 and GC41.2.2, the notice required by GC41.8 shall be deemed to replace the registration or provision of notice after the

performance of work as required by any applicable legislation and no claim shall be deemed to have expired, become void or unenforceable by reason of the claimant not commencing any action within the time prescribed by any applicable legislation.

- 41.3 The Contractor shall, by the execution of this contract, be deemed to have consented to submit to binding arbitration at the request of any claimant those questions that need be answered to establish the entitlement of the claimant to payment pursuant to the provisions of GC41.1 and such arbitration shall have as parties to it any subcontractor to whom the claimant supplied material, performed work or rented equipment should such subcontractor wish to be adjoined and the Owner shall not be a party to such arbitration and, subject to any agreement between the Contractor and the claimant to the contrary, the arbitration shall be conducted in accordance with the Northwest Territories legislation governing arbitration.
- 41.4 A payment made pursuant to GC41.1, is to the extent of the payment, a discharge of the Owner's liability to the Contractor under the contract and may be deducted from an amount payable to the Contractor under the contract.
- 41.5 To the extent that the circumstances of the work being performed for the Owner permit, the Contractor shall comply with all laws in force in the Northwest Territories relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens.
- 41.6 The Contractor shall discharge all his lawful obligations and shall satisfy all lawful claims against him arising out of the performance of the work at least as often as the contract requires the Owner to pay the Contractor.
- 41.7 The Contractor shall, whenever requested to do so by the Engineer, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in GC41.6.
- 41.8 GC41.1 shall only apply to claims and obligations that have been received by the Engineer in writing before payment is made to the Contractor pursuant to TP4.8 and within 120 days after a claimant:
- 41.8.1 should have been paid in full under his contract with the Contractor or subcontractor where the claim is for money that was lawfully required to be held back from the claimant, or
 - 41.8.2 performed the last of the service, work or labour, or furnished the last of the material pursuant to his contract with the Contractor or subcontractor, where the claim is not for money referred to in GC41.8.1.
- 41.9 The proceedings to determine the right to payment of which, pursuant to GC41.2, shall have commenced within one year from the date that the notice referred to in GC41.8.1 was received by the Engineer, and the notification required by GC41.8.1 shall set forth the amount claimed to be owing and the person who by contract is primarily liable.
- 41.10 The Owner may, upon receipt of a notice of claim under GC41.8 withhold from any amount that is due and payable to the Contractor pursuant to the contract the full amount of the claim or any portion thereof.
- 41.11 The Engineer shall notify the Contractor in writing of receipt of any claim referred to in GC41.8 and of the intention of the Owner to withhold funds pursuant to GC41.10 and the Contractor may, at any time thereafter and until payment is made to the claimant, be entitled to post, with the Owner, security in a form acceptable to the Owner in an amount equal to the value of the claim, the notice of which is received by the Engineer and upon receipt of such security the Owner shall release to the Contractor any funds which would be otherwise payable to the Contractor, that were withheld pursuant to the provisions of GC41.10 in respect of the claim of any claimant for whom the security stands.
- 41.12 Notwithstanding anything contained in TP9 hereof, no interest will be paid to the Contractor on any monies withheld pursuant to GC41.10.

GC42 SECURITY DEPOSIT - FORFEITURE OR RETURN

- 42.1 The Owner may convert the security deposit, if any, to its own use, if:

- 42.1.1 the work is taken out of the Contractor's hands pursuant to GC37.
- 42.1.2 the contract is terminated pursuant to GC40.
- 42.1.3 the Contractor is in breach of or in default under the contract.
- 42.2 If the Owner converts the contract security pursuant to GC42.1, the amount realized shall be deemed to be an amount due from the Owner to the Contractor under the contract.
- 42.3 Any balance of an amount referred to in GC42.2 that remains after payment of all losses, damage and claims of the Owner and other shall be paid by the Owner to the Contractor, if in the opinion of the Engineer, it is not required for the purposes of the contract.

GC43 ENGINEER'S CERTIFICATES

- 43.1 On the date that:
 - 43.1.1 the work has been completed, and
 - 43.1.2 the Contractor has complied with the contract and all orders and directions made pursuant thereto,both to the satisfaction of the Engineer, he shall issue a Certificate of Final Completion to the Contractor.
- 43.2 If the Engineer is satisfied that the work is substantially complete the Engineer may, at any time before issuing a certificate referred to in GC43.1, issue a Certificate of Substantial Completion to the Contractor, and for the purposes hereof the work will be considered to be substantially complete:
 - 43.2.1 when the work under the contract or a substantial part thereof is, in the opinion of the Engineer, ready for use by the Owner or is being used for the purposes intended, and
 - 43.2.2 when the work remaining to be done under the contract is, in the opinion of the Engineer, capable of completion or correction at a cost of not more than:
 - 43.2.2.1 - 3% of the first \$500,000, and
 - 43.2.2.2 - 2% of the next \$500,000, and
 - 43.2.2.3 - 1% of the balance,of the value of the contract at the time this cost is calculated.
- 43.3 For the sole purpose of GC43.2, where the work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the work or a part thereof cannot be completed by the time specified in the Articles of Agreement, or as amended pursuant to GC35, for reasons beyond the control of the Contractor or where the Engineer and the Contractor agree not to complete a part of the work within the specified time, the cost of that part of the work which was either beyond the control of the Contractor to complete or the Engineer and the Contractor have agreed not to complete by the time specified shall be deducted from the value of the contract referred to GC43.2 and the said cost shall not form part of the cost of the work remaining to be done in determining Substantial Completion.
- 43.4 A Certificate of Substantial Completion referred to in GC43.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the Contractor;
 - 43.4.1 before a Final Certificate of Completion referred to in GC43.1 will be issued, and
 - 43.4.2 before the 12-month period referred to in GC31.1.2 shall commence for the said parts and all the said things.
- 43.5 The Engineer may, in addition to the parts of the work described in a Certificate of Substantial Completion referred to in GC43.2, require the Contractor to rectify any other parts of the work not completed to his satisfaction and to do any other things that are necessary for the satisfactory completion of the work.

- 43.6 If the contract or a part thereof is subject to a Unit Price Arrangement, the Engineer shall measure and record the quantities of labour, plant and material, performed, used and supplied by the Contractor in performing the work and shall, at the request of the Contractor, inform him of those measurements.
- 43.7 The Contractor shall assist and co-operate with the Engineer in the performance of his duties referred to in GC43.6 and shall be entitled to inspect any record made by the Engineer pursuant to GC43.6.
- 43.8 After the Engineer has issued a Certificate of Final Completion referred to in GC43.1, he shall, if GC43.6 applies, issue a Certificate of Final Measurement.
- 43.9 A Certificate of Final Measurement referred to in GC43.8 shall:
- 43.9.1 contain the aggregate of all measurements of quantities referred to in GC43.6, and
 - 43.9.2 be binding upon and conclusive between the Owner and the Contractor as to the quantities referred to therein.

GC44 RETURN OF SECURITY DEPOSIT

- 44.1 After a Certificate of Substantial Completion referred to in GC43.2 has been issued, the Owner shall, if the Contractor is not in breach of or in default under the contract, return to the Contractor all or any part of the security deposit that, in the opinion of the Engineer, is not required for the purposes of the contract.
- 44.2 After a Certificate of Final Completion referred to in GC43.1 has been issued, the Owner shall return to the Contractor the remainder of any security deposit unless the contract stipulates otherwise.
- 44.3 Interest shall not be paid on security deposits.

GC45 CLARIFICATION OF TERMS IN GC46 TO GC49

- 45.1 For the purposes of GC46 to GC49:
- 45.1.1 "Unit Price Table" means the table set out in the Tender, and
 - 45.1.2 "plant" does not include tools customarily provided by a tradesman in practicing his trade.

GC46 ADDITIONS OR AMENDMENTS TO UNIT PRICE TABLE

- 46.1 Where a Unit Price Arrangement applies to the contract or a part thereof the Engineer and the Contractor may, by an agreement in writing:
- 46.1.1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Unit Price Table if any labour, plant or material that is to be included in a Final Certificate of Measurement referred to in GC43.7 is not included in any class of labour, plant or material set out in the Unit Price Table, or
 - 46.1.2 subject to GC46.2, amend a price per unit set out in the Unit Price Table for any class of labour, plant or material included therein if an estimated quantity is set out therein for that class of labour, plant or material and a Final Certificate of Measurement referred to in GC43.7 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the Contractor in performing the work is:
 - 46.1.2.1 less than 85% of that estimated quantity, or
 - 46.1.2.2 in excess of 115% of that estimated quantity.
- 46.2 In no event shall the total cost of an item set out in the Unit Price Table that has been amended pursuant to GC46.1.2.1 exceed the amount that would have been payable to the contractor had the estimated total quantity actually been performed, used or supplied.
- 46.3 An amendment that is made necessary by GC46.1.2.2 shall apply only to the quantities that are in excess of 115%.

46.4 If the Engineer and the Contractor do not agree as contemplated in GC46.1, the Engineer shall determine the class and the unit of measurement of the labour, plant or material and subject to GC46.2 and GC46.3, the price per unit therefore shall be determined in accordance with GC49.

GC47 DETERMINATION OF COST - UNIT PRICE TABLE

47.1 Whenever, for the purposes of the contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in the Unit Price Table by the price of that unit set out in the Unit Price Table.

GC48 DETERMINATION OF COST PRIOR TO UNDERTAKING WORK-LUMP SUM

48.1 If the method described in GC47 cannot be used because the labour, plant or material is of a kind or class that is not set out in the Unit Price Table then, for the purposes of the Contract, the price of the change shall be the aggregate costs of all labour, plant and material that is required for the change as agreed upon, prior to undertaking work, by the Contractor and the Engineer plus a mark-up for overhead and profit which shall include any office administration costs, general management costs, financing and other bank charges, bonding and insurance costs, any portion of time of the Contractor or his Superintendent, any cost or rental of small tools and the risk of undertaking the work within the stipulated amount, which mark-up shall be equal to:

48.1.1 20% of the aggregate costs referred to herein for that portion of the work done by the Contractor's own forces; and

48.1.2 15% of the aggregate costs referred to herein for that portion of the work that is done by subcontractors.

48.2 Subject to similar provisions expressed elsewhere in the Contract, in order to facilitate approval of the change, the Contractor shall submit a cost breakdown identifying, as a minimum, the cost of labour, plant, material, each subcontract amount and the amount of the appropriate percentage mark-up as described herein.

GC49 DETERMINATION OF COST FOLLOWING COMPLETION OF THE WORK

49.1 Where it is not possible to predetermine the price of a change, including elements not set out in the Unit Price Table, the actual price of the change shall be equal to the aggregate costs of:

49.1.1 all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, plant or material that falls within one of the classes of expenditure described in GC49.2 that are directly attributable to the performance of the contract, and

49.1.2 a mark-up equal to 10% of the amounts referred to in GC49.1.1 which mark-up shall be for profit and all other expenditures or costs, not covered in GC49.1.1, including overhead, general administration costs and financing and interest charges.

49.2 For purposes of GC49.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are:

49.2.1 payments to subcontractors.

49.2.2 wages, salaries and travelling expenses of employees of the Contractor located at the work site and that portion of wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor provided they are actually and properly engaged on the work under the Contract.

49.2.3 assessments payable under any statutory authority relating to worker's compensation, employment insurance, pension plan or holidays with pay, territorial health or insurance plans, and environmental reviews.

49.2.4 rent that is paid or an amount equivalent to the said rent if the plant is owned by the Contractor, that is necessary for and used in the performance of the work, if the rent or the equivalent amount is reasonable and use of that plant has been approved by the Engineer.

- 49.2.5 payments for maintaining and operating the plant that is necessary for and used in the performance of the work, and payments for effecting such repairs thereto as, in the opinion of the Engineer, are necessary for the proper performance of the contract other than payments for any repairs to the plant arising out of defects existing before its allocation to the work.
- 49.2.6 payments for material that is necessary for and incorporated in the work, or that is necessary for and consumed in the performance of the contract.
- 49.2.7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the plant and material necessary for and used in the performance of the contract.
- 49.2.8 any other payments made by the Contractor with the approval of the Engineer that are necessary for the performance of the contract.

GC50 RECORDS TO BE KEPT BY CONTRACTOR

- 50.1 The Contractor shall:
 - 50.1.1 maintain full records of his estimated and actual costs of the work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto.
 - 50.1.2 make all records and material referred to in GC50.1.1 available to audit and inspection by the Owner and the Comptroller General of the Government of the Northwest Territories or by persons acting on behalf of either or both of them when requested.
 - 50.1.3 allow any of the persons referred to in GC50.1.2 to make copies of and to take extracts from any of the records and material referred to in GC50.1.1.
 - 50.1.4 furnish any person referred to in GC50.1.2 with information he may require from time to time in connection with such records and material.
- 50.2 The records maintained by the Contractor pursuant to GC50.1.1 shall be kept intact by the Contractor until the expiration of two years after the date that a Final Certificate of Completion referred to in GC43.1 was issued or until the expiration of such other period of time as the Owner may direct.
- 50.3 Further to GC52, the Contractor acknowledges that the GNWT may be required to release, in whole or in part, the contract and any other information or documents in the GNWT's possession or control relating to this contract pursuant to the Access To Information and Protection of Privacy Act.
- 50.4 The Contractor shall cause all subcontractors and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with GC50.1 to GC50.3 as if they were the Contractor.

GC51 APPLICABLE LAWS

- 51.1 The Contractor shall comply with all legislative and regulatory provisions whether Federal, Territorial or Municipal applicable to the performance of the work.
- 51.2 Unless otherwise provided in the contract, the Contractor shall obtain all permits and hold all certificates and licenses for the performance of the work.
- 51.3 From time to time, the Engineer may request that the Contractor provide evidence that it complies with all applicable legislative and regulatory provisions and that it holds all required permits, certificates and licenses. Such evidence shall be provided within the time set in the request or as otherwise stipulated in the Contract.
- 51.4 This contract shall be deemed to have been made in the Northwest Territories and shall be governed by the laws of the Northwest Territories as far as applicable.
- 51.5 In the event of any legal action arising out of this contract, the Contractor, if originating such action, may sue the Government of the Northwest Territories in the name and style of "The Government of the Northwest Territories" and the Government of the Northwest Territories, if originating such action, may commence the action against the Contractor in his own behalf in the name and style of "The Government of the Northwest Territories".

GC52 ACCESS TO INFORMATION ACT

52.1 All information, including documents, submitted to the GNWT are in the custody or under the control of the GNWT and thus subject to the protection and disclosure provisions of the Access to Information and Protection of Privacy Act.

GC53 GNWT WORKPLACE CONFLICT RESOLUTION POLICY

53.1 It is a term of this contract that the provisions of the GNWT's Workplace Conflict Resolution Policy are applicable to and govern the relations between the Contractor and its employees, agents and representatives and any employee of the GNWT for the term of the contract. Further, it is a term of this contract that the Contractor shall, upon the request of the GNWT, remove from any GNWT work site where the contract work is being performed, any person employed by it for purposes of the contract who, in the opinion of the GNWT, has violated the Workplace Conflict Resolution Policy, and the Contractor shall not permit a person who has been removed to return to the work site.

GC54 CONTRACTOR STATUS

54.1 The Contractor shall be engaged under the contract as an independent contractor.

54.2 The Contractor and any employee of the said Contractor is not engaged by the contract as an employee, servant or agent of the Owner.

54.3 For the purposes of GC54.1 and GC54.2 the Contractor shall be solely responsible for any and all payments and deductions required to be made by law including those required for Canada Pension Plans, Unemployment Insurance, Workers' Compensation or Income Tax.

GC55 HUMAN REMAINS, ARCHAEOLOGICAL REMAINS AND ITEMS OF HISTORICAL OR SCIENTIFIC INTEREST

55.1 For the purposes of this clause:

55.1.1 "human remains" means the whole or any part of a deceased human being, irrespective of the time that has elapsed since death.

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

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

55.2 If, during the course of the work, the Contractor encounters any object, item or thing which is described in GC55.1, or which resembles any object, item or thing described in GC55.1, the contractor shall:

55.2.1 take all reasonable steps, including stopping work in the affected area, to protect and preserve the object, item or thing, and

55.2.2 immediately notify the Engineer of the circumstances in writing, and

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

55.3 Upon receipt of a notification in accordance with GC55.2.2, the Engineer shall, in a timely manner, determine whether the object, item or thing is one described in, or contemplated by, GC55.1, and shall notify the Contractor in writing of any action to be performed, or work to be carried out by, the Contractor as a result of the Engineer's determination.

- 55.4 The Engineer may, at any time, enlist the services of experts, particularly an archaeologist or historian as appropriate, to assist in the investigation, examination, taking of measurements or other such recordings, placing of permanent protection around or removing of the object, item or thing encountered by the Contractor, and monitoring in case of further discoveries, and the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.
- 55.5 Human remains, archaeological remains and items of historic or scientific interest encountered at the site of the work shall remain the property of the Owner.

GC56 CONTAMINATED SITE CONDITIONS

- 56.1 For the purposes of this clause, a contaminated site condition exists when toxic, radioactive or other hazardous substances or materials, or other pollutants, are found to be present at the site of the work to the extent that they constitute a hazard, or potential hazard, to the environment, property, or the health or safety of any person.
- 56.2 If the Contractor encounters a contaminated site condition, or has reasonable grounds to believe that a contaminated site condition exists at the site of the work, the contractor shall
- 56.2.1 take all reasonable steps, including stopping the work, to ensure that no person suffers injury, sickness or death, and that neither property nor the environment is injured or destroyed as a result of the contaminated site conditions, and
 - 56.2.2 immediately notify the Engineer of the circumstances in writing, and
 - 56.2.3 take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.
- 56.3 Upon receipt of a notification in accordance with GC56.2.2, the Engineer shall, in a timely manner, determine whether a contaminated site condition as described in, or contemplated by, GC56.1, exists, and shall notify the Contractor in writing of any action to be taken, or work to be performed, by the Contractor as a result of the Engineer's determination.
- 56.4 If the Contractor's services are required by the Engineer, the contractor shall follow the direction of the Engineer with regard to any excavation, treatment and disposal of the contaminated substances or materials.
- 56.5 The Engineer may at any time, and at the Engineer's sole discretion, enlist the services of experts and specialty contractors to assist in determining the existence of, and the extent and treatment of the contaminated site conditions, and the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.

GC57 INSURANCE

- 57.1 The Contractor shall without limiting its obligations or liabilities hereto, obtain, maintain at its sole cost and expense and pay for during the period of this Contract minimum insurance in accordance with GC58 to GC61. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the *Contractor* hereunder.
- 57.2 Within in fourteen (14) days after acceptance of the Contractor's Tender, the Contractor shall, unless otherwise directed in writing by the Engineer, deposit with the Engineer an Insurer's Certificate of Insurance in the form displayed in the Tender and, if requested by the Engineer, the originals or certified

true copies of all contracts of insurance maintained by the Contractor pursuant to the Insurance Coverage Requirements shown hereunder.

- 57.3 The provisions of the Insurance Coverage Requirements contained hereunder are not intended to cover all of the Contractor's risks under GC58. Any additional risk management measures or additional insurance coverages the Contractor may deem necessary to fulfill its obligations under GC8 shall be at its own discretion and expense. Umbrella/Excess liability insurance may be purchased to achieve the limits required.
- 57.4 **Deductible** Unless noted otherwise, the payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Contractor.
- 57.5 **Waiver of Recourse** Contractor waives all rights of recourse against the Owner for damages to Contractor's property or property of others for which Contractor is responsible and Contractor's Insurers have no right of subrogation against the Owner.
- 57.6 **Coverage Deficiencies** Contractor shall be responsible for any exclusions and/or insufficiencies of coverage relating to policies herein described.
- 57.7 **Notice of Cancellation** All required insurance shall be endorsed to provide the Owner with 30 days advance written notice of material change, cancellation or termination. Such notices shall be addressed to: The Owner (as noted on the Contractor's Certificate of Insurance).

GC58 COMPREHENSIVE GENERAL LIABILITY

- 58.1 Comprehensive General Liability Insurance with limits of not less than two million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than twelve (12) months from the date of the Final Certification of Completion. The Owner is not to be added as an Insured under this policy. Such insurance shall include but is not limited to:
- 58.1.1 Premises, Property and Operations Liability;
 - 58.1.2 Products and Completed Operations Liability;
 - 58.1.3 Owners' and Contractors' Protective Liability;
 - 58.1.4 Blanket Written Contractual Liability;
 - 58.1.5 Non-Owned Automobile Liability;
 - 58.1.6 Broad Form Property Damage Extension;
 - 58.1.7 Use of explosives for blasting, shoring, excavating, underpinning, demolition, removal, pile driving and caisson work, work below ground surface, tunneling and grading, as applicable;
 - 58.1.8 Contingent Employer's Liability;
 - 58.1.9 Person Injury Liability;
 - 58.1.10 Employees As Additional Insured;
 - 58.1.11 Cross Liability With Respect To Additional Insured.
 - 58.1.12 Asbestos Abatement Liability, as applicable.

GC59 AUTOMOBILE LIABILITY INSURANCE

- 59.1 Automobile Liability Insurance in respect of Contractor's owned and leased vehicles shall have limits of not less than two million dollars inclusive per occurrence for bodily injury, death, and damage to property. And when applicable:

- S.E.F. No. 4a Explosives Endorsement;
- S.E.F. No. 21b Blanket Fleet Endorsement.

GC60 AIRCRAFT AND WATER CRAFT LIABILITY INSURANCE

60.1 Aircraft and Watercraft Liability Insurance with respect to owned or non-owned aircraft and watercraft if used directly in or indirectly in the performance of the work, including use of airport premises, with limits of not less than one million dollars inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than one million dollars for Aircraft Passenger Hazard. Such insurance shall be in a form acceptable to the Owner.

GC61 PROPERTY INSURANCE ("All Risks" Course of Construction Insurance)

61.1 Insurance has been purchased by the Owner on a very broad basis, to protect as Insured, all those who have direct participation in the construction project, for claims which may arise as a result of loss or damage during course of construction.

61.2 **Coverage:** "All Risks" of physical loss or damage or destruction while said project is in course of construction, site preparation, reconstruction, repair, erection, fabrication, testing, and including all materials, equipment machinery, structures, property, fitting, fixtures, betterment, and supplies of any nature whatsoever to enter into and form part of the finished project while at the site of operations or elsewhere in Canada or the Continental United States or America, all the property of the Insured or the property of others for which the insured have assumed responsibility, or for whom the Insured are required to carry insurance, including while on a river or lake crossing ferry in connection with land transportation. A copy of said policy may be obtained from the GNWT if requested by the Contractor.

61.3 **Exclusions:** This policy does not cover goods in transit to the site. This is the Contractor's risk, which he may or may not wish to insure.

61.3.1 This policy does not cover the following types of construction and/or maintenance contracts:

- (a) Highways & Ferries.
- (b) Water & Sewer Contracts With No Buildings.

61.4 **Term:** From the commencement of work to the date of the Substantial Completion as certified by the Owner.

61.5 **Limit of Liability:** The limit of liability at the project site is the estimated full completed value of the project including, but not limited to, owner-supplied labour or materials, reasonable profit, insurance costs, overhead, taxes, labour, administrative fees and all other expenses which are incurred as additional costs as a result of a partial or total loss.

61.6 **Deductible:** The Contractor shall be responsible for a deductible, which shall be equal to 5% of the considered insurable loss to a maximum of \$10,000 per occurrence.

GC62 APPOINTMENT OF REFEREE

62.1 Within thirty days of the parties signing the Contract, the Owner and the Contractor shall name a Referee who may be called upon during the performance of, or after the completion of the work, to settle any claims or disputes arising under the Contract. Where the Referee appointed in accordance with this provision refuses to act, is incapable of acting or dies, the parties shall name a new Referee at the earliest opportunity. Should the parties be unable to agree on a Referee within the time specified, the matter shall be decided by the Engineer whose decision shall be final.

62.2 Where a review is requested under GC33.5, the Engineer shall submit to the Referee a copy of the disputed decision, the terms of the Contract and the documents and information submitted to or considered by the Engineer in accordance with the procedure under GC33.4.

- 62.3 Where either party has disputed a decision of the Engineer in accordance with GC33, the Referee shall review the decision of the Engineer and may, if he deems it appropriate, require the parties to supply him with further information or documentation, giving each party an opportunity to respond. The Referee may inspect the work after giving reasonable notice to each party of the time he intends to do so.
- 62.4 Not later than thirty days after receipt of the last documentary submission, the Referee shall issue his written decision with reasons, to the parties.
- 62.5 Subject to GC 62.6, a decision of the Referee under GC62.4 is final and binding on the parties.
- 62.6 Either party may within 10 days of receiving the Referee's decision, protest that decision. The protest shall be in writing, contain full reasons for the protest and be given to the other party. Either party may then take whatever lawful action they consider appropriate in the circumstances.
- 62.7 The costs of retaining the Referee shall be shared equally between the Owner and the Contractor, unless the Referee directs otherwise. The Owner may deduct such costs assessed against the Contractor by the Referee, from any amount due and payable by the Owner to the Contractor under the Contract.

END OF GENERAL CONDITIONS