

CONTRACTOR'S OBLIGATIONS TO PROVIDE INUIT CONTENT - APPENDIX K

1.0 GENERAL

This contract pertains to work in Nunavut and contains provisions regarding minimum prescribed levels of Inuit Labour that must be met or exceeded in the performance of the work. The requirements set out in this Appendix K to meet minimum prescribed levels of Inuit Labour is a fundamental term of the contract. The minimum prescribed level of Inuit Labour shall be complied with.

If the amount of Inuit Labour identified by the bidder on Appendix "B-2" of the tender is less than with the tender requirements, this would result in an obvious qualification to the tender submission by the bidder that would ordinarily cause the tender to be considered non-responsive.

For an Inuit Labour level achieved which differs from the level prescribed, a bonus or penalty will be assessed in accordance with the NNI Policy, specifically Articles 12.3 and 12.4 of the Policy. A bonus would be for exceeding the minimum prescribed Inuit Labour level, and a penalty would be for not meeting the minimum prescribed Inuit Labour level.

"Inuit Labour" and "Inuit Goods and Services" identified on the tender forms shall receive a bid adjustment in accordance with the NNI Policy and the adjustment percentages indicated on Appendix B-2 forms. "Inuit Goods and Services" means "Inuit Content" as defined in the Nunavummi Nangminiqaqtunik Ikajuuti (NNI) Policy definition appendix; the NNI Policy is attached as tender Appendix "J"

Damages as described in contract General Condition GC 55 may apply if the Inuit Labour and/or Inuit Goods and Services proposed by the Contractor on the tender Appendix B-2 forms are not met. In addition, if the minimum prescribed levels of Inuit Labour identified on page 4 of this Appendix is not met, then for future tenders where there are similar prescribed minimum levels for Inuit Labour, the Contractor may be deemed "not responsible" (as defined in the Government Contract Regulations.)

2.0 DEFINITIONS

- .1 "Inuit (singular Inuk)" means a person described in Article 1.1.1 of the Nunavut Land Claims Agreement (NLCA) and who has enrolled himself or herself on the Inuit Enrolment List under Article 35 of the NLCA.
- .2 "Inuit firm" means an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is,
 - .1 a limited company with at least 51% of the company's voting shares beneficially owned by Inuit, or
 - .2 a cooperative controlled by Inuit, or
 - .3 an Inuk sole proprietorship or partnership; and
 - .4 is included on Nunavut Tunngavik Inc. (NTI)'s Inuit Firms Registry

.3 "Labour"

For the purpose of this contract and specifically Appendix K "Labour" means the Labour (including Inuit labour) used on the job in any capacity and including, for example, tradespeople, administrative staff and professional staff whether in a head office or in a site office and attributable to this project. "Inuit Labour" refers to the status of employees and may be directly provided by the general contractor or indirectly through a sub contractor, and is not necessarily through an Inuit Firm.

.4 "Goods and Services"

For the purpose of this contract and specifically Appendix K "Goods and Services" means the entire dollar value of the Work including Labour. For further clarification "Inuit Goods and Services" includes all labour of Inuit firms attributable to and paid from the Contract. "Inuit Goods and Services" are to have the same meaning as the term "Inuit Content" used in the General Conditions of the Construction Contract.

.5 "Inuit Content"

"Inuit Content" is defined as the dollar value of the goods and services required by the Contract supplied by any Inuit Firm or Inuit sole proprietorship and Inuit Labour. Inuit Content may include:

- i. goods and services supplied by an Inuit Firm or Inuit supplier acting as the General Contractor. These are referred to as "own forces";
- ii. goods and services supplied by an Inuit Firm or Inuit supplier so long as these goods and services are required for the completion of the Contract and are paid for by the Contract.
- iii. Inuit labour by an Inuit Firm or a non-Inuit Firm.

3.0 REQUIREMENTS

- .1 The Contractor shall maximize the value of Inuit Labour and Inuit Goods and Services and shall meet or exceed the Inuit Labour minimum level identified in this appendix when bidding. In the performance of the work, the Contractor shall meet or exceed the amounts tendered on Appendix B-2.
- .2 The Contractors shall submit records on a monthly basis, or as specified, indicating the amount of Inuit Labour and Inuit Goods and Services used. No payment shall be due or payable to the Contractor if the Contractor fails to supply these reports to the Owner.

4.0 FAILURE TO ACHIEVE INUIT CONTENT REQUIREMENTS

In addition to the bonus or penalty prescribed by the Nunavummi Nangminiaqtunik Ikajuuti (NNI) Policy for exceeding or not meeting the minimum prescribed Inuit Labour level set out on page 4 of this Appendix K the following damages may apply for not meeting Inuit Labour and/or Inuit Goods and Services requirements:

- .1 There is a requirement to provide no less than the levels of Inuit Labour and Inuit Goods and Services tendered by the Contractor on Appendix B-2 of the tender. Failure to meet this requirement by achieving the levels tendered may result in the Owner applying damages described in the contract General Condition GC 55.
- .2 Additionally, if the contractor fails to meet the prescribed minimum Inuit Labour set out on page 4 of this Appendix K then for future tenders where there are similar prescribed minimum levels for Inuit Labour the Owner may deem the Contractor to be "not responsible" (as defined in the Government Contract Regulations).
- .3 The Owner may terminate this contract prior to Final Completion if the Contractor has not demonstrated compliance with the requirement to attain the prescribed minimum levels of Inuit Labour set out on page 4 of this Appendix K.

5.0 INDEMNIFICATION

- .1 The Contractor shall indemnify the Owner against any claim brought by any person because of any failure by the Contractor to achieve the prescribed levels of Inuit Labour prescribed by this contract.

6.0 WAIVER OF INUIT CONTENT REQUIREMENTS

- .1 The prescribed level of Inuit Labour shall only be reduced when sufficient Inuit Labour is not available and the Contractor has requested and received prior approval by the Owner in writing to reduce the prescribed levels.

Inuit Labour

It is a fundamental term of this contract that the contractor shall maximize the value of Inuit labour used to perform the Work. Therefore the GN has set a minimum percent by dollar value for the use of Inuit labour. The Inuit labour content may be provided by the general contractor or any subcontractor and may include professional or administrative staff or skilled or unskilled trades people, and not necessarily through an Inuit Firm. The minimum may only be reduced where sufficient Inuit labour is not available and the approval of the Owner has been obtained in writing.

For the purposes of this contract the GN has prescribed that the following minimum percent of the total labour for this job by dollar value shall be provided by Inuit workers.

20 %
Prescribed minimum level of Inuit labour as a percent of total labour by dollar value.

Substantiation

In order to substantiate the amount of Inuit Labour the general contractor shall be responsible for providing an amalgamated employment report that shall reflect the Inuit labour used by the general contractor and any other sub contractor or supplier. The general contractor shall submit this employment report with every Progress Claim. Receipt of an employment report shall be a condition precedent to the release of a progress payment, an interim payment and/or a final payment.

If requested, the general contractor shall also provide a completed "Employee Verification and Consent Form" for an Inuit worker.

ARTICLES OF AGREEMENT

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

Between

(herein the "Owner")

and

(herein the "Contractor")

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 all of those documents referred to on 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 1.2.1 The Owner hereby designates _____
as the Owner's Representative for the Department of _____ of the Government of Nunavut.
- 1.2.3 The Contractor hereby designates _____
as the Contractor's Representative.
- 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/or
 - 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 the 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 the Agreement and the _____ day of _____, 20____, in a careful and workmanlike manner, diligently perform and complete the following work:

_____ which work is more particularly described in the Plans and Specifications.

A3 CONTRACT AMOUNT

3.1 Subject to any increase, decrease, deduction, reduction, or set-off permitted under the terms of 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, and/or

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 GC43.7 multiplied in each case by appropriate unit price that is set out in the Unit Price Table "Appendix D" 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 (NUNAVUT)

The attention of the Contractor is drawn to the following statutory provision. It is a condition of this Agreement that payment hereunder is subject to Section 46 of the Financial Administration Act (Nunavut) as amended or re-enacted in successor legislation during the term of this Contract. Section 46 currently provides as follows: "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."

A6 JOINT AND SEVERAL LIABILITY

If the Contractor is comprised of more than one party, as in the case of a joint venture or a partnership, then in that event such parties declare themselves to be bound jointly and severally with one another with respect to the fulfilment of all the terms and conditions of this agreement and hereby renounce their benefits of division and discussion and the obligations of such parties shall be joint and several, and each party shall execute this agreement.

SIGNED, SEALED AND DELIVERED in the presence of:

Contractor: Contractor's Full Legal Business Name and Address:

_____ (Seal)

Facsimile No. _____

• _____
Signature

• _____
Signature

Owner: Owner's Full Business Name and Address

Government of Nunavut _____

Facsimile No. (867) _____

• _____

END OF ARTICLES OF AGREEMENT

TERMS OF PAYMENT

TP1 AMOUNT PAYABLE - GENERAL

- 1.1 Subject to any other provisions of the contract, the Owner, hereinafter in these Terms of Payment the "Government of Nunavut" will pay the Contractor, at the times and in the manner hereinafter set out, the amount by which the aggregate of the amounts described in TP2 exceeds the aggregate of the amounts described in TP3, and the Contractor shall accept that amount as payment in full satisfaction for everything furnished and done by the contractor in respect of the Work to which the payment relates.

TP2 AMOUNT PAYABLE TO THE CONTRACTOR

- 2.1 The amounts "payable to the Contractor" 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, and
 - 2.1.3 the amounts, if any, that are a bonus for Inuit Labour achieved, as described in the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy) for the Work, and
 - 2.1.4 the applicable Goods and Services Tax (GST).

TP3 AMOUNTS PAYABLE TO THE GOVERNMENT OF NUNAVUT

- 3.1 The amounts "payable to the Government of Nunavut" are the aggregate of the amounts, if any, that the Contractor is liable to pay the Government of Nunavut pursuant to the within contract, including any penalty assessed for Inuit Labour shortfalls, as described in the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy) for the Work.
- 3.2 When making any payment to the Contractor, the failure of the Government of Nunavut 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 this Term of Payment, "payment period" means a period of 30 consecutive days or such other interval as is agreed between the Contractor and the Government of Nunavut.
- 4.2 The Contractor shall, on the expiration of a payment period, deliver to the "Representative", as designated by the Government of Nunavut and set out in Article of Agreement A1.2.1, in respect of that payment period a written invoice for that part of the Work that has been completed with the required associated backup and a listing of material that was delivered to the Work site but not incorporated into the Work during that payment period. The Contractor's official invoice shall include, as a minimum; - a full description of the Work and materials, the Contract number, the Contractor's GST Registration Number, and the dollar values as follows: Sub-total #1 (no GST), the Holdback, Sub-total #2 (Sub-total #1 less the Holdback), and the Grand Total (Sub-total #2 plus GST).
- 4.3 The Representative, as designated by the Government of Nunavut, will, not later than ten days after receipt of the invoice referred to in TP4.2:
 - 4.3.1 inspect or otherwise satisfy themselves that the part of the Work and the materials described in the invoice have been provided in a satisfactory manner (an inspection may be carried out by either a Representative designated by the Government of Nunavut, or its' consultant), and
 - 4.3.2 coordinate with the Contractor to resolve any disagreements on the content and amount of the invoice (obtaining a corrected invoice from the Contractor if changes are required), and
 - 4.3.3 complete a Request for Contact Payment (RCP), indicating on it the date that the Contractor's invoice was approved, and

- 4.3.4 send to the Government of Nunavut, Public Works and Services Department (PW&S)'s finance section the original invoice that has been agreed upon along with a Request for Contact Payment (RCP) signed by the Representative, as designated by the Government of Nunavut, (and PW&S's Regional Project Manager or the Regional Director depending on the signing authority of these persons) and a copy of the PW&S's Major Works Contract Payment Check List with the appropriate sections filled out. In addition, the Representative, as designated by the Government of Nunavut, will send a copy of the agreed invoice and the RCP to the Contractor.
- 4.4 Subject to TP1, the Government of Nunavut, will pay the Contractor in accordance with the amounts stipulated hereunder. Invoices of Nunavut Contractors, as defined by the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy), will become due and payable 20 days after receipt of the invoice, provided the invoice is approved by the Representative, as designated by the Government of Nunavut, as specified in TP4.3. Invoices from other Contractors will become due and payable 30 days after approval of the invoice by the Representative, as designated by the Government of Nunavut, as specified in TP4.3:
- 4.4.1 an amount that is equal to 95% of the value that is indicated in that invoice 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 invoice if a labour and material payment bond has not been furnished by the Contractor.
- 4.5 Subject to TP1 and TP4.6, the Government of Nunavut will, not later than 20 days for Nunavut Contractors (as defined by the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy) of the GN) 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 Government of Nunavut's estimate of the cost to the Government of Nunavut of rectifying defects described in the Substantial Certificate of Completion, and
- 4.5.3 an amount that is equal to the Representative, as designated by the Government of Nunavut, estimate of the cost to the Government of Nunavut 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 Government of Nunavut's obligation under TP4.5 that:
- 4.6.1 the Contractor has made and delivered to the Government of Nunavut's Representative 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 Inuit Local and Nunavut Employment and involvement reports as set out in this contract.
- 4.7 A statutory declaration referred to in TP4.6 and TP4.9 shall be submitted on the attached form, page 4 & 5.
- 4.8 Subject to TP1 and TP4.9, the Government of Nunavut will, not later than 20 days for Nunavut Contractors (as defined by the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy) of the GN) or 30 days for other Contractors after the date of issue of a Final Certificate of Completion referred to in GC43.1 and provided that the Government of Nunavut is in receipt of statutory declaration as described in TP4.7, 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.

TP5 PROGRESS REPORT AND PAYMENT THEREUNDER NOT BINDING ON THE GOVERNMENT OF NUNAVUT

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

TP6 RIGHT OF SET-OFF

- 6.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the Contract, the Government of Nunavut, may set-off any amount payable to the Government of Nunavut 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.
- 6.2 For the purposes of this Terms of Payment document, "current contract", means a contract between the Government of Nunavut and the Contractor;
- 6.2.1 under which the Contractor has an undischarged obligation to perform or supply work, labour or material, or;
- 6.2.2 in respect of which the Government of Nunavut, 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.

TP7 PAYMENT IN EVENT OF TERMINATION

- 7.1 If the contract is terminated pursuant to GC40, the Government of Nunavut, will pay the Contractor any amount that is lawfully due and payable to the Contractor as soon as is practicable under the circumstances.

Certificate of Completion
STATUTORY DECLARATION

THE MATTER OF a contract bearing

#

between the Government of Nunavut and

(Insert full name of contractor)

herein the Contractor,

for
(briefly describe the work to be performed)

dated the _____ day of _____,

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 |
|------------------|--|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Certificate of Completion - STATUTORY DECLARATION
2nd page

and the following amounts, if any, which are being withheld pending payment to the Contractor by the Government of Nunavut.

| 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 NUNAVUT.

DECLARED before me at _____

this _____ day of _____,

(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, that person must make the declaration. 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 section of the Criminal Code of Canada is 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."

GENERAL CONDITIONS

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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 him to perform, on his behalf, any of his functions under the contract.
 - 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 the context otherwise requires, a partnership, proprietor-ship, firm, joint venture, consortium and a 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 division into sections, the table of contents, and 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, and
 - 1.4.3 figured dimensions and scaled dimensions, the figured dimensions govern.
- 1.5 Any reference to a statutory provision shall include any subordinate legislation made and from time-to-time amended, extended or re-enacted.
- 1.6 This Agreement shall be governed by and construed in accordance with the laws of Nunavut and the laws of Canada as applicable therein.

- 1.7 Unless otherwise indicated, all dollar amounts referred to in the Agreement are in lawful money of Canada.
- 1.8 In any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect. In the event any provision of this Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect.
- 1.9 Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 1.10 The Contractor shall be required to comply, and shall require its subcontractors to comply, with all applicable laws, orders, rules and regulations; and, without limiting the generality of the foregoing, the Contractor shall at its sole expense comply with all unemployment insurance, Worker's Compensation, income tax, payroll tax, Canada Pension Plan, occupational health and safety and environmental protection legislation.

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 on Appendix B-1 and B-2 of the Tender.
- 4.2 The Contractor shall notify the Engineer of his intention to subcontract.
- 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, and if any changes are made without consent, the contract may be terminated at the option of the Owner.
- 4.7 Every subcontract entered into by the Contractor shall adopt all of the terms and conditions of this contract that are of general application.
- 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 was 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 TO CONTRACTOR

- 10.1 Notices for the purposes of GC37.1.1, GC39 and GC40 shall be in writing and shall be given
- 10.1.1 by delivering the notice to the Contractor in person or, if the Contractor is a partnership, firm, joint venture consortium or corporation, to a senior administrative or executive officer thereof, or
 - 10.1.2 by mailing the notice to the Contractor at his address set out in the Articles of Agreement.
- 10.2 A notice referred to in GC10.1 shall be deemed to have been received by the Contractor
- 10.2.1 if it was delivered pursuant to GC10.1.1, on the day that it was delivered, and
 - 10.2.2 if it was sent by mail pursuant to GC10.1.2, on the earlier of the day it was received by the Contractor and the sixth day after it was mailed.
- 10.3 Any notice, consent, order, direction, decision, or other communication, other than a notice referred to in

GC10.1, that may be given to the Contractor pursuant to the contract may be given in any manner, but it shall be deemed to have been received by the contractor, if it is in writing.

10.3.1 on the day that it was delivered to the superintendent, or

10.3.2 on the sixth day after it was mailed to the Contractor at his address set out in the Articles of Agreement.

10.4 Where the postal service is disrupted by a strike, a notice, consent, order, direction, decision or other communication may be given to the Contractor by facsimile and shall be deemed to have been received by the Contractor twenty-four hours after it was transmitted.

GC11 MATERIAL, PLANT AND REAL PROPERTY SUPPLIED BY THE OWNER

11.1 Subject to GC11.2, 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 acquired, used or provided by him for the contract shall, from the time of their acquisition, use or provision, 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; and

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 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 Owner

- 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 Owner 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 Owner.

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;
 - 14.1.2 furnish the Engineer with such information respecting the performance of the contract as he may require; and
 - 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.
- 15.2 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 if:
 - 15.2.1 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
 - 15.2.2 the Contractor incurs, in the opinion of the Engineer, extra expense in complying with GC15.1;
and
 - 15.2.3 the Contractor has given the Engineer written notice of his claim for the extra expense referred to in GC15.2.2 within 10 days of the date that the other contractors or workers were sent onto the work or its site.

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.