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1. MINISTER AND MINISTER'S REPRESENTATIVE

1.1 **Minister's Duties and Authority:** The Minister shall carry out the duties and exercise the authority specified in the Contract.

1.2 **Minister's Representative:** The Minister shall appoint a representative who shall, unless the Contractor is expressly advised otherwise by the Minister or a duly authorized departmental officer, have full authority to act on behalf of and bind the Minister under the Contract.

1.3 Appointment of Assistants

.1 The Minister's Representative may appoint any number of persons to assist him in carrying out his duties. He shall notify the Contractor of the names, duties and scope of authority of such persons.

.2 The failure of any assistants appointed pursuant to clause 1.3.1 to disapprove any work shall not prejudice the authority of the Minister to disapprove such work and to give instructions for the rectification thereof.

1.4 **Instructions in Writing:** The Contractor shall take instructions only from the Minister or any assistants appointed pursuant to clause 1.3. Instructions given by the Minister shall be in writing, provided that if the Minister considers it necessary to give any instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Minister, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this clause. Provided that if the Contractor, within 7 days, confirms in writing to the Minister any oral instruction of the Minister and such confirmation is not contradicted in writing within 7 days by the Minister, it shall be deemed to be an instruction of the Minister.

1.5 **Minister Interpreter of Contract:** The Minister in the first instance shall be the interpreter of the Contract and the judge of the Contractor's performance.

1.6 **Minister's Determinations:** When the Minister is required to exercise his discretion by giving his decision, opinion or consent, or expressing his satisfaction or approval, or determining value, or otherwise taking action which may affect the rights and obligations of the Contractor he shall exercise such discretion within the terms of the Contract after due consultation with the Contractor and shall promptly notify the Contractor of such decision, opinion, consent, approval or determination.

1.7 **Minister's Review:** Any review, comment, consent, acceptance or approval, or lack thereof, by the Minister, shall not relieve the Contractor of any of its responsibilities or liabilities under the Contract.

2. ASSIGNMENT, SUBCONTRACTING AND NOMINATION

2.1 Assignment

.1 The Contractor shall not assign the Contract, either in whole or in part, without the previous written consent of the Minister, which consent, notwithstanding other provisions of the Contract, shall be at the Minister's sole discretion.

.2 The Minister shall not be bound by any assignment by the Contractor of any monies payable or to become payable to the Contractor under the Contract, without the written consent of the Minister, which consent:

.1 will not be given for a general assignment of book debts, but

.2 may, at the Minister's sole discretion, be given for a specific assignment of all or part of monies payable to the Contractor under the Contract,

subject however, in all cases, to the provisions of the Financial Administration Act (Alberta).

2.2 Subcontracting

.1 The Contractor:

.1 shall not sublet the Contract as a whole,

.2 shall not subcontract any part of the Work without the Minister's prior consent, which shall not be unreasonably withheld,

.3 shall provide such details of any Subcontractor he wishes to engage as the Minister may require,

.4 shall contract with those Subcontractors proposed by him and accepted by the Minister and such Subcontractors shall not be changed without the Minister's prior consent.

.2 The Minister may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to contract with another Subcontractor.

.3 If the Minister requires a change from a proposed Subcontractor, the Contract Price shall be adjusted by any difference in cost and markup occasioned by such required change, except where such change is required due to the Contractor's default or negligence, in which case there shall be no change in the Contract Price.

.4 The Minister may, upon reasonable request and at his discretion, provide to a Subcontractor information as to the percentage or quantity of the Subcontractor's work for which payment has been approved.

.5 Nothing contained in the Contract shall create a contractual relationship between a Subcontractor and the Minister and subcontracting part of the Work shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workers as fully as if they were his own.

.6 The Contractor shall enter into contracts or written agreements with his Subcontractors to require them to perform their work in accordance with the Contract, and the Contractor shall incorporate the terms and conditions of the Contract Documents, to the extent that they apply, into all subcontracts.

2.3 Nominated Subcontractors and Suppliers

- .1 A nominated Subcontractor or nominated Supplier means a person, firm or corporation with whom the Contract requires the Contractor to enter into a contract for the performance of a subcontract or the supply of things related to the Work.
- .2 Nothing contained in the Contract shall create a contractual relationship between the Minister and a nominated Subcontractor or nominated Supplier and such nomination shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any nominated Subcontractor or nominated Supplier, his agents, servants or workers as fully as if they were his own.

3. DOCUMENTS

3.1 Property and Use of Contract Documents: The Contract Documents are the sole property of the Minister and unless it is necessary for the purposes of the Contract, the Contract Documents shall not, without the consent of the Minister, be used by or communicated to a third party by the Contractor.

3.2 Reporting of Conflicts, Errors and Discrepancies

- .1 If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Minister in writing at once and, before proceeding or continuing with the Work affected thereby, shall obtain a written interpretation or clarification from the Minister; however, the Contractor shall not be liable to the Minister for failure to report any conflict, error or discrepancy in the Contract Documents unless the Contractor had actual knowledge thereof or should reasonably have known thereof.
- .2 The Contractor shall obtain from the Minister any dimensions required but not indicated in figures in the Contract Documents nor calculable from figures in the Contract Documents. Scaling of Drawings, for any purpose, shall be at the Contractor's risk.

3.3 Disruption of Progress

- .1 The Contractor shall notify the Minister when planning or execution of the Work is likely to be delayed or disrupted unless any further document or instruction required of the Minister under the Contract is issued by the Minister within a reasonable time. The notice shall include details of the document or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.
- .2 If, by reason of any failure or inability of the Minister to issue, within a reasonable time, any document or instruction for which notice has been given by the Contractor in accordance with clause 3.3.1, the Contractor suffers delay or incurs costs then the Minister shall determine:
 - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
 - .2 the amount of such costs, which shall be added to the Contract Price.
- .3 If the failure or inability of the Minister to issue any documents or instruction is caused in whole or in

part by the failure of the Contractor to submit documents which he is required to submit under the Contract, the Minister shall take such failure by the Contractor into account when making his determination pursuant to clause 3.3.2.

3.4 Additional Instructions: The Minister shall have authority to issue to the Contractor, from time to time, such Additional Instructions as may be necessary for the proper performance of the Work. The Contractor shall carry out and be bound by such Additional Instructions.

3.5 Forms: Forms to be used pursuant to the Contract or as otherwise may be required for the administration of the Contract shall be as prescribed or approved by the Minister.

4. GENERAL OBLIGATIONS

4.1 Contractor's Responsibilities: The Contractor shall, with due care and diligence, design, to the extent provided for by the Contract, execute and complete the Work and remedy any defects therein in accordance with the provisions of the Contract. This shall include the provision of superintendence, labour, Products, Construction Equipment, Temporary Work and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects. The Contractor shall comply with and adhere strictly to the Minister's instructions on any matter, whether mentioned in the Contract or not, concerning the Work.

4.2 Contract Security

- .1 The Contractor shall, if required by the Bid Documents, provide either or both contract performance security or security for payment of claims for labour and material.
- .2 Surety bonds shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta.
- .3 The Minister may, for reasonable cause, object to use of the surety company proposed by the Contractor, and may require the Contractor to provide a surety bond issued by another surety company acceptable to the Minister, with no change in Contract Price.

4.3 Site Operations and Methods of Construction

- .1 The Contractor shall be fully responsible for the adequacy, stability and safety of all Site operations and methods of construction.
- .2 The Contractor shall submit at such times and in such detail as the Minister may require such information pertaining to the methods of construction (including Temporary Work and the use of Construction Equipment) which the Contractor proposes to use and such calculations of stresses, strains and deflections that will arise, in the Permanent Work or any part thereof, from the use of such methods during execution of the Work.
- .3 The Minister shall, on request from the Contractor, provide to the Contractor such design criteria relevant to the Permanent Work or any Temporary

Work designed by the Minister as may be necessary to enable the Contractor to comply with clause 4.3.2.

- .4 For the purposes of this clause, "method of construction" means a method, means, technique, sequence or procedure of construction.

4.4 Differing Physical Conditions or Obstructions

- .1 If, during the execution of the Work, the Contractor encounters physical obstructions or physical conditions, including sub-surface obstructions or conditions, other than weather conditions or conditions due to weather conditions, on the Site, which, in his opinion, differ substantially from those indicated in the Contract and which were not reasonably foreseeable, the Contractor shall as soon as possible give notice thereof to the Minister. On receipt of such notice, the Minister shall, if in his opinion such obstructions or conditions differ substantially from those indicated in the Contract Documents and could not have been reasonably foreseen, determine:

- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
.2 the amount of any costs, valued in accordance with clause 8.3, which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price.

- .2 A determination by the Minister pursuant to clause 4.4.1 shall take account of:

- .1 the time of the Contractor's notice to the Minister of a differing physical condition or obstruction,
.2 any instruction which the Minister may have issued to the Contractor in connection therewith, and
.3 any proper and reasonable measures acceptable to the Minister which the Contractor may have taken in the absence of specific instructions from the Minister.

- 4.5 **Climatic and Weather Conditions:** The relevant climatological records and related information published by the Canadian Climate Centre of Environment Canada, for one or more locations in the vicinity of the Site, shall be used as a basis for any evaluations and determinations concerning climate and weather.

4.6 Contractor's Superintendence

- .1 The Contractor shall provide all necessary superintendence during the execution of the Work and as long thereafter as the Minister may consider necessary for the proper fulfilling of the Contractor's obligations. The Contractor, or a competent and authorized representative approved of by the Minister, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Work. Such authorized representative shall receive, on behalf of the Contractor, instructions from the Minister.
.2 If approval of the Contractor's representative is withdrawn by the Minister, the Contractor shall, as soon as is practicable, after receiving notice of such

withdrawal, remove the representative from the Work and shall not employ him again on the Work in any capacity and shall replace him by another representative approved by the Minister.

4.7 Contractor's Employees

- .1 The Contractor shall provide on the Site in connection with the execution and completion of the Work and the remedying of any defects therein:
.1 technical assistants who are skilled and experienced in their respective trades and such foremen and others as are competent to give proper superintendence of the Work, and
.2 labour as is necessary for the proper and timely fulfilling of the Contractor's obligations.

- 4.8 **Minister May Object:** The Minister may object to and require the Contractor to remove forthwith from the Site any person who, in the opinion of the Minister, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence is otherwise considered by the Minister to be undesirable, and such person shall not be allowed on the Site without the consent of the Minister.

4.9 Safety, Security and Protection of the Environment

- .1 The Contractor shall, throughout the execution of the Work and the remedying of any defects therein:
.1 have full regard for the health and safety of all persons upon the Site and keep the Site and the Work, to the extent that they are under his control, in an orderly state appropriate to the avoidance of danger to such persons, and
.2 provide and maintain at his own cost all temporary facilities and controls when and where necessary or required by the Minister or by any duly constituted authority, for the protection of the Work or for the safety and convenience of the public or others, and
.3 take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or any other causes arising as a consequence of his methods of operation.
.2 The Contractor shall appoint a person at the Site who shall manage an accident prevention program. This person shall be the Contractor's superintendent unless another person is appointed and approved by the Minister.

4.10 Minister's Responsibilities for Safety

- .1 If under clause 4.18 the Minister carries out work on the Site with his own workers he shall, in respect of such work and subject to clause 4.9:
.1 have full regard to the safety of all persons upon the Site, and
.2 keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

- .2 If under clause 4.18 the Minister contracts with Other Contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

4.11 Care of Work

- .1 The Contractor shall take full responsibility for the care of the Work from the date of commencement of Work at the Site until the date of issue of the certificate of Substantial Performance of the Work, when the responsibility for such care shall pass to the Minister, provided that:

- .1 except where otherwise specified in the Contract, if the Minister issues a certificate of Substantial Performance for part of the Permanent Work the Contractor shall cease to be liable for the care of that part from the date of issue of such certificate, when the responsibility for the care of that part shall pass to the Minister, and
- .2 the Contractor shall take full responsibility for the care of any outstanding Work which he undertakes to finish during the warranty period until such outstanding Work has been completed.

- 4.12 **Responsibility to Rectify Loss or Damage:** If there is any loss or damage to the Work, or any part thereof, or to Products for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, the Contractor shall, at his own cost, rectify such loss or damage so that the Work conforms with the provisions of the Contract to the satisfaction of the Minister. The Contractor shall also be liable for any loss or damage to the Work occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under the warranty provisions of the Contract.

- 4.13 **Hold Harmless Agreement:** The Contractor shall hold harmless the Minister from any and all third party claims, demands, or actions for which the Contractor is legally responsible, including those arising out of negligence or willful acts by the Contractor or the Contractor's employees or agents. This hold harmless shall survive the Contract.

4.14 Regulatory Requirements

- .1 The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:

- .1 any Regulatory Requirements, and
- .2 the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Work,

and the Contractor shall keep the Minister indemnified against all penalties and liability of every kind for breach of any such provisions.

- .2 The Minister shall be responsible for obtaining any planning, zoning or other similar permission required for the Project to proceed.

- .3 Without limiting the Contractor's obligations under clause 4.14.1, the Contractor shall:

- .1 comply with all requirements of and pay all fees in connection with the Workers' Compensation Act (Alberta),
- .2 comply with the Occupational Health and Safety Act (Alberta) and all safety requirements as contained in the regulations thereto,
- .3 ensure that wages, hours of work and other conditions of employment of all persons employed by the Contractor in the performance of any work required by the Contract are in compliance with the requirements of the Employment Standards Code (Alberta), the Labour Relations Code (Alberta) and any other applicable law, rule, regulation or order, and
- .4 pay all fees and charges levied by a municipal authority in respect of applicable permits and licences.

4.15 Artifacts and Fossils

- .1 Coins, fossils, artifacts, structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Minister and the Contractor, be deemed to be the property of the Minister. The Contractor shall take reasonable precautions to prevent his workers or any other persons from removing or damaging any such clause or thing and shall, immediately upon discovery thereof and before removal, inform the Minister of such discovery and carry out the Minister's instructions for dealing with same. If, by reason of such instructions, the Contractor suffers delay or incurs costs then the Minister shall determine:

- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
- .2 the amount of such costs, which shall be added to the Contract Price.

- 4.16 **Patent Rights:** The Contractor shall indemnify the Minister from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Product, Construction Equipment, Temporary Work or other thing used for or in connection with or for incorporation in the Work and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or specification provided by the Minister.

4.17 Royalties

- .1 Except as otherwise provided in the Contract, the Contractor shall be liable for all tonnage and other royalties, rent and other payments or compensation, if any, for obtaining stone, sand, gravel, clay or other materials required for the Work.
- .2 The Contractor shall be liable for all payments or other compensation, if any, levied in relation to the dumping of all or part of any waste materials.

4.18 Other Contractors

.1 The Contractor shall, in accordance with the requirements of the Minister, afford all reasonable opportunities for carrying out their work to:

- .1 any Other Contractors of the Minister and their workers,
- .2 the workers of the Minister, and
- .3 the workers of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Minister may enter into in connection with or ancillary to the Work.

.2 Pursuant to clause 4.18.1, and except as may be provided in the Contract, the Contractor shall, on the request of the Minister:

- .1 make available to any person referred to in clause 4.18.1, any roads or ways for the maintenance of which the Contractor is responsible, or
 - .2 permit the use, by any such persons, of Temporary Work or Construction Equipment on the Site, or
 - .3 provide any other service for any such person,
- the Minister shall determine an addition to the Contract Price in accordance with clause 8.3.

4.19 Permanent Work Designed by the Contractor

.1 Where the Contract provides that part of the Permanent Work shall be designed by the Contractor, he shall submit to the Minister, for review:

- .1 such drawings, specifications, calculations and other information as is necessary for the Minister's review, and
- .2 operation and maintenance manuals, as applicable together with drawings of the Permanent Work as completed, in sufficient detail to enable the Minister to operate, maintain, dismantle, reassemble and adjust the Permanent Work incorporating that design,

and such design and any alterations thereto shall be performed by a qualified design professional licensed to practice in Alberta.

.2 The Contractor shall not commence any work to which the information referred to in clause 4.19.1 relates unless such information has been reviewed by the Minister, and the Contractor shall not thereafter alter such design without the Minister's review.

4.20 Records and Audit

.1 With respect to Cost Plus Work, the Contractor shall:

- .1 keep accurate records of estimated and actual costs, payments made and time spent;
- .2 keep record copies of bids, quotations, contracts, correspondence, invoices, receipts and vouchers related thereto;
- .3 make such records available for inspection and audit by the Minister for a period of at least 2 years after the date of Total Performance of the Work;

.4 provide the Minister with copies and extracts therefrom when requested by the Minister; and

.5 afford facilities for audit and inspection by the Minister at mutually agreeable times and places.

.2 The Contractor shall cause Subcontractors and other persons directly or indirectly controlled by or affiliated with the Contractor and persons directly or indirectly having control of the Contractor to comply with clause 4.20.1 as if they were the Contractor.

4.21 Record of Labour and Construction Equipment:

The Contractor shall, if required by the Minister, deliver to the Minister a record in detail, in such form and at such intervals as the Minister may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Construction Equipment as the Minister may require.

4.22 Customs

.1 With respect to the importation and re-export of Construction Equipment, Temporary Work, Products and other things required for the Work, the Contractor shall:

- .1 be liable for all applicable customs, import duties, taxes and brokerage fees, and
- .2 be responsible for obtaining clearance through Customs. If requested by the Contractor, the Minister may assist in obtaining such clearance.

4.23 Urgent Remedial Work

.1 If, due to any accident, or failure, or other event occurring to, in, or in connection with the Work, or any part thereof, either during the execution of the Work, or during the warranty period, any remedial or other work is, in the opinion of the Minister, urgently necessary for the safety of the Work, persons or property and the Contractor is unable or unwilling at once to do such work, the Minister may employ other persons or contract with other firms or corporations to carry out such work as the Minister may consider necessary.

.2 If the work or repair done by the Minister pursuant to clause 4.23.1 is work which, in the opinion of the Minister, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall be determined by the Minister and shall be recoverable from the Contractor by the Minister.

5. QUALITY OF PRODUCTS AND WORK

5.1 Products and Workmanship

.1 Products and workmanship shall be:

- .1 of the respective kinds described in the Contract, and
- .2 subjected from time to time to such tests as the Minister may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

- .2 The Contractor shall:
 - .1 at his cost provide all things necessary for examining, measuring, and testing Products including labour, electricity, fuels, stores, apparatus and instruments, and
 - .2 supply samples of materials, before incorporation in the Work, for testing as may be selected and required by the Minister.
- 5.2 **Cost of Samples:** All samples shall be supplied by the Contractor at his own cost if the supply thereof is provided for in the Contract.
- 5.3 **Cost of Tests Provided For**
 - .1 The cost of making any test shall be borne by the Contractor if such test is:
 - .1 specified in the Contract to be performed by the Contractor, or
 - .2 in cases of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfill, specified in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Bid.
- 5.4 **Cost of Tests Not Provided For**
 - .1 .If the Minister requires any test which is not provided for in the Contract and such test shows the Products or workmanship not to be in accordance with the Contract, then the cost of such test shall be borne by the Contractor, but in any other case clause 5.4.2 shall apply.
 - .2 Where, pursuant to clause 5.4.1, this clause applies, the Minister shall determine:
 - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
 - .2 the amount of any costs incurred by the Contractor, which shall be added to the Contract Price.
- 5.5 **Inspection and Testing**
 - .1 The Minister shall at reasonable times have access to the Site and to all workshops and places where Products are being manufactured, fabricated or prepared for the Work and the Contractor shall afford every facility for, and every assistance in, obtaining the right to such access.
 - .2 The Minister shall be entitled, during manufacture, fabrication or preparation to inspect and test the Products to be supplied under the Contract. If Products are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Minister to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.
- 5.6 **Dates For Inspection and Testing:** The Contractor Shall agree with the Minister on the time and place for the inspection or testing of any Products as provided in the Contract. The Minister shall give the Contractor not less than 48 hours notice of his intention to carry out the inspection or to attend the tests. If the Minister does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Minister, proceed with the tests. The Contractor shall forthwith forward to the Minister certified copies of the test results.
- 5.7 **Rejection:** If, at the time and place agreed in accordance with clause 5.6, Products are not ready for inspection or testing or if, as a result of the inspection or testing referred to in clause 5.5, the Minister determines that the Products are defective or otherwise not in accordance with the Contract, he may reject the Products and shall notify the Contractor thereof immediately. The notice shall state the Minister's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected Products comply with the Contract. If the Minister so requests, inspection and testing of rejected Products shall be made or repeated under the same terms and conditions.
- 5.8 **Cost for Inspection and Testing:** All costs incurred by the Minister because of rescheduling, or undue delay of inspection and testing, and for which the Contractor is responsible, shall be determined by the Minister and shall be recoverable from the Contractor by the Minister.
- 5.9 **Independent Inspection:** Inspection and testing of Products to be carried out by the Minister may be delegated to an independent agency. Any such delegation shall be effected in accordance with clause 1.3 and for this purpose such independent agency shall be considered as an assistant of the Minister.
- 5.10 **Examination of Work Before Covering Up:** The Contractor shall afford full opportunity for the Minister to examine and measure any part of the Work which is about to be covered up or put out of view and to examine exposed or excavated surfaces before any part of the Work is placed thereon. The Contractor shall give notice to the Minister whenever any such part of the Work or exposed or excavated surface is or are ready or about to be ready for examination and the Minister shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Work or of examining such surfaces.
- 5.11 **Uncovering and making Openings:** The Contractor shall uncover any part of the Work or make openings in or through the same as the Minister may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of clause 5.9 and is found to be executed in accordance with the Contract, the Minister shall determine the amount of the Contractor's costs in respect of such uncovering, making openings in or through, reinstating and making good, which shall be added to the Contract Price. In any other case all costs shall be borne by the Contractor.
- 5.12 **Removal of Improper Work or Products**
 - .1 The Minister shall have authority to issue instructions for:
 - .1 the removal from the Site, within such time or times as may be specified in the instruction, of any Products which, in the opinion of the

- Minister, are not in accordance with the Contract,
 - .2 the substitution of proper and suitable Products, and
 - .3 the removal and proper re-execution, notwithstanding any previous test thereof or progress payment therefor, of any work which is not in accordance with the Contract.
- .2 In case of default by the Contractor in carrying out instructions pursuant to clause 5.12.1 within the time specified therein or, if none, within a reasonable time, the Minister may employ other persons or contract with other firms or corporations to carry out the same, and all costs consequent thereon or incidental thereto shall be determined by the Minister and shall be recoverable from the Contractor by the Minister.

6. COMMENCEMENT, COMPLETION, CONTRACT TIME AND DELAYS

6.1 Commencement of Work: The Contractor shall commence the Work as soon as is reasonably possible in accordance with the instructions contained in the Letter of Acceptance and other provisions of the Contract. Thereafter, the Contractor shall proceed with the Work without delay.

6.2 Possession of and Access to Site

- .1 If the Contractor suffers delay or incurs costs from failure of the Minister to give possession of the Site or part thereof in accordance with the provisions of the Contract, the Minister shall determine:
 - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
 - .2 the amount of such costs, which shall be added to the Contract Price.
- .2 The Contractor shall bear all costs and charges for special or temporary rights-of-way required by him in connection with the Work. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Work.

6.3 Contract Time

- .1 The Contractor shall achieve Substantial Performance of the Work as a whole within the Contract Time.
- .2 When the Contractor is required to achieve Substantial Performance of part or parts of the Work prior to achieving Substantial Performance of the Work as a whole, the Contractor shall achieve Substantial Performance of such part or parts of the Work within the time or times specified and such time or times shall be considered to be the Contract Time or Times for such part or parts.

6.4 Extension of Contract Time

- .1 In the event of:
 - .1 a change in the Work made under clause 8.1, or
 - .2 any cause of delay referred to in the Contract, or

- .3 abnormally adverse weather conditions, abnormal weather being defined as temperature, precipitation, humidity or wind that is outside of plus or minus one standard deviation from the mean, for the time period in question, determined pursuant to clause 4.5, or
- .4 any delay, impediment or prevention by the Minister, or
- .5 other special circumstances which may occur, other than through a default of or breach of Contract by the Contractor or for which he is responsible,

being such as to affect an activity on the critical path of the Contractor's schedule, the Minister shall determine the extension of the Contract Time for the whole or part of the Work, to which the Contractor may be entitled.

6.5 Contractor to Provide Notification and Details

- .1 The Minister shall not be bound to make any determination pursuant to clause 6.4 unless the Contractor has:
 - .1 within 7 days after such event has first arisen notified the Minister, and
 - .2 within 14 days, or such other reasonable time as may be agreed by the Minister after such notification, submitted to the Minister details of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

6.6 Interim Determination of Extension of Time: Where an event has a continuing effect such that it is not practicable for the Contractor to submit details within the period of 14 days referred to in clause 6.5.1.2, he may claim for an extension of time provided that he has submitted to the Minister interim details at intervals of not more than 14 days and final details within 14 days of the end of the effects resulting from the event. On receipt of such interim details, the Minister may make an interim determination of extension of time and, on receipt of the final details, the Minister shall review all the circumstances and may determine an overall extension of time in regard to the event. No final review shall result in a decrease of any extension of time already determined by the Minister. The Minister may determine an extension of the Contract Time notwithstanding that the Contract Time may have passed without being extended.

6.7 Rate of Progress: If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Work or any part is at any time, in the opinion of the Minister, too slow to comply with the Contract Time, or Milestone Dates, the Minister may notify the Contractor who shall immediately take such steps as are necessary, subject to the consent of the Minister, to expedite progress so as to comply with the Contract Time or Milestone Dates. The Contractor shall not be entitled to any additional payment for taking such steps. If any steps, taken by the Contractor in meeting his obligations under this clause, involve the Minister in additional costs, such costs shall be determined by the Minister and shall be recoverable from the Contractor by the Minister.

6.8 Substantial Performance of the Work

- .1 When the whole of the Work has been substantially performed and any pre-requisites to Substantial Performance of the Work prescribed by the Contract have been met, the Contractor may so notify the Minister, accompanied by a written undertaking to finish without delay any outstanding work during the warranty period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Minister to issue a certificate of Substantial Performance of the Work.
- .2 The Minister shall, within 21 days after the date of delivery of the notice referred to in clause 6.8.1, either issue to the Contractor, a certificate, stating the date on which, in his opinion, the Work was substantially performed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Minister's opinion, is required to be done by the Contractor before the issue of such certificate. The Minister shall also notify the Contractor of any defects in the Work affecting substantial performance that may appear after such instructions and before completion of the Work specified therein. The Contractor shall be entitled to receive such certificate within 21 days after completion, to the satisfaction of the Minister, of the Work so specified and remedying all defects so notified. The Minister may specify the date for Total Performance of the Work in such certificate.

6.9 Substantial Performance of Part or Parts of Work

- .1 In accordance with the procedure set out in clause 6.8, the Contractor may request and the Minister may issue a certificate of Substantial Performance in respect of any substantial part of the Permanent Work which has been substantially completed and which has been or will be occupied or used by the Minister or an Other Contractor prior to Substantial Performance of the Work as a whole, whether or not such prior occupation or use is provided for in the Contract.

6.10 Total Performance of the Work

- .1 When the whole of the Work has been totally performed and any pre-requisites to Total Performance of the Work prescribed by the Contract have been met, the Contractor may so notify the Minister. Such notice shall be deemed to be a request by the Contractor for the Minister to issue a certificate of Total Performance of the Work.
- .2 The Minister shall, in accordance with the procedure set out in clause 6.8.2, either issue a certificate of Total Performance of the Work or give instructions.

- 6.11 **Warranty Performance of the Work:** The Work of the Contract shall only be considered as completed when a certificate of Warranty Performance of the Work has been signed by the Minister and delivered to the Contractor, stating the date on which the Contractor has completed his obligations to execute and complete the Work and remedy any defects therein to the Minister's satisfaction. The certificate of Warranty Performance of the Work shall be given by the Minister within 28 days after the expiration of the warranty period, or, if different warranty periods are applicable to different parts of the

Permanent Work, the expiration of the latest such period, or as soon thereafter as any Work instructed, pursuant to clause 7, has been completed to the satisfaction of the Minister.

6.12 Acceleration

- .1 If the Minister wishes to reduce the Contract Time for the Work or any part thereof, he shall issue to the Contractor a notice thereof and an instruction requiring the Contractor to submit to him within the period specified in the instruction:
 - .1 the Contractor's priced proposals for reducing the Contract Time, together with any consequential modifications to the construction schedule, or
 - .2 the Contractor's explanation why he is unable to reduce the Contract Time.
- .2 If the Minister accepts the Contractor's proposals submitted pursuant to clause 6.12.1.1, including amendments thereto agreed by both parties, the Minister shall issue instructions to the Contractor modifying the Contract accordingly. Such instructions shall include:
 - .1 the revised Contract Time or Times,
 - .2 the modifications to the construction schedule,
 - .3 the revised Contract Price, and
 - .4 any other relevant modifications to the Contract.
- .3 The Contractor may at any time submit to the Minister proposals to reduce the Contract Time for the Work or part thereof. The Minister shall consider such proposals and if he accepts them he shall take action as in clause 6.12.2.

6.13 Damages For Delay

- .1 Without prejudice to any other right the Minister may have with respect to damages, if the Contractor fails to achieve Substantial Performance of the Work or, if applicable, of part of the Work, within the Contract Time or Times the Contractor shall pay the Minister an amount equal to the sum of:
 - .1 all additional salaries, wages, consulting fees and travel and subsistence costs incurred by the Crown in respect of persons overseeing performance of the Work or part thereof caused by the delay, which are hereby set at \$1,500 for each day of the period of delay;
 - .2 all costs incurred by the Crown as a result of the inability to use the Work or part thereof for the period of delay; and
 - .3 all other costs and damages incurred or sustained by the Crown as a result of the Contractor's failure to achieve Substantial Performance of the Work or part thereof within the Contract Time or Times.
- .2 The Minister may, without prejudice to any other method of recovery, deduct the amount referred to in clause 6.13.1 from any monies due or to become due to the Contractor under the Contract. The payment or deduction of such amount shall not relieve the

Contractor from his obligation to complete the Work or from any other of his contractual obligations.

- .3 For the purposes of this clause, "period of delay" means the period commencing on the date specified in the Contract for Substantial Performance of the Work or part thereof and ending on the day immediately preceding the date on which Substantial Performance of the Work or part thereof is actually achieved.

6.14 Damages for Delay of Specific Work

- .1 In addition to damages for delay as outlined in Clause 6.13, without prejudice to any other right the Minister may have with respect to damages, and regardless of actual loss or damages, if the Contractor fails to achieve Substantial Performance of any Specific Work by the Specific Work times specified in such Clause in Section 01110 – Summary of Work, the Contractor shall pay the Minister the amount specified as damages for delay in Clause 6.13.1.1–6.13.1.3, for each day of the period of delay, as defined by Clause 6.14.3.
- .2 The Minister may, without prejudice to any other method of recovery, deduct the amount referred to in clause 6.14.1 from any monies due or to become due to the Contractor under the Contract. The payment or deduction of such amount shall not relieve the Contractor from his obligation to complete the Work or from any other of his contractual obligations. The Contractor and its surety shall be liable for and shall pay the Minister in accordance with these conditions.
- .3 For the purposes of this Clause 6.14, "period of delay" means the period commencing on the date specified for Substantial Performance of the Specific Work as outlined in Section 01110, and ending on the day immediately preceding the date on which Substantial Performance of that Specific Work is actually achieved.

7. WARRANTY

7.1 Warranty Period

- .1 In the Contract the term "warranty period" shall mean a period of one (1) year, or such longer period as may be provided elsewhere in the Contract, calculated from:
 - .1 the date of Substantial Performance of the Work, certified by the Minister in accordance with clause 6.8, or
 - .2 in the event of more than one certificate having been issued by the Minister under clause 6.9, the respective dates so certified, or
 - .3 in the case of outstanding work to be completed after the date or dates of Substantial Performance referred to in clauses 7.1.1.1 and 7.1.1.2, the date upon which such work is certified as complete by the Minister,and in relation to the warranty period the term "the Work" shall be construed accordingly.

- 7.2 **Completion of Outstanding Work:** The Contractor shall complete work outstanding at the date of Substantial Performance of the Work within the time

specified by the Minister in the certificate of Substantial Performance of the Work.

7.3 Remedying Defects

- .1 The Contractor shall, during or as soon as practicable after the expiration of the warranty period, remedy any defects in the Work and execute any work of modification or reconstruction related thereto, as the Minister may, during the warranty period or within 14 days after its expiration instruct the Contractor to do.
- .2 Work referred to in clause 7.3.1 shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Minister, due to:
 - .1 defects in Products or workmanship, or defects in design for which the Contractor is responsible,
 - .2 the neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract.

If, in the opinion of the Minister, such necessity is due to any other cause, he may determine an addition to the Contract Price in accordance with clause 8.

- 7.4 **Contractor's Failure to Carry Out Instructions:** If the Contractor defaults in carrying out instructions issued pursuant to clause 7.2 or 7.3, the Minister may employ other persons or contract with other firms or corporations to carry out the same. If such work is work which, in the opinion of the Minister, the Contractor was liable to do at his own cost, then all costs consequent thereon or incidental thereto shall be determined by the Minister and shall be recoverable from the Contractor by the Minister.

- 7.5 **Contractor to Search:** If any defect in the Work appears at any time prior to the end of the warranty period, the Minister may instruct the Contractor to search for the cause thereof. If such defect is one for which the Contractor is liable, the cost of the work carried out in searching shall be borne by the Contractor and he shall in such case remedy such defect at his own cost in accordance with the provisions of clauses 7.3 and 7.4. If such defect is one for which the Contractor is not liable under the Contract, the Minister shall determine the amount of the costs of such search incurred by the Contractor, which shall be added to the Contract Price.

8. CHANGES AND VARIATIONS

8.1 Changes in the Work

- .1 Consistent with the Work, the Minister may make changes in the Work or any part thereof, and he shall have the right to instruct the Contractor to make such changes and the Contractor shall make such changes, which may include:
 - .1 increasing or decreasing the quantity of any work included in the Contract,
 - .2 omitting any work, but not if the omitted work is to be carried out by the Minister or by an Other Contractor except by reason of the Contractor's default or negligence,
 - .3 changing the character or quality or kind of any work,

- .4 changing the levels, lines, position and dimensions of any part of the Work,
 - .5 executing additional work of any kind necessary for the completion of the Work,
 - .6 changing any specified sequence or timing of construction of any part of the Work.
- .2 No such change shall invalidate the Contract, but the effect, if any, if such changes on the Contract Price shall be valued in accordance with clause 8.3 and any extension of the Contract Time shall be determined in accordance with clause 6.4. Where an instruction to change the Work is necessitated by default or negligence of the Contractor or for which he is responsible, any cost and time attributable to such default or negligence shall be borne by the Contractor.

8.2 Instructions For Changes in the Work

- .1 The Contractor shall not make any changes in the Work without a written instruction from the Minister.
- .2 No instruction shall be required for:
 - .1 an increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this clause, but is the result of quantities exceeding or being less than those stated in the Schedule of Prices, and
 - .2 a change or adjustment in lines, levels, grades or elevations when such change or adjustment is already provided for in the Contract.

8.3 Valuation of Changes in the Work

- .1 Changes referred to in clause 8.1 and any changes to the Contract Price which are required to be determined in accordance with this clause (for the purposes of this clause referred to as "changed work"), shall be valued, at the Minister's option,:
 - .1 at the rates and prices set out in the Contract if, in the opinion of the Minister, these are applicable, or
 - .2 if the rates and prices set out in the Contract are not applicable to the changed work, at rates and prices deduced or extrapolated from such rates and prices, or
 - .3 by acceptance by the Minister of rates and prices submitted by the Contractor or other rates and prices as may be agreed by negotiation, or
 - .4 by acceptance by the Minister of a lump sum quotation submitted by the Contractor or other lump sum as may be agreed by negotiation, or
 - .5 as Cost Plus Work in accordance with the provisions of Section 00630 - Payment Conditions.
- .2 If there is disagreement on the value of changed work, the Minister shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Minister shall determine provisional rates or prices to enable on-

account payments to be made in accordance with the payment conditions of the Contract.

8.4 Impact of Changes in the Work

- .1 If in the opinion of the Minister or the Contractor the nature or amount of any changed work relative to the nature or amount of the whole of the Work or to any part thereof, is such that the rate or price contained in the Contract for any item of the Work is, by reason of such changed work, rendered inappropriate or inapplicable, then, after due consultation by the Minister with the Contractor, a suitable rate or price may be agreed upon between the Minister and the Contractor.
- .2 If there is disagreement on the rates or prices referred to in clause 8.4.1 the Minister shall fix such rate or price as is, in his opinion, appropriate and shall notify the Contractor. Until such time as rates or prices are agreed or fixed, the Minister shall determine provisional rates or prices to enable on-account payments to be made in accordance with the payment conditions of the Contract.

8.5 Quantity Variations

- .1 Except for items of Work, if any, for which the applicability of this clause 8.5 has been specifically excluded elsewhere in the Contract, the Minister and the Contractor may agree to adjust a rate or price contained in the Contract:
 - .1 if the actual quantity of work executed under the item exceeds or falls short of the estimated quantity specified in the Schedule of Prices by more than 15%; and
 - .2 if there is no off-setting adjustment with respect to the quantity of any other item of work; and
 - .3 if, based on the actual quantity of work executed and the rate or price contained in the Schedule of Prices, the extended amount of the item exceeds 15% of the original Contract Price; and
 - .4 if the Contractor believes that he has incurred significant additional expense as a result thereof or the Minister believes that the quantity variation entitles the Minister to an adjustment in the rate or price.
- .2 An adjusted rate or price made pursuant to clause 8.5.1, where the actual quantity of work executed under the item exceeds the estimated quantity specified in the Schedule of Prices by more than 15%, shall apply only to the quantity that is in excess of 115%.
- .3 An adjusted rate or price made pursuant to clause 8.5.1, where the actual quantity of work executed under the item falls short of the quantity specified in the Schedule of Prices by more than 15%, shall not exceed the rate or price that would cause the total amount paid for the item to exceed 85% of the product of the original rate or price contained in the

Schedule of Prices multiplied by the estimated quantity specified in the Schedule of Prices.

9. CHANGES IN COST AND REGULATORY REQUIREMENTS

9.1 **Increase or Decrease in Cost:** Subject to clause 9.2, the Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Products or any other matters affecting the cost of execution of the Contract, except where specified otherwise in the Contract Documents.

9.2 Changes in Regulatory Requirements

- .1 If, after the latest date for submission of Bids for the Contract, there is a change to any Regulatory Requirement, or a new Regulatory Requirement is introduced, which causes additional or reduced cost to the Contractor in the execution of the Contract, such additional or reduced cost shall be determined by the Minister and shall be added to or deducted from the Contract Price.
- .2 When a Regulatory Requirement is changed or introduced during the period of time referred to in clause 9.2.1 but public notice thereof has been given by the applicable authority before the commencement of such period of time, the change or introduction shall be deemed to have occurred before the commencement of such period of time.

10. CLAIMS REVIEW PROCESS AND DISPUTE RESOLUTION PROCEDURE

10.1 General

- .1 Any claims or demands by the Contractor, arising out of alleged errors, omissions or misrepresentations in the Contract Documents or arising out of acts or omissions of the Minister's assistants or the Minister's assistants' directors, officers, employees, agents or sub-contractors, in relation to the carrying out of the Work, are to be made only to, or against, the Minister. The Contractor waives any right to commence or carry on such claims or demands against any person other than the Minister.
- .2 Unless otherwise agreed to in writing between the Minister and the Contractor, all disputes in respect of the application or interpretation of any provision of the Contract shall be determined in accordance with the Dispute Resolution Procedure (as defined in clause 10.3). Either party may at any time by notice to the other refer any question in respect of the application or interpretation of any provision of this Agreement to the Dispute Resolution Procedure. In the case of a Claim (as defined in clause 10.2), the Contractor shall follow the Claims Review Process for Contractor Claims (as set out in clause 10.2).
- .3 The Contractor is hereby warned that under applicable laws there may be certain things that have to be done by certain times, otherwise the Contractor may lose its legal right to make, or continue with making, a claim against the Minister.

10.2 **Claims Review Process for Contractor Claims :** The review of the contractor's claim is subject to the following process:

- .1 If a circumstance arises between the Minister and the Contractor, in connection with or arising out of the Contract or the carrying out of the Work, which the Contractor believes requires a change in payment or compensation under the Contract or a change in the time required to complete the Contract, such situation is considered a claim (the "**Claim**").
- .2 As soon as the Contractor becomes aware of the Claim, the Contractor shall immediately begin to keep separate daily work records relating to the Claim. The records may include, but are not limited to, accurate quantity measurements, quality reports, actual direct costs, and actual indirect costs. The Contractor shall provide copies of such records in the manner and at the times requested by the Department.
- .3 Notice of claim
 - .1 Where the Contractor considers that there is a Claim, the Contractor shall send a notice of the Claim (the "**Notice of Claim**") to the Minister's Representative (as set out in the Contract).
 - .2 The Notice of Claim must be provided as soon as reasonably possible after the occurrence of the circumstance giving rise to the Claim, and not later than seven days after the occurrence of the circumstance or the Contractor becoming aware of the circumstance. It is imperative that the Contractor provide such notice in such manner and if the Contractor fails to provide such notice in such manner, the Minister may assert a claim for damages arising from such failure.
 - .3 The Notice of Claim shall be in such written form as directed in writing by the Minister or be in writing and expressly referring to this clause 10.2.3.3 and shall set out details about the Claim, including but not limited to:
 - .1 the Contract number;
 - .2 the Contract description;
 - .3 Notice of Claim number;
 - .4 identification of any documents or particulars that support the Claim (including any written or oral communications related to the Claim);
 - .5 detailed description of the substance of the Claim with dates, locations, incurred/projected direct costs (labour, material, equipment, etc.), incurred/projected indirect costs and any other items relevant to the Claim;
 - .6 relevant provisions of the Contract which support the Claim and the reasons why such provisions support the Claim;
 - .7 identify whether there is any impact on a critical path that will impact the construction schedule (as set out in the contract) thereby resulting in extension of the Contract Time (as defined in the contract);
 - .8 any other information that may be helpful for reviewing the Claim; and
 - .9 any proposals on ways to mitigate the impact of the Claim.

- .4 In order for there to be an efficient and effective understanding of the Claim by the Minister, it is incumbent on the Contractor to provide all the necessary information reasonably needed by the Minister in order to understand the Claim and to provide all the necessary information in an organized, concise, and logical manner.
 - .5 Notwithstanding a Notice of Claim has been provided to the Minister, the Work must proceed or continue without delay.
 - .4 Minister Acknowledgement of the Notice of Claim
 - .1 Upon receipt of the Notice of Claim, the Minister shall provide a written acknowledgement to the Contractor and within seven days of the receipt of the Notice of Claim arrange a tri-party meeting of the Minister's representative, the Contractor and the Minister's assistant. The details of the Claim will be discussed at the tri-party meeting.
 - .5 Ongoing effect
 - .1 If the circumstance giving rise to the Claim has a continuing effect, then the Contractor shall submit to the Minister such further information at such intervals as may be reasonably required by the Minister.
 - .6 Review of the Claim
 - .1 If the Contractor wishes to have the Minister review the Claim, the Contractor shall send a written notice to the Minister's Representative (as set out in the Contract) no later than 28 days after submitting the Notice of Claim, expressly referring to this clause 10.2.3.6 and requesting the Minister to review the Claim (the "**Level 1 Notice**").
 - .2 Failure by the Contractor to provide the Level 1 Notice in such manner shall be deemed by the Minister to be an abandonment of the Claims Review Process for Contractor Claims (as set out in clause 10.2), unless otherwise agreed to in writing by the Minister.
 - .3 The parties will make bona fide efforts to review the Claim but the Work must proceed or continue without delay during the following process to review the Claim.
 - .4 Level 1 Review by the Minister's Representative
 - .1 within 14 days of the receipt of the Level 1 Notice, the Level 1 reviewer will provide a written acknowledgement of receipt of the Level 1 Notice to the Contractor;
 - .2 the Level 1 reviewer shall commence review of the claim as soon as possible and will meet with the Contractor within a period of 30 days from the receipt of the Level 1 Notice. During this meeting, the Level 1 reviewer and the Contractor will start the process of negotiating and entering into a claim review process agreement for the Claim (the "**CRP Agreement**") addressing the schedule for the review, the process for the review (including participants), the date for providing the Level 1 reviewer's decision, and the date for providing the Level 2 reviewer's decision;
 - .3 the Contractor shall provide any additional information as set out in the CRP Agreement and as may be further required by the Level 1 reviewer;
 - .4 the Level 1 reviewer shall provide the Contractor with the Level 1 reviewer's decision (the "**Level 1 Decision**") by the date set out in the CRP Agreement;
 - .5 if the Contractor is not satisfied with the Level 1 Decision, the Contractor may by the date set out in the CRP Agreement give the Minister written notice (the "Level 2 Notice") that the Contractor is elevating the Claim to the Level 2 review and setting out the aspects of the Level 1 Decision that the Contractor takes issue with and why (failure by the Contractor to provide the Level 2 Notice in such manner shall be deemed by the Minister to be an abandonment of the Claims Review Process for Contractor Claims (as set out in clause 10.2), unless otherwise agreed to in writing by the Minister).
- The Level 2 Notice shall be sent to:
- Executive Director,
Major Capital Projects Branch
2nd Floor, Twin Atria Building
4999 - 98 Ave
Edmonton, AB T6B 2X3
- .5 Level 2 Review by the Executive Director, Major Capital Projects Branch
 - .1 within 14 days of the receipt of the Level 2 Notice, the Level 2 reviewer will provide a written acknowledgement of receipt of the Level 2 Notice to the Contractor;
 - .2 the Level 2 reviewer shall commence and complete review of the claim in accordance with the CRP Agreement;
 - .3 if the Level 2 Notice includes new items or issues that were not included in the Notice of Claim, the Level 2 reviewer may refer the new items or issues back to the Level 1 reviewer;
 - .4 the Contractor shall provide any additional information as may be required by the CRP Agreement or as may be further required by the Level 2 reviewer;
 - .5 the Level 2 reviewer shall provide the Contractor with the Level 2 reviewer's decision (the "**Level 2 Decision**") by the date set out in the CRP Agreement;
 - .6 if the Contractor is not satisfied with the Level 2 Decision, the Contractor may submit the Claim to the Dispute Resolution Procedure set out in clause 10.3.
 - .6 The review of the Claim shall end no later than 12 months after the occurrence of the circumstance giving rise to the Claim. If the

review of the Claim has not been completed within 12 months after the occurrence of the circumstance giving rise to the Claim, for any reason whatsoever including the inability of the parties to agree on a CRP Agreement, the Claim shall be deemed to have been unequivocally denied by the Minister and the Contractor may submit the Claim to the Dispute Resolution Procedure set out in clause 10.3.

10.3 Dispute Resolution Procedure :

.1 Any Claim that has not been resolved by the Claims Review Process for Contractor Claims (as set out in clause 10.2), or any disagreement or other dispute in respect of the application or interpretation of any provision of the Contract (the "**Dispute**"), will be resolved in accordance with the dispute resolution procedure set out in this clause 10.3 (the "**Dispute Resolution Procedure**"):

.1 the Dispute Resolution Procedure shall be started by delivery of a notice (the "Dispute Notice") in writing and expressly referring to this clause 10.3, from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute.

.2 any Dispute Notice issued by the Contractor to the Minister must be sent to:

Executive Director,
Procurement, Operations & Grants Branch
3rd Floor, Twin Atria Building
4999 - 98 Avenue
Edmonton, AB, T6B 2X3

.3 within 30 days from the receipt of the Dispute Notice, officials designated by the Department and the Contractor will meet (the "**Settlement Meeting**") at a mutually acceptable time and place to make all reasonable efforts to attempt to resolve the Dispute (all negotiations held pursuant to the Settlement Meeting are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding); and

.4 if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to a court of law of competent jurisdiction.

10.4 Obligations to and Claims of Third Parties

.1 The Contractor shall, with respect to lawful obligations of and lawful claims against the Contractor or any Subcontractor arising from the Contract:

.1 discharge such obligations of and satisfy such claims against the Contractor, and
.2 ensure the discharge of such obligations of and the satisfaction of such claims against Subcontractors.

.2 The Contractor shall, when requested by the Minister, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in clause 10.4.1.

.3 If a third party sends written notice to the Minister of an undischarged obligation or unsatisfied claim referred to in clause 10.4.1, the Minister may, 30 days after giving written notice to the Contractor, and surety where applicable,:

.1 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 the Subcontractor, and

.2 where security for payment of claims has been provided in the form of a security deposit, the Minister may deduct such amount from the security deposit, or

.3 where a security deposit has not been provided or insufficient monies are available in the security deposit, the Minister may deduct such amount, or portion thereof, from the amount payable to the Contractor under the Contract.

.4 Clause 10.4.3 shall apply only when written notice of the obligation or claim is sent to Minister not later than 45 days after the last day on which the labour, equipment, material or services giving rise to such obligation or claim were provided.

11. RELEASE FROM PERFORMANCE

11.1 **Frustration:** If any circumstance outside the control of both the Minister and the Contractor arises after the award of the Contract which renders it impossible or unlawful for either party to fulfill his contractual obligations, then the Minister or the Contractor may terminate the Contract by giving notice to the other party and, upon such notice, the Contract shall, except as to the rights of the parties under this clause and to the operation of clause 15., terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

11.2 **Removal of Construction Equipment on Termination:** If the Contract is terminated pursuant to clause 11.1, the Contractor shall remove from the Site all Construction Equipment.

11.3 Payment if Contract Terminated

.1 If the Contract is terminated pursuant to clause 11.1, the Contractor shall be paid by the Minister, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all Work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

.1 the cost of Products reasonably ordered for the Work which have been delivered in acceptable condition to the Contractor or of which the Contractor is liable to accept delivery, such Products becoming the property of the Minister upon such payments being made by him,

.2 the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Work insofar as such expenditure has not been covered by any other payments referred to in this clause,

.3 such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, for removal of Construction Equipment under clause 11.2.

provided that against any payment due from the Minister under this clause, the Minister shall be credited with any amounts which, at the date of termination, were recoverable by the Minister from the Contractor.

.2 Any amount payable under this clause shall be determined by the Minister.

12. SUSPENSION AND TERMINATION BY MINISTER

12.1 Suspension of Work

.1 The Contractor shall, on the instructions of the Minister, suspend the progress of the Work or any part thereof for such time and in such manner as the Minister may consider necessary and shall, during such suspension, properly protect and secure the Work or such part thereof so far as is necessary in the opinion of the Minister. Clause 12.2 shall apply unless such suspension is

- .1 otherwise provided for in the Contract, or
- .2 necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or
- .3 necessary by reason of normal weather conditions on the Site, or
- .4 necessary for the proper execution of the Work or for the safety of the Work or any part thereof, except to the extent that such necessity arises from any act or default by the Minister,

in which case such suspension shall be at the Contractor's expense.

12.2 Minister's Determination Following Suspension

.1 Where, pursuant to clause 12.1, this clause applies the Minister shall determine

- .1 any extension of time to which the Contractor is entitled under clause 6.4, and
- .2 the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension.

12.3 Suspension Lasting More Than 91 Days: If the progress of the Work or any part thereof is suspended on the written instructions of the Minister and if permission to resume work is not given by the Minister within a period of 91 days after the date of suspension then, unless such suspension is the Contractor's responsibility pursuant to clauses 12.1.1.1 to 12.1.1.4, the Contractor may give notice to the Minister requesting permission, within 28 days from the receipt thereof, to proceed with the Work or that part thereof in regard to which progress is suspended. If, within such time, such permission is not granted, the Contractor may elect to treat the suspension, where it affects only part of the Work, as an omission of such part under clause 8.1 by giving a further notice to the Minister to that effect, or, where it affects the whole of the Work, treat the suspension as an event of default by the Minister and

terminate the Contract in accordance with the provisions of clause 14., in which case the provisions of clauses 14.2 and 14.3 shall apply.

12.4 Termination of Contract

- .1 The Minister may terminate the Contract at any time by giving a notice of termination to the Contractor. When such a notice is received by the Contractor he shall, subject to the provisions of such notice, forthwith cease all operations in performance of the Contract.
- .2 If the Minister terminates the Contract pursuant to clause 12.4.1 the Minister shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of clause 14..

13. DEFAULT OF CONTRACTOR

13.1 Default

- .1 If the Contractor:
 - .1 is deemed by law unable to pay his debts as they fall due, or becomes insolvent, or
 - .2 enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or
 - .3 if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law, has a similar effect to any of the foregoing, or if he
 - .4 has contravened clause 2.1, or
 - .5 has repudiated the Contract,then the Minister may, upon written notice, enter upon the Site and the Work and immediately terminate the Contractor's right to continue with the Work.
- .2 If the Minister determines, that, in his opinion, the Contractor without reasonable excuse:
 - .1 has failed to commence and proceed with the Work or any part thereof in accordance the provisions of the Contract, or
 - .2 has failed to comply with a notice issued pursuant to clause 6.7 or an instruction issued pursuant to clause 6.12 within 14 days after receiving it, or
 - .3 despite previous warning from the Minister, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or
 - .4 has contravened clause 2.2, or
 - .5 has failed to attain Substantial Performance of the Work or part or parts of the Work within the Contract Time or Times pursuant to clause 6.3,

then the Minister may, after giving 14 days notice to the Contractor, and unless the Contractor has within such period remedied the default, enter upon the Site and the Work and terminate the Contractor's right to continue with the Work in whole or in part.

- .3 If the Minister terminates the Contractor's right to continue with the Work, in whole or in part, pursuant to clause 13.1.1 or clause 13.1.2, such termination shall not release the Contractor from any of his obligations or liabilities under the Contract, and shall not affect the rights and authorities conferred on the Minister by the Contract, and the Minister may complete the Work or part thereof, or may contract with any Other Contractor to complete the Work or part thereof. The Minister or such Other Contractor may use for such completion so much of the Construction Equipment, Temporary Work and Products as he or they may think proper.

13.2 Valuation at Date of Termination

- .1 The Minister shall, as soon as practicable after any entry and termination by the Minister pursuant to clause 13.1, determine:
- .1 what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
 - .2 the value of any unused or partially used Products, any Construction Equipment and any Temporary Work.

- 13.3 **Payment After Termination:** If the Minister terminates the Contractor's right to continue with the Work in whole or in part under clause 13.1, he shall not be liable to pay to the Contractor any further amount in respect of the Contract until the expiration of the warranty period and thereafter until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Minister have been determined. The Contractor shall then be entitled to receive only such sum (if any) as the Minister may determine would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Minister the amount of such excess and it shall be deemed a debt due by the Contractor to the Minister and shall be recoverable accordingly.

- 13.4 **Assignment of Benefit of Agreement:** The Contractor shall, if so instructed by the Minister within 14 days of the entry and termination referred to in clause 13.1, assign to the Minister the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

14. DEFAULT OF MINISTER

- 14.1 **Failure of Minister to Pay:** If the Minister fails to pay to the Contractor any amount due under the Contract within 28 days after the expiry of the time stated in the Payment Conditions within which payment is to be made, the Contractor may terminate the Contract by giving notice to the Minister. Such termination shall take effect 14 days after the giving of such notice unless payment is received within such period.

- 14.2 **Removal of Construction Equipment:** Upon the termination of the Contract referred to in clause 14.1, the Contractor shall remove promptly from the Site all Construction Equipment.

- 14.3 **Payment on Termination:** In the event of termination pursuant to clause 14.1 the Minister shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of clause 11., but, in addition to the payments specified in clause 11.3, the Minister shall pay to the Contractor the amount of any loss or damage, including reasonable profit, to the Contractor directly arising out of or in connection with or by consequence of such termination.

14.4 Contractor May Suspend Work

- .1 As an alternative to termination under clause 14.1 but without prejudice to the Contractor's entitlement to terminate under clause 14.1, the Contractor may, after giving 14 days' prior notice to the Minister, suspend work or reduce the rate of work.
- .2 If the Contractor suspends or reduces the rate of work pursuant to clause 14.4.1 and thereby suffers delay or incurs cost the Minister shall determine
 - .1 any extension of time to which the Contractor is entitled under clause 6.4, and
 - .2 the amount of such costs, which shall be added to the Contract Price.

- 14.5 **Resumption of Work:** When the Contractor suspends work or reduces the rate of work pursuant to clause 14.4.1 and the Minister subsequently pays the amount due, the Contractor's entitlement under clause 14.1 shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

15. FORCE MAJEURE

15.1 Force Majeure Event:

- .1 If a Force Majeure Event occurs then notwithstanding any other provision of this Contract:
 - .1 To the extent that and for so long as either Party is prevented by the Force Majeure Event from performing any obligation under this Contract, that Party is relieved from liability due to its inability to perform or delay in performing that obligation; and
 - .2 If the Force Majeure Event wholly or substantially prevents the Contractor from proceeding with the Work then the times by which the Contractor shall obtain Substantial Performance of the Work or Total Performance of the Work as applicable shall be adjusted for the period of the Force Majeure Event.
- .2 Upon either Party becoming aware of the occurrence of a Force Majeure Event that prevents that Party from performing any obligation under this Contract, that Party shall in a timely manner give the other Party notice of the Force Majeure Event, including reasonable details of the anticipated effects on performance of this Contract, and thereafter the Contractor shall, on an ongoing basis,

notify the Minister of its plans for remedying or mitigating the effects of the Force Majeure Event.

- .3 If the Contractor anticipates that the Force Majeure Event will delay the times by which the Contractor shall obtain Substantial Performance of the Work or Total Performance of the Work as applicable, but is of the opinion the delay can be avoided or mitigated

through extraordinary measures, the Contractor may propose to the Minister that such extraordinary measures be taken by the Contractor at the Minister's expense.

END OF SECTION