
INSTRUCTIONS TO BIDDERS

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INSTRUCTIONS TO BIDDERS

1. INTERPRETATION

- (a) This document shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada.
- (b) Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- (c) If any provision of this Contract is void, illegal, invalid or unenforceable; it shall be severable from the Contract and shall not invalidate or impair the remaining provisions of the Contract.
- (d) The Contractor is acknowledged to be an independent contractor and neither the Contractor, nor any officer, servant nor agent of the Contractor is deemed to be an employee of the Government of Newfoundland and Labrador.
- (e) The Contract constitutes the entire agreement between the Government of Newfoundland and Labrador and the Contractor. There are no other agreements of any kind other than those contained within the Contract.

2. OPEN CALL FOR BIDS

- (a) Bids must be received on or before the exact closing time and date indicated in the advertisement. BIDS RECEIVED AFTER THAT TIME WILL NOT BE CONSIDERED OR OPENED.
- (b) The Form of Agreement is included in the Contract Documents at the time of the Open Call for Bids for the purpose of information to Bidders and shall not be completed at the time of Bid submission.
- (c) Before submitting a Bid, Bidders shall carefully examine the Contract Documents and the proposed work and fully inform themselves of the existing conditions and limitations. **Site visits are strongly recommended but not mandatory.** No subsequent allowance under the Contract Documents will be considered for any Bidder who had failed to become familiar with all aspects of the work.
- (d) By submitting a Bid, a Bidder represents to the Government of Newfoundland and Labrador that the Bidder has made such examination and is satisfied as to the conditions that will be encountered in performing the Work and as to the requirements described in the Open Call for Bids.
- (e) Neither the Province nor any of its employees, officers, agents, elected or appointed officials, advisors or representatives will be liable, under any circumstances, for any claim arising out of this Tender process including but not limited to costs of preparation of the bid, loss of profits, loss of opportunity or for any other claim; and

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- (f) The bidder waives any right to or claim for any compensation of any kind whatsoever including claims for costs of preparation of the bid, loss of profit or loss of opportunity by reason of the Province's decision not to accept the bid submitted by the bidder, to enter into an agreement with any other bidder or to cancel this bidding process and the bidder shall be deemed to have agreed to waive such right or claim.
- (g) Bidders shall identify any information in the bid that may qualify for an exemption from disclosure under subsection 39(1) of the **Access to Information and Protection of Privacy Act, 2015**.
- (h) This procurement is subject to trade agreements, such as the Canada Free Trade Agreement and the Canada European Union Comprehensive & Economic Trade Agreement, where applicable.

3. CONTRACT DOCUMENTS

- (a) Notices of Open Calls for Bids will be posted on the Government of Newfoundland and Labrador's online procurement service provider website www.MERX.com.
- (b) The Contract Documents that form part of the Open Call for Bids consist of the Instructions to Bidders, Electronic Bid Form, Agreement, General Conditions, Supplementary General Conditions, Drawings, Specifications, and any Amendments to the Contract Documents issued during the bid period.
- (c) Every interpretation of, or addition to, the Contract Documents to be considered a valid part of the Contract Documents will be issued in the form of a written amendments.
- (d) No amendments will be issued less than five (5) days prior to the closing date of the Open Call for Bids.
- (e) Bidders are responsible for ensuring they have received all Open Call for Bids Amendments and are advised to check the Government of Newfoundland and Labrador's online procurement service provider website for Open Call for Bids Amendments before submitting their Bids.
- (f) Bidders shall acknowledge amendments by using the online acknowledgement question provided.
- (g) The Government of Newfoundland and Labrador may also avail of the e-procurement service provider, MERX, audit log for the purpose of verifying Bidder receipt and/or acknowledgement of amendments.
- (h) All work to be Substantially Performed within the time frame indicated in sentence 1.2 Work Covered by Contract Documents, of specification section 01 11 00 – Summary of Work.

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4. ENQUIRIES

- (a) A Bidder is solely responsible for obtaining all information that may be necessary in order to understand the requirements of the Open Call for Bids and to submit a Bid in accordance with the terms and conditions of the Open Call for Bids.
- (b) If a Bidder finds errors, discrepancies or omissions in the Open Call for Bids, the Bidder should notify the Contract Administrator of the error, discrepancy or omission as soon as possible. If a Bidder is unsure of the meaning or intent of any provision in the Open Call for Bids, the Bidder should request clarification from the Contract Administrator.
- (c) All enquiries related to the Open Call for Bids must be directed, in writing, to the Contract Administrator identified in the Open Call for Bids.
- (d) Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction or modification to the Open Call for Bids will be provided by an Amendment.
- (e) Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction or modification to the Open Call for Bids, will be provided by the Contract Administrator only to the Bidder that made the enquiry.
- (f) A Bidder is not entitled to rely on any response or interpretation received pursuant to an enquiry unless that response or interpretation is provided in writing by the Contract Administrator or by an Amendment to the Open Call for Bids.
- (g) If a Bidder has sent an enquiry and has not received any acknowledgement of its enquiry, the Bidder should follow up with the Contract Administrator.
- (h) Enquiries received within 48 hours of the Submission Deadline may not receive a response from the Contract Administrator.

5. BID SURETY AND BONDING

- (a) Bidding Security
 - (i) Every Bidder shall submit with the Bid a bid bond issued by an approved Surety Company licensed to do business in the Province of Newfoundland and made out in favour of the Newfoundland Exchequer Account.
 - (ii) The bid bond shall be at least ten percent (10%) of the bid amount (without HST). All bids, regardless of monetary value require a Bid Security of at least ten percent (10%) of the bid amount (without HST), with a minimum security of five hundred dollars (\$500.00)." Bid Securities shall be in the form of a Bid Bond or Certified Cheque in favour of the

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- Newfoundland Exchequer Account. An approved certified cheque may be substituted in lieu of the bid bond. The bidding security will be returned upon receipt of the Performance and Labour and Materials Bonds.
- (iii) For bids less than \$25,000.00, the terms of the Bid Security will be invoked and the amount retained by the Owner, if the Bidder fails to provide the required insurances and commence work within 30 days of being notified of the award of the work within the Open Call for Bids validity period.
 - (iv) The Bid Security of the unsuccessful bidders numbers 2 & 3 will be returned to them upon receipt of documentation from successful bidder or expiry of irrevocable bid period, whichever comes first, Bid Securities of bidders higher than 3 will be returned after the Open Call for Bids opening.
 - (v) Failure to submit a bid security in accordance with this requirement will result in rejection of bid submitted.
 - (vi) The terms of the bid security will be invoked and the amount retained by the Owner if the Bidder fails to enter into an agreement when notified of the award of the work within the Open Call for Bids validity period; or fails to provide the Performance and Labour and Materials Bonds in the amount and within the period specified.
- (b) Performance Bond
- (i) A Performance Bond will be required in the amount of fifty percent (50%) of the contract price (exclusive of HST). The Performance Security is to be received not later than two (2) weeks after the award of the contract and prior to the formal execution of the agreement. No work is to be undertaken until the Performance Security has been received. Performance Security will not be required for a contract value of less than \$25,000.
 - (ii) In lieu of the Performance Bond, the Minister may accept at their sole discretion an approved certified cheque for ten percent (10%) of the contract amount (exclusive of HST). The cheque will be retained until satisfactory completion of the work including the warranty period, after which this amount will be returned to the Contractor together with the accrued interest thereon at the current bank rate.
- (c) Labour and Materials Payment Bond
- (i) A Labour and Materials Payment Bond will be required in the amount of fifty percent (50%) of the contract price (exclusive of HST), The Labour and Materials Payment Bond is to be received not later than two (2) weeks after the award of the contract and prior to the execution of the formal agreement.

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No work is to be undertaken until the Labour and Materials security has been received. Labour and Materials security will not be required for a contract valued at less than \$25,000.

- (ii) In lieu of the Labour and Materials Bond, the Minister may accept at their sole discretion an approved certified cheque of ten percent (10%) of the contract amount (exclusive of HST). The cheque will be retained until substantial completion of the work. This security, if in the form of a cheque, will be returned to the Contractor together with the accrued interest thereon at the current bank rate.
- (d) E-Bonds
 - (i) Contractors may provide Bid Bonds, Performance Bonds as well as Labour and Material Payment Bonds in either paper or electronic format (e-Bonds).
 - (ii) In accordance with the recommendations of the Surety Association of Canada, the e-Bonds shall be digitally verifiable through a third party digital certification service provider that can maintain integrity of e-Bond content and provide secure access to the e-Bond such as Mobile Bonds, Xenex Enterprises or Trisura Guarantee Insurance Company.
 - (iii) All security bonds, paper or E-Bonds, are to be submitted through the MERX website.
- (e) Contractors are advised that Certified Cheques, Money Orders, or Bank Drafts from a recognized financial institution registered to do business in the Province of Newfoundland and Labrador, are acceptable forms of Bid Surety and Bonding in lieu of Bonds for Bid Security, Performance Bonds, and Labour & Materials Payment Bonds. No other forms of Bid Surety and Bonding, including cash, will be accepted.
- (f) Where a certified cheque, money order or bank draft is the format chosen by the bidder, the bidder may submit the certified cheque, money order or bank draft in person at the Tendering and Contracts office or via **registered post** no later than three (3) business days after the submission deadline or the bid will be disqualified. The bidder must scan a copy (front and back) of the certified cheque, money order or bank draft, clearly showing certification stamp, and **registered mail receipt** and include the documentation with the electronic bid.

6. BID PROCEDURES

- (a) Bids must be submitted before the Submission Deadline,
- (b) Bids received by the Government of Newfoundland and Labrador

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- after the Submission Deadline, or by an unacceptable submission method, will be rejected.
- (c) The Government of Newfoundland and Labrador may extend the Submission Deadline by issuing an Amendment to the Open Call for Bids at any time before the Submission Deadline.
 - (d) For the purpose of the evaluation of Bids received in the Electronic Bid Form
 - (i) the bid shall be the Total Bid Amount, exclusive of HST. HST will be added to the contract price.
 - (ii) Work associated with Separate Prices may be deleted at the sole discretion of the Owner at the time of contract award and a deduction(s) will be made to the Total Bid Amount equal to the amount(s) indicated in the Electronic Bid Form.
 - (iii) Costs associated with Unit Price work will vary depending upon the quantities authorized by the Owner during the course of construction and the final contract amount will be adjusted accordingly, upwards or downwards, based upon the quoted unit rate, within the limits of the **Public Procurement Act**.
 - (e) **ONLINE BID SUBMISSION PROCEDURES**
 - (i) The online procurement service provider for the Government of Newfoundland and Labrador is www.MERX.com.
 - (ii) Bidders are required to submit a Bid through the Government of Newfoundland and Labrador's online procurement service provider.
 - (iii) The Bidders are required to register a user profile with the Government of Newfoundland and Labrador's online procurement service provider, and the submission procedures set out on the online procurement service provider website shall apply, including those with respect to Amendment Acknowledgements and bid bond submission.
 - (iv) It is solely the Bidder's responsibility to ensure that its Bid is received by the online procurement service provider before the Submission Deadline. Bids received after the Submission Deadline will not be accepted.
 - (f) If the Government of Newfoundland and Labrador requests more information about a Bidder's legal name or status, address or contact information, the Bidder must provide the Government of Newfoundland and Labrador with such information within three (3) calendar days of the request. Failure to provide The Government of Newfoundland and Labrador with the requested information within such time period may result in that Bidder's Bid being rejected.
 - (g) It is solely the Bidder's responsibility to ensure that its Bid is prepared correctly.
 - (h) It is solely the Bidder's responsibility to ensure that its Bid and any

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Bid change or Bid withdrawal is received prior to the Submission Deadline.

7. REQUIRED DOCUMENTS WITH BID SUBMISSION

- (a) Evidence of compliance with all requirements with respect to worker's compensation (Workplace NL Certificate of Clearance documentation) and a Certificate of Recognition (COR) certified from the Newfoundland and Labrador Construction Safety Association (NLCSA), valid at the date of Submission Deadline (Closing Date), where required, must be uploaded in the space provided in the electronic bidding system at the time of bid submission. Failure to provide these documents at the time of bidding shall result in disqualification of bid.

8. CURRENCY AND TAX CONDITIONS

- (a) All prices must be quoted in Canadian dollars.
- (b) Newfoundland and Labrador certifies that the amounts payable to the successful Bidder for the Work will be paid by the Government of Newfoundland and Labrador with Crown funds.

9. OWNERSHIP AND RELEASE OF INFORMATION

- (a) Bids that are not withdrawn in accordance with these Bidding Procedures become the property of the Government of Newfoundland and Labrador after the Submission Deadline.
- (b) The Bidder is advised that any information contained in a Bid may be released by the Government of Newfoundland and Labrador in original or other forms if authorized or required by the Government of Newfoundland and Labrador's policies or procedures, including these Bidding Procedures, or by any law, including The **Auditor General Act (Newfoundland and Labrador)**, and the **Access to Information and Protection of Personal Privacy Act (2015)**.
- (c) The financial value of the contract, including unit prices where applicable, will be publicly released by the Government of Newfoundland and Labrador as a part of the award notification.

10. IRREVOCABLE BID PERIOD

- (a) The Government of Newfoundland and Labrador will endeavour to award a Contract within the specified validity period; however, Bids are irrevocable for sixty (60) calendar days after the Submission Deadline. A Bidder is bound to enter into the Contract if it is awarded the Contract during this period of irrevocability.

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- (b) The Government of Newfoundland and Labrador may request that Bidders agree to an extension of this period of irrevocability. The Bid of each Bidder that consents to such an extension remains irrevocable for the additional time requested by the Government of Newfoundland and Labrador. The Bid of each Bidder that does not consent to such an extension remains irrevocable for the irrevocable bid period currently in force upon the Bid.
- (c) No Bidder has any obligation to enter into a Contract with the Government of Newfoundland and Labrador upon the expiration of the irrevocable bid period. Where the irrevocable bid period in force upon a Bid has expired, further Bid information will not be released by the Government of Newfoundland and Labrador provided the Bidder has so requested.

11. BIDDER DECLARATIONS

- (a) In submitting a Bid, the Bidder declares that the Bidder:
 - (i) is incorporated and in good standing under ***The Corporations Act (Newfoundland and Labrador)***, or otherwise authorized or permitted to legally carry on business in the Province of Newfoundland and Labrador;
 - (ii) is financially capable of carrying out the terms of the Contract; and
 - (iii) possesses all the necessary experience, capital, organization, and equipment to perform the Work in accordance with the terms and conditions of the Contract.
- (b) In submitting a Bid, the Bidder declares and represents that it has not knowingly participated in bid-rigging, collusion, or fraud in the preparation of its Bid. Further, the Bidder declares and represents that it has produced the Bid independently from, and without consultation, communication, agreement or arrangement with, any competitor, except where the competitor intends to become a Subcontractor for a portion of the Work or intends to form a joint venture arrangement with the Bidder.
- (c) The Bidder is advised that, under ***the Competition Act (Canada)***, the Bidder is responsible for notifying The Government of Newfoundland and Labrador of any aforementioned agreements or arrangements with its competitors.
- (d) In submitting a Bid, the Bidder declares and represents that the Bidder does not knowingly have a conflict of interest related to the performance of the Work by the Bidder or by its Subcontractors. If the Bidder is in doubt as to whether individuals or circumstances give rise to a conflict of interest, the Bidder should consult with the Contract Administrator prior to submitting a Bid. The Government of Newfoundland and Labrador may reject any Bid if, in its sole

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- discretion, the Government of Newfoundland and Labrador determines that an actual or potential conflict of interest exists.
- (e) By submitting a Bid, the Bidder agrees that:
 - (i) the Open Call for Bids, in its entirety, is deemed to be incorporated into and form part of the Bid notwithstanding that all parts of the Open Call for Bids may not be attached to or accompany the Bid;
 - (ii) all Open Call for Bids amendments have been received, considered and addressed in the Bid;
 - (iii) any changes to the submitted Bid received by the Government of Newfoundland and Labrador before the Submission Deadline form part of the Bid;
 - (iv) any proposals, counter-offers, qualifications or changes to the terms, conditions or specifications in the Open Call for Bids by the Bidder will not be accepted by the Government of Newfoundland and Labrador but will be disregarded and will not be incorporated into the Contract;
 - (v) if they are the preferred Bidder, the Bidder will enter into a Contract with the Government of Newfoundland and Labrador to complete the Work in accordance with the Bid and the terms, conditions and specifications contained in the Open Call for Bids; and
 - (vi) the Bid will form part of the Contract.
 - (f) Bidders will not engage in any form of political or other lobbying whatsoever in relation to the Open Call for Bids, including for the purpose of influencing the outcome of the process. Further, no such person (other than as expressly contemplated by this Open Call for Bids) will attempt to communicate in relation to the Open Call for Bids, directly or indirectly, with any representative of the Government of Newfoundland and Labrador (GNL) (including any Minister or Deputy Minister, or any Members of the House Assembly, or any employee of the GNL), or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever. In the event of any lobbying or communication in contravention of this Section, the Province in its sole and absolute discretion may at any time, but will not be required to, reject any and all bids submitted by that proponent without further consideration or compensation.

12. UNACCEPTABLE BIDS

- (a) Bids not submitted on the Electronic Bid Form through the MERX website will not be considered.
- (b) Paper or facsimile bids will not be accepted.

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- (c) Bids received after the Open Call for Bids Closing time will not be considered.
- (d) Incomplete Bids will be rejected.
- (e) Bids not accompanied by an approved security in the correct amount will be rejected.
- (f) Bids containing qualification or additional clauses to the Electronic Bid Form will be rejected.
- (g) Incorrectly prepared Bids may be rejected.

13. CHANGES TO BIDS

- (a) Any changes to a Bid must be completed by editing the Electronic Bid before the Submission Deadline.
- (b) If, in the Government of Newfoundland and Labrador's opinion, there is any ambiguity about the nature or effect of any change, the Government of Newfoundland and Labrador may reject such a change and evaluate the Bidder's Bid without regard to the change.
- (c) Where a change affects one or more Prices, the Bidder is reminded to make changes to all affected Prices.

14. WITHDRAWAL OF BIDS

- (a) A Bidder may withdraw a Bid, within the Electronic procurement system, without penalty, at any time before the Submission Deadline in Merx.

15. SUBSTITUTION OF MATERIALS

- (a) Bids shall be based upon using the materials or products as specified without substitution. Where two or more brand names are specified the choice shall be left to the Contractor. Where only one brand name is stated there shall be no substitution.
- (b) Where the Specifications include the "or approved equal" clause, substitutions may be proposed provided that:
 - (i) the request for a substitution is made in writing at least seven (7) days prior to the Submission Deadline;
 - (ii) the request shall clearly define and describe the product for which the substitution is requested;
 - (iii) the substituted article is equivalent to the specified article with regards to design, function, appearance, durability, operation and quality.
- (c) Approval of the substitution by the Owner's Representative shall be in the form of an amendment to the Specifications issued at least five (5) days prior to the Submission Deadline to all of those Bidders listed as having received the Open Call for Bids Documents.

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16. ACCEPTANCE OF BID

- (a) The Owner will not necessarily accept the lowest or any Bid.
- (b) Upon written acceptance of the Bid within the Open Call for Bids validity period, the Electronic Bid Form becomes part of the Contract Documents and the successful bidder becomes the Contractor. The Contractor will be required to execute a formal agreement with the Owner within two (2) weeks of the date of the letter of intent to award or letter to award.

17. OPENING OF BIDS

- (a) Bids received by the Submission Deadline will be opened publicly at Tendering and Contracts immediately after the Submission Deadline.
- (b) The Government of Newfoundland and Labrador will post the bid results on the Government of Newfoundland and Labrador, Tendering and Contract's bid results web page immediately after the Submission Deadline. <https://www.merx.com/govnl>
- (c) Where an Open Call for Bids requires the submission of a bid bond (whether electronic or paper) but the bid bond has not been received prior to the Submission Deadline, the corresponding Bid will be rejected.
- (d) All Bids which were received at the time of the public opening will be evaluated after the public opening.
- (e) Anyone may attend the public opening or view the opening via a Skype meeting platform.
 - (i) Solicitations are undertaken in accordance with the Public Procurement Regulations. The opening of submissions will be held on the designated date and time with two representatives of the Department of Transportation and Infrastructure, Tendering and Contracts.
 - (ii) To access the Skype meeting for the opening your organization may be interested in, please email tenderingandcontract@gov.nl.ca no less than four hours prior to the stated date and time of the opening of submissions. The subject of the email must read 'Interest in Tender (Reference Number) Opening'. The body of the email must include the email of the individual who will be joining the Skype session. Emails requests received less than four hours in advance of the opening shall not be acknowledged. Prior to the opening, an email including a Skype meeting invitation will be sent to the email address indicated in the request.

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- (iii) The following resources are available for organizations who do not currently use the Skype platform:
- <http://2016-17.elearnwithnca.co.uk/help/lync/86-installing-skype-for-business-web-app-browser-plug-in>
 - <https://support.office.com/en-us/article/join-a-skype-for-business-meeting-with-skype-meetings-app-skype-for-business-web-app-4828ad18-ed21-422a-a870-94d676d4b72a>
 - <https://support.office.com/en-us/article/trouble-installing-the-skype-for-business-web-app-plug-in-958fc5f1-2d6f-42e3-815d-a9516c591274>

18. EVALUATION PROCESS

- (a) Bids that were opened at the public opening and recorded in the Report After Open Call for Bids (**Unofficial Results**) will be reviewed and evaluated by the Government of Newfoundland and Labrador after the public opening.
- (b) The process of evaluating Bids is as follows:
- (i) Determine Bid Compliance (Pass/Fail),
 - (ii) Compare Total Prices,
- (c) Determining Bid Compliance (Pass/Fail)
- (i) The Government of Newfoundland and Labrador will evaluate all Bids that were opened at the time of public opening to determine whether they comply with the requirements of the Open Call for Bids.
 - (ii) Bids which the Government of Newfoundland and Labrador determines, in its sole discretion, comply with the requirements of the Open Call for Bids will progress to the second step of the evaluation process. The Government of Newfoundland and Labrador may reject a Bid submission if it is incomplete, incorrect or conditional, or contains additions, deletions, alterations or other irregularities. Bids which the Government of Newfoundland and Labrador determines do not comply with the requirements of the Open Call for Bids will not progress to the second step of the evaluation and will be rejected.
 - (iii) The Government of Newfoundland and Labrador may waive irregularities or reject all or any Bids if, in the sole discretion of the Government of Newfoundland and Labrador, it is deemed appropriate.
- (d) Comparing Total Prices
- (i) The Government of Newfoundland and Labrador will compare the Total Prices (exclusive of HST) of all compliant Bids to determine the Bid ranking. All compliant Bids will be

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assigned their respective places in order of lowest Total Price to highest Total Price. The preferred Bidder is the Bidder that submitted the compliant Bid with the lowest Total Price.

- (ii) Where a Bidder fails to provide a Lump Sum Price, Separate Price, or Unit Price as identified in the Electronic Bid Form, the Bid will be rejected.
- (e) The Government of Newfoundland and Labrador has the right to contact not only any of the references provided by the Bidder, but also any other references identified by the Government of Newfoundland and Labrador who have had dealings with the Bidder or the Bidder's Subcontractors without prior notice to the Bidder.
- (f) If a preferred Bidder is rejected, the Bidder with the second-lowest Total Price becomes the preferred Bidder, and so on until either a Contract is awarded to a qualified Bidder having submitted a compliant Bid or the Open Call for Bids is cancelled.
- (g) A Bidder will be notified, in writing, if its Bid is rejected.

19. AWARD AND SIGNING OF CONTRACT

- (a) The Government of Newfoundland and Labrador is under no obligation to award a Contract to a Bidder, even if one or more Bids are determined to be compliant and one or more Bidders are determined to be qualified. Without limiting the generality of the foregoing, the Government of Newfoundland and Labrador will have no obligation to award a Contract where:
 - (i) there is only one Bid received;
 - (ii) the prices exceed the funds available for the Work;
 - (iii) the prices materially exceed prices for similar work in the past;
 - (iv) the prices materially exceed the Government of Newfoundland and Labrador's cost to perform the Work, or a significant portion thereof, with its own forces;
 - (v) the prices are unbalanced;
 - (vi) in the sole opinion of the Government of Newfoundland and Labrador, the interests of the Government of Newfoundland and Labrador would be best served by not awarding a Contract.
- (b) If no Contract is awarded, the Government of Newfoundland and Labrador will give written notice to all Bidders, that no Contract award will be made and (where applicable) will post a notice on the Government of Newfoundland and Labrador's online procurement service provider website that the Open Call for Bids has been

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- cancelled and no further Bid information will be released, provided the Bidder has so requested.
- (c) If the Government of Newfoundland and Labrador decides to award a Contract, it will award the Contract to the qualified Bidder that has submitted a compliant Bid with the lowest Total Price.
 - (d) The successful Bidder will be notified in writing that the Bidder has been awarded the Contract, subject to the Bidder complying with the specific conditions precedent to the Contract as set out in the Open Call for Bids or the notification of award.
 - (e) The Bidder shall, within 14 calendar days after the date on which the notification of award was sent to the Bidder, demonstrate to the Government of Newfoundland and Labrador that the Bidder has satisfied any conditions precedent to the Contract or in the notification of award. The Government of Newfoundland and Labrador will execute the Contract and send a copy to the Contractor upon being satisfied that the requirement of this section is being met.

20. FAILURE TO RESPOND TO AWARD NOTIFICATION

- (a) If, within two (2) weeks after the date on which the award notification was sent to the Bidder, the Government of Newfoundland and Labrador has not received all of the following from the Bidder:
 - (i) the Contract, duly signed by the Bidder (if applicable);
 - (ii) a performance bond (if applicable);
 - (iii) a labour and material payment bond (if applicable); and
 - (iv) evidence that the Bidder has satisfied any conditions precedent to the Contract;then the Government of Newfoundland and Labrador may do one or more of the following:
 - a. where a bid bond was required, claim against the bid bond;
 - b. declare the Bidder ineligible to bid on Open Call for Bids issued by the Government of Newfoundland and Labrador for a period of up to two (2) years;
 - c. proceed to award the Contract to, another Bidder;
 - d. cancel the Open Call for Bids;
 - e. exercise whatever other remedies are available by law.

21. COMMENCEMENT OF WORK

- (a) Unless otherwise authorized by the Government of Newfoundland and Labrador, in writing, the Contractor shall not commence any Work until the Contractor has:
 - (i) submitted an approved performance bond (if required);

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- (ii) submitted an approved labour and material payment bond (if required);
- (iii) submitted confirmation of all required insurances.
- (iv) submitted a Site Specific Safety Plan acceptable to the Government of Newfoundland and Labrador;
- (v) complied with the conditions precedent to the Contract;
- (vi) confirmed that the Government of Newfoundland and Labrador has executed the Contract that was signed and submitted by the Contractor and,
- (vii) attended a pre-construction meeting (if required).

22. TENDERING AND CONTRACTS OFFICE CLOSURE

- (a) In the event the Tendering and Contracts office is closed, any Open Call for Bids closing on that day will close at the scheduled time and the results published the following business day.

23. CONTRACT PERFORMANCE

- (a) Performance monitoring is required in accordance with the Public Procurement Act and Regulations. Upon completion of each contract, the contractor's performance will be evaluated according to prescribed criteria.
- (b) In accordance with Public Procurement Regulations Section 26, bidding privileges may be suspended due to noncompliant performance on a single contract or substandard performance on 2 or more contracts.

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GC1 DEFINITIONS

1.1 Amendment

Modifications to the Open Call for Bids Documents identifying any required addition, deletions, clarifications or corrections.

1.2 Contract Documents

The Contract Documents consist of the Instruction to Bidders, Electronic Bid Form, executed Agreement, General Conditions of Contract, Supplementary General Conditions of Contract, Specifications, Drawings and such other documents as are listed in Article A-2 of the Agreement, including all amendments thereto incorporated before their execution and subsequent amendments thereto made pursuant to the provisions of the contract or agreed upon between the parties. The Successful Bidder's bid, and any amendments to the Specification issued during the bidding period shall also form part of the Contract Documents.

1.3 Contractor

The Contractor means the person, firm or corporation identified as such in the Agreement. The term Contractor means the Contractor or the Contractor's authorized representative as designated by the Contractor to the Owner in writing.

1.4 Materials and Equipment

The term Materials and Equipment means all materials, machinery, equipment and fixtures forming the completed work as required by the Contract Documents but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the work and normally referred to as construction machinery and equipment.

1.5 Other Contractor

The term Other Contractor means any person, firm or corporation employed by or having a separate contract directly or indirectly with the Owner for work other than that required by the Contract Documents.

1.6 Owner

The Owner is the person or entity identified as such in the Agreement. The term Owner means the Owner or the Owner's authorized representatives as designated by the Owner to the Contractor in writing.

The Owner's Representative for the purposes of administering this construction Contract shall be the designated representative of the Government of Newfoundland and Labrador.

GENERAL CONDITIONS OF CONTRACT

1.7 Products

The term Products means all material, machinery, equipment and fixtures forming the completed work as required by the Contract Documents but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work and normally referred to as construction machinery and equipment.

1.8 Project

The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part.

1.9 Subcontractor

A Subcontractor is a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work included in the Contract, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.

1.10 Substantial Performance

A Contract shall be deemed to be substantially performed

- a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and
- b) when the work to be done under the contract is capable of completion at a cost of not more than:
 - (i) three per centum of the first two hundred and fifty thousand dollars (\$250,000) of the contract price,
 - (ii) two per centum of the next two hundred and fifty thousand dollars (\$250,000) of the contract price, and
 - (iii) one per centum of the balance of the contract price.

1.11 Time

- a) The Contract Time is the time stated in Article A-1(c) of the Agreement for Substantial Performance of the Work.
- b) The date of Substantial Performance of the Work is the date certified by the Owner.
- c) The term day, as used in the Contract Documents, shall mean the calendar day.
- d) The term working day means any day observed by the construction industry in the area of the place of building.

GENERAL CONDITIONS OF CONTRACT

1.12 Total Performance

Total Performance shall mean when the Work has been performed to the requirements of the Contract Documents and is so certified by the Owner.

1.13 Work

Work includes the whole of the works, materials, matters and things required to be done, furnished and performed by the Contractor under the Contract.

GC 2 DOCUMENTS

2.1 The Contract Documents shall be signed by the Owner and the Contractor.

2.2 Words which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.3 In the event of conflicts between Contract Documents the following shall apply:

- a) Drawings of a later date shall govern.
- b) Figured dimensions shown on the Drawings shall govern even though they may differ from scaled dimensions.
- c) Drawings of larger scale shall govern over those of smaller scale of the same date.
- d) Specifications shall govern over Drawings.
- e) The General Conditions of Contract shall govern over Specifications.
- f) Supplementary General Conditions shall govern over the General Conditions of the Contract.

GC 3 ADDITIONAL INSTRUCTIONS AND SCHEDULE OF WORK

3.1 During the progress of the Work the Owner may furnish to the Contractor such additional instructions as may be necessary to supplement the Contract Documents. All such instructions shall be consistent with the intent of the Contract Documents.

3.2 Additional instructions may include minor changes to the Work which affect neither Contract Price nor the Contract Time.

3.3 Additional instructions may be in the form of drawings, samples, models or written instructions.

3.4 Additional instructions will be issued by the Owner with reasonable promptness and in accordance with any schedule agreed upon.

3.5 The Contractor shall, within thirty (30) days of the signing of this contract provide the Owner with a schedule of work.

GENERAL CONDITIONS OF CONTRACT

GC 4 DOCUMENTS PROVIDED

- 4.1 The Contractor will be provided, without charge, a copy of Contract Documents or parts thereof, in electronic format, as are reasonably necessary for the performance of the Work.

GC 5 DOCUMENTS ON THE SITE

- 5.1 The Contractor shall keep one copy of all current Contract Documents and shop drawings on the site, in good order and available to the Owner and/or their representatives. This requirement shall not be deemed to include the executed Contract Documents.

GC6 OWNERSHIP OF DOCUMENTS AND MODELS

- 6.1 All Contract documents and copies thereof, and all models are and shall remain the property of the Owner and are not to be used on other work.
- 6.2 Such documents are not to be revised in any manner without the written authorization of the Owner.
- 6.3 Models furnished by the Contractor or the Owner are the property of the Owner.

GC 7 OWNER DECISIONS

- 7.1 The Owner, in the first instance, shall decide on questions arising under Contract Documents and interpret the requirements therein. Such decisions shall be given in writing.
- 7.2 The Contractor shall notify the Owner in writing within five (5) days of receipt of a decision of the Owner referred to in GC 7.1 should the Contractor hold that a decision by the Owner is in error and/or at variance with the Contract Documents. Unless the Contractor fulfills this requirement subsequent claims by the Contractor for extra compensation, arising out of the decision, will not be accepted.
- 7.3 If the question of error and/or variance is not resolved immediately, and the Owner decides that the disputed work shall be carried out, the Contractor shall act according to the Owner's written decision.

Any question of change in Contract Price and/or extension of Contract Time due to such error and/ or variance shall be decided as provided in GC 16 - Settlement of Disputes and Claims.

GENERAL CONDITIONS OF CONTRACT

GC 8 DELAY

- 8.1 If it can be clearly shown that the Contractor is delayed in the performance of the work by any act or fault of the Owner or other Contractor, then the Contract Time shall be extended for such reasonable time as the Owner may decide in consultation with the Contractor. The Contractor shall be reimbursed for any costs incurred by the Contractor as a result of such a delay occasioned by the act or fault, provided that it can be clearly shown that the Contractor's forces cannot work efficiently elsewhere on the project and that the incurred cost is limited to that which could not reasonably have been avoided.
- 8.2 If the Contractor is delayed in the performance of the Work by a Stop Work Order issued by any court or other public authority, and providing that such order was not issued as the result of any act or fault of the Contractor or of any one employed by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Owner may decide, in consultation with the Contractor, and the Contractor shall be reimbursed for any on-site costs incurred by the Contractor as the result of such delay.
- 8.3 If the Contractor is delayed in the performance of the Work by civil disorders, labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized Contractor's Association, of which the Contractor is a member) fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by any cause of any kind whatsoever beyond the Contractor's control, then the Contract Time shall be extended for such reasonable time as may be decided by the Owner, in consultation with the Contractor, but in no case shall the extension of time be less than the time lost as the result of the event causing the delay, unless such shorter extension of time be agreed to by the Contractor.
- 8.4 No extension shall be made for delay unless written notice of claim is given to the Owner within fourteen (14) days of its commencement, providing that in the case of a continuing cause of delay only one notice shall be necessary.

GC 9 OWNER'S RIGHT TO DO WORK

- 9.1 If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of the Contract, the Owner may notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default within five (5) working days of receiving the notice.
- 9.2 If the correction of the default cannot be completed within the five (5) working days specified, the Contractor shall be considered to be in compliance with the Owner's instructions if the Contractor:
- a) commences the correction of the default within the specified time, and
 - b) provides the Owner with an acceptable schedule for such correction, and
 - c) completes the correction in accordance with such schedule.

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9.3 If the Contractor fails to comply with the provisions GC 9.1 and GC 9.2 the Owner may, without prejudice to any other right or remedy the Owner may have, correct such default and may deduct the cost thereof from the payment then or thereafter due the Contractor.

GC 10 OWNER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

10.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor written notice, terminate the Contract.

10.2 The Owner may notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations, if the Contractor.

- a) fails to proceed regularly and diligently with the Work; or
- b) without reasonable cause wholly suspends the carrying out of the Work before the completion thereof, or
- c) refuses or fails to supply sufficient properly skilled workers or proper workmanship, products or construction machinery and equipment for the scheduled performance of the Work within five (5) working days of receiving written notice from the Owner, except in those cases provided in GC 8 - Delay; or
- d) fails to make payments due to the Contractor's Subcontractors, suppliers or workers; or
- e) persistently disregards laws or ordinances, or the Owner's instructions; or
- f) otherwise violates the provisions of the Contract to a substantial degree.

Such written notice by the Owner shall instruct the Contractor to correct the default within five (5) working days from the receipt of the written notice.

10.3 If the correction of the default cannot be completed within the five (5) working days specified, the Contractor shall be considered to be in compliance with the Owner's instructions if the Contractor:

- a) commences the correction of the default within the specified time,
- b) provides the Owner with an acceptance schedule for such correction, and
- c) completes the correction in accordance with such schedule.

GENERAL CONDITIONS OF CONTRACT

- 10.4 If the Contractor fails to correct the default within the time specified or subsequently agreed upon, the Owner may, without prejudice to any other right or remedy the Owner may have, stop the Work or terminate the Contract.
- 10.5 If the Owner terminates the Contract under the conditions set out above, the Owner is entitled to:
- a) take possession of the premises and products and utilize the temporary buildings, plants, tools, construction machinery and equipment, goods, materials, intended for, delivered to and placed on or adjacent to the work and may complete the Work by whatever method the Owner may deem expedient but without undue delay or expense;
 - b) withhold any further payments to the Contractor until the Work is finished.
 - c) upon Total Performance of the Work, charge the Contractor the amount by which the full cost of finishing the Work including compensation to the Owner for the Owner's additional services and a reasonable allowance to cover the cost of any corrections required by GC 31 - Warranty, exceeds the unpaid balance of the Contract Price; or if such cost of finishing the Work is less than the unpaid balance of the Contract Price, pay the Contractor the difference.
 - d) on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections under GC 31 - Warranty exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference.

GC 11 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 11.1 If the Owner should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Owner's insolvency, the Contractor may, without prejudices to any other right or remedy the Contractor may have, by giving the Owner written notice, terminate the Contract.
- 11.2 If the Work should be stopped or otherwise delayed for a period of thirty days or more under an order of any court, or other public authority, and providing that such order was not issued as the result of any act or fault of the Contractor or of any one directly or indirectly employed by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner fifteen (15) days written notice, terminate the Contract.
- 11.3 The Contractor may notify the Owner in writing that the Owner is in default of the Owner's contractual obligations if:
- a) The Owner fails to issue a certificate in accordance with GC 21 --Certificates and Payments;

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- b) The Owner fails to pay to the Contractor when due any amount certified by the Owner and verified by the audit of the Owner.

Such written notice shall advise the Owner that if such default is not corrected within fifteen (15) days from the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the work and/ or terminate the contract.

- 11.4 If the Contractor terminates the Contract under the conditions set out above, the Contractor shall be entitled to be paid for all Work performed and for any loss sustained upon products and plant supplied with reasonable overhead, profit and damages.

GC 12 OTHER CONTRACTORS

- 12.1 The Owner reserves the right to let separate contracts in connection with the project of which the Work is part.
- 12.2 The Owner shall co-ordinate the work and insurance coverages of Other Contractors as it affects the Work of this Contract.
- 12.3 The Contractor shall coordinate the Contractor's work with that of Other Contractors and connect as specified or shown in the Contract Documents. Any change in the costs incurred by the Contractor in the planning and performance of such work which was not shown or included in the Contract documents as of the date of signing the Contract, shall be evaluated as provided under GC 19 - Valuation and Certification of Changes in the Work.
- 12.4 The Contractor shall report to the Owner any apparent deficiencies in other Contractor's work which would affect the Work of this Contract immediately when they come to the Contractor's attention and shall confirm such report in writing. Failure by the Contractor to so report shall invalidate any claims against the Owner by reason of the deficiencies of Other Contractor's work except as to those of which the Contractor was not reasonably aware.

GC 13 ASSIGNMENT

- 13.1 The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder with/out the written consent of the Owner.

GC 14 SUBCONTRACTORS

- 14.1 The Contractor agrees to preserve and protect the rights of the Owner under the Contract with respect to any work to be performed under subcontract. The Contractor shall:

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- a) require the Contractor's Subcontractors to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and
- b) be fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

The Contractor therefore agrees that the Contractor will incorporate all the terms and conditions of the Contract Documents into all Subcontract Agreements the Contractor enters into with the Contractor's Subcontractors.

- 14.2 The Contractor shall employ those Subcontractors proposed by the Contractor in writing and accepted by the Owner prior to the signing of the Contract for such portions of the work as may be designated in the bidding requirements.
- 14.3 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to employ one of the other Subcontractor Bidders.
- 14.4 In the event that the Owner requires a change from any proposed Subcontractor the Contract Price shall be adjusted by the difference in cost occasioned by such required change.
- 14.5 The Contractor shall not be required to employ as a Subcontractor any person or firm to whom the Contractor may reasonably object.
- 14.6 The Owner may, upon reasonable request and at the Owner's discretion, provide to a Subcontractor information as to the percentage of the Subcontractor's work which has been certified for payment.
- 14.7 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

GC 15 EMERGENCIES

- 15.1 The Owner has authority in an emergency to stop the progress of the Work whenever in the Owner's opinion such stoppage maybe necessary to ensure the safety of life, or the Work, or neighbouring property. This includes authority to make changes in the Work, and to order, assess and award the cost of such work, extra to the Contract or otherwise, as may in the Owner's opinion be necessary. The Owner shall, within two (2) working days, confirm in writing any such instructions. In such a case if work has been performed under direct order of the Owner, the Contractor shall keep the Contractor's right to claim the value of such work.
- 15.2 Should the Work be stopped by civil pickets, or other disorder, neither the Owner nor the Contractor shall have claim for change in the price of the Contract.

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GC 16 SETTLEMENT OF DISPUTES AND CLAIMS

- 16.1 In the case of any dispute or claim arising between the Owner and the Contractor as to their respective rights and obligations under the Contract, either party hereto may give the other written notification of such dispute or claim. The notification of dispute or claim shall be made within fourteen (14) days of the dispute or cause of action arising. If the dispute or claim cannot be resolved to the satisfaction of both parties, either party may refer the matter to such judicial tribunal as the circumstances require.
- 16.2 Legal proceedings shall not take place until after the performance or the substantial performance of the disputed work except:
- a) when the dispute concerns a certificate for payment.
 - b) where either party can show that the matter in dispute requires immediate consideration while evidence is available.
 - c) in the case of legal proceedings, where the action may become prescribed by reason of delay.

GC 17 INDEMNIFICATION

- 17.1 Except as provided in GC 17.2, the Contractor shall be liable for, and shall indemnify and hold harmless the Owner against all claims, demands, losses, costs, damages, actions, suits or proceedings, whatsoever arising under any statute or Common Law:
- a) in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Work; and
 - b) in respect of any injury or damage whatsoever to any property, real or personal or any chattel real, insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Work.
- 17.2 The Contractor shall not be liable under GC 17.1 if the injury, death, loss or damage is due to any act or neglect of the Owner.

GC 18 CHANGES IN THE WORK

- 18.1 The Owner may make changes by altering, adding to, or deducting from the Work, with the Contract Price and the Contract Time being adjusted accordingly.
- 18.2 Except as provided in GC 15 - Emergencies, no change shall be made without a written order from the Owner and no claim for an addition or deduction to the Contract Price or change in the Contract Time shall be valid unless so ordered and at the same time valued or agreed to be valued as provided in GC 19 - Valuation and Certification of Changes in the Work.

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GC 19 VALUATION AND CERTIFICATION OF CHANGES IN THE WORK

19.1 The value of any change shall be determined in one or more of the following methods:

- a) by unit prices subsequently agreed upon
- b) by estimate and acceptance in a lump sum
- c) by cost and a fixed or percentage fee.

In the case of changes in the Work valued as outlined in GC 19.1 (a), where Unit Prices are provided in the Contract for Work to be done, those Unit Prices shall be used in determining the value of the change. If any Unit Price is not provided in the Contract for the Work, a Unit Price shall be subsequently agreed upon or an alternate method of determining the value of the Work shall be used.

In the case of changes in the Work valued as outlined in GC 19.1 (b), the Contractor shall submit an itemized estimate for all materials and labour to complete the extra work.

In the case of changes in the Work valued as outlined in GC 19.1(c), the Contractor shall submit detailed invoices, vouchers and time sheets for all materials and labour to complete the extra work.

Subject to the provisions of GC 19.2, when work is performed by the Contractor's own forces the Contractor's markup for overhead shall be ten (10) percent and the Contractor's profit ten (10) percent of the agreed or actual cost of the change. When work is performed by one of the Contractor's Subcontractors, the Subcontractor's markup for overhead shall be ten (10) percent of the agreed or actual cost of the change plus five (5) percent for profit. The Contractor's markup for overhead and profit shall be ten (10) percent of the Subcontractor's total price.

19.2 Notwithstanding the provisions of GC 19.1, in case of changes in the Work, the amount charged for equipment rentals shall be that provided in the Contract and no additional amount shall be paid as markup for overhead or profit for the Contractor or Subcontractor.

19.3 Notwithstanding the provisions of GC 19.1, in case of purchase of left over product or materials, the Contractor's profit shall be ten (10) percent of the cost as supported by invoices or vouchers, or agreed upon price. No markup for overhead shall be added. This applies to material or product that are supplied only and not installed on site.

19.4 When a change in the Work is proposed or required the Contractor shall present to the Owner for approval the Contractor's claim for any change in the Contract Price and/or change in the Contract Time. The Owner shall be satisfied as to the correctness of such claim and, when approved shall issue a written order to the Contractor to proceed with the change. The value of work performed in the change shall be included for payment with the regular certificate for payment.

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- 19.5 In the case of changes in the Work to be paid for under GC 19.1, the form of presentation of costs and methods of measurement shall be agreed to by the Owner and Contractor before proceeding with the change. The Contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the change in the Work, together with vouchers where applicable.
- 19.6 If the method of valuation, measurement and the change in Contract Price and/or change in Contract Time cannot be promptly agreed upon, and the change is required to be proceeded with then the Owner shall determine the method of valuation, measurement and the change in Contract Price and/or Contract Time subject to final determination in the manner set out in GC 16 - Settlement of Disputes and Claims. In this case the Owner shall issue a written authorization for the change setting out the method of valuation and if by lump sum the Owner's valuation of the change in Contract Price and/or Contract Time.
- 19.7 In the case of a dispute in the valuation of a change authorized in the Work pending final determination of such value, the Owner shall certify the value of work performed and include the amount with the regular certificates for payment.
- 19.8 It is intended in all matters referred to above that both the Owner and Contractor shall act promptly.
- 19.9 Credits will be based on the net cost of material and labour or the net difference in unit price quantities.

GC 20 APPLICATION FOR PAYMENT

- 20.1 Applications for payment on account as provided for in Article A-4 of the Agreement may be made monthly as the Work progresses.
- 20.2 Application for payment shall be made monthly on a date to be agreed between the Owner and the Contractor and the amount claimed shall be for the value, proportionate to the amount of the Contract, of work performed and products delivered to the site at that date.
- 20.3 If requested by the Owner, due to the use of Fixed Price items, the Contractor shall submit to the Owner, before the first application for payment, a schedule of values of the various parts of the Work, aggregating the total amount of the Contract Price and divided so as to facilitate evaluation of applications for payment.
- 20.4 The revised schedule, if required, shall be made out in such form, and supported by such evidence as to its correctness, as the Owner may reasonably direct, and when approved by the Owner shall be used as the basis for application for payment.
- 20.5 When making application for payment, the Contractor shall submit a statement based upon this schedule. Claims for products delivered to the site but not yet incorporated into the Work shall be supported by such evidence as the Owner may reasonably require to establish the value and delivery of the products.

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20.6 Applications for release of holdback monies following the Substantial Performance of the Work and the application for final payment shall be made at the time and in the manner set forth in GC 21 Certificates and Payments.

GC 21 CERTIFICATES AND PAYMENTS

21.1 The Owner shall, within ten (10) days of receipt of an application for payment from the Contractor submitted in accordance with GC 20 - Application for Payment, issue a certificate for payment in the amount applied for or such other amount as the Owner shall determine to be properly due. If the Owner amends the application the Owner shall promptly notify the Contractor in writing, giving the Owner's reasons for the amendment.

21.2 The Owner shall within twenty-one (21) days of the issuance of a certificate for payment by the Owner, make payment to the Contractor on account, in accordance with the provisions of the Agreement.

21.3 If payment is not made by the Owner within sixty (60) days of issuance of a certificate for payment, the Owner will be liable for interest on the amount owing at the rate of 2% per annum from the sixty-first (61st) day to the date of payment.

21.4 Notwithstanding any other provisions of this Contract:

a) If on account of climatic or other conditions reasonably beyond the control of the Contractor there are items of work that cannot be performed, the payment in full for that which has been performed as certified by the Owner shall not be withheld or delayed by the Owner on account thereof, but the Owner may withhold from the Contract Price until the remaining work is finished an amount sufficient to cover the cost to the Owner of performing such remaining work and to adequately protect the Owner from claims.

b) Where legislation permits and where, upon application by the Contractor, the Owner has certified that a Subcontract has been totally performed to Owner's satisfaction prior to the Substantial Performance of this Contract, the Owner shall pay the Contractor the holdback retained for such Subcontractor on the day following the expiration of the Statutory Limitations Period stipulated in the Mechanics' Lien Act applicable to the place of building.

c) Holdbacks will be released on the following conditions:

i) a copy of the contract between the Subcontractor and the Contractor, or some other suitable Document satisfactory to the Owner, must be presented to the Owner,

ii) the Subcontract is completed without deficiencies;

GENERAL CONDITIONS OF CONTRACT

- iii) the warranty for the Subcontract will not start until Substantial Performance of the General Contract;
 - iv) the Contractor provides an approved statutory declaration that all monies have been paid to the Subcontractors;
 - v) the Owner will, at that time, release the total amount specified on the Sub-contractor's Contract.
- 21.5 Notwithstanding the provisions of GC 21.4 (b) and notwithstanding the wording of such certificate the Contractor shall ensure that such work is protected pending the Total Performance of the Contract and be responsible for the correction of any defects in it regardless of whether or not they were apparent when such certificates were issued.
- 21.6 The Owner shall, within ten (10) days of receipt of an application from the Contractor for a Certificate of Substantial Performance, make an inspection and assessment of the work to verify the validity of the application. The Owner shall within seven (7) days of Owner's inspection notify the Contractor of the Owner's approval or disapproval of the application. When the Owner finds the Work to be Substantially Performed the Owner shall issue such a certificate. The date of this certificate shall be the date of Substantial Performance of the Contract. Immediately following the issuance of the Certificate of Substantial Performance, the Owner, in consultation with the Contractor shall establish a reasonable date for the Total Performance of the Contract.
- 21.7 Following the issuance of the Certificate of Substantial Performance and upon receipt from the Contractor of all documentation called for in the Contract Documents the Owner shall issue a certificate for payment of holdback monies. The release of holdback monies authorized by this certificate shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the Mechanics' Lien Act applicable to the place of building, providing that no lien or privilege claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full except holdback monies properly retained.
- 21.8 The Owner shall, within ten (10) days of receipt of an application from the Contractor for payment upon Total Performance of the Contract, make an inspection and assessment of the Work to verify the validity of the application. The Owner shall within seven (7) days of the Owner's inspection notify the Contractor of the Owner's approval or disapproval of the application. When the Owner finds the Work to be totally performed to the Owner's satisfaction the Owner shall issue a Certificate of Total Performance and certify for payment the remaining monies due to the Contractor under the Contract less any holdback monies which are required to be retained. The date of this certificate shall be the date of Total Performance of the Contract. The Owner shall, within thirty (30) days of issuance of such certificate, make payment to the Contractor in accordance with the provisions of Article A-4 of the Agreement.

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- 21.9 The release of any remaining holdback monies shall become due and payable on the day following the expiration of the Statutory Limitation Period stipulated in the Mechanics' Lien Act applicable to the place of building or where such legislation does not exist or apply in accordance with such other legislation, regulations governing privileges, industry practice or such other provisions which may be agreed to between the parties, provided that no claims against the Work exist and the Contractor has submitted to the Owner a sworn statement that all accounts for labour, Subcontracts, products, construction machinery and equipment and any other indebtedness which may have been incurred by the Contractor in the Total Performance of the Work and for which the Owner might in any way be held responsible, have been paid in full except holdback monies properly retained.
- 21.10 No certificate for payment, or any payment made thereunder, nor any partial or entire use of occupancy of the Work by the Owner shall constitute an acceptance of any work or products not in accordance with the Contract Documents.
- 21.11 The issuance of the Certificate of Total Performance shall constitute a waiver of all claims by the Owner against the Contractor except those previously made in writing and still unsettled, if any, and those arising from the provisions of GC 31 - Warranty, or those arising from negligence on the part of the Contractor.

The acceptance of the Certificate of Total Performance or of the payment due thereunder shall constitute a waiver of all claims by the Contractor against the Owner except those made in writing prior to the Contractor's application for payment upon Total Performance of the Contract and still unsettled, if any.

- 21.12 The holdback to be used by the Owner when issuing certificate of payment will be ten (10) percent of the value of the Work completed at the date of the Contractor's claim.
- 21.13 Notwithstanding the provisions of GC 21.3 or any other provision of this Contract, the Owner may:
- a) in the event of a claim by the Owner against the Contractor for damages arising out of the performance or non-performance of the Contract, withhold payment of any amount equal to the alleged damages until the liability for damages is established and no amount of interest will be paid on amounts held under this clause;
 - b) set-off amounts owing by the Contractor to the Owner,
 - c) following the issuance of the Certificate of Substantial Performance, withhold payment of an amount equal to twice the cost, as estimated by the Owner, of remedying deficiencies until the issuance of a Certificate of Total Performance and no amount of interest will be paid on amounts held under this clause.

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GC 22 TAXES AND DUTIES

22.1 The Contractor shall pay all government sales taxes, customs duties and excise taxes with respect to the Contract.

Contractors are advised that Government is not exempt from the Harmonized Sale Tax (HST). The Owner will pay the HST to the Contractor with each regular progress billing.

22.2 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the Agreement and up to the agreed date of completion shall increase or decrease the Contract Price accordingly. The Contractor is to co-operate with the Owner and permit access to books and records in order to establish the amount of such taxes involved.

22.3 The Contractor shall maintain full records of the Contractor's estimates of and actual cost to the Contractor of the Work together with all proper open call for bids, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, shall make them available to audit and inspection by the Owner, the Auditor General for Newfoundland and Labrador or by persons acting on their behalf, shall allow them to make copies thereof and to take extracts therefrom, and shall furnish them with any information which they may require from time to time in connection with such records.

GC 23 LAWS, NOTICES, PERMITS AND FEES

23.1 The laws of the place of building shall govern the Work.

23.2 The Contractor shall obtain all permits, licenses and certificates and pay all fees required for the performance of the Work which are in force at the date of the Open Call for Bids submission (but this shall not include the obtaining of permanent easements or rights of servitude).

23.3 The Contractor shall give all required notices and comply with all laws, ordinances, rules, regulations, codes and order of all authorities having jurisdiction relating to the Work, to the preservation of the public health and construction safety which are or become in force during the performance of the Work.

23.4 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations and codes relating to the Work. If the Contract Documents are at variance therewith, or changes which require modification to the Contract Documents are made to any of the laws, ordinances, rules, regulations and codes by the authorities having jurisdiction subsequent to the date of the Open Call for Bids submission, any resulting change in the cost shall constitute a corresponding change in the Contract Price. The Contractor shall notify the Owner in writing requesting direction immediately any such variance or change is observed by the Contractor.

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- 23.5 If the Contractor fails to notify the Owner in writing and obtain the Owner's direction as required in GC 23.4 and performs any work knowing it to be contrary to any laws, ordinances, rules, regulations, codes and orders of any authority having jurisdiction, the Contractor shall be responsible for and shall correct any violations thereof and shall bear all costs, expense and damages, attributable to the Contractor's failure to comply with the Provisions of such laws, ordinances, rules, regulations, codes and orders.
- 23.6 The Contractor is not required to carry the cost of a municipal permit related to performance of the Work. If a municipal permit is requested, the Contractor shall advise the Owner of the request and where directed by the Owner, shall pay for and obtain a permit related to the conduct of the Work and the Owner will issue a change order to allow for payment of the cost of obtaining the permit. Nothing in this clause relieves the Contractor of its obligation to make such filings and to submit such documents and notices with respect to the Work on behalf of the Owner as are otherwise required by the municipality. All other permits are to remain the responsibility of the contractor.

GC 24 PATENT FEES

- 24.1 The Contractor shall pay all royalties and patent license fees required for the performance of the Contract and such royalties or fees shall be deemed to have been included in the contract price. The Contractor shall hold the Owner harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of any patent or invention by the Contractor or anyone for whose acts the Contractor may be liable.
- 24.2 The Owner shall hold the Contractor harmless against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of any patent or invention in executing anything for the purpose of the Contract, the model, plan or design of which was supplied to the Contractor by the Owner.

GC 25 WORKPLACE NL

- 25.1 At the time of bid submission, and prior to receiving payment on Substantial and Total Performance of the Work, the Contractor shall provide evidence of compliance with all requirements of the Province in the place of building with respect to worker's compensation including payments due thereunder.
- 25.2 At any time during the term of Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by the Contractor and any or all of the Contractor's Subcontractors.
- 25.3 Non incorporated companies i.e.: partnerships, sole proprietorships, and independent operators must provide coverage for any employees and personal coverage for the principal(s).

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GC 26 LIABILITY INSURANCE

26.1 Comprehensive General Liability Insurance

- a) Without restricting the generality of GC 17 - Indemnification, the Contractor shall provide and maintain, either by way of a separate policy or by an endorsement to their existing policy, Commercial Liability Insurance acceptable to the Owner and subject to limits set out in detail in the Certificate of Insurance inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof.
- b) This insurance shall include as an additional insured His Majesty the King in Right of Newfoundland and Labrador and the Occupant/Operator of the property. Such insurance must have the approval of the Owner and be to the limits, form and amounts specified. The Contractor will not permit any Subcontractor to commence work on this Project until the same insurance requirements have been complied with by the Subcontractor.
- c) The insurance shall also include as Unnamed Insureds the architectural and engineering consultants of the Owner with respect to work performed by the Contractor, but excluding professional liabilities associated with such architectural and engineering consultants.
- d) The Comprehensive General Liability Insurance will not be limited to, but shall include coverage for:
 - 1) premises and operations liability
 - 2) products or completed operations liability
 - 3) blanket contractual liability
 - 4) broad form property damage
 - 5) cross liability
 - 6) elevator and hoist liability
 - 7) contingent employer's liability
 - 8) personal injury liability
 - 9) liability with respect to non-owned licensed vehicles
 - 10) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunneling and grading as applicable.

26.2 Automobile Liability Insurance

The Contractor shall provide and maintain liability insurance in respect of (i) owned licensed vehicles and (ii) leased vehicles, subject to limits set out in this Contract.

26.3 Aircraft and or Watercraft Liability Insurance

The Contractor shall provide and maintain liability insurance with respect to owned and non-owned aircraft and watercraft, as may be applicable, subject to limits set out in this

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Contract. Such insurance shall be in the names of the Contractor, His Majesty the King in Right of Newfoundland and Labrador, and the Owner as defined in 26.1(b) and (c) where they have an insurable interest in the use and operation of such aircraft and watercraft.

26.4 Airport Contractor Liability Insurance

The Contractor shall provide and maintain liability insurance with respect to work completed on the tarmac side of an airport and/or inside an airport and the area outside an airport if this not provided within the Contractor's Commercial General Liability Insurance.

26.5 Environmental Impairment Liability Insurance

The Contractor shall provide and maintain liability insurance with respect to environmental contamination/remediation at a work site.

26.6 Completed operations shall be maintained continuously until twelve (12) months from the date the Owner issues a Certificate of Substantial Performance.

26.7 All insurance policies shall contain an endorsement requiring notification of His Majesty and the Named Insured, in writing, thirty (30) days prior to cancellation of any policy or material change, except in the event of non-payment where policy conditions dealing with termination will apply.

GC 27 PROPERTY INSURANCE

27.1 The Contractor shall provide and maintain property insurance, acceptable to His Majesty the King in the Right of Newfoundland and Labrador, insuring the full value of the Work in the amount of the contract price and the full value as stated of products for incorporation into the work. The insurance shall include as additional insured His Majesty the King in Right of Newfoundland Labrador.

27.2 Such coverage shall be provided for by **either** Broad Form Builders' Risks Policy or an Installation Floater **or** Piers, Wharves, and Docks Rider.

27.3 The policies shall insure on a Broad Form basis direct loss or damage subject to any exclusions specified in the Supplementary General Condition. Such coverage shall apply to:

- a) all products, labour, and supplies of any nature whatsoever, the property of the Insureds or of others for which the Insureds may have assumed responsibility, to be used in or pertaining to the site preparations, demolitions of existing structures, erections and/or fabrication and/or reconstruction and/or repair of the insured project, while on the site or in transit, subject to the exclusion of the property specified.

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- b) the installation, testing and any subsequent use of machinery and equipment including boilers, pressure vessels or vessels under vacuum.
- d) damage to the Work caused by an accident to and/or the explosion of any boiler(s) or pressure vessel(s) forming part of the work.
- e) damage to Work caused by earthquake or flooding.

Such coverage shall exclude construction machinery, equipment, temporary structural and other temporary facilities, tools, and supplies used in the construction of the work and which are not expendable under the Contract.

- 27.4 Policies provided shall contain an endorsement requiring notification of His Majesty and the Named Insured, in writing, thirty (30) days prior to cancellation of any policy or material change of coverage except in the event of non-payment where policy conditions dealing with termination will apply.
- 27.5 All such insurance shall be maintained continuously until the date the Owner issues a Certificate of Substantial Performance. All such insurance shall provide for the Owner to take occupancy of the work or any part thereof during the term of the insurance. Any increase in the cost of this insurance arising out of such occupancy shall be at the Owner's expense.
- 27.6 The policies shall provide that in the event of a loss, payment for damage to the Work shall be made to the Owner and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the Owner and the Contractor for the purpose of adjusting the amount of such loss with the Insurers. On the determination of the extent of the loss, the Contractor shall immediately proceed to restore the Work and shall be entitled to receive from the Owner (in addition to any sum due under the Contract) the amount at which the Owner's interest in the restoration work has been appraised, such amount to be paid as the work of restoration proceeds and in accordance with the Owner's certificates for payment. Damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of time for Substantial and Total Performance of the work as the Owner may decide.
- 27.7 The Contractor shall be responsible for any deductible amounts under the policies and for providing such additional insurance as may be required to protect the insureds against loss on items excluded from the policies. Contractors are also advised that the Bid Documents contain a Certificate of Insurance indicating type and limit of liability insurance required for this project. The successful bidder will be required prior to commencement of work, to have the Certificate of Insurance completed by the Contractor's insurance company and delivered to the Government of Newfoundland and Labrador not later than 30 days after the award of the contract.

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GC 28 PROTECTION OF WORK AND PROPERTY

- 28.1 The Contractor shall protect the property adjacent to the Project site from damage as the result of the Contractor's operations under the Contract.
- 28.2 The Contractor shall protect the Work and the Owner's property from damage and shall be responsible for any damage which may arise as the result of the Contractor's operations under the Contract except damage which occurs as the result of:
- a) errors in the Contract Documents, and/or
 - b) acts or omissions by the Owner, the Owner's agents, employees or Other Contractors.
- 28.3 Should any damage occur to the Work and/or Owner's property for which the Contractor is responsible, the Contractor shall make good such damage at the Contractor's own expense or pay all costs incurred by others in making good such damage.
- 28.4 Should any damage occur to the Work and/or Owner's property for which the Contractor is not responsible as provided in GC 17 – Indemnification the Contractor shall make good such damage to the Work, and, if the Owner so directs to the Owner's property, and the Contract Price and Contract Time shall be adjusted in accordance with GC 18 - Changes in the Work.
- 28.5 The Contractor shall be completely responsible for the safety of the work as it applies to protection of the public and property and the construction of the work. All applicable Codes and Standards for the area and location of the Work shall apply to the project.
- 28.6 Any person not following the stipulated safety regulations shall be dismissed.

GC 29 DAMAGES AND MUTUAL RESPONSIBILITY

- 29.1 If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or anyone employed by that party then that party shall be reimbursed by the other party for such damages. The party reimbursing the other party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.
- 29.2 Claims under this GC shall be made in writing to the party liable within reasonable time after the first observance of such damage and not later than the time limits stipulated in GC 21 - Certificates and Payments, and may be adjusted by agreement or in the manner set out in GC 16 - Settlement of Disputes and Claims.
- 29.3 If the Contractor has caused damage to any Other Contractor on the work, the Contractor agrees upon due notice to settle with such Other Contractor by agreement or arbitration, if the Other Contractor will so settle. If such Other Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor

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and may require the Contractor to defend the action at the Contractor's expense. If any final order or judgment against the Owner arises therefrom the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

- 29.4 If the Contractor becomes liable to pay or satisfy any final order, judgment or award against the Owner then the Contractor, upon undertaking to indemnify the Owner against any and all liability for costs, shall have the right to appeal in the name of the Owner such final order or judgment to any and all courts of competent jurisdiction.

GC 30 BONDS

- 30.1 The Owner shall have the right during the period stated in the Bid Documents for acceptance of the bid to require the Contractor to provide and maintain in good standing until the fulfillment of the Contract, bonds covering the faithful performance of the Contract including the requirements of the Warranty provided for in GC 31 Warranty, and the payment of all obligations arising under the Contract.
- 30.2 All such bonds shall be issued by a duly incorporated surety company approved by the Owner and authorized to transact a business or surety-ship in the Province of Newfoundland and Labrador.
- 30.3 If bonds are called for in the Bid Documents or instructions to bidders, the costs attributable to providing such bonds shall be included in the bid price.
- 30.4 Should the Owner require the provision of a bond or bonds by the Contractor other than those provided for under GC 30.3, the Contract Price shall be increased by all costs attributable to providing such bonds.
- 30.5 The Contractor shall promptly provide the Owner with any bonds that are required.

GC 31 WARRANTY

- 31.1 Without restricting any warranty or guarantee implied or stipulated by law the Contractor shall at the Contractor's own expense rectify and make good any defect or fault however caused appearing within a period of one year from the date of Substantial Performance of the Work, unless otherwise stated in the Supplementary General Conditions, provided that the Contractor shall not be responsible for any defect or fault resulting from the design of the Work.
- 31.2 The Contractor shall correct and/or pay for any damage to other work resulting from any corrections required under the conditions of GC 31.1.
- 31.3 Neither the Owner's final certificate nor payment thereunder shall relieve the Contractor from the Contractor's responsibility hereunder.
- 31.4 The Owner shall give the Contractor written notice of observed defects promptly.

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- 31.5 In any case where the Contractor states that they are not responsible for a defect or fault because such a defect or fault is the result from a design of the work by the Owner, the onus to establish the defect or fault in the design of the work shall be on the Contractor.
- 31.6 The Contractor shall, subject to the procedures for Settlement of Disputes contained in GC 16 – Settlement of Disputes and Claims, abide by the direction and decisions of the Owner made pursuant to the General Conditions and in particular GC 7 – Owner’s Decision regarding the correction by the Contractor of any defect or fault in the work discovered during the warranty period referenced in GC 31.1 hereof.
- 31.7 The Contractor shall submit a schedule, acceptable to the Owner, for the completion of the warranty work in respect of the defect or fault referenced in GC 31.1, within thirty (30) days of the Owner requesting in writing such a schedule from the Contractor.
- 31.8 Where the Contractor rectifies and makes good any defect or fault for which the Contractor is responsible under this Warranty, the Contractor shall warrant the portion of the work that is corrected for a period equal to the original warranty period, from the date that the correction was done.

GC 32 CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

- 32.1 The Contractor shall have complete control of the Work except as provided in GC 15 -Emergencies. The Contractor shall effectively direct and supervise the Work using the Contractor’s best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all parts of the Work under the Contract.
- 32.2 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate discipline to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 32.3 Notwithstanding the provisions of GC 32.1 and GC 32.2 above, or any provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for temporary structural and other temporary facilities and methods shall be deemed to comprise part of the overall design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.

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32.4 The Contractor shall carefully examine the Contract Documents and shall promptly report to the Owner any error, inconsistency or omission the Contractor may discover. The Contractor shall not be held liable for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents.

GC 33 SUPERINTENDENCE

33.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Work site at all times while work is being performed.

33.2 The superintendent shall be satisfactory to the Owner and shall not be changed except for good reason and only then after consultation with and agreement by the Owner.

33.3 The superintendent shall represent the Contractor at the Work site. Directions given to the superintendent by the Owner shall be held to have been given to the Contractor. Important directions shall be confirmed to the Contractor in writing, other directions will be so confirmed if requested.

GC 34 LABOUR AND PRODUCTS

34.1 Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for all labour products, tools, construction equipment and machinery, water, heat, light, power, transportation and other facilities and services necessary for the proper performance of the Work.

34.2 All products provided shall be new unless otherwise specified in the Contract Documents. Any products which are not specified shall be of a quality best suited to the purpose required and their use subject to the approval of the Owner.

34.3 The Contractor shall at all times maintain good order and discipline among the Contractor's employees engaged on the Work and shall not employ on the Work any unfit person nor anyone not skilled in the task assigned to that person.

34.4 The Contractor shall ensure that all employees (including owners, management and subcontracted employees) are aware that workplace violence and harassment will not be tolerated. Allegations of workplace violence and harassment perpetrated against employees of the Department of Transportation and Infrastructure will be investigated and addressed as per the Department's Workplace Violence and Harassment Prevention Program, and may result in correction actions aimed at individuals or the Contractor. The Contractor hereby agrees to be bound by the Department's Workplace Violence and Harassment Prevention Program and shall cooperate fully in any resulting investigations and shall ensure compliance with any subsequent corrective actions.

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GC 35 SUBSURFACE CONDITIONS

- 35.1 The Contractor shall promptly notify the Owner in writing if, in the Contractor's opinion, the subsurface conditions at the Project site differ materially from those indicated in the Contract Documents or as may have been represented to the Contractor by the Owner before the time of Open Call for Bids submission.
- 35.2 After prompt investigation, should the Owner determine that conditions do differ materially, the Owner shall issue appropriate instructions for changes in the Work as provided for in GC 18 - Changes in the Work.

GC 36 USE OF PREMISES

- 36.1 The Contractor shall confine the Contractor's apparatus, the storage of products and the operations of the Contractor's workers to limits indicated by laws, ordinances, permits or by directions of the Owner and shall not unreasonably encumber the premises with the Contractor's products.
- 36.2 The Contractor shall not load or permit to be loaded any part of the Work with a mass that will endanger its safety.
- 36.3 The Contractor shall enforce the Owner's instructions regarding signs, advertisements, fires and smoking.
- 36.4 Unless otherwise provided the Contractor shall, at the Contractor's own expense, and without extra cost to the Owner, make suitable provision to accommodate all traffic either pedestrian or vehicular, over or around, the project upon which work is being performed, in a manner satisfactory to the Owner.
- 36.5 The Contractor shall provide and maintain at the Contractor's own expense such fences, barriers, signs, lights and security as may be necessary to prevent avoidable accidents to residents or to the public generally.

GC 37 CLEANUP AND FINAL CLEANING OF WORK

- 37.1 The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, other Contractors or their employees.
- 37.2 When the Work is Substantially Performed the Contractor shall remove all of the Contractor's surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. The Contractor shall also remove any waste products and debris and leave the Work clean and suitable for occupancy by the Owner unless otherwise specified.

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37.3 When the Work is Totally Performed, the Contractor shall remove all of the Contractor's surplus Products, tools, construction machinery and equipment. The Contractor shall also remove any waste products and debris, other than that caused by the Owner, other Contractors or their employees.

GC 38 CUTTING AND REMEDIAL WORK

38.1 The Contractor shall do all cutting and remedial work that may be required to make the several parts of the Work come together properly.

38.2 The Contractor shall co-ordinate the schedule for the Work to ensure that this requirement is kept to a minimum.

38.3 Should the Owner or anyone employed by the Owner be responsible for ill-timed work necessitating cutting and/or remedial work shall be valued as provided in GC 19 Valuation and Certification of Changes in the Work and added to the Contract Price.

38.4 Cutting and remedial work shall be performed by specialists familiar with the materials affected and shall be performed in a manner to neither damage nor endanger any Work.

GC 39 INSPECTION OF WORK

39.1 The Owner and the Owner's authorized representatives shall have access to the Work for inspection wherever it is in preparation or progress. The Contractor shall co-operate to provide reasonable facilities for such access.

39.2 If special tests, inspections or approvals are required by the Contract Documents, the Owner's instructions or the laws or ordinances of the place of building the Contractor shall give the Owner timely notice requesting inspection. Inspection by the Owner shall be made promptly. The Contractor shall arrange inspection by other authorities and shall notify the Owner of the date and time.

39.3 If the Contractor covers or permits to be covered any of the Work that is subject to inspection or before any special tests and approvals are completed without the approval of the Owner, the Contractor shall uncover the Work, have the inspection satisfactorily completed and make good the Work at the Contractor's own expense.

39.4 Examination of any questioned Work may be ordered by the Owner. If such Work be found in accordance with the Contract the Owner shall pay the cost of examination and replacement, together with the cost of subsequent verification testing. If such Work be found not in accordance with the Contract through the fault of the Contractor, the Contractor shall pay such cost.

39.5 The Contractor shall furnish promptly to the Owner all certificates and inspection reports relating to the Work.

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GC 40 REJECTED WORK

- 40.1 Defective Work, whether the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor, and whether incorporated in the Work or not, which has been rejected by the Owner as failing to conform to the Contract Documents shall be removed promptly from the premises by the Contractor and replaced and/or executed promptly in accordance with the Contract Documents at the Contractor's expense.
- 40.2 Other Contractor's work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.
- 40.3 If in the opinion of the Owner it is not expedient to correct defective work not done in accordance with the Contract Documents, the Owner may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract, the amount of which shall be determined in the first instance by the Owner.

GC 41 SHOP DRAWINGS

- 41.1 The term "shop drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are to be provided by the Contractor to illustrate details of a portion of the Work.
- 41.2 The Contractor shall arrange for the preparation of clearly identified shop drawings as called for by the Contract Documents or as the Owner may reasonably request.
- 41.3 Prior to Submission to the Owner the Contractor shall review all shop drawings. By this review the Contractor represents that the Contractor has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data or will do so and that the Contractor has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents. The Contractor's review of each shop drawing shall be indicated by stamp, date and signature of a responsible person.
- 41.4 The Contractor shall submit shop drawings to the Owner for the Owner's review with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of Other Contractors. If either the Contractor or the Owner so requests they shall jointly prepare a schedule fixing the dates for submission and return of shop drawings. Shop drawings shall be submitted in electronic format (PDF) or prints as the Owner may direct. At the time of submission the Contractor shall notify the Owner in writing of any deviations in the shop drawings from the requirements of the Contract Documents.
- 41.5 The Owner will review and return shop drawings in accordance with any schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The Owner's

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review shall be for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the shop drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the shop drawings has been approved in writing by the Owner.

- 41.6 The Contractor shall make any changes in shop drawings which the Owner may require consistent with the Contract Documents and resubmit unless otherwise directed by the Owner. When resubmitting the Contractor shall notify the Owner in writing of any revisions other than those requested by the Owner.

GC 42 SAMPLES

- 42.1 The Contractor shall submit for the Owner's approval such standard manufacturers' samples as the Owner may reasonably require. Samples shall be labelled as to origin and intended use in the Work and shall conform to the requirements of the Contract Documents.
- 42.2 The Contractor shall provide samples of special products, assemblies, or components when so specified. The cost of such samples not specified shall be authorized as an addition to the Contract Price as provided in GC 18 - Changes in the Work.

GC 43 TESTS AND MIX DESIGNS

- 43.1 The Contractor shall furnish to the Owner test results and mix designs as may be requested. The testing company must first be approved by the Owner.
- 43.2 The cost of tests and mix designs beyond those called for in the Contract Documents or beyond those required by laws, ordinances, rules and regulations relating to the work and the preservation of public health, shall be authorized as an addition to the Contract Price as provided in GC 18 - Changes in the Work.

GC 44 LABOUR

- 44.1 In carrying out the Contractor's duties under this contract, the Contractor should comply with all Provincial and Federal legislation respecting labour and the employment of labour, where applicable, including the labour standards code and shall not operate in conflict with the Human Rights legislation. In the employment of labour, preference should be given to persons normally resident in Newfoundland and Labrador.
- 44.2 The Contractor and Subcontractors shall maintain and keep available for inspection by the Owner, a record of the names and addresses of all workers employed on the Project.
- 44.3 All Work shall be done by workers skilled in their various trades.

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- 44.4 There shall be no discrimination in the selection of workers for employment on the project in respect of gender, race, religious views or political affiliation.
- 44.5 The Contractor shall pay fair wages and shall pay rates of wages and allowances to the various classes of labour not less favourable than those prevailing in the area where the Work is being performed.

GC 45 TIME OF ESSENCE

- 45.1 Time is of the essence of the Contract.

GC 46 ASSESSMENT AND DAMAGES FOR LATE COMPLETION

- 46.1 For purposes of this General Condition

- a) The Work shall be deemed to be completed on the date that a Certificate of Substantial Performance referred to in GC 21.6 is issued, and
- b) "Period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the Work and ending on the day immediately preceding the day on which the Work is completed but does not include any day in which, in the opinion of the Owner, completion of the Work was delayed for reasons beyond the control of the Contractor.
- 46.2 If the Contractor does not complete the Work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the contractor shall pay the Owner for liquidated damages.
- 46.3 The Liquidated Damage Daily Rate has been determined as the total of the department's costs associated with maintaining a presence and carrying out typical contract administration duties on the project which includes, but has not been limited to the following: salaries including overtime, for the staff complement on the project, travel costs for the normal staff complement on the project, vehicle rental charges, fuel for vehicles, and other equipment rental charges, such as internal survey equipment, which may be utilized on the project.
- 46.4 Depending on the scope of work, there may be other direct or indirect costs to the department, which will also be deemed to be recoverable as supplemental liquidated damages including but not limited to consulting, third parties, etc. These other costs shall be quantified and considered as additional to the Liquidated Damage Daily Rate noted above.
- 46.5 No bonus will be assessed for completing the project ahead of the given Liquidated Damages Application date.

GENERAL CONDITIONS OF CONTRACT

- 46.6 Contractors, by submission of their Bid, shall be deemed to have accepted these terms and agree to the Liquidated Damage Daily Rate as being a genuine reasonable pre-estimate of costs, or loss to the Department, for contract administration.
- 46.7 Liquidated damages will be applied to the contract payment at the per diem amount specified for each calendar day of the Period of Delay, as defined above, not as a penalty but as Liquidated Damages. It will apply until work is considered no longer feasible in the construction season or the work is completed according to the definition of Substantial Performance. Paving work will be considered no longer feasible when asphalt paving is terminated by the Department's Highway Specifications or an approved end of paving season extension date as communicated by the Department. Liquidated damages in a subsequent construction season will apply from the day after the Victoria Day holiday to when work is completed according to the definition of Substantial Performance.
- 46.8 In event that a Contractor is awarded multiple contracts by Government within a construction season, Government reserves the right in its sole discretion to amend the Liquidated Damages Application Date if an approved amended execution plan and/or schedule allows more effective and efficient execution of all related multiple Contracts.

GC 47 CERTIFICATE OF RECOGNITION FOR CONTRACTS

- 47.1 The Contractor shall, at the time of bid submission, submit a Letter of Good Standing stating Certificate of Recognition (COR) certified from the Newfoundland and Labrador Construction Safety Association (NLCSA), or equivalent. The Letter of Good Standing stating COR Certified must be valid at the Submission Deadline (Closing Date).
- 47.2 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by any or all of their Subcontractors.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
for use when a Bid Price forms the
basis of payment and to be used only
with the Contract Documents of the Contract**

THIS AGREEMENT made on the ____ day of _____ in the year two thousand and

BY AND BETWEEN

hereinafter called the "Owner"

AND

hereinafter called the "Contractor"

WITNESSETH: that the Owner and Contractor undertake and agree as follows:

ARTICLE 1: THE WORK

The Contractor shall:

- (a) perform all the Work required by the Contract Documents for _____ which have been signed by both the parties,
- (b) do and fulfil everything indicated by this Agreement, and
- (c) commence the Work by the ____ day of _____, 20__ and substantially perform the Work of this Contract as certified by the Owner's Representative by the ____ day of _____, 20__.

ARTICLE 2: CONTRACT DOCUMENTS

The following is an exact list of the Contract Documents referred to in Article A-1: (SEE SPECIFICATION INDEX FOR LIST OF DOCUMENTS AND DRAWINGS). **See Attached**

ARTICLE 3: CONTRACT PRICE

THE CONTRACT PRICE IS \$

(HST INCLUDED) Canadian funds which price shall be subject to adjustments as may be required in accordance with the General Conditions of the Contract.

ARTICLE 4: PAYMENT

- (a) Subject to applicable legislation and, where such legislation does not exist or apply, in accordance with such prescribed regulations or industry practice respecting holdback percentages and in accordance with the provisions of the General Conditions of the Contract, the Owner shall:
- (1) make monthly payments to the Contractor on account of the Contract Price. The amounts of such payments shall be as certified by the Owner; and
 - (2) upon Substantial Performance of the work as certified by the Owner pay to the contractor any unpaid balance of holdback monies then due; and
 - (3) upon Total Performance of the Work as certified by the Owner pay to the contractor any unpaid balance of the Contract Price then due.
- (b) If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract or in any award by a court, interest at the rate and in the manner specified in GC21-Certificates and Payments, shall become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

ARTICLE 5: ADDRESSES FOR NOTICES

All communications in writing between the parties or between them and the Owner shall be deemed to have been received by the addressee if delivered to the individual or to a member of the firm or to an officer of the Corporation for whom they are intended or if sent by post addressed as follows:

The Owner at: _____

The Contractor at: _____

ARTICLE 6: SUCCESSION

The General Conditions of the Contract hereto annexed, and all other aforesaid Contract Documents, are all to be read into and form part of this Agreement and the whole shall constitute the Contract between the parties and subject to law and the provisions of the Contract Documents shall ensure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers hereunto duly authorized.

SIGNED, SEALED AND DELIVERED

in the presence of:

OWNER:

CONTRACTOR

signed

signed

name and title

name and title

date

signed / witnessed

name and title

date

N.B. Where any legal jurisdiction, local practice or client requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the Corporation or Partnership, should be attached.

CONTRACT PERFORMANCE EVALUATION FORM



Contract Performance Evaluation

TI Project No: _____ **Contract No:** _____ **Contractor:** _____
Project Title: _____
Contract Award Date: _____ **Contract Award Amount:** _____
Contractual Substantial Completion Date: _____ **Final Contract Value:** _____
Actual Substantial Completion Date: _____ **Final Completion Date:** _____

If any category receives a rating below the minimum required, a written explanation with examples must be provided.

Categories for Evaluation	Weight (W)	Rating (R) (0-10)	Total Points (W x R)	Minimum Required	Comments
PROJECT EXECUTION & TIMELINESS			25		
Developed a suitable schedule for the work	0.00	0			
Collaborated and communicated with TI for effective project scheduling	0.00	0			
Assigned sufficient resources for efficiency and productivity	0.00	0			
Scheduled milestones were met in accordance with the contract; including the completion date	0.00	0			
Identified project risks and developed contingencies and mitigations	0.00	0			
SUBTOTAL:			0.0	15	
ADMINISTRATION & MANAGEMENT			25		
Documentation submissions were accurate, timely and complete with supporting information as required	0.00	0			
Effectively coordinated work with sub-contractors, sub-consultants, TI, clients, regulatory authorities and others as appropriate	0.00	0			
Timely cooperation and responsiveness to identified issues	0.00	0			
Changes managed appropriately	0.00	0			
Showed diligence in completing any final deficiencies	0.00	0			
Project team is respectful to TI and stakeholders	0.00	0			
SUBTOTAL:			0.0	15	
QUALITY OF WORK			25		
Deliverables met or exceeded contract requirements	0.00	0			
Industry standards/best practices followed	0.00	0			
Minimum rejected work or requirement for re-work	0.00	0			
Commissioning and closeout were effective	0.00	0			
SUBTOTAL:			0.0	15	
SAFETY & ENVIRONMENTAL COMPLIANCE			25		
Site Specific Safety Plan was relevant, followed and updated as necessary	0.00	0			
Appropriate implementation of incident reporting, incident investigation, and corrective actions	0.00	0			
Adherence to OH&S Acts & Regulations and TI OH&S Program	0.00	0			
Appropriate PPE was used consistently and correctly	0.00	0			
Demonstrated commitment to safety by leadership	0.00	0			
Attendance & safety monitoring by Contractor Safety Representative / Site Supervisor	0.00	0			
Sub-trade, sub-consultant adherence to Site Specific Safety Plan	0.00	0			
Demonstrated and promoted environmental awareness	0.00	0			
Obtained permits and adhered to regulations	0.00	0			
Hazardous materials stored and labeled correctly	0.00	0			
Waste management procedures followed correctly	0.00	0			
SUBTOTAL:			0.0	15	
FINAL SCORE (All Categories):			0.0	60	

Overall Rating : FAIL

The undersigned fully understands and agrees that:

- This evaluation represents, to the best of TI's knowledge, a true and accurate analysis of the contractor's performance on the contract;
- This evaluation and/or the project rating were not negotiated with the Contractor but have been communicated to the Contractor Representative
- Failing to meet the minimum score per category and/or overall may result in bidding privileges being suspended or revoked

TI Project Manager **Date**

TI Regional Engineer **Date**

Director, Building Design and Construction **Date**

In the event the Contractor disputes the rating, the Contractor must notify the Regional Engineer in writing within 10 days of receipt of the completed Contract Performance Evaluation form. It is the Contractor's responsibility to explain the item(s) that are in dispute and present relevant justification for their argument.

CERTIFICATE OF INSURANCE

DESCRIPTION & LOCATION OF WORK:				
PROJECT NO:		AWARD DATE:		VALUE \$:
INSURER:				
ADDRESS:				
BROKER:				
ADDRESS:				
INSURED NAME OF CONTRACTOR:				
ADDRESS:				
ADDITIONAL INSURED (Excluding Automobile Liability Policy) ✓ The OWNER: His Majesty the King in Right of the Province of NL as represented by the Minister of Transportation & Infrastructure. Dept. of Transportation & Infrastructure, P.O. Box 8700, St. John's, NL., A1B 4J6, Attn: Tendering & Contracts ✓ The Occupant/Operator of the Property: ✓ Project Consultants of the OWNER (excluding professional liabilities)				
This document certifies that the following policies of insurance and indicated coverage are at present in force subject to the terms, conditions and exclusions as contained therein covering the operations of the insured in connection with the above noted contract made between the named insured and the Owner.				
POLICY TYPE	NUMBER	INCEPTION DATE	EXPIRY DATE Y/M/D	LIMITS OF LIABILITY
1.1 COMMERCIAL GENERAL LIABILITY or 1.2 WRAP-UP LIABILITY (Including where indicated) A. BLASTING B. PILE DRIVING OR CAISSON WORK C. REMOVAL OR WEAKENING OF SUPPORT				\$5,000,000 Minimum
2A. BUILDERS' RISK "BROAD FORM" or 2B. INSTALLATION FLOATER "BROAD FORM" or 2C. PIERS, WHARVES, & DOCKS RIDER				100% Contract Value if Exceeds \$25,000
3. AUTOMOBILE LIABILITY INSURANCE				\$2,000,000 Minimum
4. AIRCRAFT and/or WATER CRAFT LIABILITY INSURANCE	Not required			
5. FIRST and THIRD PARTY CONTRACTOR'S ENVIRONMENTAL IMPAIRMENT LIABILITY				\$2,000,000 Minimum
6. SHIPBUILDER'S or SHIP REPAIRER'S LIABILITY INSURANCE	Not required			
7. HULL & MACHINERY INSURANCE, and PROTECTION & INDEMNITY Insurance including 4/4 th COLLISION LIABILITY	Not required			
8. CYBER LIABILITY	Not required			
The Insurer agrees to notify the Owner, as defined above, in writing, thirty (30) days prior to cancellation, termination or material change of any policy. Maximum deductible for any coverages to be \$5,000.				
NAME OF INSURER'S OFFICER or AUTHORIZED REPRESENTATIVE :	SIGNATURE:		Date:	
			Tele:	
			Email:	
Issuance of this certificate shall not limit or restrict the right of the Owner to request at any time duplicate certified copies of said insurance policies.				