

DOMESTIC CONTRACT

THIS CONTRACT made

BETWEEN:

CANADIAN COMMERCIAL CORPORATION, a Crown Corporation having its head office in the City of Ottawa, Ontario (hereinafter called "**CCC**")

OF THE FIRST PART

AND:

.....
company incorporated pursuant to the laws of,
having its head office in the City of, Province of,
(hereinafter called "**the Supplier**")

OF THE SECOND PART

concerning the(the "**Project**").

WHEREAS CCC's mandate includes assistance in the development of trade between Canada and other nations, and more particularly assistance to persons in Canada in the export of goods and services from Canada;

AND WHEREAS the Supplier had requested CCC's involvement in the Project to facilitate the award of the related export contract to the Supplier;

AND WHEREAS, at the Supplier's request, CCC has entered into a contract ("the **Prime Contract**") with("the **Purchaser**") for

AND WHEREAS the Supplier is in agreement with all the terms, undertakings and conditions contained in the Prime Contract and unconditionally agrees to perform all the obligations, undertakings and responsibilities on the part of CCC resulting from its entering into the Prime Contract;

NOW THEREFORE, the Parties hereto agree as follows:

ARTICLE 1 - COVENANTS OF THE SUPPLIER

- 1.1** The Supplier covenants and undertakes to perform and be responsible for each and every obligation, undertaking and responsibility in the same manner and to the same extent as each such obligation, undertaking and responsibility is imposed upon or undertaken by CCC in the Prime Contract.

ARTICLE 2 - PRIME CONTRACT

- 2.1** The Parties agree that the Prime Contract, attached hereto as Annex “A”, forms an integral part of this contract as fully as if it were set forth herein in its entirety and, as between the Parties, shall be interpreted and applied, with such changes as the context requires.
- 2.2** CCC shall not agree to changes to the Prime Contract without the prior written consent of the Supplier.

ARTICLE 3 - CONTRACT DOCUMENTS

- 3.1** This Domestic Contract shall consist of this agreement and the following Appendices attached hereto:

Annex “A”	the Prime Contract
Annex “B”	CCC General Conditions - Domestic Contract
Annex “C”	Contract Award Management Fee
Annex “D”	Supplemental Conditions

ARTICLE 4 - ENTRY INTO FORCE

- 4.1** This Domestic Contract shall come into full force and effect on the later of:
- (a) the execution of this Domestic Contract by the Parties and
 - (b) the Prime Contract coming into effect.

IN WITNESS WHEREOF this Domestic Contract has been executed by the duly authorized officers of the Parties.

CANADIAN COMMERCIAL CORPORATION

By: _____

Date: _____

[SUPPLIER]

By: _____

Date: _____

ANNEX "A"

This is Annex "A" to the Domestic Contract between the Canadian Commercial Corporation and, dated the day of , 200 .

PRIME CONTRACT

ANNEX "B"

This is Annex “B” to the Domestic Contract between the **Canadian Commercial Corporation** and, dated the day of , 200 .

CCC GENERAL CONDITIONS - DOMESTIC CONTRACT

Article 1 - Performance of the Work

- 1.1 In the performance of CCC’s obligations, undertakings and responsibilities under the Prime Contract, the Supplier shall exercise all proper and professional skill, care and diligence, shall provide efficient supervision and inspection of the work and shall ensure that the work and material are of high quality and satisfy in all respects the requirements of the Prime Contract.
- 1.2 CCC does not guarantee to the Supplier the performance of any of the obligations of the Purchaser under the Prime Contract.

Article 2 - Price and Payment

- 2.1 The Supplier shall pay to CCC the Contract Award Management Fee, specified in Annex C attached hereto, in accordance with Article 2.4 herein.
- 2.2 Subject to Articles 2.1 and 2.4 herein, in consideration of the performance by the Supplier of all its obligations under Article 1, the Supplier shall be paid all amounts payable by the Purchaser to CCC pursuant to the Prime Contract. These payments shall be made by CCC, provided that:
 - (a) the Supplier has met the requirements, terms and conditions of the Prime Contract;
 - (b) the Supplier has provided CCC with appropriate invoices together with the related supporting documentation, to be submitted by CCC to the Purchaser;
 - (c) good and sufficient evidence is produced by the Supplier, and its suppliers and sub-tier subcontractors, proving that the work in progress is free from all liens and claims chargeable to the said Supplier; and
 - (d) the related payments under the Prime Contract have been received by CCC. At no time shall CCC be required to pay to the Supplier any amount in excess of those amounts actually received from the Purchaser.
- 2.3 Unless otherwise agreed, payments by CCC to the Supplier shall be made within five (5) business days of receipt by CCC of the related funds under the Prime Contract.

- 2.4 CCC shall deduct from the amount payable to the Supplier all of the following amounts:
- a) the Contract Award Management Fee owing to CCC by the Supplier;
 - b) all transfer and banking charges assumed by CCC, and
 - c) any other amounts that may be due and payable to CCC by the Supplier, including, without limitation, any amounts owing under the Services Agreement.
- 2.5 CCC may, at its discretion, require the Supplier to provide from time to time evidence that its accounts with its subcontractors and suppliers are current with respect to its own terms of payment with such subcontractors and suppliers.
- 2.6 Unless otherwise agreed, payments by CCC to the Supplier under this Domestic Contract will be made in the same currency as payments are made to CCC under the Prime Contract.

Article 3 - Claims and Disbursements under the Prime Contract

- 3.1 In the event that the Supplier asserts a claim to the effect that the Purchaser is in default of its obligations under the Prime Contract, CCC will assert an identical claim against the Purchaser under the Prime Contract, pursuant to the provisions thereof (including those pertaining to Disputes), and the Supplier shall, to the extent permitted by law, participate and play the leading role in any resulting proceedings under the Prime Contract as if the claim was its own. CCC shall obtain instructions from the Supplier as are required from time to time by CCC to pursue claims under the Prime Contract. The Supplier shall assume all legal fees and disbursements incurred by CCC in advancing the claim.
- 3.2 In the event that the Purchaser asserts a claim or counterclaim against CCC or commences litigation or other dispute proceedings under the Prime Contract, CCC shall promptly notify the Supplier of the same and the Supplier shall provide instructions as to the position that should be taken on behalf of CCC. The Supplier shall, to the extent permitted by law, participate and play the leading role in all resultant settlement meetings and disputes proceedings. The Supplier agrees to assume any and all liabilities imposed on CCC under the Prime Contract, including but not limited to all legal fees and disbursements incurred by CCC in defending the proceedings, and to be bound by, and to give prompt effect to, any decision or finding rendered against CCC pursuant to the Prime Contract.
- 3.3 All disbursements, including those pertaining to bonds and guarantees, required from CCC in relation to the implementation of the Prime Contract shall be effected by the Supplier on CCC's behalf. In cases where such disbursements are not effected by the Supplier in a timely manner and CCC agrees to make such disbursements or part thereof to avoid CCC from being found in default under the Prime Contract, these disbursements shall be immediately reimbursed by the Supplier to CCC upon notification by CCC.

Article 4 - Disputes under this Domestic Contract

- 4.1 While disputes between CCC and the Purchaser are governed by the provisions of the Prime Contract, in the event of any dispute between the Supplier and CCC under this Domestic Contract, the Parties shall attempt to settle the matter amicably. In the event that the matter is not so settled and either Party wishes to pursue the matter further, it shall be referred to arbitration in accordance with the *Commercial Arbitration Act* (R.S.C.1985, c.17, 2nd Supp.). The arbitration decision shall be final and binding upon both Parties.

Article 5 - Indemnification

- 5.1 The Supplier hereby agrees to indemnify and hold harmless CCC from and against any loss, liability, costs, claims, demands, proceedings, taxes, charges, fines, sanctions, penalties and expenses of whatsoever nature or kind, arising, suffered or incurred by CCC as a result of CCC's entering into the Prime Contract and into this Domestic Contract.

Article 6 - No partnership, joint venture or joint enterprise

- 6.1 The Parties hereto expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Domestic Contract nor any acts of either CCC or the Supplier shall constitute or be deemed to constitute CCC and the Supplier as partners, joint venturers or principal and agent in any way for any purpose. The Supplier shall not represent itself or hold itself out to be an agent of CCC. Neither Party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other Party hereto without the prior written consent of the other Party.

Article 7 - Security Interests, including liens under the *Bank Act*

- 7.1 If any security interest exists in respect of the work for which the Supplier claims or intends to claim payment, including but not limited to a lien under Section 427 of the *Bank Act*, the Supplier hereby agrees to inform CCC of such security interest without delay and further agrees, unless otherwise instructed by notice from CCC, either
- (a) to cause the security interest to be removed and to furnish CCC with written confirmation of such removal or
 - (b) to cause the holder of the security interest to furnish in respect of the work for which payment is made or is to be made to the Supplier under this Domestic Contract either
 - (i) a postponement or subordination of interest or
 - (ii) a formal written and binding undertaking that it will not make any claim upon the work.
- 7.2 Failure of the Supplier to abide by the terms of section 7.1 shall entitle CCC to terminate this Domestic Contract for default.

Article 8 - Accounts and Audits

- 8.1 The Supplier shall keep proper and detailed accounts and records with respect to its business, including keeping proper and detailed accounts and records solely relating to this Domestic Contract. All such accounts and records, including supporting documents, shall be open to audit and inspection by the authorized representatives of CCC who may make copies thereof and take extracts therefrom.
- 8.2 The Supplier shall afford all reasonable facilities for such audits and inspection by such representatives and furnish CCC and its authorized representatives with all such information as it or they may from time to time require with reference to such accounts and records.
- 8.3 Such accounts and records shall be kept available by the Supplier for six years from the completion of the work.

Article 9 – Insurance

- 9.1 In addition to other coverages specified in this Article 9, the Supplier shall place and maintain all insurance coverages required under the Prime Contract.
- 9.2 The Supplier shall place, or have placed, all risks property insurance on the value of the raw materials and/or work in process, and/or finished goods which from time to time represent the unliquidated, advance or progress payment made to the Supplier pursuant to this Domestic Contract. Notwithstanding the unliquidated, advance or progress payments provided for herein, the risk in, and responsibility for, the articles, equipment, goods and materials or part thereof covered by this Domestic Contract shall remain with the Supplier until passed to the Purchaser as specified in the Prime Contract.
- 9.3 The Supplier shall maintain commercial general liability insurance in the amount not less than CAD \$ 3 million in respect of this Project. The Supplier agrees, upon the request of CCC, to increase this amount due to the size and nature of the Project. CCC agrees to consider requests from the Supplier to reduce this amount due to the size and nature of the Project.
- 9.4 If the Project involves construction or installation at the site of the Purchaser, the Supplier agrees to place all builders' risk insurance and errors and omissions insurance in amounts satisfactory to CCC.
- 9.5 The Supplier agrees that it shall cause such insurance policy or policies to be made payable to the Supplier and CCC as their respective interests may appear and agrees to provide CCC with a copy of such policies.

Article 10 - Progress Reports

- 10.1 The Supplier shall communicate in writing on a monthly basis to CCC describing its progress under this Domestic Contract, including a full description of any actual or anticipated problems or delays and the proposed resolution thereof. CCC may specify to the Supplier the nature and content of these communications.

Article 11 - Access to Work

- 11.1 CCC's authorized representatives shall upon reasonable advance notice have access to the work and to the plant, facilities and premises of the Supplier where any part of the work is being performed, to verify if the requirements of the Prime Contract are being met.

Article 12 - Corruption

- 12.1 The Supplier warrants that no bribe, gift or other inducement has been paid, promised or offered to any official or employee of CCC or Her Majesty in right of Canada for, or with a view to, the entering into this Domestic Contract.
- 12.2 The Supplier warrants that it has not contravened and will not contravene the *Corruption of Foreign Public Officials Act* (S.C. 1998, c. 34) in relation to the Prime Contract.

Article 13 - Authorized Representatives

- 13.1 Each Party shall appoint a representative to serve as points of contact, and notify, in writing, the other Party of the appointee. In the absence of such notification, the authorized representatives shall be the persons specified in the Article 18 herein.

Article 14 - Amendments to the Prime Contract

- 14.1 CCC shall not amend the Prime Contract without the prior written consent of the Supplier, and any such amendment shall automatically be considered an amendment to Annex "A".

Article 15 - Termination

- 15.1 The Supplier acknowledges and agrees that this Domestic Contract shall automatically terminate upon termination of the Prime Contract, and under the same conditions thereof. In such a case, the amount payable to or by the Supplier as a result of such termination shall be the same as the amount paid to CCC or to be paid by CCC as a result of the termination under the Prime Contract.
- 15.2 In the event that
- (a) the Supplier is in default under this Domestic Contract,
 - (b) the Supplier becomes bankrupt or insolvent or has a receiving order under the *Bankruptcy and Insolvency Act* made against it or makes an assignment for the benefit of its creditors,
 - (c) an order is made or resolution passed for the winding up of the Supplier or if the Supplier takes the benefit of any statute relating to bankrupt or insolvent debtors, or
 - (d) the Supplier is in default of its payment obligations to its suppliers or sub-contractors in respect of this Project,

CCC may, at its option, by notice in writing to the Supplier, terminate this Domestic Contract in part or in its entirety, and exercise all remedies available to it at law or in equity, including claims for all damages and loss suffered by CCC as a result of such event of default.

Article 16 - Confidentiality

- 16.1 Each Party shall use all information regarding the other Party's business which the other Party has identified as being of a proprietary or confidential nature, solely for the purpose of this Domestic Contract. Such information shall be kept confidential for an unlimited period of time and shall not be disclosed except for the purpose of the Project, unless the prior written consent to disclosure of the Party who has supplied the information is obtained or the disclosure is legally required.

Article 17 - Assignment

- 17.1 This Domestic Contract shall not be assigned in whole or in part by either Party without the express prior consent in writing of the other Party.

Article 18 – Notices

- 18.1 Any notice from one Party to the other shall be in writing and shall be delivered to their representatives at the following addresses:

CCC : CANADIAN COMMERCIAL CORPORATION
50 O'Connor Street - Suite 1100
Ottawa, Ontario K1A 0S6

Attention:
Tel: (613)
Fax: (613) 995-2121

Supplier:

Notices may be sent by facsimile, registered mail or electronic mail with return receipt. Notices sent by facsimile shall be deemed to be received on the day they were sent. Notice sent by registered mail shall be deemed to be received on the fifth business day after the date of mailing. Notices sent by electronic mail with return receipt shall be deemed to be received on the date they were opened by the recipient.

- 18.2 Either Party may change its address or the name of its contact person by written notice to the other Party.
- 18.3 Each Party shall inform the other Party promptly of any notices it receives from or on behalf of the Purchaser under the Prime Contract.

Article 19 - Entire Agreement

- 19.1 This Domestic Contract constitutes the entire agreement between the Supplier and CCC pertaining to the Project and supersedes all previous agreements, negotiations and documents pertaining thereto.

Article 20 - Applicable Law

- 20.1 The Prime Contract shall be interpreted in accordance with its own applicable law provisions. Any other element of this Domestic Contract shall be interpreted in accordance with the applicable laws in force in the province of Ontario and the federal laws of Canada.

Article 21 - Export Permits

- 21.1 The Supplier shall obtain, on behalf of CCC, any necessary export permits, licences or other documents required by any Canadian governmental authorities or other governmental authorities related to the Prime Contract. CCC will participate in the exercise as technically required.

Article 22 - GST Clause

- 22.1 The goods and services to be supplied to CCC by the Supplier under this Domestic Contract are intended for export from Canada and as such would constitute a "zero-rated supply" as this expression is defined in Part IX of the *Excise Tax Act*. The Goods and Services Tax should not therefore as a rule be added to the value of these goods and services. The Supplier shall maintain evidence satisfactory to the Canada Customs and Revenue Agency that these goods and services have been exported by CCC.

Article 23 - Waiver

- 23.1 A waiver of the breach of any provision of this Domestic Contract shall not be binding upon either Party, unless it is in writing and signed by the waiving Party and delivered to the other Party. A waiver by a Party of any provision of this Domestic Contract shall not constitute a continuing waiver, or a waiver of one or any of the other provisions, unless such waiver shall specifically provide otherwise.
- 23.2 Payments to the Supplier shall not constitute evidence that the Supplier's related obligations under this Domestic Contract have been performed.

Article 24 - International Sanctions

- 24.1 In compliance with its international obligations or with United Nations obligations Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under the *United Nations Act*, the *Special Economic Measures Act* (SEMA), or the *Export and Import Permits Act*. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative.

- 24.2 The Supplier agrees that it will comply with any such regulations that are in force on the effective date of the Domestic Contract and will require such compliance by its first-tier subcontractors. CCC relies on such undertaking from the Supplier to enter into this Domestic Contract, and any breach of such undertaking shall entitle CCC to terminate this Domestic Contract for default, and to recover damages from the Supplier, including excess procurement costs.

Article 25 - Invalid Provisions

- 25.1 If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity illegality or unenforceability shall not affect any other provisions of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.

Article 26 – Enurement

- 26.1 This Domestic Contract shall enure to the benefit of and be binding upon the Supplier and CCC and their respective successors and permitted assigns.

Article 27 - Counterparts

- 27.1 This Domestic Contract may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constituted one and the same instrument.

Article 28 - Survival of Terms

- 28.1 The provisions of Articles 3, 4, 5, 16 and 20 of these General Conditions shall survive termination of this Domestic Contract.

ANNEX "C"

This is Annex "C" to the Domestic Contract between the **Canadian Commercial Corporation** and, dated the day of , 200 .

CONTRACT AWARD MANAGEMENT FEE

1. In consideration of CCC entering into the Prime Contract, the Supplier agrees to pay to CCC ____ per cent (___%) of the value of the payments to be made by CCC to the Supplier under the Domestic Contract.
2. In addition to the fees set out in Section 1, in the event that the Prime Contract is not completed on time for reasons attributable to the Supplier, the Supplier agrees that CCC may bill the Supplier for CCC fees (on an hourly or per diem basis) and disbursements when the time for completion of the Project under the Prime Contract has been exceeded by 25%. The Supplier shall pay CCC for the fees and disbursements no later than 30 days from the date of the invoice issued by CCC.

ANNEX “D”

This is Annex “D” to the Domestic Contract between the **Canadian Commercial Corporation** and, dated the day of , 200 .

SUPPLEMENTAL CONDITIONS

In the event and to the extent of inconsistencies, these Supplemental Conditions shall have precedence over CCC General Conditions - Domestic Contracts

[To be determined].