

ARTICLES OF AGREEMENT

These Articles of Agreement made in duplicate this, day of

Between

The Government of the Yukon (referred to in the contract documents as "the Owner") represented by the Executive Council Member for Community and Transportation Services (referred to in the contract documents as the "Minister").

and

(referred to in the contract documents as the "Contractor")

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

A1 Contract Documents

1.1 Subject to A1.4 and A1.5 the documents forming the contract between the Owner and the Contractor, referred to herein as the contract documents, are

- .1 these Articles of Agreement,
- .2 the document attached hereto, marked "A" and entitled "Instructions to Tenderers" except to the extent that the Instructions to Tenderers is inconsistent with the remainder of this Agreement, in which case the latter shall prevail,
- .3 the document attached hereto, marked "B" and entitled "Supplementary General Conditions", referred to herein as the Supplementary General Conditions,
- .4 the document attached hereto, marked "C" and entitled "General Conditions", referred to herein as the General Conditions,
- .5 the document attached hereto, marked "D" and entitled "Insurance Conditions", referred to herein as the Insurance Conditions,
- .6 the document attached hereto, marked "E" and entitled "Contract Security Conditions", referred to herein as the Contract Security Conditions,
- .7 the document attached hereto, marked "F" and entitled "Business Incentive Policy", referred to herein as the Business Incentive Policy,
- .8 the document attached hereto, marked "G" and entitled "Fair Wage Schedule", referred to herein as the Fair Wage Schedule.
- .9 the document attached hereto, marked "H" and entitled "Terms of Payment", referred to herein as the Terms of Payment,
- .10 the documents attached hereto, marked "I" and entitled "Plans and Specifications", referred to herein as the Plans and Specifications,

- .11 the documents attached hereto, marked "J" and entitled "Tender Forms", and
 - .12 any amendment or variation of the contract documents that is made in accordance with the General Conditions.
- 1.2 The Minister hereby designates the **Manager, Design and Construction** of the Department of Community and Transportation Services as the Engineer for the purposes of the contract.
- .1 For the purposes of or incidental to the contract, the Engineer's address shall be deemed to be:

**Transportation Engineering Branch
Community and Transportation Services
P.O. Box 2703
Whitehorse, Yukon Y1A 2C6**

- 1.3 In the Contract
- .1 "Fixed Price Arrangement" means that part of the contract that prescribes a lump sum as payment for performance of the work to which it relates; and
 - .2 "Unit Price Arrangement" means that part of the contract that prescribes the product of a price multiplied by a number of units of measurement of a class as payment for performance of the work to which it relates.
- 1.4 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Unit Price Arrangement are not applicable to any part of the work to which a Fixed Price Arrangement is applicable.
- 1.5 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Fixed Price Arrangement are not applicable to any part of the work to which a Unit Price Arrangement is applicable.

A2 Date of Completion of Work and Description of Work

- 2.1 The Contractor shall, between the date of these Articles of Agreement and the **day of** _____, **19** _____, in a careful and professional manner, diligently perform and complete the following work:

which is described in the Plans and Specifications.

A3 Contract Amount

- 3.1 Subject to any increase, decrease, deduction, reduction or set-off that may be made under the contract, the Owner shall pay the Contractor at the times and in the manner that is set out or referred to in the Terms of Payment.
- .1 the sum of \$ _____ in consideration for the performance of the work that is subject to a Fixed Price Arrangement, and

.2 a sum that is equal to the aggregate of the products of the number of units of measurement of each class of labour, plant and material that is set out in The Final Cost Breakdown referred to in GC38.8 multiplied in each case by the appropriate unit price that is set out in the Unit Price Table in consideration for the performance of the work that is subject to a Unit Price Arrangement.

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

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

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

A4 Contractor's Address

4.1 For all purposes of or incidental to the contract, the Contractor's address shall be deemed to be:

A5 Unit Price Table

5.1 The Owner and the Contractor agree that the following table is the Unit Price Table for the purpose of the contract:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Class of labour, plant or material	Unit of Measurement	Price Per Unit	Estimated Total Quantity	Estimated Total Price

For unit prices and quantities, see Attachment "J" Tender Form #1 of the contractor's tender submission. These pages form part of this contract.

5.2 The Unit Price Table that is set out in A5.1 designates the part of the work to which a Unit Price Arrangement is applicable.

5.3 The part of the work that is not designated in the Unit Price Table referred to in A5.2 is the part of the work to which a Fixed Price Arrangement is applicable.

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

Section 24(2) of the Financial Administration Act of the Government of the Yukon applies and reads as follows:

"It is a term of every contract that money that becomes due under the contract is not payable unless a provision of this or another Act authorizes the payment to be made in the fiscal year when the payment falls due.

SIGNED, SEALED AND DELIVERED

BY:
Government of The Yukon (owner)

IN THE PRESENCE OF:

(signature)

(witness)

(name - please print)

(name - please print)

(title)

(date)

Contractor:

(signature)

(name - please print)

(seal)

(title)

(signature)

(witness)

(name - please print)

(name - please print)

(title)

(date)

INSTRUCTIONS TO TENDERERS - "A"

1 Tender Forms

- 1.1 Tenders must be submitted on the Forms of Tender provided, enclosed and sealed in an envelope and mailed or hand delivered to:

**Government of the Yukon
Contract Administrator
2nd Floor, 4141 - 4th Avenue
P.O. Box 2703
Whitehorse, Yukon Y1A 2C6**

- 1.2 The tenderer shall identify, on the envelope containing the bid, his/her name and address and the name of the tender to which it applies.
- 1.3 The tender shall not contain any recapitulation of the work to be done. The tenderer shall tender the complete job as described by the contract documents. All blank spaces in the Tender Forms shall be filled. Erasures or corrections must be initialled by the person or persons signing the tender.
- 1.4 The tenderer who wishes to verify that his/her tender has been received prior to tender closing time, may do so by telephoning the Contract Administration Office at (867) 667-5481. The tenderer must state his/her company name before this information can be released. No other information concerning tenders will be released under any circumstances prior to tender opening.
- 1.5 The tenderer who wishes to withdraw a tender from consideration may do so by submitting a written withdrawal letter to the same address to which the tender was submitted, prior to tender closing time and the tender will be returned to the tenderer intact.

2 Acceptance of Tenders

- 2.1 The Government of the Yukon (Owner) need not necessarily accept the lowest or any tender and reserves the right to reject or accept any tenders.
- 2.2 In order to be considered, tenders must be received before the specified time. Tenders received after this time will not be considered regardless of the reason for their being late, and will be returned to the tenderer unopened.
- 2.3 Tenders may be amended or revoked by giving written notice, delivered by hand, postal mail, or facsimile to the address in 1.1 prior to the specified closing time for delivery of tenders. FAX (867) 393-6245.
- 2.4 A facsimile from a party tendering a price will not be considered. However, where a formal tender has been received before the specified time, amendments to the tender price by facsimile are acceptable as specified in 2.3.
- 2.5 Any tenderer, his/her agent or representative may attend the opening of tenders.

3 Tender Security

3.1 The Contractor shall submit with the tender:

- .1 where the tender amount is \$500,000 or more, a Bid Bond in the amount of 10% of the tender amount with a "Consent of Surety" forming part thereof and which provides that the surety will issue a Performance Bond and a Labour and Material Payment Bond, each for not less than 50% of the tender amount; OR
- .2 where the tender amount is less than \$500,000, a Bid Bond and a Consent of Surety as described in 3.1.1 or tender security, payable to the Government of the Yukon, in the form of cash, a Canadian postal money order, certified check, an assignable redeemable term deposit, bank draft, bearer or assignable bonds of the Government of Canada or of a Canadian provincial government or irrevocable letter of guaranteed credit acceptable to the Owner, in an amount not less than 10% of the tender amount.

4 Acceptance Period

- 4.1 Where a contract is awarded within thirty (30) days after closing of tenders, the Contractor shall execute the Contract or forfeit the tender security.
- 4.2 Where a contract is awarded within sixty (60) days after the closing of tenders for projects carried out by the Government of the Yukon on behalf of the Government of Canada, the Contractor shall execute the Contract or forfeit the tender security.

5 Insurance

- 5.1 The Contractor shall be required to provide insurance as described in **attachment "D"** to the contract documents.

6 Goods and Services Tax

- 6.1 This is to certify that the property and/or services ordered/purchased hereby are for the use of, and are being purchased by the Government of the Yukon with crown funds, and are therefore not subject to the Goods and Services Tax.
- 6.2 It shall be the responsibility of the contractor to apply directly to Revenue Canada for Input Tax Credits on any Goods and Services Tax paid.

7 Yukon Acts

- 7.1 All contracts with the Government of the Yukon are subject to the conditions and provisions of the Employment Standards Act, the Workers' Compensation Act, and any regulations thereunder, as amended from time to time. Particular attention should be paid to the "Fair Wage Schedule" included in these documents, issued by the Department of Labour for the Yukon and amended from time to time. Section 96(1) and 96(2) of the Employment Standards Act reads as follows:

"96(1)) Where an employer has a contract for the performance of a public work of the Yukon, he shall pay his employees who are engaged on or in connection with that public work not less than the prevailing wage rate applicable to the work performed by his employees as that rate is set out in an applicable schedule of wage rates, established by the board with the approval of the Commissioner in Executive Council.

96(2) The schedule of wage rates may contain rates payable to apprentices by reference to the Apprentice Training Act and regulations, or otherwise."

7.2 Prior to commencing the work and prior to receiving payment for Substantial or Total Performance of the work, the Contractor shall provide evidence of compliance with the requirements of the Workers' Compensation Act including payments due thereunder.

7.3 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by themselves and their Subcontractors.

8 Municipal Regulations and Permits

8.1 Before entering into a contract, the Contractor shall provide to the Owner proof of an appropriate business licence.

GENERAL CONDITIONS "C"

Contents

Article No.	Article	Page
GC1	Interpretation	3
GC2	Successors and Assigns	4
GC3	Assignment of Contract	4
GC4	Subcontracting by Contractor	4
GC5	Amendments	5
GC6	No Implied Obligations	5
GC7	Time of Essence	5
GC8	Indemnification by Contractor	5
GC9	Indemnification by Owner	5
GC10	Notices	6
GC11	Material, Plant and Real Property Supplied by the Owner	6
GC12	Material, Plant and Real Property Become Property of the Owner	7
GC13	Permits and Taxes Payable	7
GC14	Performance of Work under Direction of Engineer	8
GC15	Cooperation with Other Contractors	8
GC16	Examination of Work	9
GC17	Clearing of Site	9
GC18	Contractor's Superintendent	9
GC19	Unsuitable Workers	10
GC20	Increased or Decreased Costs	10
GC21	Protection of Work and Documents	11
GC22	Public Ceremonies and Signs	11
GC23	Precautions against Damage, Infringement of Rights, Fire and Other Hazards	11
GC24	Changes in the Work	12

Article No.	Article	Page
GC25	Interpretation of Contract by Engineer	13
GC26	Warranty and Rectification of Defects in Work	13
GC27	Non-Compliance by Contractor	14
GC28	Protesting Engineer's Decisions	14
GC29	Changes in Soil Conditions and Neglect or Delay by the Owner	15
GC30	Extension of Time	16
GC31	Assessments and Damages for Late Completion	16
GC32	Taking the Work Out of the Contractor's Hands	17
GC33	Effect of Taking the Work Out of the Contractor's Hands	18
GC34	Suspension of Work by Minister	18
GC35	Termination of Contract	19
GC36	Claims Against and Obligations of the Contractor	19
GC37	Contract Security - Forfeiture	20
GC38	Engineer's Certificates	20
GC39	Return of Contract Security	22
GC40	Clarification of Terms in GC41 to GC44	22
GC41	Additions or Amendments to Unit Price Table	22
GC42	Determination of Cost - Unit Price Table	23
GC43	Determination of Cost - Negotiation	23
GC44	Determination of Cost - Failing Negotiation	23
GC45	Records to be Kept by Contractor	24
GC46	Contractor Status	25
GC47	Yukon Acts	25

GC1 Interpretation

1.1 In the contract

- .1 where reference is made to a part of the contract by means of numbers preceded by letters, the reference shall be construed to be a reference to the particular part of the contract that is identified by that combination of letters and numbers and to any other part of the contract referred to therein;
- .2 "contract" means the contract documents referred to in the Articles of Agreement;
- .3 "contract security" means any security given by the Contractor to the Owner in accordance with the contract;
- .4 "Engineer" means a Professional Engineer employed by the Owner who is designated pursuant to the Articles of Agreement and includes an individual specially authorized by him/her to perform, on his/her behalf, any of his/her functions under the contract and is so designated in writing to the Contractor;
- .5 "material" includes all commodities, articles and things required to be furnished by or for the Contractor under the contract for incorporation into the work;
- .6 "Minister" includes a person acting for, or if the office is vacant, in place of the Minister and his/her successor in the office, and his/her or their lawful deputy and any of his/her or their representatives appointed for the purposes of the contract;
- .7 "Owner" means the Government of the Yukon or its authorized agent or representative as designated to the Contractor in writing. The Owner is referred to throughout the contract documents as if singular in number;
- .8 "person" includes, unless the context otherwise requires, a partnership, proprietorship, firm, joint venture, consortium and a corporation;
- .9 "plant" includes all animals, tools, implements, machinery, vehicles, buildings, structures, equipment and commodities, articles and things other than material, that are necessary for the due performance of the contract;
- .10 "subcontractor" means a person to whom the Contractor has, subject to GC4 Subcontracting by Contractor, subcontracted the whole or any part of the work;
- .11 "superintendent" means the employee of the Contractor who is designated by the Contractor to act pursuant to GC18 Contractor's Superintendent;
- .12 "work" includes, subject only to any express stipulation in the contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to perform the contract.

1.2 The headings in the contract documents, other than in the Plans and Specifications, form no part of the contract but are inserted for convenience of reference only.

1.3 In interpreting the contract, in the event of discrepancies or conflicts between anything in the Plans and Specifications and the General Conditions, the General Conditions govern.

- 1.4 In interpreting the contract in the event of discrepancies or conflicts between anything in the General Conditions and the Supplementary General Conditions, the Supplementary General Conditions govern.
- 1.5 In interpreting the Plans and Specifications, in the event of discrepancies or conflicts between
- .1 the Plans and Specifications, the Specifications govern;
 - .2 the Plans, the Plans drawn with the largest scale govern; and
 - .3 figured dimensions and scaled dimensions, the figured dimensions govern.

GC2 Successors and Assigns

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

GC3 Assignment of Contract

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

GC4 Subcontracting by Contractor

- 4.1 Subject to this General Condition, the Contractor may subcontract any part of the work.
- 4.2 The Contractor shall notify the Engineer in writing of his/her intention to subcontract.
- 4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.
- 4.4 The Engineer may object to the intended subcontracting by notifying the Contractor in writing within six days of receipt by the Engineer of a notification referred to in GC4.2.
- 4.5 If the Engineer objects to a subcontracting pursuant to GC4.4, the Contractor shall not enter into the intended subcontract.
- 4.6 The Contractor shall not, without the written consent of the Engineer, change a subcontractor who has been engaged by him/her in accordance with this General Condition.
- 4.7 Every subcontract entered into by the Contractor shall adopt all the terms and conditions of this contract that are of general application.
- 4.8 Neither a subcontracting nor the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the contract or to impose any liability upon the Owner.

GC5 Amendments

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

GC6 No Implied Obligations

- 6.1 No implied terms or obligations of any kind by or on behalf of the Owner shall arise from any thing in the contract and the express covenants and agreements therein contained and made by the Owner are the only covenants and agreements upon which any rights against the Owner are to be founded.
- 6.2 The contract supersedes all communications, negotiations and agreements, either written or oral, relating to the work that were made prior to the date of the contract.

GC7 Time of Essence

- 7.1 Time is of the essence of the contract.

GC8 Indemnification by Contractor

- 8.1 The Contractor shall indemnify and save the Owner harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, his/her servants, agents, subcontractors and sub-subcontractors in performing the work including an infringement or an alleged infringement of a patent of invention or any other kind of intellectual property.
- 8.2 For the purposes of GC8.1, "activities" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC9 Indemnification by the Owner

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

GC10 Notices

- 10.1 Any notice, consent, order, decision, direction or other communication, other than a notice referred to in GC10.4, that may be given to the Contractor pursuant to the contract may be given in any manner.

- 10.2 Any notice, consent, order, decision, direction or other communication required to be given in writing, to any party pursuant to the contract shall, subject to GC10.4, be deemed to have been effectively given
- .1 to the Contractor, if delivered personally to the Contractor or the Contractor's superintendent, or forwarded by mail, or facsimile to the Contractor at the address set out in A4.1, or
 - .2 to the Owner, if delivered personally to the Engineer, or forwarded by mail, or facsimile to the Engineer at the address set out in A1.2.1.
- 10.3 Any such notice, consent, order, decision, direction or other communication given in accordance with GC10.2 shall be deemed to have been received by either party
- .1 if delivered personally, on the day that it was delivered,
 - .2 if forwarded by mail, on the earlier of the day it was received and the sixth day after it was mailed, and
 - .3 if forwarded by facsimile, 24 hours after it was transmitted.
- 10.4 A notice given under GC32 Taking the Work out of the Contractor's Hands, GC34 Suspension of Work by Minister, and GC35 Termination of Contract, if delivered personally, shall be delivered to the Contractor or, if the Contractor is a partnership or corporation, to an officer thereof.

GC11 Material, Plant and Real Property Supplied by the Owner

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

GC12 Material, Plant and Real Property Become Property of the Owner

- 12.1 Subject to GC13.6 all material and plant and the interest of the Contractor in all real property, licences, powers and privileges purchased, used or consumed by the Contractor for the contract shall, after the time of their purchase, use or consumption, be the property of the Owner for the purposes of the work and they shall continue to be the property of the Owner
- .1 in the case of material, until the Engineer indicates that he/she is satisfied that it will not be required for the work, and
- .2 in the case of plant, real property, licences, powers and privileges, until the Engineer indicates that he/she is satisfied that the interest vested in the Owner therein is no longer required for the purposes of the work.
- 12.2 Material or plant that is the property of the Owner by virtue of GC12.1 shall not be taken away from the work site or used or disposed of except for the purposes of the work without the written consent of the Engineer.
- 12.3 The Owner is not liable for loss of or damage from any cause to the material or plant referred to in GC12.1 and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of the Owner.

GC13 Permits and Taxes Payable

- 13.1 The Contractor shall, within 30 days after the date of the contract, tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the work were being performed for a person other than the Owner.
- 13.2 Within 10 days of making a tender pursuant to GC13.1, the Contractor shall notify the Engineer of his/her action and of the amount tendered and whether or not the municipal authority has accepted that amount.
- 13.3 If the municipal authority does not accept the amount tendered pursuant to GC13.1 the Contractor shall pay that amount to the Owner within 6 days after the time stipulated in GC13.2.
- 13.4 For the purposes of GC13.1 to GC13.3 "municipal authority" means any authority that would have jurisdiction respecting permission to perform the work if the owner were not the Government of the Yukon.
- 13.5 Notwithstanding the residency of the Contractor, the Contractor shall pay any applicable tax arising from or related to the performance of the work under the contract.
- 13.6 For the purpose of the payment of any applicable tax or the furnishing of security for the payment of any applicable tax arising from or related to the performance of the work under the contract, the Contractor shall, notwithstanding the fact that all material, plant and interest of the Contractor in all real property, licences, powers and privileges, have become the property of the Owner after the time of purchase, be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any applicable tax payable, at the time of the use or consumption of that material, plant or interest of the Contractor in accordance with the relevant legislation.

GC14 Performance of Work Under Direction of Engineer

14.1 The Contractor shall

- .1 permit the Engineer to have access to the work and its site at all times during the performance of the contract;
- .2 furnish the Engineer with such information respecting the performance of the contract as he/she may require; and
- .3 give the Engineer every possible assistance to enable the Engineer to carry out his/her duty to see that the work is performed in accordance with the contract and to carry out any other duties and exercise any powers specially imposed or conferred on the Engineer under the contract.

GC15 Cooperation with Other Contractors

15.1 Where, in the opinion of the Engineer, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligation.

15.2 If

- .1 the sending onto the work or its site of other contractors or workers pursuant to GC15.1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract, and
- .2 the Contractor incurs, in the opinion of the Engineer, extra expense in complying with GC15.1, and
- .3 the Contractor has given the Engineer written notice of his/her claim for the extra expense referred to in GC15.2.2 within 30 days of the date that the other contractors or workers were sent onto the work or its site,

The Owner shall pay the Contractor the cost, calculated in accordance with GC42 Determination of Cost-Unit Price Table to GC44 Determination of Cost-Failing Negotiation, of the extra labour, plant and material that was necessarily incurred.

GC16 Examination of Work

16.1 If, at any time after the commencement of the work but prior to the expiration of the warranty or guarantee period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the contract, the Engineer may have that work examined by an expert of his/her choice.

16.2 If, as a result of an examination of the work referred to in GC16.1, it is established that the work was not performed in accordance with the contract, then, in addition to and without limiting or otherwise affecting any of the Owner's rights and remedies under the contract either at law or in equity, the Contractor shall pay the Owner, on demand, all reasonable costs and expenses that were incurred by the Owner in having that examination performed.

GC17 Clearing of Site

- 17.1 The Contractor shall maintain the work and its site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any directions of the Engineer.
- 17.2 Before the issue of a Certificate of Substantial Performance referred to in GC38.2, the Contractor shall remove all the plant and material not required for the performance of the remaining work, and all waste material and other debris, and shall cause the work and its site to be clean and suitable for the purpose intended unless otherwise stipulated in the contract.
- 17.3 Before the issue of a Certificate of Total Performance referred to in GC38.1, the Contractor shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- 17.4 The Contractor's obligations described in GC17.1 to GC17.3 do not extend to waste material and other debris caused by the Owner or contractors and workers referred to in GC15.1.

GC18 Contractor's Superintendent

- 18.1 The Contractor shall, forthwith upon the award of the contract, designate a superintendent.
- 18.2 The Contractor shall forthwith notify the Engineer of the name, address and telephone number of a superintendent designated pursuant to GC18.1.
- 18.3 A superintendent designated pursuant to GC18.1 shall be in full charge of the operations of the Contractor in the performance of the work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the Contractor that may be given to the superintendent under the contract.
- 18.4 The Contractor shall, until the work has been completed, keep a competent superintendent at the work site during working hours.
- 18.5 The Contractor shall, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, has conducted himself/herself improperly or is acting in a fashion that is endangering the safety of persons engaged in the work or members of the public and shall forthwith designate another superintendent who is acceptable to the Engineer.
- 18.6 Subject to GC18.5, the Contractor shall not substitute a superintendent without the written consent of the Engineer.
- 18.7 A breach by the Contractor of GC18.4 or GC18.6 entitles the Engineer to refuse to issue any payment until the superintendent has returned to the work site or another superintendent who is acceptable to the Engineer has been substituted.

GC19 Unsuitable Workers

- 19.1 The Contractor shall, upon the request of the Engineer, remove any person employed by him/her for purposes of the contract who, in the opinion of the Engineer, has conducted himself/herself improperly, or is endangering the safety of persons engaged in the work or members of the public, and the Contractor shall not permit a person who has been removed to return to the work site.

GC20 Increased or Decreased Costs

- 20.1 The amount set out in the Articles of Agreement shall not be increased or decreased by reason of any increase or decrease in the cost of the work that is brought about by an increase or decrease in the cost of labour, plant or material or any wage adjustment arising pursuant to the Employment Standards Act.
- 20.2 Notwithstanding GC20.1 and GC29 Changes in Soil Conditions and Neglect or Delay by the Owner, an amount set out in the Articles of Agreement shall be adjusted in the manner provided in GC20.3, if any change in a tax imposed under the Excise Act, the Excise Tax Act, Goods and Services Tax, the Old Age Security Act, the Customs Act, the Customs Tariff or any provincial sales tax legislation imposing a retail sales tax on the purchase of tangible personal property incorporated into Real Property
- .1 occurs after the date of the submission by the Contractor of his/her tender for the contract,
 - .2 applies to material, and
 - .3 affects the cost to the Contractor of that material.
- 20.3 If a change referred to in GC20.2 occurs, the appropriate amount set out in the Articles of Agreement shall be increased or decreased by an amount equal to the amount that is established by an examination of the relevant records of the Contractor referred to in GC45 Records to be Kept by Contractor to be the increase or decrease in the cost incurred that is directly attributable to that change.
- 20.4 For the purpose of GC20.2, where a tax is changed after the date of submission of the tender but public notice of the change has been given by the Minister of Finance before that date, the change shall be deemed to have occurred before the date of submission of the tender.

GC21 Protection of Work and Documents

- 21.1 The Contractor shall guard or otherwise protect the work and its site, and protect the contract, specifications, plans, drawings, information, material, plant and real property, whether or not they are supplied by the Owner to the Contractor, against loss or damage from any cause, and he/she shall not use, issue, disclose or dispose of them without the written consent of the Minister, except as may be essential for the performance of the work.
- 21.2 If any document or information given or disclosed to the Contractor is assigned a security rating by the person who gave or disclosed it, the Contractor shall take all measures directed by the Engineer to be taken to ensure the maintenance of the degree of security that is ascribed to that rating.

- 21.3 The Contractor shall provide all facilities necessary for the purpose of maintaining security, and shall assist any person authorized by the Minister to inspect or to take security measures in respect of the work and its site.
- 21.4 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC21.1 to GC21.3.

GC22 Public Ceremonies and Signs

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

GC23 Precautions Against Damage, Infringement of Rights, Fire, and Other Hazards

- 23.1 The Contractor shall, at his/her own expense, do whatever is necessary to ensure that
- .1 no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the contract;
 - .2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the work or plant;
 - .3 the location of any services, both above and below the ground, are confirmed prior to commencement of the work;
 - .4 fire hazards in or about the work or its site are eliminated and, subject to any direction that may be given by the Engineer, any fire is promptly extinguished;
 - .5 the health and safety of all persons employed in the performance of the work is not endangered by the method or means of its performance;
 - .6 adequate medical services are available to all persons employed on the work or its site at all times during the performance of the work;
 - .7 adequate sanitation measures are taken in respect of the work and its site; and
 - .8 all stakes, buoys and marks placed on the work or its site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed.
- 23.2 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC23.1.
- 23.3 The Contractor shall, at his/her own expense, comply with a direction of the Engineer made under GC23.2.

GC24 Changes in the Work

- 24.1 Subject to GC5 Amendments, the Engineer may, at any time before he/she issues his/her Certificate of Total Performance,
- .1 order work or material in addition to that provided for in the Plans and Specifications; and
 - .2 delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Plans and Specifications or in any order made pursuant to GC24.1.1, if that additional work or material, deletion or change is, in his/her opinion, consistent with the general intent of the original contract.
- 24.2 The Contractor shall perform the work in accordance with such orders, deletions and changes that are made by the Engineer pursuant to GC24.1 from time to time as if they had appeared in and been part of the Plans and Specifications.
- 24.3 The Engineer shall determine whether or not anything done or omitted by the Contractor pursuant to an order, deletion or change referred to in GC24.1 increased or decreased the cost of the work to the Contractor.
- 24.4 If the Engineer determines pursuant to GC24.3 that the cost of the work to the Contractor has been increased, the Owner shall pay the Contractor the increased cost that the Contractor necessarily incurred for the additional work calculated in accordance with GC43 Determination of Cost - Negotiation or GC44 Determination of Cost - Failing Negotiation.
- 24.5 If the Engineer determines pursuant to GC24.3 that the cost of the work to the Contractor has been decreased, the Owner shall reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost caused by the deletion or change referred to in GC24.1.2 and calculated in accordance with GC43 Determination of Cost -Negotiation.
- 24.6 GC24.3 to GC24.5 are applicable only to a contract or a portion of a contract for which a Fixed Price Arrangement is stipulated in the contract.
- 24.7 An order, deletion or change referred to in GC24.1 shall be in writing, signed by the Engineer and given to the Contractor in accordance with GC10 Notices.

GC25 Interpretation of Contract by Engineer

- 25.1 If, at any time before the Engineer has issued a Certificate of Total Performance referred to in GC38.1, any question arises between the parties about whether anything has been done as required by the contract or about what the Contractor is required by the contract to do, and, in particular but without limiting the generality of the foregoing, about
- .1 the meaning of anything in the Plans and Specifications,
 - .2 the meaning to be given to the Plans and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention,

- .3 whether or not the quality or quantity of any material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the contract,
- .4 whether or not the labour, plant or material provided by the Contractor for performing the work and carrying out the contract are adequate to ensure that the work will be performed in accordance with the contract and that the contract will be carried out in accordance with its terms,
- .5 what quantity of any kind of work has been completed by the Contractor, or
- .6 the timing and scheduling of the various phases of the performance of the work,

the question shall be decided by the Engineer whose decision shall be final and conclusive in respect of the work.

- 25.2 The Contractor shall perform the work in accordance with any decisions of the Engineer that are made under GC25.1 and in accordance with any consequential directions given by the Engineer.

GC26 Warranty and Rectification of Defects in Work

- 26.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at his/her own expense,
 - .1 rectify and make good any defect or fault that appears in the work or comes to the attention of the Engineer with respect to those parts of the work accepted in connection with the Certificate of Substantial Performance referred to GC38.2 within 12 months from the date of the Certificate of Substantial Performance.
 - .2 rectify and make good any defect or fault that appears in or comes to the attention of the Engineer in connection with those parts of the work described in the Certificate of Substantial Performance referred to in GC38.2 within 12 months from the date of the Certificate of Total Performance referred to in GC38.1.
- 26.2 The Engineer may direct the Contractor to rectify and make good any defect or fault referred to in GC26.1 or covered by any other expressed or implied warranty or guarantee.
- 26.3 A direction referred to in GC26.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor and shall be given to the Contractor in accordance with GC10 Notices.
- 26.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC26.2 within the time stipulated therein.

GC27 Non-Compliance by Contractor

- 27.1 If the Contractor fails to comply with any decision or direction given by the Engineer pursuant to GC17 Clearing of Site, GC21 Protection of Work and Documents, GC23 Precautions Against Damage, Infringement of Rights, Fire and Other Hazards, GC25 Interpretation of Contract by Engineer, or GC26 Warranty and Rectification of Defects in Work, the Engineer may employ such methods as he/she deems advisable to do that which the Contractor failed to do.

27.2 The Contractor shall, on demand, pay the Owner an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the Owner by reason of the Contractor's failure to comply with any decision or direction referred to in GC27.1, including the cost of any methods employed by the Engineer pursuant to GC27.1.

GC28 Protesting Engineer's Decisions

28.1 The Contractor may, within ten days after the communication to him/her of any decision or direction referred to in GC24.3 or GC27.1, protest that decision or direction.

28.2 A protest referred to in GC28.1 shall be in writing, contain full reasons for the protest, be signed by the Contractor and be given to the Owner by delivery to the Engineer.

28.3 If the Contractor gives a protest pursuant to GC28.2, any compliance by the Contractor with the decision or direction that was protested shall not be construed as an admission by the Contractor of the correctness of that decision or direction, or prevent the Contractor from taking whatever action he/she considers appropriate in the circumstances.

28.4 The giving of a protest by the Contractor pursuant to GC28.2 shall not relieve him/her from complying with the decision or direction that is the subject of the protest.

28.5 Subject to GC28.6, the Contractor shall take any action referred to in GC28.3 within three months after the date that a Certificate of Total Performance is issued under GC38.1 and not afterwards.

28.6 The Contractor shall take any action referred to in GC28.3 resulting from a direction under GC26 Warranty & rectification of Defects in Work within three months after the expiration of a warranty or guarantee period and not afterwards.

28.7 Subject to GC28.8, if the Owner determines that the Contractor's protest is justified, the Owner shall pay the Contractor the cost of the additional labour, plant and material necessarily incurred by the Contractor in carrying out the protested decision or direction.

28.8 Costs referred to in GC28.7 shall be calculated in accordance with GC42 Determination of Cost - Unit Price Table to GC44 Determination of Cost -Failing Negotiation.

GC29 Changes in Soil Conditions and Neglect or Delay by the Owner

29.1 Subject to GC29.2 no payment, other than a payment that is expressly stipulated in the contract, shall be made by the Owner to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.

29.2 If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to

- .1 a substantial difference between the information relating to soil conditions at the work site that is contained in the Plans and Specifications or other documents supplied to the Contractor for his/her use in preparing his/her tender or a reasonable assumption of fact based thereon made by the Contractor, and the actual soil conditions encountered by the Contractor at the work site during the performance of the contract, or

.2 any neglect or delay that occurs after the date of the contract on the part of the Owner in providing any information or in doing any act that the contract either expressly requires the Owner to do or that would ordinarily be done by an owner in accordance with the usage of the trade,

he/she shall, within ten days of the date the actual soil conditions described in GC29.2.1 were encountered or the neglect or delay described in GC29.2.2 occurred, give the Engineer written notice of his/her intention to claim for that extra expense or that loss or damage.

29.3 When the Contractor has given a notice referred to in GC29.2, he shall give the Engineer a written claim for extra expense or loss or damage within 30 days of the date that a Certificate of Total Performance referred to in GC38.1 is issued and not afterwards.

29.4 A written claim referred to in GC29.3 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable the Engineer to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as the Engineer requires from time to time.

29.5 If the Engineer determines that a claim referred to in GC29.3 is justified, the Owner shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC41 Additions or Amendments to Unit Price Table to GC44 Determination of Cost - Failing Negotiation.

29.6 If, in the opinion of the Engineer, an occurrence described in GC29.2.1 results in a saving of expenditure by the Contractor in performing the contract, the amount set out in the Articles of Agreement shall, subject to GC29.7, be reduced by an amount that is equal to the saving.

29.7 The amount of the saving referred to in GC29.6 shall be determined in accordance with GC41 Additions or Amendments to Unit Price Table to GC43 Determination of Cost - Negotiation.

29.8 If the Contractor fails to give a notice referred to in GC29.2 and a claim referred to in GC29.3 within the times stipulated, an extra payment shall not be made to him/her in respect of the occurrence.

GC30 Extension of Time

30.1 Subject to GC30.2, the Engineer may, on the application of the Contractor made before the day fixed by the Articles of Agreement for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date if, in the opinion of the Engineer, causes beyond the control of the Contractor have delayed its completion.

30.2 An application referred to in GC30.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

GC31 Assessments and Damages for Late Completion

31.1 For the purposes of this General Condition

- .1 the work shall be deemed to be completed on the date that a Certificate of Substantial Performance referred to in GC38.2 is issued, and
 - .2 "period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the work and ending on the day immediately preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC30.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the Contractor.
- 31.2 If the Contractor does not complete the work by the day fixed for completion of the work by the Articles of Agreement but completes it thereafter, the Contractor shall pay the Owner an amount equal to the aggregate of
- .1 all salaries, wages and travelling expenses incurred by the Owner in respect of persons overseeing the performance of the work during the period of delay;
 - .2 the cost incurred by the Owner as a result of the inability to use the completed work for the period of delay; and
 - .3 all other expenses and damages incurred or sustained by the Owner during the period of delay as a result of the work not being completed by the day fixed for its completion.
- 31.3 The Minister may waive the right of the Owner to the whole or any part of the amount payable by the Contractor pursuant to GC31.2 if, in the opinion of the Minister, it is in the public interest to do so.

GC32 Taking the Work Out of the Contractor's Hands

- 32.1 The Minister may, by giving a notice in writing to the Contractor in accordance with GC10 Notices, take all or any part of the work out of the Contractor's hands, and may employ such means as he/she sees fit to have the work completed if the Contractor
- .1 has not, within six days of the Minister or his/her designate giving notice to the Contractor in writing in accordance with GC10 Notices, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;
 - .2 has defaulted in the completion of any part of the work within the time fixed for its completion of the work by the contract;
 - .3 has become insolvent;
 - .4 has committed an act of bankruptcy;
 - .5 has abandoned the work;
 - .6 has made an assignment of the contract without the consent required by GC3.1; or
 - .7 has otherwise failed to observe or perform any of the provisions of the contract.
- 32.2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC32.1,

- .1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC32.4, extinguished, and
 - .2 the Contractor is liable to pay the Owner, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Owner in respect of the Contractor's failure to complete the work.
- 32.3 If the whole or any part of the work that is taken out of the Contractor's hands pursuant to GC32.1 is completed by the Owner, the Engineer shall determine the amount, if any, of a holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the Contractor's hands and that is not required for the purposes of having the work performed or of compensating the Owner for any other loss or damage incurred or sustained by reason of the Contractor's default.
- 32.4 The Owner may pay the Contractor the amount determined not required pursuant to GC32.3.

GC33 Effect of Taking the Work Out of the Contractor's Hands

- 33.1 The taking of the work or any part thereof out of the Contractor's hands pursuant to GC32 Taking the Work Out of the Contractor's Hands does not operate so as to relieve or discharge him/her from any obligation under the contract or imposed upon him/her by law except the obligation to complete the performance of that part of the work that was taken out of his/her hands.
- 33.2 If the work or any part thereof is taken out of the Contractor's hands pursuant to GC32 Taking the Work Out of the Contractor's Hands, all plant and material and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor under the contract shall continue to be the property of the Owner without compensation to the Contractor.
- 33.3 When the Engineer certifies that any plant, material or any interest of the Contractor referred to in GC33.2 is no longer required for the purposes of the work, or that it is not in the interests of the Owner to retain that plant, material, or interest, it shall revert to the Contractor.

CC34 Suspension of Work by Minister

- 34.1 The Minister may, when in his/her opinion it is in the public interest to do so, require the Contractor to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension in writing to the Contractor in accordance with GC10 Notices.
- 34.2 When a notice referred to in GC34.1 is received by the Contractor in accordance with GC10 Notices, he/she shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.
- 34.3 The Contractor shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.

- 34.4 If a period of suspension is 30 days or less, the Contractor shall, upon the expiration of that period, resume the performance of the work and he/she is entitled to be paid the extra cost, calculated in accordance with GC42 Determination of Cost - Unit Price Table to GC44 Determination of Cost -Failing Negotiation, of any labour, plant and material necessarily incurred by him/her as a result of the suspension.
- 34.5 If, upon the expiration of a period of suspension of more than 30 days, the Minister and the Contractor agree that the performance of the work will be continued by he Contractor, the Contractor shall resume performance of the work subject to any terms and conditions agreed upon by the Minister and the Contractor.
- 34.6 If, upon the expiration of a period of suspension of more than 30 days, the Minister and the Contractor do not agree that performance of the work will be continued by the Contractor or upon the terms and conditions under which the Contractor will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC35 termination of Contract.

GC35 Termination of Contract

- 35.1 The Minister may terminate the contract at any time by giving a notice of termination in writing to the Contractor in accordance with GC10 Notices.
- 35.2 When a notice referred to in GC35.1 is received by the Contractor in accordance with GC10 Notices, he/she shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the contract.
- 35.3 If the contract is terminated pursuant to GC35.1, the Owner shall pay the Contractor, subject to GC35.4, an amount equal to
- .1 the cost to the Contractor of all labour, plant and material supplied by him/her under the contract up to the date of termination in respect of a contract or part thereof for which a Unit Price Arrangement is stipulated, in the contract, or
 - .2 the lesser of
 - .1 an amount, calculated in accordance with the Terms of Payment, that would have been payable to the Contractor had he/she completed the work, and
 - .2 an amount that is determined to be due to the Contractor pursuant to GC43 Determination of Cost - Negotiation in respect of a contract or part thereof for which a Fixed Price Arrangement is stipulated in the contract.
- less the aggregate of all amounts that were paid to the Contractor by the Owner and all amounts that are due to the Owner from the Contractor pursuant to the contract.
- 35.4 If the Owner and the Contractor are unable to agree about an amount referred to in GC35.3 that amount shall be determined by the method referred to in GC44 Determination of Cost - Failing Negotiation.

GC36 Claims Against and Obligations of the Contractor

- 36.1 If a Contractor does not pay a subcontractor in accordance with his/her obligation to do so in respect of labour, equipment, materials, or services rendered in connection with a construction contract, the subcontractor may deliver a notice of claim to the Owner setting out the nature and amount of the claim against the Contractor. Then
- .1 the Owner may notify the Contractor of the claim and allow a period of up to 30 days for the Contractor and subcontractor to come to a mutually agreed settlement;
 - .2 if a settlement has not been reached within the time limit allowed, the Owner may, if funds are due and payable under the contract, deposit part or all of the amount claimed into the Supreme Court of Yukon pending settlement of the claim;
 - .3 such payment is sufficient discharge by the Owner of any obligation it may have to pay the money to the Contractor; and
 - .4 the Owner has no liability to the Contractor if such payment is in an amount greater or less than the amount lawfully payable by the Contractor to the subcontractor.
- 36.2 The Owner may require in writing that the Contractor send, by certified mail within 15 days from the date of receipt of the demand, a list of the names and the amounts owing to the creditors of the Contractor for labour, equipment, materials, or services used in the performance of the contract.
- 36.3 The Owner may insert an advertisement in the necessary newspapers upon the certification of Substantial or Total Performance of the Work deposing to the fact that such an occasion has taken place.

GC37 Contract Security-Forfeiture

- 37.1 If
- .1 the work is taken out of the Contractor's hands pursuant to GC32 Taking the Work out of the Contractor's Hands,
 - .2 the contract is terminated pursuant to GC35 Termination of Contract, or
 - .3 the Contractor is in breach of or in default under the contract,
- The Owner may convert the contract security, if any, to his/her own use.
- 37.2 If the Owner converts the contract security pursuant to GC37.1, the amount realized shall be deemed to be an amount due from the Owner to the Contractor under the contract.
- 37.3 Any balance of an amount referred to in GC37.2 that remains after payment of all losses, damage and claims of the Owner and others shall be paid by the Owner to the Contractor if, in the opinion of the Engineer, it is not required for the purposes of the contract.

GC38 Engineer's Certificates

38.1 On the date that

- .1 the work has been completed, and
- .2 the Contractor has complied with the contract and all orders and directions made pursuant thereto,

both to the satisfaction of the Engineer, the Engineer shall issue a Certificate of Total Performance to the Contractor.

38.2 If the Engineer is satisfied that the work is substantially complete he/she shall, at any time before he/she issues a certificate referred to in GC38.1, issue a Certificate of Substantial Performance to the Contractor, and

- .1 for the purposes of GC38.2 the work will be considered to be substantially complete,
 - .1 when the work under the contract or a substantial part thereof is, in the opinion of the Engineer, ready for use by the Owner or is being used for the purposes intended; and
 - .2 when the work to be done under the contract is, in the opinion of the Engineer, capable of completion or correction at a cost of not more than
 - .1 5% of the first \$500,000, and
 - .2 3% of the next \$500,000, and
 - .3 1% of the balance of the value of the contract at the time this cost is calculated.

38.3 For the sole purpose of GC38.2.1.2., where the work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the work or a part thereof cannot be completed by the time specified in A2.1 or as amended pursuant to GC30 Extension of Time for reasons beyond the control of the Contractor or where the Engineer and the Contractor agree not to complete part of the work within the specified time, the cost of work that part of the work which was either beyond the control of the Contractor to complete or the Engineer and the Contractor have agreed not to complete by the time specified shall be deducted from the value of the contract referred to GC38.2.1.2 and the said cost shall not form part of the cost of the work remaining to be done in determining substantial completion.

38.4 A Certificate of Substantial Performance referred to in GC38.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the Contractor

- .1 before a Certificate of Total Performance referred to in GC38.1 will be issued, and
- .2 before the 12-month period referred to in GC26.1.2 shall commence for the said parts and all the said things.

- 38.5 The Engineer may, in addition to the parts of the work described in a Certificate of Substantial Performance referred to in GC38.2, require the Contractor to rectify any other parts of the work not completed to his/her satisfaction and to do any other things that are necessary for the satisfactory completion of the work.
- 38.6 If the contract or a part thereof is subject to a Unit Price Arrangement, the Engineer shall measure and record the quantities of labour, plant and material, performed, used and supplied by the Contractor in performing the work and shall, at the request of the Contractor, inform him/her of those measurements.
- 38.7 The Contractor shall assist and cooperate with the Engineer in the performance of his/her duties referred to in GC38.6 and shall be entitled to inspect any record made by the Engineer pursuant to GC38.6.
- 38.8 After the Engineer has issued a Certificate of Total Performance referred to in GC38.1, he/she shall, if GC38.6 applies, issue a Final Cost Breakdown.
- 38.9 A Final Cost Breakdown referred to in GC38.8 shall
- .1 contain the aggregate of all measurements of quantities referred to in GC38.6, and
 - .2 be binding upon and conclusive between the Owner and the Contractor as to the quantities referred to therein.

GC39 Return of Contract Security

- 39.1 After a Certificate of Substantial Performance referred to in GC38.2 has been issued, the Owner shall, if the Contractor is not in breach of or in default under the contract, return to the Contractor all or any part of the contract security that, in the opinion of the Engineer, is not required for the purposes of the contract.
- 39.2 After a Certificate of Total Performance referred to in GC38.1 has been issued, the Owner shall return to the Contractor the remainder of any contract security unless the contract stipulates otherwise.

GC40 Clarification of Terms in GC41 To GC44

- 40.1 For the purpose of GC41 Additions or Amendments to Unit Price Table to GC44 Determination of Cost - Failing Negotiation
- .1 "Unit Price Table" means the table set out in the Articles of Agreement, and
 - .2 "plant" does not include tools customarily provided by a trades-person in practicing his/her trade.

GC41 Additions or Amendments to Unit Price Table

- 41.1 Where a Unit Price Arrangement applies to the contract or a part thereof the Engineer and the Contractor may, by an agreement in writing,

- .1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Unit Price Table if any labour, plant or material that is to be included in the Final Cost Breakdown referred to in GC38.8 is not included in any class of labour, plant or material set out in the Unit Price Table; or
 - .2 subject to GC41.2 and GC41.3, amend a price per unit set out in the Unit Price Table for any class of labour, plant or material included therein if the Final Cost Breakdown referred to in GC38.8 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the Contractor in performing the work is
 - .1 less than 85% of that estimated total quantity, or
 - .2 in excess of 115% of that estimated total quantity.
- 41.2 In no event shall the total cost of an item set out in the Unit Price Table that has been amended pursuant to GC41.1.2.1 exceed the amount that would have been payable to the Contractor had the estimated total quantity actually been performed, used or supplied.
- 41.3 An amendment that is made pursuant to GC41.1.2.2 shall apply only to the quantities that are in excess of 115%.
- 41.4 If the Engineer and the Contractor do not agree as contemplated in GC41.1, the Engineer shall determine the class and unit of measurement of the labour, plant or material and, subject to GC41.2 and GC41.3, the price per unit therefor shall be determined in accordance with GC44 Determination of Cost - Failing Negotiation.

GC42 Determination Of Cost - Unit Price Table

- 42.1 Whenever, for the purposes of the contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in column 3 of the Unit Price Table by the price of that unit set out in column 4 of the Unit Price Table.

GC43 Determination of Cost - Negotiation

- 43.1 If the method described in GC42 Determination of Cost - Unit Price Table cannot be used because the labour, plant or material is of a kind or class that is not set out in the Unit Price Table, the cost of that labour, plant or material for the purposes of the contract shall be the amount agreed upon from time to time by the Contractor and the Engineer.
- 43.2 For the purposes of GC43.1, the Contractor shall submit to the Engineer any necessary cost information requested by the Engineer in respect of the labour, plant and material referred to in GC43.1.

GC44 Determination of Cost - Failing Negotiation

- 44.1 If the methods described in GC41 Additions or Amendments to Unit Price Table, GC42 Determination of Cost - Unit Price Table or GC43 Determination of Cost - Negotiation fail for any reason to achieve a determination of the cost of labour, plant and material for the purposes referred to therein, that cost shall be equal to the aggregate of

- .1 all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, plant and material that falls within one of the classes of expenditure described in GC44.2 that are directly attributable to the performance of the contract,
 - .2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expense, but not including those referred to in GC44.1.1 or GC44.1.3 or of a class referred to in GC44.2, in an amount that is equal to 15% of the sum of the expenses referred to in GC44.1.1, and
 - .3 interest on the costs determined under GC44.1.1 and GC44.1.2, which interest shall be calculated in accordance with TP9.
- 44.2 For purposes of GC44.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are,
- .1 payments to subcontractors;
 - .2 wages, salaries and travelling expenses of employees of the Contractor while they are actually and properly engaged on the work, other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor unless they are engaged at the work site with the approval of the Engineer;
 - 3 assessments payable under any statutory authority relating to workers compensation, unemployment insurance, pension plan or holidays with pay;
 - .4 rent that is paid for plant or an amount equivalent to the said rent if the plant is owned by the Contractor that is necessary for and used in the performance of the work, if the rent or the equivalent amount is reasonable and use of that plant has been approved by the Engineer;
 - .5 payments for maintaining and operating plant necessary for and used in the performance of the work, and payments for effecting such repairs thereto as, in the opinion of the Engineer, are necessary for the proper performance of the contract other than payments for any repairs to the plant arising out of defects existing before its allocation to the work;
 - .6 payments for material that is necessary for and incorporated in the work, or that is necessary for and consumed in the performance of the contract;
 - .7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the plant and material necessary for and used in the performance of the contract;
 - .8 any other payments made by the Contractor with the approval of the Engineer that are necessary for the performance of the contract.

GC45 Records to be Kept by Contractor

- 45.1 The Contractor shall

- .1 maintain full records of his/her estimated and actual cost of the work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto;
 - .2 make all records and material referred to in GC45.1.1 available to audit and inspection by persons acting on behalf of the Owner, when requested;
 - .3 allow any of the persons referred to in GC45.1.2 to make copies of and to take extracts from any of the records and material referred to in GC45.1.1; and
 - .4 furnish any person referred to in GC45.1.2 with any information he/she may require from time to time in connection with such records and material.
- 45.2 The records maintained by the Contractor pursuant to GC45.1.1 shall be kept intact by the Contractor until the expiration of two years after the date that a Certificate of Total Performance referred to in GC38.1 was issued or until the expiration of such other period of time as the Minister may direct.
- 45.3 The Contractor shall cause all subcontractors and all other persons directly or indirectly control led by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with GC45.1 and GC45.2 as if they were the Contractor.

GC46 Contractor Status

- 46.1 The Contractor shall be engaged under the contract as an independent contractor.
- 46.2 The Contractor and any employee of the said Contractor is not engaged by the contract as an employee, servant or agent of the Owner.
- 46.3 For the purposes of GC46.1 and GC46.2 the Contractor shall be solely responsible for any and all payments and deductions required to be made by law including those required for Canada Pension Plan, Unemployment Insurance, Workers' Compensation or Income Tax.

GC47 Yukon Acts

- 47.1 The Contractor shall comply with and be subject to all the terms and conditions of the Workers' Compensation Act and the Employment Standards Act.

INSURANCE CONDITIONS "D"

1 Comprehensive General Liability Insurance

1.1 The Contractor shall provide and maintain a Comprehensive General Liability Insurance Policy in the name of the Contractor and the Owner for a limit of not less than \$2,000,000.00 inclusive for bodily injury, including death and property damage for any one occurrence or series of occurrences arising out of one cause and shall contain the following provisions:

- .1 Bodily Injury and Property Damage on an occurrence basis;
- .2 Broad Form Property Damage;
- .3 Completed Operations Coverage;
- .4 Contingent Employer's Liability;
- .5 Contractor's Protective Liability;
- .6 Blanket Contractual Liability Assumed Under this Contract;
- .7 Cross Liability Written as follows:

"Cross Liability:

The insurance provided by this Policy shall apply in respect to any claim or action brought against any one Insured by any other Insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. The inclusion herein of more than one Insured shall not operate to increase the limit of the Insurer's liability."

- .8 Personal Injury Coverage

1.2 The Policy shall be endorsed to include blasting, pile driving, caissons, pressure vessels, collapse, marine, aircraft and all other hazards to which the work may be exposed.

2 Builder's Risk- Direct Damage Insurance

2.1 The Contractor shall be required to provide and maintain Builder's Risk insurance that shall be written to insure the work on an "All Risks" basis including the perils of Flood and Earthquake.

2.2 This Policy shall insure the Contractor and the Owner with loss, if any, payable to the Owner.

2.3 The amount of insurance shall be sufficient to cover the full replacement value of all work completed at all times, plus the value at the site of the work of all materials and property to be incorporated into and form part of the finished work. All form-work, tarpaulins, scaffolding and materials used for temporary protection for winter work are included.

3 Contractor's Equipment Floater - "All Risks"

- 3.1 The Contractor shall be required to provide and maintain insurance which shall cover the Contractor's equipment, including all tools, implements, machinery, vehicles, temporary buildings and structures and contents thereof, articles and things required for the execution of the work. The amount of insurance shall be at least equal to the actual cash value of such property.
- 3.2 The Policy shall be written to include the following clause:

"The Insurers shall not be entitled to subrogation or transfer of rights in respect of any claim under this policy against the Owner (Government of the Yukon), the Contractor, and all other Contractors and Subcontractors and any other party participating in the project at the site".

4 Automobile Third Party Liability Insurance

- 4.1 The Contractor shall provide and maintain insurance which shall cover any motor vehicle, trailer or semi-trailer owned, used or operated by or on behalf of the Contractor and obliged by law to carry a licence (other than a special licence issued in respect of any motor vehicle, trailer or semi-trailer chiefly used or operated off highways) as well as self-propelled equipment unlicensed but required to be insured in accordance with the Yukon Government Motor Vehicle Act.
- 4.2 The policy limit shall be not less than \$1,000,000.00 inclusive for Legal Liability for Bodily Injury or Death of any person or damage to property.

5 General Provisions

- 5.1 The insurance coverage required by the provisions of this insurance condition shall in no way limit the Contractor's obligations under GC8. Any additional coverage the Contractor may deem necessary to fulfill his/her obligations under the aforesaid GC8 shall be at his/her own discretion and expense.
- 5.2 The policies required by this insurance condition shall be required to cover from the date of contract award and shall be maintained until the day of issue of the Certificate of Total Performance of the Work. Completed Operations Coverage under the Comprehensive General Liability Insurance shall be maintained for one year thereafter.
- 5.3 Immediately following notification of contract award and preceding the start of any on-site work, the Contractor shall provide the Owner with a certificate of insurance showing that all required coverage is in force.
- 5.4 If required by the Owner, the Contractor shall provide certified true copies of each insurance policy.
- 5.5 The insurance shall be in forms and amounts acceptable to the Owner.
- 5.6 The approval of any such policy by the Owner shall in no way relieve the Contractor of his/her obligations to provide the insurance herein referred to.
- 5.7 Each insurance policy shall contain a provision that thirty (30) days prior written notice shall be given by the Insurer to the Contractor and the Owner in the event of any material change in, cancellation of, or expiration of coverage. Any such notice received by the Contractor shall be transmitted forthwith to the Owner.

5.8 If any of the insurance coverage required by the Contract is not provided or lapses for any reason whatsoever, the Owner will require the Contractor, at the Contractor's risk and expense, to stop all work on the site until satisfactory evidence of coverage is produced.

CONTRACT SECURITY CONDITIONS "E"

1. The Contractor shall, within fourteen (14) days of the date of contract award, provide to the Owner contract security as follows:
 - .1 where the contract amount is \$500,000.00 or more, a Performance Bond and a Labour and Material Payment Bond, as described in (2), each in the amount of at least 50% of the contract amount; OR
 - .2 where the contract amount is \$50,000.00 or more but less than \$500,000.00, bonds as described in (1.1) OR contract security in the amount of 20% of the contract amount in a form as described in (3); OR
 - .3 where the contract amount is less than \$50,000.00, contract security in the amount of 10% of the contract amount in a form as described in (3).
2. If the contract security is in the form of surety bonds, such bonds shall be issued by a duly licenced surety company authorized to transact a business of surety-ship in the province or territory of the place of the work and shall be maintained in good standing until the fulfillment of the contract. The form of such bonds shall be in a form approved by the Superintendent of Insurance of Canada or the Superintendent of Insurance of Yukon.
3. Where the contract amount is less than \$500,000.00, the contract security may be in the form of cash, a Canadian postal money order, certified check, an assignable redeemable term deposit, bank draft, bearer or assignable bonds of the Government of Canada or of a Canadian provincial government, or Irrevocable Letter of Guaranteed Credit acceptable to the Owner.
4. If the contract security is in the form of cash, upon issuing the Certificate of Substantial Performance or the Certificate of Total Performance, whichever applies, the Owner will, if the contractor is not in default, refund to the Contractor the amount of the contract security which is not required for the purposes of the contract.

FAIR WAGE SCHEDULE "G"

1. All contracts for public works between the Government of the Yukon and contractors are subject to the Fair Wage Schedule.
 2. The Fair Wage Schedule applies to the following public works:
 - .1 building construction
 - .2 heavy construction
 - .3 road, sewer and watermain construction
 3. The Fair Wage Schedule rates apply to all contractors and subcontractors. These are the minimum rates which must be paid to employees engaged on or in connection with public works. The Fair Wage Schedule makes provision for special rates which are payable to apprentices. The Apprentice Training Act and regulations (available from the Department of Education) set out the applicable apprentice percentages.
 4. Order-In-Council 1999/20 sets out the Fair Wage Schedule that is currently in effect at the tender closing date.
 5. Order-In-Council 1986/44 (Fair Wage Regulation) sets out that:
 - .1 the Fair Wage Schedule must be paid by contractors and subcontractors.
 - .2 the Fair Wage Schedule must be posted in a conspicuous place on the work-site where it is most likely to come to the attention of employees.
-

CATEGORY A

Effective 01 April, 2000 the prevailing wage rate for all classes in Category A is \$23.50 per hour.

CLASSES

• Boilermaker (erection and repair)	• Bricklayer and Stone Mason
• Carpenter	• Crane Operator (overhead, climbing, skyway or equivalent)
• Diver	• Electrician
• Elevator Mechanic	• Glass and Metal Installer
• Head Cook, Camp (camp size over 100 persons)	• Heavy Equipment Mechanic
• Heavy Equipment Operator (dragline, gradall, pile driver, shovel, mobile crane)	• Interior Systems Mechanic (metal framing and walls, drywall application, drywall contact and suspended ceilings, acoustical and metal linear ceiling, demountable partition, shaft wall and access floor systems; plenum barriers, fireproofing and plasterers)
• Linesperson (electric)	• Mechanical Systems Insulator
• Millright	• Plumber, Steamfitter and Welder (pipe)
• Refrigeration Mechanic	• Sheet Metal Mechanic
• Sprinkler System Installer	• Structural Steel Erector (includes reinforcing Ironworker)
• Surveyor	• Tile Setter
• Welder - General (acetylene and electric)	

1. The payment of wages to an apprentice in a Category A class occupation shall be based on the applicable percentage of the wage rate for that trade as prescribed by the Apprentice Training Act.
2. Where there is no recognized apprenticeship training program in the Yukon and where a person is engaged in activities at the same level and in circumstances similar to an apprentice in a Category A class occupation the person shall be paid no less than the applicable apprentice percentage of the rate for this category.

3. A person who is enrolled in recognized trades training obtained through a cooperative education program and is engaged in activities and in circumstances similar to an apprentice in a Category A class occupation, shall be paid no less than the applicable apprentice percentage of the rate for this category

CATEGORY B

Effective 01 April, 2000, the prevailing wage rate for all classes in Category B is \$21.06 per hour.

CLASSES

<ul style="list-style-type: none"> • Asphalt or Concrete Spreader Operator 	<ul style="list-style-type: none"> • Batchperson (operator of asphalt or concrete plant)
<ul style="list-style-type: none"> • Blaster 	<ul style="list-style-type: none"> • Cement Finisher
<ul style="list-style-type: none"> • Compressor Operator 	<ul style="list-style-type: none"> • Concrete Mixer Operator
<ul style="list-style-type: none"> • Driller 	<ul style="list-style-type: none"> • Float Driver
<ul style="list-style-type: none"> • Floor Covering Installer (includes carpet and resilient tile) 	<ul style="list-style-type: none"> • Head Cook, Camp (camp size 1 - 100 persons)
<ul style="list-style-type: none"> • Heavy Equipment Operator (rubber tire backhoe, tracked backhoe, bulldozer, front end loaders, graders, scrapers or equivalent) 	<ul style="list-style-type: none"> • Heavy Equipment Servicer
<ul style="list-style-type: none"> • Hoist Operator 	<ul style="list-style-type: none"> • Ornamental and Miscellaneous Metal Erector
<ul style="list-style-type: none"> • Painter and Paper Hanger 	<ul style="list-style-type: none"> • Pipelayer
<ul style="list-style-type: none"> • Roofer 	<ul style="list-style-type: none"> • Truck Driver (heavy - 10 Ton G.V.W. and up)

CATEGORY C

Effective 01 April, 2000, the prevailing wage rate for all classes in Category C is \$18.68 per hour.

CLASSES

• Blaster's Helper	• Concrete Floatperson (puddleperson, screedperson)
• Second Cook/Baker, Camp	• Surveyor's Helper
• Truck Driver (G.V.W. - 3 to 10 Tons)	•

CATEGORY D

Effective 01 April, 2000, the prevailing wage rate for all classes in Category D is \$16.95 per hour.

CLASSES

• Asphalt Raker	• Camp/Kitchen Helper
• Driller's Helper	• First Aid Attendant
• Flagperson	• Jackhammer Operator
• Labourer	• Mortar Person
• Pump Tender	• Roller Operator (roller, packer or compactor)
• Roofer's Helper	• Watchperson or Security Guard

TERMS OF PAYMENT "H"

TP1 Amount Payable- General

1.1 Subject to any other provisions of the contract, the Owner shall pay the Contractor, at the times and in the manner hereinafter set out, the amount by which

- .1 the aggregate of the amounts described in TP2 exceeds
- .2 the aggregate of the amounts described in TP3

and the Contractor shall accept that amount as payment in full satisfaction for everything furnished and done by him/her in respect of the work to which the payment relates.

TP2 Amounts Payable to the Contractor

2.1 The amounts referred to in TP1.1.1 are the aggregate of

- .1 the amounts referred to in the Articles of Agreement, and
- .2 the amounts, if any, that are payable to the Contractor pursuant to the General Conditions.

TP3 Amounts Payable to the Owner

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

TP4 Time of Payment

- .1 In these terms of payment
 - .1 "payment period" means a period of 30 consecutive days or such other period as is agreed between the Contractor and the Engineer and subject to Government of the Yukon Contract Regulations.
 - .2 an amount is "due and payable when it is due and payable by the Owner to the Contractor according to TP4.4, TP4.7 or TP4.10.
 - .3 an amount is overdue when it is unpaid on the first day following the day upon which it is due and payable.
 - .4 "date of payment" means the date of the negotiable instrument of an amount due and payable by the Owner and given for payment.
 - .5 "Bank Rate" means the discount rate of interest set by the Bank of Canada in effect at the opening of business on the date of payment.

- 4.2 The Contractor shall, on the expiration of a payment period, deliver to the Engineer in respect of that payment period a written progress claim that fully describes any part of the work that has been completed and any material that was delivered to the work site but not incorporated into the work during that payment period.
- 4.3 The Engineer shall, not later than ten days after receipt by him/her of a progress claim referred to in TP4.2,
- .1 inspect the part of the work and the material described in the progress claim; and
 - .2 issue a progress report, a copy of which the Engineer will give to the Contractor, that indicates the value of the part of the work and the material described in the progress claim that, in the opinion of the Engineer
 - .1 is in accordance with the contract and
 - .2 was not included in any other progress report relating to the contract.
- 4.4 Subject to TP1 and TP4.5 the Owner shall, not later than 30 (thirty) days after the receipt by the Engineer of a progress claim referred to in TP4.2, pay the Contractor
- .1 an amount that is equal to 95% of the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has been furnished by the Contractor, or
 - .2 an amount that is equal to 90% of the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has not been furnished by the Contractor.
- 4.5 It is a condition precedent to the Owner's obligation under TP4.4 that the Contractor has made and delivered to the Owner a statutory declaration described in TP4.6 in respect of a progress claim referred to in TP4.2.
- 4.6 A statutory declaration referred to in TP4.5 shall contain a deposition by the Contractor that
- .1 up to the date of the Contractor's progress claim the Contractor has complied with all lawful obligations with respect to the Employment Standards Act; and
 - .2 up to the date of the Contractor's immediately preceding progress claim all lawful obligations of the Contractor to subcontractors and suppliers of material in respect of the work under the contract have been fully discharged.
- 4.7 Subject to TP1 and TP4.8, the Owner shall, not later than 30 days after the date of issue of a Certificate of Substantial Performance referred to in GC38.2, pay the Contractor the amount referred to in TP1 less the aggregate of
- .1 the sum of all payments that were made pursuant to TP4.4;
 - .2 an amount that is equal to the Engineer's estimate of the cost to the Owner of rectifying defects in the work; and
 - .3 an amount that is equal to the Engineer's estimate of the cost to the Owner of completing deficiencies in the work other than the defects referred to in TP4.7.2.

- 4.8 It is a condition precedent to the Owner's obligation under TP4.7 that the Contractor has made and delivered to the Owner a statutory declaration described in TP4.9 in respect of a Certificate of Substantial Performance referred to in GC38.2.
- 4.9 A statutory declaration referred to in TP4.8 shall contain a deposition by the Contractor that up to the date of the Certificate of Substantial Performance the Contractor has
- .1 complied with all of the Contractor's lawful obligations with respect to the Employment Standards Act and the Workers Compensation Act including payments thereunder;
 - .2 discharged all of the Contractor's lawful obligations to the subcontractors and suppliers of material in respect of the work under the contract.
- 4.10 Subject to TP1 and TP4.11, the Owner shall, not later than 60 days after the date of issue of a Certificate of Total Performance referred to in GC38.1, pay the Contractor the amount referred to in TP1 less the aggregate of
- .1 the sum of all payments that were made pursuant to TP4.4; and
 - .2 the sum of all payments that were made pursuant to TP4.7.
- 4.11 It is a condition precedent to the Owner's obligation under TP4.10 that the Contractor has made and delivered a statutory declaration described in TP4.12 to the Owner.
- 4.12 A statutory declaration referred to in TP4.11 shall, in addition to the depositions described in TP4.9, contain a deposition by the Contractor that all of the Contractor's lawful obligations and any lawful claims against the Contractor that arose out of the performance of the contract have been discharged and satisfied.

TP5 Progress Report and Payment Thereunder Not Binding on the Owner

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

TP6 Delay in Making Payment

- 6.1 Notwithstanding GC7 Time of Essence any delay by the Owner in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of contract by the Owner.
- 6.2 The Owner shall pay, without demand from the Contractor, simple interest at the Bank Rate plus 1¼ percent on any amount which is overdue pursuant to TP4.1.3 including the day such amount became overdue until the day prior to the date of payment.

TP7 Right of Set-Off

- 7.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the contract, the Owner may set off any amount payable to the Owner by the Contractor under this contract or under any current contract against any amount payable to the Contractor under this contract.

- 7.2 For the purposes of TP7.1, "current contract" means a contract between the Owner and the Contractor
- .1 under which the Contractor has an undischarged obligation to perform or supply work, labour or material, or
 - .2 in respect of which the Owner has, since the date on which the Articles of Agreement were made, exercised any right to take the work that is the subject of the contract out of the Contractor's hands.

TP8 Payment In Event of Termination

- 8.1 If the contract is terminated pursuant to GC35 Termination of Contract, the Owner shall pay the Contractor any amount that is lawfully due and payable to the Contractor as soon as is practicable under the circumstances.

TP9 Interest on Settled Claims

- 9.1 The Owner shall pay to the Contractor simple interest on the amount of a settled claim at an average Bank Rate plus 1¼ percent.
- 9.2 For the purposes of TP9.1,
- .1 a claim is deemed to have been settled when an agreement in writing is signed by the Engineer and the Contractor setting out the amount of the claim to be paid by the Owner and the items of work for which the said amount is to be paid.
 - .2 an average Bank Rate means the discount rate of interest set by the Bank of Canada in effect at the end of each calendar month averaged over the period the settled claim was outstanding.
 - .3 a settled claim is deemed to be outstanding from the date the said claim was overdue pursuant to TP4.1.3 until the date of payment.
- 9.3 For the purposes of TP9 a claim means a disputed amount subject to negotiation between the Owner and the Contractor under the contract.