

## Section Cover Page

2019-08-30

**Section 00 72 00**  
**General Conditions of Contract**

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The department's Master Specification System contains two forms of General Conditions suitable for building construction and renovation contracts:

- .1 Basic Master Specification (BMS) Section 00 72 00 - General Conditions of Contract (long form).
- .2 Small Projects Master Specification (SPMS) Section 00 72 14 - General Conditions (short form).

Refer to Data Sheet - General for guidelines on selecting appropriate form.

This Master Specification Section contains:

- .1 This Cover Page
- .2 Data Sheet - General
- .3 Specification Section Text:
  - .1 See page 1 for list of contents.

## Change Log

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2019-08-30

Section 00 72 00  
General Conditions of Contract

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### Changes made in this Section Update (2019-08-30):

1. 4.3 – New text for Dispute Resolution Procedure.

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### Changes made in this Section Update (2019-02-20):

1. 1.1.1 – Added wording for counterpart signatures.

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### Changes made in this Section Update (2017-06-09):

1. 1.2.1 – grammatical correction

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### Changes made in this Section Update (2017-02-22):

1. Resolved duplicate paragraph numbering in document.

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### Changes made in this Section Update (2015-08-20):

1. 1.1.5 - Contract Documents – order of precedence list was revised.
2. 1.1.8 - Responsibility for printing and providing Contract Documents was revised.

The type of General Conditions to be used on a given contract will depend on the following:

1. Nature of the Work (complexity, potential for disputes etc.)
2. Contract Price (estimated cost).
3. Contract Time (duration).
4. Whether or not security is being specified.
5. Project location (region, site and adjacent property).
6. Likely type of Contractor and types of major Subcontractors.
7. Special contractual conditions and arrangements (eg. multiple prime contracts, etc.).
8. Special staging and scheduling requirements.
9. Other special contractual and administrative requirements.
10. Other risk factors.

Normally use this BMS Section 00 72 00 for building construction and renovation contracts whose estimated cost is \$100,000 or greater. For contracts under \$100,000, use of SPMS Section 00 72 14 - General Conditions should be considered and, if determined to be appropriate, used.

This Section is not intended to be edited. It should be used as is, in its entirety. Any required modifications must be made by means of Supplementary Conditions. If Supplementary Conditions are deemed necessary, discuss with Infrastructure, Procurement Branch.

This BMS Section 00 72 00 - General Conditions of Contract does not include definitions, payment conditions or insurance conditions. Always use BMS Section 00 71 00 - Definitions, Section 00 73 80 - Payment Conditions and Section 00 73 16 - Insurance Conditions in conjunction with this Section.

Ensure that Division 01 - General Requirements is coordinated with the General Conditions of Contract to avoid duplication and conflict.

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## 1. GENERAL

### 1.1 CONTRACT DOCUMENTS

- .1 The Contract Documents shall be signed by the Province and the Contractor. The Contract may be executed by the parties in counterparts, and may be delivered by electronic transmission in Portable Document Format (PDF), each of which upon execution and delivery shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- .2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- .3 The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work in accordance with these documents. It is not intended, however, that the Contractor shall supply Products or perform work not consistent with, covered by or properly inferable from the Contract Documents.
- .4 Nothing contained in the Contract Documents shall create any contractual relationship between the Consultant and the Contractor, a Subcontractor, a Sub-subcontractor, a supplier, or their agent, employee, or other person performing any of the Work.
- .5 In the event of conflicts between Contract Documents the following shall apply:
  - .1 figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing,
  - .2 drawings of larger scale shall govern over those of smaller scale of the same date,
  - .3 schedules shall govern over drawings,
  - .4 specifications shall govern over schedules and drawings,
  - .5 addenda shall govern over applicable portions of documents published during the tendering process,
  - .6 change orders shall govern over applicable portions of documents identified in 5.1 to 5.5 inclusive,
  - .7 the General Conditions of Contract shall govern over specifications, schedules and drawings,
  - .8 Supplementary Conditions shall govern over the General Conditions of Contract, specifications, schedules and drawings,
  - .9 the executed Agreement between the Province and the Contractor shall govern over all documents, and
  - .10 Amendments made after the execution of the Agreement Form shall govern over the executed Agreement between the Province and Contractor.

Notwithstanding the foregoing, documents of later date shall always govern.

- .6 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- .7 References to the masculine or the singular shall be considered to include the feminine and the plural as the context requires.
- .8 The Contractor shall be responsible for printing, at its expense, as many copies of the Contract Documents or parts thereof as are reasonably necessary for the performance of the Work. The Province will make available appropriate source documents from which the Contract Documents may be printed.
- .9 The Contractor shall keep one copy of current Contract Documents and shop drawings at the Place of the Work, in good order and available to the Province. This requirement shall not be considered to include the executed set of Contract Documents.
- .10 The Contract Documents, models and copies thereof furnished by the Province are and shall remain the Province's property with the exception of the signed contract set belonging to the Contractor. Such documents and models shall be used only with respect to the Work and shall not be used on other work. Such documents and models shall not be copied or revised in any manner without the written authorization of the Province.
- .11 Models furnished by the Contractor at the Province's expense are the property of the Province.

## **1.2 LAW OF THE CONTRACT**

- .1 This Contract shall be governed by and interpreted in accordance with the laws in force in Alberta and the parties irrevocably attorn to the exclusive jurisdiction of the courts of Alberta.
- .2 The Contractor shall comply with the provisions of all laws, now in force or in force after the signing of this Contract, that expressly or by implication apply to the Contractor in performing the work of this Contract.
- .3 Article 1.2 shall survive the Contract.

## **1.3 RIGHTS AND REMEDIES**

- .1 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

- .2 No action or failure to act by the Province or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **1.4 REPORTING OF CONFLICTS, ERRORS AND DISCREPANCIES**

- .1 If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Province in writing at once and, before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from the Province; however, the Contractor shall not be liable to the Province for failure to report any conflict, error or discrepancy in the Contract Documents unless the Contractor had actual knowledge thereof or should reasonably have known thereof.
- .2 The Contractor shall, pursuant to 1.4.1, obtain from the Province any dimensions required but not indicated in figures in the Contract Documents nor calculable from figures in the Contract Documents. Scaling of drawings, for any purpose, shall be at the Contractor's risk.

#### **1.5 RELATIONSHIP OF PARTIES**

- .1 The relationship of the Contractor to the Province in performing the services under this Contract is that of an independent contractor, and nothing in this Contract is to be construed as creating and agency, partnership, joint venture or employment relationship between the Contractor and the Province.

#### **1.6 CONFLICT OF INTEREST AND ETHICAL CONDUCT**

- .1 The Contractor shall ensure that there is not a conflict of interest or an apparent conflict of interest on the part of the Contractor or its employees, subcontractors or agents in relation to the Work, and all Work shall be performed in accordance with high ethical standards, including without limitation the following:
  - .1 the Contractor and its employees, subcontractors and agents shall not influence, or seek to influence, or otherwise take part in a decision of the Province knowing that the decision might further their private interests;
  - .2 where the Work involve providing advice, making recommendations to the Province or exercising discretionary authority regarding a right, permission, privilege, status, contract or benefit, then such advice, recommendations or discretion must be provided, made or carried out impartially and without bias;
  - .3 except for payment as set out in this Contract, the Contractor and its employees subcontractors or agents shall not accept any collateral gift, payment, commission or other direct benefit arising from or connected to the performance of the Services;



- .4 the Contractor and its employees, subcontractors and agents shall not have any financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Work;
  - .5 the Contractor, upon request by the Province, shall deliver copies of all written ethical standards, conflict of interest policies and codes of conduct established or observed by the Contractor in its business practices or in relation to its employees, subcontractors or agents; and
  - .6 the Contractor shall comply with, and ensure that, its employees, subcontractors and agents comply with, the *Lobbyists Act* (Alberta), as amended from time to time.
- .2 In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the performance of the Work, the Contractor shall immediately disclose such matter to the Province in writing. Upon such disclosure, the Contractor shall not commence or continue performance of the Work without the prior written consent of the Province. If the Province is of the opinion the Contractor or its employees, subcontractors or agents are in a conflict of interest, the Province may terminate this Contract in accordance with Article 2.3.1.2.

## **2. PROVINCE**

### **2.1 PROVINCE'S RIGHT TO PERFORM WORK OR TAKE WORK OUT OF CONTRACTOR'S HANDS**

- .1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of his insolvency or if a receiver is appointed because of his insolvency, the Province, without prejudice to any other right or remedy he may have, by giving the Contractor or receiver or trustee in bankruptcy written notice, may:
  - .1 take the Work out of the Contractor's hands, or
  - .2 terminate the Contract, in accordance with Article 2.3.
- .2 If the Contractor should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree, the Province may notify the Contractor in writing that he is in default of his contractual obligations and instruct him to correct the default in the 5 Working Days immediately following the receipt of such notice.
- .3 If the correction of the default referred to in Article 2.1.2 cannot be completed in the 5 Working Days specified, the Contractor shall be in compliance with the Province's instructions if he:
  - .1 commences the correction of the default within the specified time, and
  - .2 provides the Province, within the specified time, with an acceptable schedule for such correction, and

- .3 completes the correction in accordance with such schedule.
- .4 If the Contractor fails to correct the default referred to in Article 2.1.2 in the time specified or subsequently agreed upon, the Province, without prejudice to any other right or remedy he may have, may:
  - .1 correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor, or
  - .2 if the Contractor has provided a performance bond, require the surety company to correct such default in accordance with the conditions of the performance bond, or
  - .3 take all or any part of the Work out of the Contractor's hands, or
  - .4 terminate the Contract, in accordance with Article 2.3.
- .5 If all or any part of the Work is taken out of the Contractor's hands, the Province may:
  - .1 employ such means as he sees fit to have the Work completed, and
  - .2 take possession of the premises and products and utilize the construction machinery and equipment subject to the rights of third parties, and
  - .3 withhold further payments to the Contractor until the Work is completed.
- .6 If all or any part of the Work is taken out of the Contractor's hands, the Province may:
  - .1 if the Contractor has not provided contract performance security:
    - .1 charge the Contractor, upon Final Acceptance of the Work, the amount by which the full cost of completing the Work, including a reasonable allowance to cover the cost of corrections to work performed by the Contractor that may be required under Article 6.3, Warranty, exceeds the unpaid balance of the Contract Price; however if such cost of finishing the Work is less than the unpaid balance of the Contract Price, he shall pay the Contractor the difference, and
    - .2 on expiry of the warranty period, charge the Contractor the amount by which the cost of corrections to his Work under Article 6.3, Warranty, exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference, or
  - .2 if the Contractor has provided contract performance security in the form of a performance bond, exercise the provisions of the performance bond in accordance with the conditions of such bond and the Contract Documents, or:

- .3 if the Contractor has provided contract performance security in the form of a security deposit, convert the security deposit to his own use; the amount realized shall be deemed to be an amount due from the Province to the Contractor under the Contract and any balance of such amount that remains after payment of all losses, damage, and claims of the Province and others shall be paid by the Province to the Contractor if in the Province's opinion, it is not required for the purposes of the Contract.
- .7 The Contractor's obligations under the Contract as to quality, correction and warranty of the work performed by him up to the time of the Work being taken out of the Contractor's hands, shall continue after the Work is taken out of the Contractor's hands.

## **2.2 PROVINCE'S RIGHT TO SUSPEND WORK**

- .1 The Province may require the Contractor to suspend performance of the Work either for a specified or an unspecified period by giving a written notice of suspension to the Contractor.
- .2 When a notice referred to in Article 2.2.1 is received by the Contractor, he shall suspend all operations in respect of the Work except those that, in the opinion of the Province, are necessary for the care and preservation of the Work.
- .3 The Contractor shall not, during a period of suspension, remove any part of the Work, Products or construction machinery and equipment from the Place of the Work without the consent of the Province.
- .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 shall be entitled to an increase in Contract Price, an extension of Contract Time, or both, where such increase in Contract Price, extension of Contract Time, or both, are directly attributable to the suspension.
- .5 If, upon the expiration of a period of suspension of more than 30 days, the Province and the Contractor agree that the performance of the Work will be continued by the Contractor, the Contractor shall resume performance of the Work subject to any terms and conditions agreed upon by the Province and the Contractor.
- .6 If, upon the expiration of a period of suspension of more than 30 days, the Province 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 of Contract by the Province.

## **2.3 PROVINCE'S RIGHT TO TERMINATE CONTRACT**

- .1 The Province may, by giving a written notice of termination to the Contractor, terminate the Contract:
  - .1 pursuant to Article 2.1.1, 2.1.4, 2.2.6 or
  - .2 at any other time.
- .2 When a notice referred to in Article 2.3.1 is received by the Contractor, he shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the Contract.
- .3 If the Province terminates the Contract pursuant to Article 2.1.1 or 2.1.4, the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination.
- .4 If the Province terminates the Contract pursuant to Article 2.2.6 or 2.3.1.2., the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination, including reasonable profit and for loss sustained upon Products and construction machinery and equipment and such other damages as the Contractor may have sustained as a result of the termination of the Contract.

## **2.4 CHANGES IN THE WORK**

- .1 The Province, without invalidating the Contract, may make changes in the Work consisting of additions, deletions or other modifications, the Contract Price and Contract Time being adjusted if required.
- .2 Changes in the Work shall be authorized by written order from the Province.

## **2.5 VALUATION OF CHANGES**

- .1 The value of any change shall be determined by one or more of the following methods, as selected by the Province:
  - .1 By acceptance of a lump sum, properly itemized and supported by Subcontractors', Sub-subcontractors' and Suppliers' signed quotations and other substantiating data as may be required by the Province to permit evaluation.
  - .2 By unit prices agreed upon.
  - .3 By cost plus percentage or fixed fee.

- .2 In cases of extra work to be paid for under method 2.5.1.3, the Contractor shall keep and present in such form as the Province may direct, a correct account of the actual cost of labour, materials, and equipment, together with vouchers. The Province shall certify as to the amount due the Contractor.
- .3 In cases of extra work to be paid for under method 2.5.1.2, the Contractor shall keep and present in such form as the Province may direct, a correct account of the actual quantities related to each of the agreed upon unit prices, together with vouchers. The Province shall certify as to the amount due the Contractor.
- .4 On extra work authorized by the Province, and to be paid for under method 2.5.1.1, the allowance for overhead and profit shall be based on the following schedule:
  - .1 For work performed by Contractor's own forces, including work performed to accommodate work performed by Subcontractors, the Contractor shall be entitled to a mark-up of 15% on its actual Direct Costs related to the change in the work for overhead costs and profit.
  - .2 For work performed by Subcontractors, including work performed to accommodate work performed by Sub-subcontractor:
    - .1 Each Subcontractor shall be entitled to a mark-up of 15% on actual Direct Costs related to the change in the work for overhead and profit.
    - .2 Contractor shall be entitled to 10% on the Subcontractors' total price to cover their Administrative Fee and profit.
  - .3 For work performed by Sub-subcontractors:
    - .1 Each Sub-subcontractor shall be entitled to a mark-up of 15% on actual Direct Costs related to the change in the work for overhead and profit.
    - .2 Subcontractor shall be entitled to 10 % on the Sub-subcontractors' total price to cover their Administrative Fee and profit.
    - .3 Contractor shall be entitled to 10 % on the Subcontractor's above total price to cover their Administrative Fee and profit.
- .5 If a change results in a decrease in cost, the amount of credit to be given to the Province by the Contractor shall be the amount of the actual decrease without overhead and profit.
- .6 If a change involves both extras and credits and results in an increase in cost, overhead and profit shall be allowed on the increase only.
- .7 The Contractor shall include in his proposal for change a statement as to the effect the proposed change will have on the Contract Time.

## **2.6 CHANGES IN SUB SURFACE CONDITIONS**

- .1 The Contractor shall promptly notify the Province in writing if the subsurface conditions at the Place of the Work differ substantially from those indicated in the Contract Documents or represented to the Contractor before submission of tender.
- .2 After investigation should the Province agree that conditions do differ substantially, appropriate instructions for changes in the Work will be issued.

## **3. CONTRACTOR**

### **3.1 CONTRACTOR'S RESPONSIBILITIES FOR AND CONTROL OF THE WORK**

- .1 The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for:
  - .1 The means, methods, techniques, sequences and procedures of construction and for coordinating all parts of the Work under the Contract.
  - .2 The design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use.
  - .3 Construction safety at the Place of the Work and for compliance with the regulatory requirements required by the applicable legislation.
- .2 Notwithstanding the provisions of 3.1.1.1 and 3.1.1.2, or provisions to the contrary elsewhere in the Contract Documents, the Contractor shall not be held responsible for:
  - .1 the design or selection of a specific means, method, technique, sequence, or procedure of construction, nor
  - .2 the design or selection of a temporary structural or other temporary facility, which is indicated in and required by the Contract Documents.
- .3 The Contractor shall be responsible for seeing that the finished Work complies accurately with the Contract Documents.

### **3.2 SUPERINTENDENCE**

- .1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Place of the Work while the Work is being performed.
- .2 The superintendent shall be satisfactory to the Province and shall not be changed except for good reason and only then after consultation with the Province.

- .3 The superintendent shall be the Contractor's representative at the Place of the Work and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

### **3.3 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT**

- .1 If the Work should be stopped or otherwise delayed for a period of 30 days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by him, the Contractor may, without prejudice to any other right or remedy he may have, by giving the Province written notice, terminate the Contract.
- .2 If the Contractor terminates the Contract pursuant to Article 3.3.1, he shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination, including reasonable profit and for loss sustained upon Products and construction machinery and equipment and such other damages as the Contractor may have sustained as a result of termination of the Contract.

### **3.4 HOLD HARMLESS AGREEMENT**

- .1 Each party shall indemnify and hold harmless the other, its employees and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from
  - .1 that party's breach of this Contract, or
  - .2 the negligence, other tortious act of wilful misconduct of that party, or those for whom it is legally responsible, relation to the performance of its obligations under this Contract.
- .2 The Contractor shall indemnify and hold harmless the Province against and from any loss or damage to real or personal property of the Province to the extent arising from the Contractor's breach of this Contract or from the negligence, other tortious act or wilful misconduct of the Contractor, or those for whom it is legally responsible.
- .3 Article 3.4 survives the Contract.

### **3.5 SECURITY**

- .1 The Contractor shall, if and as specified elsewhere in the Contract Documents, provide:
  - .1 contract performance security in the form of a security deposit or a surety bond, and



- .2 security for payment of claims in the form of a security deposit or a surety bond, and
  - .3 other security which may be specified.
- .2 The Province reserves the right to require the Contractor to provide one or more of the aforementioned types of security notwithstanding that such security may not have been required by the Tender Documents prior to tender closing. Should the Province exercise this right, the Contract Price shall be increased by the actual cost of such security provided.
  - .3 Surety bonds shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta and shall be properly executed.
  - .4 The Province may, for reasonable cause, object to use of surety company proposed by the Contractor, and may require the Contractor to provide a surety bond issued by another surety company acceptable to the Province, with no change in Contract Price.
  - .5 If, at any time during term of surety bond, surety company is declared bankrupt, becomes insolvent or its right to do business anywhere in Canada is terminated, the Contractor shall within 10 days thereafter substitute another surety bond and surety company acceptable to the Province, with no change in Contract Price.
  - .6 The Province reserves the right to provide the surety company with progress reports on the Work.

### **3.6 WORKERS' COMPENSATION ACT AND OCCUPATIONAL HEALTH AND SAFETY ACT**

- .1 Upon request from the Province, deliver to the Province a certificate from the Workers' Compensation Board showing that the Contractor is registered and in good standing with the Board.
- .2 The Contractor shall pay all fees in connection with Workers' Compensation and comply with all requirements of the *Workers' Compensation Act* (Alberta), and as amended from time to time.
- .3 The Contractor shall comply with all safety requirements as contained in the Regulations as issued under authority of the latest edition of the *Occupational Health and Safety Act* (Alberta).

### **3.7 LABOUR**

- .1 Unless otherwise specified in the Contract Documents, the Contractor shall provide and pay for all labour necessary for the performance of the Work.



- .2 Persons employed in performing the Work shall be skilled in and competent to properly perform the tasks assigned to them and, when required by laws, rules, regulations or the Contract Documents, qualified to do so.
- .3 The Contractor shall maintain good order and discipline among persons employed at the Work site.

### **3.8 EMPLOYMENT CONDITIONS**

- .1 The Contractor agrees and shall ensure that wages, hours of work and other conditions of employment of all persons employed by the Contractor, any Subcontractor and any Sub-subcontractor in the performance of any work required by this Contract shall be in compliance with the requirements of the Alberta Employment Standards Act, the Alberta Labour Relations Act and any other applicable law, rule, regulation or order.

### **3.9 PATENT FEES**

- .1 The Contractor shall pay the royalties and patent licence fees required for the performance of the Contract.

### **3.10 PRODUCTS**

- .1 Unless otherwise indicated in the Contract Documents, the Contractor shall provide and pay for all products, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the Work.
- .2 Products provided shall be new unless otherwise indicated in the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use subject to the Province's approval.

### **3.11 USE OF PREMISES**

- .1 The Contractor shall confine construction machinery and equipment, the storage of products, and the operations of workers to the Place of the Work and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by regulatory requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with products or construction machinery and equipment.

### **3.12 PROTECTION OF WORK AND PROPERTY**

- .1 The Contractor shall protect the Work and the Province's property and property adjacent to the Place of the Work from damage and shall be responsible for damage which may arise as a result of his operations under the Contract except damage which occurs as the result of:

- .1 errors in the Contract Documents,
  - .2 acts or omissions by the Province, or Other Contractors.
- .2 Should the Contractor, in the performance of the Contract, damage the Work, the Province's property, or property adjacent to the Place of the Work, the Contractor shall be responsible for the making good of such damage at the Contractor's expense.

### **3.13 INSPECTION OF WORK**

- .1 The Province, authorized representatives of the Province, including testing agencies, and authorities having jurisdictional interests shall, at reasonable times, have proper and safe access to the Work, including parts of the Work in preparation at locations other than the Place of the Work, for the purposes of observation, inspection and testing.
- .2 If work is designated for special tests, inspections or approvals in the Contract Documents, or by the Province's instructions, or regulatory requirements, the Contractor shall give the Province timely notice requesting inspection. The Contractor shall arrange for inspections by authorities having jurisdiction and shall give the Province timely notice of the date and time.
- .3 If the Contractor covers or permits to be covered work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, he shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed and make good such work at his own expense.
- .4 The Province may order any part or parts of the Work to be specially examined should he believe that such work is not in accordance with the requirements of the Contract Documents. If, upon examination such work be found not in accordance with the requirements of the Contract Documents, the Contractor shall correct such work and pay the cost of examination and correction. If such work be found in accordance with the requirements of the Contract Documents, the Province shall pay the cost of examination and replacement.

### **3.14 REJECTED WORK**

- .1 Defective work, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the Province as failing to conform to the Contract Documents shall be removed promptly from the Place of the Work by the Contractor and replaced or re-executed promptly in accordance with the Contract Documents at the Contractor's expense.
- .2 Other Contractors' work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.

- .3 If, in the opinion of the Province, it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Province may deduct from the Contract Price the difference in value between the work as performed and that called for by the Contract Documents, the amount of which will be determined in the first instance by the Province.

### 3.15 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- .1 The Contractor acknowledges that this Contract, including without limitation the name of the Contractor, fees payable, the Term, and details of the Services may be subject to disclosure under the *FOIP Act*. The Contractor further acknowledges that the *FOIP Act* applies to the Province's Information (as defined in Article 3.16) collected, used or disclosed in the performance of Work, and the Contractor shall adhere to the *FOIP Act* in its collection, use and disclosure of any Personal Information,
- .2 The Contractor shall not collect, use or disclose any Personal Information under this Contract except as reasonably required to fulfill its obligations under this Contract, or as otherwise expressly authorized in writing by the Province.
- .3 Upon request, the Contractor shall, at the Contractor's expense, and within five business days, provide to the Province any records that are requested under the access provisions of the *FOIP Act* that are in the custody or under the control of the Contractor. Should the Contractor receive an access request under the *FOIP Act*, the Contractor shall not respond to it, but shall immediately forward the access request to the Province for further handling.
- .4 In providing the Services the Contractor shall make every reasonable effort to ensure that Personal Information that is to be or is actually used to make a decision that directly affects an individual, is both complete and accurate. At the Province's request the Contractor must correct, within five business days of the request, Personal Information that the Contractor may have either collected or compiled about an individual pursuant to this Contract.
- .5 The Contractor shall:
  - .1 protect Personal Information against any unauthorized access, use disclosure, loss, destruction or alteration;
  - .2 immediately advise the Province of any actual or potential unauthorized access, use, disclosure, destruction or alteration of Personal Information and provide all reasonable assistance to the Province to prevent or remedy the same; and
  - .3 provide the Province with any information regarding the Contractor's security measures that the Province may require to verify compliance with the *FOIP Act*.

- .6 The Contractor shall store only in Canada all records of Personal Information which are disclosed to the Contractor under this Contract, including records that are collected, used or stored on behalf of the Province.
- .7 The Contractor shall act on any direction that the Province may provide with regard to the use, collection, access, security, disclosure, alteration, loss or destruction of the Personal Information.
- .8 Article 3.15 survives the Contract.

### **3.16 NON-DISCLOSURE OF INFORMATION**

- .1 Except as provided in Articles 3.15 and 3.16, all information, regardless of form, including Personal Information, that is obtained, generated, provided or collected by the Contractor in the performance of the Work (the "Province's Information"), shall not be disclosed or published by the Contractor without the prior written consent of the Province. The Contractor may disclose the Province's Information to employees, subcontractors or agents of the Contractor who have a need to know for the purpose of performing the Work, provided that the Contractor has a confidentiality agreement with the agent or permitted subcontractor containing confidentiality provisions substantially similar to this Contract.
- .2 Subject to Article 3.15 the Contractor's obligations in Article 3.16 do not apply to information or documents which:
  - .1 are or become publicly available through no act or omission of the Contractor;
  - .2 are independently developed without benefit of the Province's Information; or
  - .3 are received by or from a third party without restriction and without a breach of an obligation of confidentiality.
- .3 The Contractor shall retain the Province's Information as confidential and shall make reasonable security arrangements against unauthorized access, use, disclosure, loss, destruction or alteration of the Province's Information. The Contractor shall immediately advise the Province of any unauthorized access, use, disclosure, loss or destruction of the Province's Information, and shall provide the Province any assistance reasonably required to rectify such a situation.
- .4 The Contractor shall return or deliver the Province's Information to the Province upon completion or termination of this Contract, or upon request of the Province.
- .5 The Province's Information may be disclosed to the extent required by law or court order, provided that the Province is given reasonable notice and opportunity to seek to prevent or limit its disclosure.

- .6 No press release, public announcement or other public commentary relating to this Contract shall be made by the Contractor without the prior written approval of the Province.

- .7 Article 3.16 survives the Contract.

#### **4. PROVINCE AND CONTRACTOR**

##### **4.1 INTERPRETATION OF CONTRACT DOCUMENTS BY PROVINCE**

- .1 The Province shall be, in the first instance, the interpreter of the requirements of the Contract Documents, and the judge of the performance thereunder by the Contractor. Interpretations and decisions of the Province shall be consistent with the intent of the Contract Documents.

##### **4.2 CLAIMS**

- .1 If the Contractor intends to claim any additional payment, or if the Province intends to make a claim against the Contractor for an adjustment in payment other than permitted under the Contract, the claimant shall give notice of its intention to the other party as soon as possible and not later than 7 days after the event giving rise to the claim first arises or the claimant first becomes aware of such event.
- .2 Failure to serve a notice of claim within the prescribed time period will prejudice the claimant's right to proceed with the claim, unless the claimant can demonstrate that such delayed notice did not prejudice the other party's ability to take measures to minimize any additional costs arising from the claim.
- .3 Upon occurrence of the event referred to in Article 4.2.1, the claimant shall take all reasonable measures required to mitigate any loss or damage which may be incurred as a result of such event.
- .4 Upon occurrence of the event referred to in Article 4.2.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make, including records of time and cost relating to labour, products, construction equipment and other resources used in the work. The Contractor shall permit the Province to inspect all such records and shall supply him with copies thereof as and when the Province so instructs.
- .5 Within 14 days, or such other reasonable time as may be agreed by the Province, of giving notice under Article 4.2.1, the Contractor shall send to the Province an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based.

- .6 Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Province may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Province, the Contractor shall send a final account within 14 days after the end of the effects resulting from the event.
- .7 The parties shall make bona fide efforts to resolve a claim as soon as possible after receipt thereof. When a party in receipt of a claim issues its final written position on the claim or fails to do so within a reasonable period of time, and the claim is not resolved to the satisfaction of both parties, the claim shall be considered a dispute and shall be settled in accordance with Article 4.3.
- .8 The Contractor shall be entitled to have included in any progress payment such amount in respect of any claims as the Province may consider due to the Contractor. If information is insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such information may substantiate to the satisfaction of the Province.

#### **4.3 DISPUTE RESOLUTION PROCEDURE**

- .1 The following expressions have the following meanings:
  - "Dispute" means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the Agreement;
  - "Dispute Notice" means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;
- .2 Any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out herein, which procedure shall be followed in the order set out below:
  - .1 the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one party to the other;
  - .2 the parties shall attempt to resolve the Dispute by a Settlement Meeting under section 4.3.3;
  - .3 if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to Court.

Within 21 days of a party becoming aware of the basis for a potential Dispute, such party shall give the other party notice of the basis for a potential Dispute. Failure by such party to provide such notice in such manner shall not thereafter disqualify such party from providing a Dispute Notice, but the other party may in that event assert a claim for damages arising from such failure.

.3 Settlement Meeting

- .1 In the event of a Dispute, which is not resolved in the normal course of business, either party may deliver a Dispute Notice to the other party. Within 30 days from the delivery of the Dispute Notice, officials designated by the Province and the Contractor will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "Settlement Meeting"). The parties through their representatives will make all reasonable efforts to resolve the Dispute. All negotiations held pursuant to Section 4.3.3 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding.

.4 Court

- .1 If any Dispute is not resolved by agreement between the parties, after a Settlement Meeting either party may refer the Dispute to Court.

**4.4 ASSIGNMENT**

- .1 The Contractor shall not assign the Contract, either in whole or in part, nor shall he sublet the Contract as a whole, without the previous written consent of the Province, which consent shall be at the Province's sole discretion.
- .2 The Province shall not be bound by any assignment by the Contractor of any monies payable or to become payable to the Contractor under the Contract, without the written consent of the Province, which consent:
  - .1 will not be given for a general assignment of book debts, but
  - .2 may, at the Province's sole discretion, be given for a specific assignment of all or part of monies payable to the Contractor under the Contract.

**4.5 ACCOUNTING**

- .1 Keep and maintain in accordance with Canadian generally accepted accounting principles complete and accurate books, records and accounts relating to this Contract and, on demand, provide to the Province these documents to examine, audit and make copies and take extracts; and
- .2 Keep the documents referred to in clause 4.5.1 for three years following the completion of termination of the Contract.
- .3 Article 4.5 survives the Contract.



## **5. OTHER PARTIES**

### **5.1 SUBCONTRACTORS**

- .1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract and to:
  - .1 enter into contracts or written agreements with his Subcontractors to require them to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and
  - .2 be as fully responsible to the Province for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

The Contractor therefore agrees that he will incorporate the terms and conditions of the Contract Documents into all subcontract agreements he enters into with his Subcontractors.

- .2 The Contractor agrees to employ those Subcontractors proposed by him on the List of Subcontractors and accepted by the Province at the signing of the Agreement.
- .3 The Province may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to employ another Subcontractor.
- .4 In the event that the Province requires a change from a proposed Subcontractor, the Contract Price shall be adjusted by the difference in cost and markup occasioned by such required change, except where such change is required due to noncompliance with the Contract Documents, in which case there shall be no change in Contract Price.
- .5 The Contractor shall not be required to employ as a Subcontractor a person or firm to whom he may reasonably object.
- .6 The Province may, upon reasonable request and at his discretion, provide to a Subcontractor information as to the percentage or quantity of the Subcontractor's work for which payment has been approved.
- .7 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Province.

### **5.2 OTHER CONTRACTORS**

- .1 The Province reserves the right to let separate contracts in connection with the Project of which the Work is part.
- .2 Unless otherwise specified, the Province shall coordinate the work and insurance coverages of Other Contractors as they affect the Work of this Contract.



- .3 The Contractor shall report to the Province, any apparent deficiencies in Other Contractor's work which would affect the work of this Contract. Failure by the Contractor to so report promptly, may invalidate any claims against the Crown by reason of the deficiencies of Other Contractors' work.
- .4 The Province will take reasonable precautions to avoid labour disputes or other disputes on the project arising from the work of Other Contractors.

### **5.3 OBLIGATIONS TO AND CLAIMS OF THIRD PARTIES**

- .1 The Contractor shall, with respect to lawful obligations of and lawful claims against the Contractor or any Subcontractor arising from the Contract:
  - .1 discharge such obligations of and satisfy such claims against the Contractor, and
  - .2 ensure the discharge of such obligations of and the satisfaction of such claims against Subcontractors.
- .2 The Contractor shall, when requested by Province, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in Article 5.3.1.

### **5.4 AUTHORITY OF THE CONSULTANT**

- .1 Where reference is made in the Contract Documents to the Province in respect of administrative duties, responsibilities and authority of the Province, the Consultant will have authority to act on behalf of the Province only to the extent provided in Article 5.5, unless otherwise modified by written agreement as provided in Article 5.4.2.
- .2 The duties, responsibilities, and limitations of authority of the Consultant as set forth in Article 5.5 shall be modified or extended only with the written consent of the Province, the Contractor, and the Consultant.

### **5.5 ROLE OF THE CONSULTANT**

- .1 The Consultant will, to the extent set forth in this Article, provide administration of the Contract during the progress of the Work until Total Completion of the Work.
- .2 The Consultant will visit the Place of the Work at appropriate intervals to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.
- .3 If the Province and the Consultant agree, the Consultant will provide at the Place of the Work, one or more project representatives to assist in carrying out the Consultant's responsibilities.

- .4 Based on the Consultant's observations and evaluation of the Contractor's applications for payment, the Consultant will recommend to the Province amounts to be paid to the Contractor in accordance with the Contract Documents, including deductions from, and withholding of, amounts payable.
- .5 The Consultant will have authority to inspect work in accordance with Article 3.13 and reject work in accordance with Article 3.14.
- .6 During the progress of the Work, the Consultant will furnish supplemental instructions to supplement the Contract Documents as required for the performance of the Work. Such supplemental instructions will be consistent with the intent of the Contract Documents and will not involve adjustment in the Contract Price or Contract Time.
- .7 The Consultant will receive, review and take appropriate action upon all Contractor's submittals required by the Contract Documents.
- .8 The Consultant will issue to the Contractor requests for proposals for changes in the Work, receive, review, and evaluate Contractor proposals for changes in the Work, and prepare Change Orders in accordance with the Contract Documents.
- .9 The Consultant will conduct inspections of the Work to determine, in accordance with the Contract Documents, the dates of Interim Acceptance of the Work, Practical Completion of the Work if applicable, Final Acceptance of the Work, and Total Completion of the Work.

## **6. REQUIREMENTS OF CONTRACT**

### **6.1 CONTRACT TIME**

- .1 Time and all time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall perform work expeditiously and with adequate forces to complete the Work of the Contract within the time specified in the Contract Documents.

### **6.2 DELAYS**

- .1 If the Contractor is delayed in the completion of the work by force majeure, or by any Other Contractor or by anyone under the control of any one of them, or by changes ordered in the work, then the Contract Time shall be extended for such reasonable time as the Province may decide.

- .2 If the Contractor is delayed in completion of the work by labour disputes, legal strikes, lockouts (including lockouts decreed or recommended by a recognized contractors' association for its members of which the Contractor is a member), fire, unusual delay by common carriers or unavoidable casualties or, without limiting any of the foregoing, by any cause of any kind whatsoever beyond the Contractor's control, then at the Province's discretion the Contract Time shall be extended for a period of time due to such delays.

### **6.3 WARRANTY**

- .1 Neither the final payment, nor any provision in the Contract Documents shall relieve the Contractor from responsibility for faulty materials or workmanship which appear within a period of one (1) year from the date of Interim Acceptance of the Work, or such other periods as may be specified for parts of the Work, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which appear within such periods.
- .2 The Province shall give notice of observed defects promptly.

### **END OF SECTION**