

## **ANNEXE F - GENERAL CONDITIONS – Architectural and engineering services**

### **GC1: General provisions – Architectural and/or engineering services**

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#### **GC1.1 Definitions**

##### **“Applicable Taxes”**

means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Canada such as, the Quebec Sales Tax (QST) as of April 1, 2013;

##### **“Architectural and Engineering Services”**

means services to provide a range of investigation and recommendation reports, planning, design, preparation, or supervision of the construction, repair, renovation or restoration of a work and includes contract administration services, for real property projects;

##### **“Average Bank Rate”**

means the simple arithmetic mean of the Bank Rate in effect at 4:00 p.m. Eastern Time each day during the calendar month which immediately precedes the calendar month in which payment is made;

##### **“Bank Rate”**

means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which it makes short term advances to members of the Canadian Payments Association (Payments Canada);

##### **“Canada”, “Crown”, “Her Majesty” or the “Government”**

means Her Majesty the Queen in right of Canada;

##### **“Change of Control”**

means, with respect to a person:

- (1) any change in ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
- (2) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
- (3) any other change of direct or indirect power to generally direct or cause the direction of the management, actions or policies of such person

but excludes any Change of Control, as defined in paragraph (1) to (3), arising as a consequence of any bona fide open market transaction effected on a recognized public stock exchange;

**“Construction Management Contract”**

means a contract between Canada and the Construction Manager for the provision of Construction Management Services in relation to the Project;

**“Construction Management Services”**

means services during the planning and design of the work, from the beginning of the design stage, including compliance with timelines, costs, construction methods and procurement strategy, in collaboration with consultants and the client. The services are then to include the provision of Construction Services. The Construction Manager also assumes all the liability and all the obligations of a general contractor;

**“Construction Services”**

means construction, repair, renovation or restoration of any work except a vessel and includes; the supply and erection of a prefabricated structure; dredging; demolition; environmental services related to a real property; or, the hire of equipment to be used in or incidentally to the execution of any construction services referred to above;

**“Consultant”**

means the party which performs the Services under the Agreement;

**“Contracting Authority”**

means the party identified on the front cover page responsible for the establishment of the agreement, its amendments, administration and any contractual issues related to it;

**“Construction Manager”**

means a person with whom Canada enters, or intends to enter, into a Construction Management Contract;

**“Contract Price”**

means the amount stated in the Agreement to be payable to the Consultant for the Services, exclusive of Applicable Taxes;

“Cost Plan”

means the allocation of proposed costs among the various elements of the Project, as described in the Project Brief or Terms of Reference;

“Departmental Representative”

means the officer or employee of Canada identified to the consultant in writing by a duly authorized departmental officer to perform the Departmental Representative’s duties under the Agreement;

“Encumbrances”

means

- (1) in the province of Quebec: any real immovable or movable right, including, whether real or personal or mixed, a servitude, a right of way, a tolerance, a restrictive covenant, an encroachment, a lease, a permit to use or occupy, a legal hypothec or any other hypothec, a security interest, a priority, a charge, an assignment, an option to purchase or sell, a right of first refusal or rights or security resulting from a claim of a governmental authority, a right ending at death and a pledge;
- (2) elsewhere in Canada: any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, writ, claim of privilege or encumbrance of any nature whatsoever;

“Facility Maintenance Services”

means services related to activities normally associated with the maintenance of a facility and keeping spaces, structures and infrastructure in proper operating condition in a routine, scheduled, or anticipated fashion to prevent failure and degradation including inspection, testing, servicing, classification as to serviceability, repairs, rebuilding and reclamation, as well as cleaning, waste removal, snow removal, lawn care, replacement of flooring, lighting or plumbing fixtures, painting and other minor works;

“Mediation”

is a process of dispute resolution in which a neutral third party assists the parties involved in a dispute to negotiate their own settlement;

“Package Construction Cost”

means the total cost, to Canada, of the Construction Services to be provided by the Construction Manager (either itself or through its subcontractors) for a specific Work Package, excluding, for further clarity, the Construction Manager’s percentage fees, fees related to permits needed for the construction of the Work Package in question (if applicable), applicable taxes, the Construction Manager’s insurance and surety costs required for the Project and the Contract Price or any part thereof;

“Package Construction Cost Estimate”

means the anticipated Package Construction Cost for a specific Work Package, as prepared by the Consultant and approved and updated in accordance with this Agreement;

**“Package Construction Cost Limit”**

means the maximum Package Construction Cost acceptable to Canada to complete a certain Work Package, as initially determined by Canada and adjusted by Canada from time to time, acting reasonably;

**“Project”**

means the construction of the new court complex in Montréal, as described in the Project Description (PD) section of the Project Brief;

**“Project Brief” or “Terms of Reference”**

means a document describing in sufficient detail the Services to be provided by the Consultant to permit the Consultant to proceed with said Services and may include general project information, scope of the work, site and design data, and time plan, specifically related to the Project;

**“Project Construction Cost”**

means the total cost, to Canada, of the Construction Services to be provided by the Construction Manager (either itself or through its subcontractors) for the Project, including, without limitation, all Packages Construction Costs, the proportional construction fees (percentage based) of the Construction Manager, the fees related to permits needed for the construction of the Project (without duplication if such fees are included in the Packages Construction Costs), the Construction Manager’s insurance and surety costs required for the Project, but excluding applicable taxes, the fixed monthly fee (including any modification thereof) of the Construction Manager for the provision of Construction Management Services and the Contract Price or any part thereof;

**“Project Construction Cost Estimate”**

means the anticipated Construction Cost for the Project, as prepared by the Consultant and approved and updated in accordance with this Agreement;

**“Project Construction Cost Limit”**

means the maximum Project Construction Cost acceptable to Canada, as initially determined by Canada and adjusted by Canada from time to time, acting reasonably;

**“Project Schedule”**

means a time plan, including the sequence of tasks, milestone dates and critical dates which must be met for the implementation of the planning, design and construction phases of the Project;

**“Services”**

means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed under the Agreement;

**“Sub-consultant”**

means any person engaged by the Consultant or another Sub-consultant to perform a portion of the Services;

### “Technical Documentation”

includes designs, reports, photographs, physical models, surveys, drawings, specifications, computer software developed for the purpose of the Project, computer printouts, design notes, calculations, CADD (Computer-aided Design and Drafting) files, and other data, information and material, prepared, computed, drawn, or produced and operating and maintenance manuals either prepared or collected for the Project;

### “Total Estimated Cost”, “Revised Estimated Cost”, “Increase (Decrease)”

on page 1 of the Contract or Contract Amendment means an amount used for internal administrative purposes only that comprises the Contract Price, or the revised Contract Price, or the amount that would increase or decrease the Contract Price and the Applicable Taxes as evaluated by the Contracting Authority, and does not constitute tax advice on the part of Canada;

### “Work Package”

means a unique part of the Construction Services for the Project, intended for separate tendering and construction, the number and nature of which are determined in accordance with this Agreement.

## **GC1.2 Interpretation**

1. Words importing the singular only also include the plural, and vice versa, where the context requires;
2. Headings or notes in the Agreement shall not be deemed to be part thereof, or be taken into consideration in its interpretation;
3. “Herein”, “hereby”, “hereof”, “hereunder” and similar expressions refer to the Agreement as a whole and not to any particular subdivision or part thereof.
4. “Day” means a calendar day, including a Saturday, Sunday or statutory holiday observed in the province where the work takes place. “Business day” means a day other than a Saturday, Sunday or statutory holiday observed in the province where the work takes place.
5. Words importing persons, entities or parties are to be broadly interpreted and include:
  - a. an individual, a legal person, a corporation, a limited liability company, a joint stock company, a firm, a partnership, a limited partnership, a limited liability partnership, a joint venture, a trust, a body or group of persons or association, whether or not incorporated, or an agency;
  - b. a body governed by public law possessing, under applicable law, the capacity to exercise its civil rights and to hold property, in its own name or otherwise; or
  - c. any other entity having legal capacity which is not listed in this section

**as well as any person acting as trustee, heir, beneficiary, executor, administrator or other legal representative of the entities listed in paragraphs a., b. and c. above.**GC1.3 Law of the Agreement

This Agreement must be interpreted and governed, and the relations between the parties determined, by the laws in force in the province of Quebec.

#### **GC1.4 Assignment and change of control**

1. The Agreement shall not be assigned, in whole or in part, by the Consultant without the prior written consent of Canada, in its sole discretion. The Consultant shall provide written notice to Canada of any assignment prior to its occurrence. Such notice shall be provided as soon as reasonably practicable and shall include sufficient information to allow Canada to assess the impact of the contemplated assignment on the Agreement. In addition to the foregoing, the Consultant shall also provide any other information related to the Assignment requested by Canada, acting reasonably. For the purpose of this section, a Change of Control of the Consultant will be deemed to be an assignment of the Agreement.
2. An assignment of the Agreement without such consent shall not relieve the Consultant or the assignee from any obligation under the Agreement, or impose any liability upon Canada.

#### **GC1.5 National or departmental security**

1. If the Agreement provides that, or if Canada determines at any point, in its sole discretion, and notifies the Consultant that, the Project is of a class or kind that involves national or departmental security, the Consultant may be required:
  - a. to provide any information concerning persons employed for purposes of the Agreement unless prohibited by law;
  - b. to remove any person from the Project and any site where Services are performed if that person cannot meet the prescribed security requirements; and
  - c. to retain the Project Technical Documentation while in the Consultant's possession in a manner specified by the Departmental Representative.
2. Notwithstanding the provision of GC4, if the Project is of a class or kind that involves national or departmental security, the Consultant shall not issue, disclose, discard or use the Project Technical Documentation on another project without the written consent of the Departmental Representative.

#### **GC1.6 Conflict of Interest and Values and Ethics Codes for the Public Service**

1. The Consultant declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person,

- with a view to influencing the entry into the Agreement or the administration of the Agreement.
2. The Consultant must not influence, seek to influence or otherwise take part in a decision of Canada knowing that the decision might further its private interest. The Consultant must have no 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 its obligations under the Agreement. If such a financial interest is acquired during the period of the Agreement, the Consultant must immediately declare it to Canada.
  3. The Consultant warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists or is likely to arise in the performance of the Agreement. In the event the Consultant becomes aware of any matter that causes or is likely to cause a conflict in relation to the Consultant's performance under the Contract, the Consultant must immediately disclose such matter to Canada in writing.
  4. If Canada is of the opinion that a conflict exists as a result of the Consultant's disclosure or as a result of any other information brought to Canada's attention, Canada may require the Consultant to take steps to resolve or otherwise deal with the conflict or, at its sole discretion, terminate the Agreement or take the Services out of the Consultant's hands.
  5. The Consultant shall not have any tests or investigations carried out by any persons that may have a direct or indirect financial interest in the results of those tests or investigations
  6. The Consultant shall not submit, either directly or indirectly, a bid for any construction or construction management contract related to the Project.
  7. The Consultant acknowledges that individuals who are subject to the provisions of the [Conflict of Interest Act](#), 2006, c. 9, s. 2, the *Conflict of Interest Code for Members of the House of Commons*, the *Values and Ethics Code for the Public Service* or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Agreement.
  8. The Consultant shall not be eligible to compete as a consultant or sub-consultant for a project which may result from the provision of the Services if the Consultant is involved in the development of a project brief or terms of reference, a request for proposal or similar documents for such project.
  9. For the purpose of this section, except paragraph 7, conflict of interest means any matter, circumstance, interest, or activity affecting the Consultant, Sub-consultants, or each of the foregoing's personnel which appear or may appear to impair the ability of the Consultant to perform the Services diligently and independently.

#### **GC1.7 Status of Consultant**

The Consultant is an independent contractor engaged by Canada to perform the Services. Nothing in the Agreement is intended to create a partnership, a joint venture or an agency between Canada and the other party or parties. The Consultant must not represent itself as an agent or representative of Canada to anyone. The Consultant, its Sub-consultants,

and, for greater certainty, each of the foregoing's respective employees, are not engaged as employees, servants or agents of Canada. The Consultant is solely responsible for any and all payments and deductions required to be made by law in relation to its employees including those required for Canada or Quebec pension plans, employment insurance, worker's compensation, provincial health or insurance plans, and income tax.

### **GC1.8 Entire agreement**

The Agreement constitutes the entire arrangement between the parties with respect to the subject matter of the Agreement, and supersedes all previous negotiations, communications and other arrangements relating to it, unless incorporated by reference herein.

### **GC1.9 Contingency fees**

The Consultant certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the contract to any person, other than an employee of the Consultant acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the contract and "person" includes any individual who is required to file a return with the Commissioner pursuant to section 5 of the [Lobbying Act](#), 1985, c. 44 (4th Supplement).

### **GC1.10 Taxes**

1. Federal government departments and agencies are required to pay Applicable Taxes.
2. Applicable Taxes will be paid by Canada as provided in the invoice. Applicable Taxes must be specified on all invoices as a separate item along with corresponding registration numbers from the tax authorities. All items that are zero-rated, exempt or to which Applicable Taxes do not apply, must be identified as such on all invoices. It is the sole responsibility of the Consultant to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Consultant agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
3. The Consultant is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The Consultant must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Agreement (in accordance with applicable legislation), including for material incorporated into real property.
4. In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Price, the Contract Price will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Price if public

notice of the change was given before bid submission date in sufficient detail to have permitted the Consultant to calculate the effect of the change.

5. Tax Withholding of 15 Percent – Canada Revenue Agency

Pursuant to the [Income Tax Act](#), 1985, c. 1 (5th Supp.) and the [Income Tax Regulations](#), Canada must withhold 15 percent of the amount to be paid to the Consultant in respect of services provided in Canada if the Consultant is not a resident of Canada, unless the Consultant obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the Consultant in respect to any tax liability which may be owed to Canada.

**GC1.11 Joint and several or solidary liability**

If at any time there is more than one legal entity constituting the Consultant, their covenants under the Agreement shall be considered to be joint and several or solidary and apply to each and every entity. If the Consultant is or becomes a partnership or joint venture, each legal entity who is a member or becomes a member of the partnership or joint venture or its successors is and continues to be jointly and severally liable or solidary liable for the performance of the Services and all the covenants of the Consultant pursuant to this Agreement, whether or not that entity ceases to be a member of the partnership, joint venture or its successor.

**GC1.12 Performance evaluation: Contract**

1. The performance of the Consultant in relation to the completion of the Services will be evaluated by Canada. The evaluation includes all or some of the following criteria:
  - a. design
  - b. quality of results
  - c. management
  - d. time
  - e. cost
2. A grade out of 20 points will be assigned to each of the five criteria as follows:
  - a. unacceptable: 0 to 5 points
  - b. not satisfactory: 6 to 10 points
  - c. satisfactory: 11 to 16 points
  - d. superior: 17 to 20 points
3. The consequences resulting from the performance evaluation are as follows:
  - a. For an overall rating of 85% or higher, a congratulation letter is sent to the Consultant.
  - b. For an overall rating of between 51% and 84%, a standard “meets expectations”, letter is sent to the Consultant.
  - c. Subject to paragraph e. below, for an overall rating of between 30% and 50%, a warning letter is sent to the Consultant indicating that if, within the next two years from the date of the letter, they receive 50% or less on another evaluation, the Consultant may be suspended from any new

Public Works and Government Services Canada (PWGSC) solicitations for Construction Services, Construction Management Services, Architectural and Engineering Services or Facility Maintenance Services, of real property projects, for a period of one year.

- d. For an overall rating of less than 30%, a suspension letter is sent to the Consultant indicating that the Consultant is suspended from any new PWGSC solicitations for Construction Services, Construction Management Services, Architectural and Engineering Services or Facility Maintenance Services, of real property projects, for a period of one year from the date of the letter.
- e. When the overall rating is between 30% and 50% and one of the grades is of 5 points or less on any one criterion, a suspension letter is sent to the Consultant indicating that the Consultant is suspended from any new PWGSC solicitations for Construction Services, Construction Management Services, Architectural and Engineering Services or Facility Maintenance Services, of real property projects, for a period of one year from the date of the letter.

The form [PWGSC-TPSGC 2913-1](#), Select – Consultant Performance Evaluation Report (CPERF), is used to record the performance.

#### **GC1.13 Integrity provisions: Contract**

The *Ineligibility and Suspension Policy* (the “Policy”) and all related Directives incorporated by reference into the bid solicitation on its closing date are incorporated into, and form a binding part of the Contract. The Consultant must comply with the provisions of the Policy and Directives, which can be found on Public Works and Government Services Canada’s website at [Ineligibility and Suspension Policy](#).

#### **GC1.14 International sanctions**

1. Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of any goods or services that are either directly or indirectly subject to [economic sanctions](#).
2. The Consultant must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
3. The Consultant must comply with changes to the regulations imposed during the period of the Agreement. The Consultant must immediately advise Canada if it is unable to perform the Services as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the parties cannot agree on a work around plan, the Agreement will be terminated for the convenience of Canada in accordance with terms and conditions of the Agreement.

**GC1.15 Code of Conduct for Procurement: Contract**

The Consultant agrees to comply with the [Code of Conduct for Procurement](#) and to be bound by its terms for the period of the Contract.

## **R1215D GC2 – Administration of the Contract – Architectural and/or Engineering Services**

- GC2.1 Notices
- GC2.2 Time and Cost Records to be Kept by the Consultant
- GC2.3 Harassment in the Workplace

### **GC2.1 Notices**

1. Any notice, request, direction, consent, decision, or other communication that is required to be given or made by either party pursuant to the Agreement, shall be in writing, and shall be deemed to have been effectively given when:
  - a. served personally, on the day it is delivered;
  - b. forwarded by registered mail, on the day it is delivered to the other party;  
or
  - c. forwarded by facsimile, e-mail or other electronic means of transmission, at the time of transmission.
2. The address of either party, or the person authorized to receive notices, may be changed by notice in the manner set out in this provision.

### **GC2.2 Time and cost records to be kept by the Consultant**

1. Time charged and the accuracy of the Consultant's time recording system may be verified by the Departmental Representative before or after payment is made to the Consultant under the terms and conditions of the Agreement.
2. The Consultant shall keep accurate time and cost records and, at Canada's request, shall make these documents available to the Departmental Representative who may make copies and take extracts therefrom.
3. The Consultant shall afford facilities for audit and inspection upon request and shall provide the Departmental Representative with such information as may be required from time to time with reference to the documents referred to in subsection 2 above.
4. The Consultant shall, unless otherwise specified, keep the time and cost records available for audit and inspection for a period of at least six (6) years following completion of the Services.
5. If the verification is done after payment by Canada, the Consultant agrees to repay any overpayment immediately upon demand.

### **GC2.3 Harassment in the Workplace**

1. The Consultant acknowledges the responsibility of Canada to ensure, for its employees, a healthy work environment, free of harassment. A copy of the Treasury Board policy, the Policy on the Prevention and Resolution of Harassment in the Workplace, which is also applicable to the Consultant, is available on the Treasury Board Web site.
2. The Consultant must not, either as an individual, or as a corporate or unincorporated entity, through its employees or Sub-consultants, harass, abuse, threaten, discriminate against or intimidate any employee, consultant or other individual employed by, or under contract with Canada. The Consultant will be notified in writing by Canada of any complaint and the Consultant will have the right to respond in writing. Upon receipt of the Consultant's response, which shall be provided to Canada by the Consultant within the time limit prescribed in Canada's notice of the complaint, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

- GC3.1 Declaration by Consultant
- GC3.2 Services
- GC3.3 Standard of Care
- GC3.4 Time Schedule
- GC3.5 Project Information, Decisions, Acceptances, Approvals
- GC3.6 Changes in Services
- GC3.7 Codes, By-Laws, Licences, Permits
- GC3.8 Provision of Staff
- GC3.9 Sub-consultants
- GC3.10 Changes in the Consultant Team
- GC3.11 Cost Control

### **GC3.1 Declaration by Consultant**

The Consultant declares that based on the information provided pertaining to the Services required under the Agreement, the Consultant has been provided sufficient information to enable the Services required under the Agreement to proceed and is competent to perform the Services and has the necessary licences and qualifications including the knowledge, skill and ability to perform the Services.

### **GC3.2 Services**

The Consultant shall perform the Services described herein, in accordance with the terms and conditions of the Agreement.

### **GC3.3 Standard of Care**

In performing the services, the Consultant shall provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures developed by professional bodies in the performance of similar services at the time when and at the location in which the services are provided.

### **GC3.4 Time Schedule**

The Consultant shall:

- a. submit in a timely manner to the Departmental Representative, for approval, a time schedule for the Services to be performed, in detail appropriate to the size and complexity of the Project, and in the prescribed format;
- b. adhere to the approved time schedule and, if changes in the approved time schedule become necessary, indicate the extent of, and the reasons for such changes, and obtain the express, written approval of the Departmental Representative.

### **GC3.5 Project Information, Decisions, Acceptances, Approvals**

1. The Departmental Representative shall provide, in a timely manner, project information, written decisions and instructions, including acceptances and approvals relating to the Services provided by the Consultant.
2. No acceptance or approval by the Departmental Representative, whether expressed or implied, shall be deemed to relieve the Consultant of the professional or technical responsibility for the Services provided by the Consultant.

### **GC3.6 Changes in Services**

1. If Canada requires any changes to the Services to be provided for the Project, Canada shall issue a written direction to the Consultant detailing the required changes. Such direction shall include instructions to the Consultant on the basis of payment to be used in the event the requested change results in an increase to the Consultant fees.
2. When the Consultant receives a direction pursuant to GC3.6.1, above, which will result in an increase in Services, the Consultant shall, within 5 business days, provide Canada with the following information:
  - a. a list and description of any known and anticipated effects of the change on:
    - i. the Construction Cost Estimate and any Work Package Estimate;
    - ii. the Project Schedule;
    - iii. any other matter concerning the Project; and
  - b. if applicable, the proposed additional Consultant fees for the change in Services established in accordance with the principles detailed in GC5.8 and in accordance with the basis of payment indicated in Canada's direction made pursuant to GC3.6.1. In addition, if and when requested by Canada, the Consultant shall provide all information required by Canada to assess the additional Consultant fees in accordance with GC5.8. For clarity, in any event, the proposed additional Consultant fees are subject to the assessment and approval of Canada in accordance with GC5.8.
3. Following receipt of the information set out in GC3.6.2, Canada will either:

notify the Consultant in writing that:

  - i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada approves them as submitted; and
  - ii. the Consultant is authorized to proceed with the change to the Services; or

b. notify the Consultant in writing that:

- i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada does not approve them as submitted; and
    - ii. the Consultant is not authorized to proceed with the change to the Services; or
  - c. notify the Consultant in writing that:
    - i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada either partially approves or does not approve them;
    - ii. the Consultant is directed to proceed with the change to the Services notwithstanding any disagreement with Canada's determination under i. above; and
    - iii. if the Consultant disagrees with Canada's determination under i. regarding additional fees, the Consultant shall proceed with the dispute resolution procedures set out in GC8; or
  - d. notify the Consultant in writing that :
    - i. Canada no longer wishes to proceed with the change to the Services; and
    - ii. any other information considering Canada's decision not to proceed with the change.
- 4. When the Consultant receives a direction pursuant to GC3.6.1 which, will result in a decrease in Services, the Consultant shall, within 5 business days, provide Canada with the following information:
  - a. a list and description of any known and anticipated effects of the change on:
    - i. the Construction Cost Estimate and any Work Package Estimate;
    - ii. the Project Schedule;
    - iii. any other matter concerning the Project; and
  - b. if applicable, the proposed reduction to the Consultant fees for the change in Services established in accordance the principles detailed in GC5.8 and consistent with the basis of payment for the Services affected by the change. In addition, if and when requested by Canada, the Consultant shall provide all information required by Canada to assess the reduction in Consultant fees in accordance with GC5.8. For clarity, in any event, the proposed reduction to the Consultant fees is subject to the assessment and approval of Canada in accordance with GC5.8.
- 5. Following receipt of the information set out in GC3.6.4, Canada will either
  - a. notify the Consultant in writing that:

- i. the reduction in Consultant fees submitted was assessed in accordance with GC5.8 and Canada approves the reduction as submitted; and
    - ii. the Consultant is authorized to proceed with the change to the Services; or
  - b. notify the Consultant in writing that:
    - i. the reduction in Consultant fees submitted was assessed in accordance with GC5.8 and Canada does not approve the reduction as submitted; and
    - ii. the Consultant is not authorized to proceed with the change to the Services; or
  - c. notify the Consultant in writing that:
    - i. the reduction in Consultant fees submitted was assessed in accordance with GC5.8 and Canada has determined that a greater reduction is required;
    - ii. the Consultant is directed to proceed with the changes to the Services notwithstanding any disagreement with Canada's determination under i. above; and
    - iii. if the Consultant disagrees with Canada's determination under i. regarding the reduction to the fees, the Consultant shall proceed with the dispute resolution procedures set out in GC8; or
  - d. notify the Consultant in writing that :
    - i. Canada no longer wishes to proceed with the change to the Services; and
    - ii. any other information considering Canada's decision not to proceed with the change.
- 6. If during the performance of the Services, the Consultant identifies a need to perform additional Services, the Consultant shall notify Canada within 10 days from the day on which the Consultant should have first been aware of the need for the additional Services. For further clarity, the Consultant must obtain Canada's approval before performing any additional Services, failing which the Consultant will not be entitled to any compensation for the additional Services.
- 7. The notice pursuant to GC3.6.6, above, shall be in writing and shall contain:
  - a. a detailed explanation of the facts and circumstances giving rise to the need for additional Services;
  - b. a list and description of any known and anticipated effects of the change on:
    - i. the Construction Cost Estimate and any Work Package Estimate;

- ii. the Project Schedule;
    - iii. any other matter concerning the Project; and
  - c. if applicable, the proposed additional Consultant fees for the change in Services established in accordance with the principles detailed in GC5.8. In addition, if and when requested by Canada, the Consultant shall provide all information required by Canada to assess the Consultant fees in accordance with GC5.8. For clarity, in any event, the proposed additional Consultant fees are subject to the assessment and approval of Canada in accordance with GC5.8.
- 8. If, following a notice from the Consultant pursuant to GC3.6.6, Canada determines that the Consultant is entitled to payment for additional Services, Canada will either:
  - a. notify the Consultant in writing that:
    - i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada approves them as submitted; and
    - ii. the Consultant is authorized to proceed with the change to the Services; or
  - b. notify the Consultant in writing that:
    - i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada does not approve them as submitted; and
    - ii. the Consultant is not authorized to proceed with the changes to the Services; or
  - c. notify the Consultant in writing that:
    - i. the additional Consultant fees submitted were assessed in accordance with GC5.8 and Canada either partially approves or does not approve them as submitted;
    - ii. the Consultant is directed to proceed with the change to the Services notwithstanding any disagreement with Canada's determination under i. above; and
    - iii. if the Consultant disagrees with Canada's determination under i. regarding additional fees, the Consultant shall proceed with the dispute resolution procedures set out at GC8; or
  - d. notify the Consultant in writing that:
    - i. Canada rejects the request for additional services; and
    - ii. Any other information related to the rejection of the request for additional services that Canada deems appropriate considering its rejection of such request.

### **GC3.7 Codes, By Laws, Licences, Permits**

The Consultant shall comply with all statutes, codes, regulations and by laws applicable to the design and where necessary, shall review the design with those public authorities having jurisdiction in order that the consents, approvals, licences and permits required for the project may be applied for and obtained. Unless otherwise stipulated in the Agreement, the Consultant shall, in order to comply with its obligation under this section, including making a determination as to the applicability to the design of statutes, codes, regulations and by laws, act as if the project were being performed for an owner other than Canada.

### **GC3.8 Provision of Staff**

The Consultant shall, on request, submit to the Departmental Representative for approval, the names, addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by the Consultant to provide the Services for the Project and, on request, submit any subsequent changes to the Departmental Representative for approval.

### **GC3.9 Sub-consultants**

1. The Consultant shall:
  - a. Intentionally omitted;
  - b. subsequent to the Agreement, provide the Departmental Representative with all Sub-consultants with whom the Consultant intends to enter into agreements for part of these Services and, on request, provide details of the terms and Services to be performed under the said agreements and the names, credentials and a description of the experience of the personnel of these Sub-consultants proposed to be employed on this Project;
  - c. include in any agreements entered into with Sub-consultants such provisions of the Agreement as they apply to the Sub-consultants; and
  - d. upon written notice by a Sub-consultant, with whom the Consultant has a direct contract, inform the Sub-consultant of the Consultant's obligations to the Sub-consultant under the Agreement.
2. The Departmental Representative may object to any Sub-Consultant within six (6) days of receipt of notification given in accordance with paragraph 1(b) above and, on notification of such objection, the Consultant shall not enter into the intended agreement with the Sub-consultant.
3. Neither an agreement with a Sub-consultant nor the Departmental Representative's consent to such an agreement by the Consultant shall be construed as relieving the Consultant from any obligation under the Agreement, or as imposing any liability upon Canada.

### **GC3.10 Changes in the Consultant Team**

1. Should a person named in the Consultant's proposal as a person who is to perform the Services or part of the Services be unable to perform or complete the Services, the Consultant shall obtain the concurrence of the Departmental Representative prior to performing or completing the Services, or entering into an agreement with another equally qualified person to perform or complete the Services, such concurrence not to be unreasonably withheld.
2. In seeking to obtain the concurrence of the Departmental Representative referred to in subsection 1 above, the Consultant shall provide notice in writing to the Departmental Representative containing:
  - a. the reason for the inability of the person to perform the Services;
  - b. the name, qualifications and experience of the proposed replacement person, and
  - c. if applicable, proof that the person has the required security clearance granted by Canada.
3. The Consultant shall not, in any event, allow performance of any part of the Services by unauthorized replacement persons, and acceptance of a replacement person by the Departmental Representative shall not relieve the Consultant from responsibility to perform the Services.
4. The Departmental Representative may order the removal from the Project of any unauthorized replacement person and the Consultant shall immediately remove the person from the performance of the Services and shall, in accordance with subsections 1 and 2 above, secure a further replacement.
5. The fact that the Departmental Representative does not order the removal of a replacement person from the performance of the Services shall not relieve the Consultant from the Consultant's responsibility to meet all the Consultant's

### **GC3.11 Cost Control**

1. Throughout Project development, the Project Construction Cost Estimate prepared by the Consultant shall not exceed the Project Construction Cost Limit.
2. In the event that the Consultant considers that the Project Construction Cost Estimate will exceed the Project Construction Cost Limit, the Consultant shall immediately notify the Departmental Representative and
  - a. if the excess is due to factors under the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the Departmental Representative, and at no additional cost to Canada, make such changes or revisions to the design as may be necessary to bring the

Project Construction Cost Estimate within the Project Construction Cost Limit; or

- b. if the excess is due to factors that are not under the control of the Consultant, changes or revisions may be requested by the Departmental Representative in accordance with GC3.6. Such changes or revisions shall be undertaken by the Consultant, and the cost of the Services related to those changes or revisions shall be determined in accordance with GC3.6, prior to performance of the said changes or revisions.
3. If the lowest price for a Work Package obtained by the Construction Manager through a bid process or negotiation exceeds the applicable Package Construction Cost Limit and if the excess is due to reasons within the control of, or reasonably foreseeable by the Consultant, the Consultant shall, if requested by the Departmental Representative, and without additional cost to Canada, either revise the scope and quality of the Work Package as required to reduce the Package Construction Cost to comply with the Package Construction Cost Limit and modify the construction documents accordingly, or, with the prior consent of Canada, revise the scope and quality of one or more other Work Packages to completely offset the Package Construction Cost overrun and modify the construction documents accordingly.

## **GC4 - Intellectual Property**

- CG4.1 Interpretation
- CG4.2 Records and Disclosure of Foreground Information
- CG4.3 Ownership of Intellectual Property Rights in Foreground Information
- CG4.4 Licenses to Intellectual Property Rights in Foreground and Background Information
- CG4.5 Consultant's Right to Grant Licenses
- CG4.6 Waiver of Moral Rights
- CG4.7 License to Intellectual Property Rights in Canada's Information
- CG4.8 Transfer or License of Consultant's Rights
- CG4.9 Transfer of Intellectual Property Rights Upon Termination of the Contract for Default
- CG4.10 Products Created Using the Foreground Information
- CG4.11 Trade Secrets and Confidential Information
- CG4.12 Intellectual property infringement and royalties

### **CG4.1 Interpretation**

1. In the Agreement, unless the context otherwise requires:

#### "Background Information"

means all Intellectual Property that is not Foreground Information that is incorporated into the Services or necessary for the performance of the Agreement and that is proprietary to or the confidential information of the Consultant, its Sub-consultants or any other third party;

#### "Firmware"

means computer programs that are stored in integrated circuits, read-only memory or other similar devices within the hardware or other equipment;

#### "Foreground Information"

means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Services performed under the Agreement;

#### "Intellectual Property"

means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Services, whether oral or recorded in any form or medium and whether or not subject to copyright; this includes but is not limited to any Inventions, designs, methods, processes, techniques, know-how, show-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications,

photographs, manuals, physical models, surveys, computer printouts, design notes, calculations, Software, Firmware, CADD (Computer-aided Design and Drafting) files and any other data, document, information and material, prepared, computed, drawn, or produced and for greater certainty, includes buildings, built works, structures and facilities constructed as part of the Project but excludes data concerned with the administration of the Agreement by Canada or the Consultant, such as internal financial or management information, unless it is a deliverable under the terms of the Agreement;

"Intellectual Property Right"

means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.

"Invention"

means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable and without limiting the foregoing the term includes any unique design and construction system;

"Software"

means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.

2. Canada's primary objective in entering into the Agreement is to receive the Services contracted for; to be able to use the deliverables resulting from the provision of those Services, including any Intellectual Property arising by virtue of the Agreement, for Canada's activities, such as construction projects, future contracts and procurements; and to protect or advance the broader public interest. This Agreement does not affect any existing Intellectual Property Rights in any information belonging to Canada, the Consultant or a third party.
3. References in these provisions of GC4 to the Consultant owning the Foreground Information or any rights in it refer to the Consultant, its Sub-consultants, its suppliers, its agents, its representatives or any of their employees owning such information or rights, as applicable.

#### **CG4.2 Records and disclosure of Foreground Information**

1. During and after the performance of the Agreement, the Consultant must keep detailed records of the Foreground Information, including the name of the authors or inventors thereof (as applicable), details of its creation, ownership and about any sale or transfer of any right in the Foreground Information. The Consultant must report and fully disclose to Canada all Foreground Information as required by the Agreement. If the Agreement does not specifically state when and how the Consultant must do so, the Consultant must provide this information when requested by the Contracting Authority or a representative of the department or agency for which the Services are performed, whether before or after the completion of the Services.
2. Before and after final payment to the Consultant, the Consultant must provide Canada with access to all records and supporting data that Canada considers pertinent to the identification of Foreground Information.
3. For any Intellectual Property that was developed or created in relation to the Services, Canada will be entitled to assume that it was developed or created by Canada, if the Consultant's records do not list that Intellectual Property or do not indicate that it was created by the Consultant, or by someone on behalf of the Consultant, other than Canada.

#### **CG4.3 Ownership of Intellectual Property Rights in Foreground Information**

1. Subject to any provision to the contrary in this Agreement, including for greater certainty GC1.5 National or Departmental Security, all Intellectual Property Rights in the Foreground Information belong to the Consultant as soon as they come into existence.
2. Despite the Consultant's ownership of all the Intellectual Property Rights in the Foreground Information, Canada has unrestricted ownership in any prototype, built work, building, structure, facility, model, custom or customized system or equipment that is a deliverable either under the Agreement or under the Construction Contract for the Project, including manuals and other operating and maintenance documents and tools. This includes the right to make them available for public use, whether for a fee or otherwise, sell them or otherwise transfer ownership in them.
3. Any personal information, as defined in the [Privacy Act](#), R.S., 1985, c. P-21, collected by the Consultant in the execution of the Services under the Agreement (hereinafter "Personal Information") becomes the property of Canada immediately upon collection and must be used only for the performance of the Services. The Consultant has no right in any such Personal Information.
4. If the Services under the Agreement involves the preparation of a database or other compilation using information or data supplied by Canada or any Personal Information, notwithstanding paragraph 1 above, the Intellectual Property Rights in the database or compilation containing such information, data, or Personal Information will belong to Canada. The Consultant's Intellectual Property Rights

in the Foreground Information are restricted to those capable of being exploited without the use of the information or data supplied by Canada or the Personal Information.

5. The Consultant must maintain the confidentiality of the information or data supplied by Canada and the Personal Information as required in accordance with this Agreement. The Consultant must return all the information belonging to Canada on request or upon completion or termination of the Agreement. This includes returning all hard copies and electronic copies as well as any paper or electronic record that contains any part of the information or information derived from it.

#### **CG4.4 Licenses to Intellectual Property Rights in Foreground and Background Information**

1. As Canada has contributed to the cost of developing the Foreground Information, the Consultant grants to Canada a license to exercise all Intellectual Property Rights in the Foreground Information, as if Canada was the owner of the Intellectual Property, so as to allow Canada to construct, implement, use, occupy, operate, exploit, promote, publicize, commemorate, maintain, modify, improve, repair, restore, or further develop the Project or any part thereof, including any building, built works, structures and facilities, resulting from the Project, either itself or through a third party (all of the foregoing individually and collectively identified as the "Authorized Purposes"). The Consultant also grants to Canada a license to exercise all Intellectual Property Rights in the Background Information to the extent that it is reasonably necessary for Canada to exercise fully all its rights in the deliverables and in the Foreground Information, including for greater certainty the rights detailed in paragraph 2 below.
2. Without limiting the generality of Canada's licenses granted under paragraph 1. above, these licenses include but are not limited to, the rights to:
  - a. as Canada may wish to award contract to third parties to exercise any of the Authorized Purposes, to disclose the Background Information and the Foreground Information to third parties, or to have it disclosed on its behalf, as required in the context of the procurement of any such contract(s), and to sub-license or otherwise authorize the use of the Background Information and the Foreground Information by any third parties engaged by Canada to carry out such contracts. Canada will require such third parties engaged by Canada not to use or disclose the Background Information and the Foreground Information except as may be necessary to carry out their contract;
  - b. reproduce, modify (including additions or deletions), improve, develop or translate the Foreground Information and Background Information, or have it done by a third party engaged by Canada, as Canada may require for the Authorized Purposes. Canada, or a person designated by Canada, will own the Intellectual Property Rights associated with any reproduction, modification, improvement, development or translation of the Background Information and the Foreground Information;

- c. disclose the Foreground Information and Background Information to other governments for information purposes
- d. create, communicate, and publish, either itself or through a third party engaged by Canada, reproductions of the Project or any part thereof in the form of paintings, models, drawings, engravings, photographs or cinematographic works, to the public, in hard copy or by any electronic or other means, except for copies in the nature of architectural drawings or plans; and
- e. in relation to any custom-designed or custom-manufactured part of the Project, exercise such of the Intellectual Property Rights in the Background Information as may be required for the following purposes:
  - i. for the use, operation, maintenance, repair or overhaul of the custom-designed or custom-manufactured parts of the Project; and
  - ii. in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Project by Canada, if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul.
- f. for Software that is custom designed for Canada, the right to use any source code the Consultant must deliver to Canada under the Agreement.

These licenses granted to Canada exclude the right to exploit the Foreground Information or Background Information commercially and transfer or assign ownership of it.

3. In addition to the licenses granted herein, the Consultant hereby grants to Canada (subject to this paragraph) a non-exclusive, perpetual, worldwide, irrevocable license to exercise all Intellectual Property Rights in the Foreground Information, as if Canada was the owner of the Intellectual Property, so as to allow Canada to exercise all of the Intellectual Property Rights granted under paragraphs 1 and 2 above for project(s) other than the Project. The Consultant also grants to Canada a license to exercise all Intellectual Property Rights in the Background Information to the extent that it is reasonably necessary for Canada to exercise fully all its rights in the deliverables and in the Foreground Information in project(s) other than the Project. In the event that Canada wishes to exercise its Intellectual Property Rights in the Background Information and the Foreground Information for a project other than the Project, and provided that Canada does not already have the necessary rights under another contract or otherwise, Canada agrees to negotiate with the Consultant a fair royalty amount determined in accordance with current industry practice and having regard to Canada's contribution to the cost of development of the Foreground Information.

4. The Consultant agrees to make the Background Information, including in the case of Software, the source code, promptly available to Canada to allow it to exercise any rights mentioned above. The licenses granted under these provisions of GC4 do not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Agreement. Furthermore, in the case of commercial off-the-shelf software, the Consultant's obligation to make the source code promptly available to Canada applies only to source code that is within the control of or can be obtained by the Consultant or any Sub-consultant.
5. Unless otherwise stipulated, licenses granted to Canada under this section, are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free.
6. No licenses can be restricted in any way by the Consultant providing any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap license or any other kind of packaging, attached to any deliverable.

#### **CG4.5 Consultant's Right to Grant Licenses**

The Consultant represents and warrants that it has the right to grant to Canada the licenses and any other rights to exercise all Intellectual Property Rights in the Foreground Information and Background Information as contemplated under this Agreement. If the Intellectual Property Rights in any Foreground Information or Background Information are or will be owned by a Sub-consultant or any other third party, the Consultant must have or obtain promptly a license from that Sub-consultant or third party that permits compliance with its obligations to Canada under this Agreement or arrange, without delay, for the Sub-consultant or third party to grant promptly any required license directly to Canada.

#### **CG4.6 Waiver of Moral Rights**

If requested by Canada, during and after the Agreement, the Consultant must provide a written permanent waiver of moral rights, as defined in the [Copyright Act](#), R.S., 1985, c. C-42, from every author that contributes to any Foreground Information subject to copyright protection that is a deliverable to Canada under the Agreement. If the Consultant is an author of the Foreground Information, the Consultant permanently waives the Consultant's moral rights in that Foreground Information.

#### **CG4.7 License to Intellectual Property Rights to Canada's Information**

1. Any information supplied by Canada to the Consultant for the performance of the Services remains the property of Canada. The Consultant must use Canada's information only as required to and for the sole purpose of performing the Services under this Agreement.
2. If the Consultant wants to use any information owned by Canada for the commercial exploitation or further development of the Foreground Information, the Consultant must request in writing and obtain a license from department or agency for which the Services are performed. In its request for a license to that

department or agency, the Consultant must explain why the license is required and how the Consultant intends to use the information. If the department or agency agrees to grant a license, which it may do in its sole discretion, conditions will be negotiated between the Consultant and that department or agency and may include the payment of a compensation to Canada.

#### **CG4.8 Transfer or License of Consultant's Rights**

1. During the Agreement and until the Consultant has disclosed all of the Foreground Information in accordance with GC 4.2 above, and subject to the provisions of GC 1.5 National or Departmental Security, the Consultant must not transfer ownership or grant a license in the Foreground Information without first obtaining the Contracting Authority's written permission. In addition, the Consultant must ensure that any transfer of ownership or granting of a license made during the Agreement and until the Consultant has disclosed all of the Foreground Information in accordance with GC 4.2 above does not affect Canada's rights in any way, including by ensuring that the Consultant's obligations to Canada under these provisions of GC4 are imposed on the transferee or licensee.
2. After the Agreement, if the Consultant transfers ownership in the Foreground Information, the Consultant is not required to obtain Canada's permission, but must promptly notify the department or agency for which the Services are performed as well as the Contracting Authority in writing of the transfer by referring to the contract number of the Agreement and its date and by providing details about the transfer, including conditions of the transfer and the identity of the transferee. The Consultant must ensure that the transfer does not affect Canada's rights in any way, including by ensuring that the Consultant's obligations to Canada under these provisions of GC4 are imposed on the transferee, and that the transfer requires the transferee to notify Canada of any future transfer
3. After the Agreement, if the Consultant grants a license or any other right (other than a transfer of ownership as contemplated in paragraph 2. above) in the Foreground Information to a third party, the Consultant is not required to obtain Canada's permission, but the license or right granted must not affect Canada's rights in any way, including by ensuring that the Consultant's obligations to Canada under these provisions of GC4 are imposed on the licensee or the beneficiary of a right.
4. In the event of a transfer of ownership or the granting of a license or any other rights as contemplated in paragraphs 1, 2 or 3 above, the Consultant shall ensure that the transferee, licensee or beneficiary of a right has the obligation to ensure that any subsequent transfer of ownership or the granting of a license or any other rights does not affect Canada's rights in any way, including by ensuring that the Consultant's obligations to Canada under these provisions of GC4 are imposed on the subsequent transferee, licensee or beneficiary of a right.

5. If the Consultant breaches its obligations under paragraphs 1, 2, 3, or 4, the Consultant must, if requested by Canada and to the extent the Consultant's breach has affected Canada's rights, immediately take all steps necessary to restore Canada's rights. If the Consultant is not successful in doing so, within the time reasonably required by Canada, the Consultant must immediately reimburse Canada for all costs Canada incurs to do so itself.
6. For greater certainty, when this section contemplates a transfer of ownership, it shall be interpreted as including, without limiting its usual meaning, all forms of sale or assignment of Intellectual Property Rights.

#### **CG4.9 Transfer of Intellectual Property Rights upon Termination**

1. If Canada takes the Services out of the Consultant's hands in accordance with GC7 of the General Conditions, in whole or in part, or if the Consultant fails to disclose any Foreground Information in accordance with GC4.2 above, Canada may, by giving notice to the Consultant, require the Consultant to transfer to Canada all the Intellectual Property Rights in the Foreground Information, including the rights owned by Sub-consultants, or in the case of a failure to disclose, all the Intellectual Property Rights in the Foreground Information not provided, including the rights owned by Sub-consultants. In the case of Intellectual Property Rights in the Foreground Information that have been sold, transferred or assigned to a third party, the Consultant shall not be obligated to transfer those Intellectual Property Rights to Canada, but shall pay to Canada on demand an amount equal to the consideration which the Consultant received from the sale, transfer or assignment of the Intellectual Property Rights in that Foreground Information or, in the case of a sale, transfer, or assignment that was not at arm's length, the fair market value of the Intellectual Property Rights in that Foreground Information, in each case including the value of future royalties or licence fees.
2. In the event of the issuance of a notice under subsection 1, the Consultant must, at its own expense and without delay, execute such documents relating to ownership of the Intellectual Property Rights as Canada may require. The Consultant must, at Canada's expense, provide all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any Intellectual Property Rights in any jurisdiction, including the assistance of the inventor in the case of an Invention.

#### **CG4.10 Products created using the Foreground Information**

If the Consultant uses the Foreground Information to develop any new product or any improvement in any existing product, the Consultant agrees that, if Canada wishes to purchase such new or improved product, the Consultant must sell them to Canada at a discount off the lowest price for which it has sold those products to other customers, to recognize Canada's financial contribution to the development of those products.

#### **CG4.11 Trade Secrets and Confidential Information**

The Consultant shall not use or incorporate any trade secrets or confidential information in any Foreground Information or Background Information used or created in performance of this Agreement.

#### **CG4.12 Intellectual property infringement and royalties**

1. The Consultant represents and warrants that, to the best of its knowledge, neither it nor Canada will infringe any third party's intellectual property rights in performing or using the Services, and that Canada will have no obligation to pay royalties of any kind to anyone in connection with the Services.
2. If anyone makes a claim against Canada or the Consultant concerning intellectual property infringement or royalties related to the Services, that party agrees to notify the other party in writing immediately. If anyone brings a claim against Canada, according to *Department of Justice Act*, R.S., 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against Canada, but the Attorney General may request that the Consultant defend Canada against the claim. In either case, the Consultant agrees to participate fully in the defence and any settlement negotiations and to pay all losses, damages, costs and legal expenses incurred or payable as a result of the claim, including the amount of any settlement. Both parties agree not to settle any claim unless the other party first approves the settlement in writing.
3. The Consultant has no obligation regarding claims that were only made because:
  - a. Canada modified the Services or part of the Services or used the Services or part of the Services without following a requirement of the Contract; or
  - b. Canada used the Services or part of the Services in a project other than the Project, other than as permitted by this Agreement; or
  - c. the Consultant used equipment, drawings, specifications or other information supplied to the Consultant by Canada (or by someone authorized by Canada); or
  - d. the Consultant used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Consultant has included the following language in its own contract with the supplier of that equipment or software: "*[Supplier name]* acknowledges that the purchased items will be used by the Government of Canada. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, *[supplier name]*, if requested to do so by either *[Consultant name]* or Canada, will defend both *[Consultant name]* and Canada against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Consultant's responsibility and, if the Contractor does not do so, it will be responsible to Canada for the claim.

4. If anyone claims that, as a result of the Services, the Consultant or Canada is infringing its intellectual property rights, the Consultant must immediately do one of the following, at the Consultant's expenses:
  - a. take whatever steps are necessary to allow Canada to continue to use the allegedly infringing part of the Services; or
  - b. modify or replace the Services to avoid intellectual property infringement, while ensuring that the Services continues to meet all the requirements of the Agreement.

If the Consultant considers that none of these options can reasonably be implemented, the Consultant shall promptly notify Canada in writing of the situation, providing sufficient details as to why these options cannot reasonably be implemented. Following receipt of such notice, Canada shall make a determination as to whether or not it agrees with the Consultant. If Canada agrees, the parties will work collaboratively, both acting reasonably and in a timely manner, to define, agree and implement a remediation plan. If Canada, acting reasonably, disagrees with the Consultant, or if the Consultant did not promptly notify Canada as detailed above and fails to implement any of the options within a reasonable amount of time, Canada may take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Services itself, in which case the Consultant must reimburse Canada for all the costs it incurs to do so.

## **GC5 – Terms of Payment – Architectural and/or Engineering Services**

- GC5.1 Fees
- GC5.2 Fee Arrangement(s) for Services
- GC5.3 Payments to the Consultant
- GC5.4 Payments for Services
- GC5.5 Delayed Payment
- GC5.6 Claims Against, and Obligations of, the Consultant
- GC5.7 No Payment for Errors and Omissions
- GC5.8 Payment for Changes and Revisions
- GC5.9 Extension of Time
- GC5.10 Suspension Costs
- GC5.11 Termination Costs
- GC5.12 Disbursements

### **GC5.1 Fees**

1. Subject to the terms and conditions of the Agreement, and in consideration for the performance of the Services, Canada shall pay to the Consultant a sum of money calculated in accordance with the provisions herein.
2. The Consultant's fees are only payable when the Consultant has performed the Services as determined by the Departmental Representative. Payment in respect of a Service, or part of a Service, is not to be deemed a waiver of Canada's rights of set off or compensation at law or under the Agreement for costs or expenses arising from default or negligence of the Consultant.
3. The maximum amount payable under the Agreement, including fees and disbursements, shall not exceed the sum specified in the Agreement Particulars, without the prior written authorization of the Departmental Representative in accordance with the terms of the Agreement.

### **GC5.2 Fee Arrangement(s) for Services**

1. The fee to be paid to the Consultant for the Services described herein, shall be determined by one or more of the following arrangements as specified in the Agreement Particulars:

- a. Intentionally omitted
- b. Fixed Fee

The fixed fee may be in the form of a fixed lump sum or an amount made up of fixed unit prices multiplied by a number of units of deliverables in the amount(s) specified in the Agreement Particulars.

- c. Time Based Fee

- i. Individuals approved in that capacity by the Departmental Representative shall be paid at the hourly rate specified in the Agreement Particulars.
  
- ii. Travel time shall be chargeable as follows:
  - a. during normal working hours, that is related to the Project and authorized by the Departmental Representative, shall be chargeable as time worked.
  - b. outside normal working hours, that is related to the Project and authorized by the Departmental Representative, shall be chargeable up to a maximum of three (3) hours per day, unless otherwise authorized by the Departmental Representative.

for clarity, the normal working hours per day for the determination of chargeable travel time shall be deemed to be seven and a half (7.5) hours of any day during which individuals are actually engaged in the performance of the Services.

- iii. The maximum amount(s) that applies (apply) to the Services (“Maximum Amount Payable”) to be carried out at time rates shall be as specified in the Agreement Particulars, which amount(s) shall not be exceeded without the prior written authorization of the Contracting Authority in accordance with GC3.6.

### **GC5.3 Payments to the Consultant**

1. The Consultant shall be entitled to receive progress payments at monthly or other agreed intervals, subject to the limitations herein, if applicable. Such payments shall be made prior to or on the due date. The due date shall be the 30th day following receipt of a proper invoice by the Departmental Representative. For avoidance of doubt, progress payments can apply to any fee arrangement agreed between Canada and the Consultant unless otherwise set out in this Agreement.
2. For the purposes of this Agreement, a proper invoice shall be a proper, complete and correct invoice compliant with the following requirements:
  - a. the invoice shows, among other things, the Consultant’s name, the date, the contract number, the Procurement Business Number (PBN) of the Consultant and the name and address of the client department;
  - b. the invoice identifies as separate items:
    - i. the amount of the progress payment being claimed for Services satisfactorily performed,
    - ii. the amount for any tax, including Applicable Taxes, calculated in accordance with the applicable legislation along with

corresponding registration numbers from the tax authorities and other information required pursuant to GC1.10.2, and

- iii. the total amount which shall be the sum of the amounts referred to in i. and ii. above;
  - c. the invoice includes all substantiating information required by this Agreement, including, for greater certainty a complete description of the Services for which payment is requested;
  - d. the invoice includes sufficient details and information to permit verification by Canada; and
  - e. the invoice is delivered to the Departmental Representative.
3. The amount of the tax shown on the invoice shall be paid by Canada to the Consultant in addition to the amount of the progress payment for Services satisfactorily performed.
  4. The Departmental Representative shall notify the Consultant within fifteen (15) days after the receipt of an invoice of any error or missing information therein. Payment shall be made prior to or on the thirtieth (30) day after acceptance of the corrected invoice or the required information. For greater certainty, the due date (as contemplated in GC5.3.1) shall not be calculated from the date the invoice containing errors or missing information was received, but from the date of the acceptance of the corrected invoice or the required information.
  5. Upon completion of each Service as described elsewhere in the Agreement, provided at least one progress payment has been made, the Consultant shall provide a Statutory Declaration evidencing that all the Consultant's financial obligations for Services rendered to the Consultant or on the Consultant's account, in connection with the Agreement, have been satisfied, before any further payment is made.
  6. Upon written notice by a Sub-consultant, with whom the Consultant has a direct contract, of an alleged non-payment to the Sub-consultant, the Departmental Representative may provide the Sub-consultant with a copy of the latest approved progress payment made to the Consultant for the Services.
  7. Upon the satisfactory completion of all Services, the amount due, less any payments already made, shall be paid to the Consultant not later than thirty (30) days after receipt of a proper invoice, together with the Final Statutory Declaration in accordance with subsection 5 above.
  8. By submitting an invoice, the Consultant certifies that the invoice is consistent with the Services performed or delivered and are in accordance with this Agreement.

#### **GC5.4 Payments for Services**

1. Intentionally omitted
2. Payments in respect of the fixed fee arrangement shall be made upon satisfactory performance of the Services but such payments shall not exceed the amount(s) as specified in the Agreement Particulars, for each Service.

3. Payments in respect of the time based fee arrangement shall be made upon satisfactory performance of the Services but such payments shall not exceed the amount(s) as specified in the Agreement Particulars, for each Service.
4. Progress payments, in respect of all fee arrangements, shall be made in accordance with GC5.3 of this Agreement and this section, but in no event shall such payments exceed the value of the fee indicated for each Service under consideration.
5. In the event there is a disagreement between the parties regarding the value of a progress payment for Services covered by a fixed fee arrangement, Canada shall determine, in its sole discretion, the value of such Services for which a progress payment is claimed as follows:
  - a. for Services related to the construction and contract administration phase of the Project: an amount established in proportion to the percentage of the construction work completed and approved for payment under the Construction Contract during the period covered by the invoice, as determined by Canada acting reasonably; or
  - b. for Services related to other phases of the Project: an amount established in proportion to progress of such Services made during the period covered by the progress payment claim, as determined by Canada acting reasonably;

For clarity, in no event shall such payments exceed the value of the fee indicated for each Service under consideration.

6. If, for reasons attributable to the Consultant, a price for any Work Package cannot be obtained by a tender or negotiation within the applicable Package Construction Cost Limit, or acceptable to the Departmental Representative for the award of the a construction contract for such Work Package, the Consultant shall be entitled to receive payment for the tender call, tender evaluation and contract award Services related to such Work Package, only when the requirements of GC3.11.3, have been met.
7. The parties may agree to determine the value of a given progress payment in the manner prescribed by GC5.4.5 regardless of the existence of a disagreement.

#### **GC5.5 Delayed payment**

1. If Canada delays in making a payment that is due in accordance with GC5.3, the Consultant will be entitled to receive interest on the amount that is overdue for the period of time as defined in subsection 2 below including the day previous to the date of payment. Such date of payment shall be deemed to be the date on the cheque given for payment of the overdue amount. An amount is overdue when it is unpaid on the first day following the due date described in GC5.3.1.
2. Interest shall be paid automatically on all amounts that are not paid by the due date or fifteen (15) days after the Consultant has delivered a Statutory Declaration in accordance with GC5.3.5 or GC5.3.7 whichever is the later.

3. The rate of interest shall be the Average Bank Rate plus 3 percent per year on any amount which is overdue pursuant to subsection 1 above.

#### **GC5.6 Claims against, and obligations of, the Consultant**

1. Canada may, in order to discharge lawful obligations of and satisfy lawful claims against the Consultant by a Sub-consultant with whom the Consultant has a direct contract for Services rendered to, or on behalf of, the Consultant, pay an amount from money that is due and payable to the Consultant directly to the claimant Sub-consultant.
2. For the purposes of subsection 1 a claim shall be considered lawful when it is so determined
  - a. by a court of legal jurisdiction, or
  - b. by an arbitrator duly appointed to arbitrate the said claim, or
  - c. by a written notice delivered to the Departmental Representative and signed by the Consultant authorizing payment of the said claim or claims.
3. A payment made pursuant to subsection 1 is, to the extent of the payment, a discharge of Canada's liability to the Consultant under the Agreement and will be deducted from any amount payable to the Consultant under the Agreement.
4. Subsection 1 shall only apply to claims and obligations
  - a. the notification of which has set forth the amount claimed to be owing and a full description of the Services or a part of the Services for which the claimant has not been paid. The notification must be received by the Departmental Representative in writing before the final payment is made to the Consultant and within one hundred twenty (120) days of the date on which the claimant
    - i. should have been paid in full under the claimant's Agreement with the Consultant where the claim is for an amount that was lawfully required to be held back from the claimant; or
    - ii. performed the last of the Services pursuant to the claimant's Agreement with the Consultant where the claim is not for an amount referred to in subparagraph 4(a)(i), and
  - b. the proceedings to determine the right to payment of which shall have commenced within one year from the date that the notification referred to in paragraph 4(a) was received by the Departmental Representative.
5. Canada may, upon receipt of a notification of claim referred to in paragraph 4(a), withhold from any amount that is due and payable to the Consultant pursuant to the Agreement the full amount of the claim or any portion thereof.

6. The Departmental Representative shall notify the Consultant in writing of receipt of any notification of claim and of the intention of Canada to withhold funds pursuant to subsection 5. The Consultant may, at any time thereafter and until payment is made to the claimant, post with Canada, security in a form acceptable to Canada in an amount equal to the value of the said claim. Upon receipt of such security Canada shall release to the Consultant any funds which would be otherwise payable to the Consultant, that were withheld pursuant to the provision of subsection 5.
7. The Consultant shall discharge all lawful obligations and shall satisfy all lawful claims against the Consultant for Services rendered to, or on behalf of, the Consultant in respect of the Agreement at least as often as the Agreement requires Canada to discharge its obligations to the Consultant.

#### **GC5.7 No payment for errors and omissions**

The Consultant shall not be entitled to payment in respect of costs incurred by the Consultant in remedying errors and omissions in the Services that are attributable to the Consultant, the Consultant's employees, or persons for whom the Consultant had assumed responsibility in performing the Services.

#### **GC5.8 Payment for changes and revisions**

1. Any proposed change to Canada's payment obligations resulting from a change in Services as described in GC3.6, shall be assessed by Canada, acting reasonably, in accordance with this section.
2. Where a change results in an increase in Services, any proposed corresponding increase in the Consultant's fees shall be assessed in accordance with the following principles:
  - a. where the basis of payment is a fixed price fee, whether the proposed increase in fixed price fee is reasonable and reflects:
    - i. the extra cost estimated to complete the change in Services, with regard to the following considerations:
      1. the hourly rates of the individuals required to complete the change in Services, where hourly rates were included in the Contract;
      2. the hourly rates of the individuals required to complete the changes, such rates must not be in excess of the lowest hourly rate charged for those individuals by the Consultant to anyone else, including the Consultant's most favoured customer or the Sub-consultant concerned, where hourly rates were not included in the Contract;
      3. the increase in time for completion of the Services, having regard to the time required for the completion of similar services in similar projects;

4. whether the number, seniority, and role of the individuals proposed to perform the change in Services is reasonable, having regard to the complexity of the change; and
- ii. any additional reasonable disbursements required to complete the change.

For clarity, the principles in this subsection are solely for the assessment of the fixed fee increase. Once a fixed fee increase has been approved and the change to the Services has been authorized, the Consultant shall not be entitled to any further increase as a result of the actual time expended performing those additional Services.

- b. where the basis of payment is a time-based fee, whether the proposed increase in the GC5.2.1 (c) iii) Maximum Amount Payable is reasonable and reflects:
  - i. the extra cost estimated to complete the change in Services, with regard to the following considerations:
    1. the hourly rates of the individuals required to complete the change in Services, where hourly rates were included in the Contract;
    2. the hourly rates of the individuals required to complete the change in Services, such rates must not be in excess of the lowest hourly rate charged for those individuals by the Consultant to anyone else, including the Consultant's most favoured customer or the Sub-consultant concerned, where hourly rates were not included in the Contract;
    3. the increase in time for completion of the Services, having regard to the time required for the completion of similar services in similar projects;
    4. whether the number, seniority, and role of the individuals proposed to perform the change in Services is reasonable, having regard to the complexity of the change; and
  - ii. any additional reasonable disbursements required to complete the change.
3. Where the change results in a decrease in Services, the proposed corresponding reduction in the Consultant's fees shall be assessed in accordance with the following principles:
  - a. where the basis of payment is a fixed price fee, whether the proposed reduction in the fixed price fee is reasonable and reflects:
    - i. the reduction in cost resulting from the change in Services with regard to the following considerations:

1. the hourly rates of the individuals providing the Services affected by the decrease in Services, where hourly rates were included in the Contract;
  2. the reasonable hourly rates of the individuals providing the Services affected by the decrease in Services, having regard to hourly rates applying in the open market to providers of services similar to the Services affected by the change where hourly rates were not included in the Contract;
  3. the reduction in time associated with the completion of the Services, having regard to the time required for the completion of similar services in similar projects;
  4. whether the number, seniority, and role of the individuals whose work will be reduced as a result of the decrease in Services is reasonable, having regard to the complexity of those affected Services; and
- ii. the reduction or removal of any disbursement included in the Contract Amount that is no longer required as a result of the decrease in Services.

For clarity, the considerations in this subsection are solely for the assessment of the fixed fee decrease. Once a fixed fee decrease has been approved and the changes to the Services have been authorized, Canada will not apply any further reduction to the fixed price fee;

- b. where the basis of payment is a time-based fee, whether the proposed reduction in the GC5.2.1 (c) iii) Maximum Amount Payable is reasonable and reflects:
- i. the reduction in cost resulting from the change in Services with regard to the following considerations:
    1. the hourly rates of the individuals providing the Services affected by the decrease in Services, where hourly rates were included in the Contract;
    2. the reasonable hourly rates of the individuals providing the Services affected by the decrease in Services, having regard to hourly rates applying in the open market to providers of services similar to the Services affected by the change where hourly rates were not included in the Contract;
    3. the reduction in time associated with the completion of the Services, having regard to the time required for the completion of similar services in similar projects;
    4. whether the number, seniority, and role of the individuals whose work will be reduced as a result of the decrease in

Services is reasonable, having regard to the complexity of those affected Services; and

- ii. the reduction or removal of any disbursement included in the Contract Amount that is no longer required as a result of the decrease in Services.
4. Where, in the opinion of the Departmental Representative, it is not possible, or not appropriate to determine a fixed price fee prior to the performance of additional Services, payment shall be made on the basis of a time based fee up to a Maximum Amount Payable determined in accordance with GC5.8.2 b.
5. Prior to the performance of Services affected by a change on the basis of a time based fee, the Consultant shall comply with any request made by the Departmental Representative pursuant to GC3.8, regarding persons to be employed by the Consultant or its Sub-consultants to provide the Services affected by such change.
6. There shall be no increase in payment for additional Services unless:
  - a. the additional Services are Services that are not described in the Contract;
  - b. the additional Services are required for reasons beyond the control of the Consultant;
  - c. if applicable, the Consultant has provided the notice referred to in GC3.6.6 within the time stipulated; and
  - d. the increase in payment for such additional Services has been approved by Canada in accordance with GC3.6.
7. No payment shall be made for any Services unless such Services are identified at the time of the execution of the Contract or authorized in writing by Canada pursuant to GC3.6.

#### **GC5.9 Extension of time**

If, and to the extent that, the time for completion of the Construction Management Contract is exceeded or extended through no fault of the Consultant in the opinion of Canada, payment for the Services required for such extended period of the contract administration shall be subject to review and equitable adjustment by Canada.

#### **GC5.10 Suspension costs**

1. In the event of a suspension of any Services pursuant to GC7.2, Canada shall pay:
  - a. for clarity, the amount that the Consultant was to receive under the terms of the Agreement for Services satisfactorily performed before the date of suspension; and
  - b. those out-of-pocket costs and expenses that, in the sole opinion of Canada, are substantiated as having been reasonably incurred as a

direct result of the suspension, as more particularly provided for in GC5.10.2, 5.10.3, and 5.10.4.

2. The Consultant shall minimize all GC5.10.1(b) out-of-pocket costs and expenses.
3. Within fourteen (14) days of notice of such suspension, the Consultant shall submit to the Departmental Representative a schedule of all out-of-pocket costs and expenses, if any, that the Consultant expects to incur during the period of suspension, and for which the Consultant will request reimbursement, failing which, the Consultant shall, for all purposes, be deemed to have no such costs and expenses.
4. Save and except for the specified payment provided for GC5.10.1(b), if any, the Consultant shall not be paid and has no claim for damages, compensation, loss of profit, loss of opportunity, allowance or otherwise by reason of, or directly or indirectly arising out of, the suspension of Services pursuant to GC7.2.

#### **GC5.11 Termination costs**

1. In the event of termination of the Agreement pursuant to GC7.3, Canada shall pay, and the Consultant shall accept in full settlement:
  - a. for clarity, the amount that the Consultant was to receive under the terms of the Agreement for Services satisfactorily performed before the date of termination; and
  - b. those out-of-pocket costs and expenses that, in the sole opinion of Canada, are substantiated as having been reasonably incurred to terminate the Agreement, as more particularly provided for in GC5.11.2, 5.11.3, 5.11.4 and 5.11.5.
2. The Consultant shall minimize all GC5.11.1(b) out-of-pocket costs and expenses.
3. Within fourteen (14) days of notice of such termination, or as extended by Canada, at its sole discretion, if requested by the Consultant, the Consultant shall submit to the Departmental Representative a schedule of all out-of-pocket costs and expenses, if any, reasonably incurred after the date of termination, failing which, the Consultant shall, for all purposes, be deemed to have no such costs and expenses.
4. Payment shall be made to the Consultant only for those out-of-pocket costs and expenses that in the opinion of Canada are substantiated as having been reasonably incurred after the date of termination of the Agreement.
5. Save and except for the specified payment provided for in GC5.11.1, if any, the Consultant shall not be paid any amount and has no claim for damages, compensation, loss of profit, loss of opportunity, allowance or otherwise by reason of, or directly or indirectly arising out of, the termination of the Agreement pursuant to GC7.3 Termination.

## GC5.12 Disbursements

1. Subject to any provisions specifically to the contrary in the Supplementary Conditions, the following costs shall be included in the fees required to deliver the consultant services and shall not be reimbursed separately;
  - a. reproduction and delivery costs of drawings, CADD files, specifications and other Technical Documentation specified in the Project Brief;
  - b. standard office expenses such as any photocopying, computer costs, Internet, cellular phone costs, long distance telephone and fax costs, including that between the Consultant's main office and branch offices or between the Consultant's offices and other team members offices;
  - c. courier and delivery charges for deliverables specified in the Project Brief;
  - d. plotting;
  - e. presentation material;
  - f. parking fees;
  - g. taxi charges;
  - h. travel time;
  - i. travel expenses; and
  - j. local project office.
  
2. Subject to any provisions specifically to the contrary in the Supplementary Conditions, the following disbursements reasonably incurred by the Consultant, that are related to the Services and approved by the Departmental Representative, shall be reimbursed to the Consultant at actual cost:
  - a. reproduction and delivery costs of drawings, CADD files, specifications and other Technical Documentation additional to that specified in the Project Brief;
  - b. transportation costs for material samples and models additional to that specified in the Project Brief;
  - c. project related travel and accommodation additional to that specified in the Project Brief shall be reimbursed in accordance with current [National Joint Council \(NJC\) Travel Directive](#) ; and
  - d. other disbursements made with the prior approval and authorization of the Departmental Representative.

3. Disbursements shall be Project-related and shall not include expenses that are related to the normal operation of the Consultant's business. The amounts payable, shall not exceed the amount entered in the Agreement Particulars, set out elsewhere in the Agreement, without the prior authorization of the Departmental Representative.

### **GC6 - Changes**

The Agreement may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by both parties.

## **GC7 - Taking the Services out of the Consultant's Hands, Suspension or Termination**

- GC7.1 Taking the Services Out of the Consultant's Hands
- GC7.2 Suspension
- GC7.3 Termination

### **GC7.1 Taking the Services out of the Consultant's hands**

1. Canada may take all or any part of the Services out of the Consultant's hands and may employ reasonable means necessary to complete such Services in the event that:
  - a. the Consultant has become insolvent or has committed an act of bankruptcy, and has neither made a proposal to the Consultant's creditors nor filed a notice of intention to make such a proposal, pursuant to the [Bankruptcy and Insolvency Act](#), or
  - b. the Consultant fails to perform any of the Consultant's obligations under the Agreement or, in Canada's opinion, so fails to make progress as to endanger performance of the Agreement, in accordance with its terms.
2. If the Consultant has become insolvent or has committed an act of bankruptcy, and has either made a proposal to the Consultant's creditors or filed a notice of intention to make such a proposal, pursuant to the [Bankruptcy and Insolvency Act](#), the Consultant must immediately forward a copy of the proposal or the notice of intention to the Contracting Authority.
3. Before the Services or any part thereof are taken out of the Consultant's hands pursuant to paragraph 1(b), the Departmental Representative will provide notice to the Consultant, and may require such failure of performance or progress to be corrected. If within fourteen (14) days after receipt of notice the default is not corrected or corrective action acceptable to Canada, acting reasonably, is not initiated to correct such default, Canada may, by notice, without limiting any other right or remedy, take all or any part of the Services out of the Consultant's hands.
4. If the Services or any part thereof have been taken out of the Consultant's hands, the Consultant will be liable for, and upon demand pay to Canada, an amount equal to all losses and damages suffered by Canada by reason of the non-completion of the Services by the Consultant.
5. If the Consultant fails to pay on demand for the losses or damages as a result of subsection 4, Canada will be entitled to deduct and withhold the same from any payments due and payable to the Consultant.
6. The taking of the Services, or any part thereof, out of the Consultant's hands does not relieve or discharge the Consultant from any obligation under the Agreement, or imposed upon the Consultant by law, in respect to the Services or any part thereof that the Consultant has performed.

## **GC7.2 Suspension**

1. Canada may, in Canada's sole discretion suspend the Services being provided, or any part thereof, for a specified or unspecified period by giving notice of suspension in writing to the Consultant. The Consultant shall not be entitled to be paid any amount whatsoever for a suspension, other than such amount, if any, payable to the Consultant in accordance with Suspension Costs provisions in GC5.10.
2. If a period of suspension does not exceed sixty (60) days and when taken together with other periods of suspension does not exceed ninety (90) days, the Consultant shall, upon the expiration of that period, resume the performance of the Services in accordance with the terms of the Agreement.
3. If a period of suspension exceeds sixty (60) days, or when taken together with other periods of suspension the total exceeds ninety (90) days, Canada and the Consultant may agree that the performance of the Services shall be continued by the Consultant, and the Consultant shall resume performance of the Services, subject only to such terms and conditions agreed upon by Canada and the Consultant in writing.

If Canada and the Consultant do not agree that performance of the Services shall be continued by the Consultant, or upon the terms and conditions under which the Consultant shall continue the Services, the notice of suspension shall be deemed to be a notice of termination in accordance with the terms of GC7.3. For clarity, Termination Costs in GC5.11 shall be without duplication of suspension costs paid (if any) pursuant to GC5.10.

## **GC7.3 Termination**

Canada may, in Canada's sole and absolute discretion, terminate the Agreement at any time by giving notice of termination in writing to the Consultant. The Consultant shall not be paid any amount whatsoever for a termination, other than such amount, if any, payable to the Consultant in accordance with the Termination Costs provisions in GC5.11.

## **GC8 – Dispute Resolution – Architectural and/or Engineering Services**

1. In the event of a disagreement regarding any aspect of the Services or any instructions given under the Agreement:
  - a. the Consultant may give a notice of disagreement to the Departmental Representative. Such notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Agreement;
  - b. the Consultant shall continue to perform the Services in accordance with the instructions of the Departmental Representative; and
  - c. the Consultant and the Departmental Representative shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Consultant's project representative and the Departmental Representative and, secondly and if necessary, at the level of a principal of the Consultant firm and a senior departmental manager.
2. The Consultant's continued performance of the Services in accordance with the instructions of the Departmental Representative shall not jeopardize the legal position of the Consultant in any disagreement.
3. If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, Canada shall pay the Consultant those fees the Consultant shall have earned as a result of the change(s) in the Services provided, together with those reasonable disbursements arising from the change(s) and which have been authorized by the Departmental Representative.
4. The fees mentioned in subsection 3 shall be calculated in accordance with the Terms of Payment set out in the Agreement.
5. If the disagreement is not settled, the Consultant may make a request to the Departmental Representative for a written departmental decision and the Departmental Representative shall give notice of the departmental decision within fourteen (14) days of receiving the request, setting out the particulars of the response and any relevant clauses of the Agreement.
6. Within fourteen (14) days of receipt of the written departmental decision, the Consultant shall notify the Departmental Representative if the Consultant accepts or rejects the decision.
7. If the Consultant rejects the departmental decision, the Consultant, by notice may refer the disagreement to Mediation.
8. If the disagreement is referred to Mediation, the Mediation shall be conducted with the assistance of a skilled and experienced mediator chosen by the

Consultant from a list of mediators proposed by Canada, and departmental Mediation procedures shall be used unless the parties agree otherwise.

9. Negotiations conducted under the Agreement, including those conducted during Mediation, shall be without prejudice.

## **GC9 - Indemnification and Insurance**

- GC9.1 Indemnification
- GC9.2 Insurance Requirements

### **GC9.1 Indemnification and liability**

1. The Consultant shall indemnify and save harmless Canada, its employees, and agents, from and against any and all claims, losses, damages, costs and legal expenses, actions and causes of action arising out of or resulting from: (i) the Consultant breaching any provision of the Agreement; or (ii) anything done or omitted to be done by the Consultant in connection with the performance of the Services under the Agreement; or (iii) any act or omission of the Consultant, its employees, Sub-consultants and agents or of anyone for whom the Consultant may be responsible or liable.
2. The Consultant's liability to indemnify or reimburse Canada under the Agreement shall not affect or prejudice Canada from exercising any other rights under law.
3. In no event shall either party be liable to the other for loss of profits, business or revenue or for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever.
4. Unless caused by the negligent or wilful act or omission of Canada, Canada shall not be liable to the Consultant for any damages, losses or costs arising from or relating to the performance of the Services. In no event is Canada's total liability for all damages, losses and causes of action to exceed the amount specifically paid to the Consultant under the Agreement.
5. If any property of Canada or any part thereof (including personal property) or any other property or part thereof associated or in connection with the Project (including, for greater certainty, the site of the construction) becomes subject to any Encumbrance as a result of any act or omission of the Consultant or its Sub-consultants, the Consultant shall immediately take all necessary steps to have such Encumbrance completely removed to the satisfaction of Canada. If the Consultant fails to do so within 30 days of the filing, issuance or registration of such Encumbrance, Canada may, without prejudice to any other rights or remedy it may have, take whatever steps it deems necessary to have such Encumbrance completely removed at the Consultant's expense, including its legal costs on a full indemnity basis.

### **GC9.2 Insurance Requirements**

1. General
  - a. The Consultant shall ensure that appropriate liability insurance coverage is in place to cover the Consultant and Sub-consultants and shall maintain all required insurance policies as specified herein.
  - b. The Consultant shall, if requested by the Contracting Officer at any time, provide to the Contracting Officer an Insurer's Certificate of Insurance

and/or the originals or certified true copies of all contracts of insurance maintained by the Consultant pursuant to the provisions contained herein.

- c. Notwithstanding anything herein to the contrary, Canada shall not be liable hereunder for any amounts arising out of any matter for which the Consultant is negligent and/or is obligated to carry insurance or otherwise carries insurance hereunder. The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Consultant.
- d. Any insurance coverages additional to those required herein that the Consultant and Sub-consultants may deem necessary for their own protection or to fulfill their obligations shall be at their own discretion and expense.
- e. All insurance contemplated herein shall include a waiver by the Consultant's insurers of any subrogation rights which the Consultant's insurers may have against Canada.

## 2. Commercial General Liability

- a. The insurance coverage provided shall not be less than that provided by IBC Form 2100, as amended from time to time, and shall have: a limit of liability of not less than \$5,000,000 per occurrence; an aggregate limit of not less than \$5,000,000 within any policy year, or such higher limits as Canada, acting reasonably, may require from time to time.
- b. The policy shall insure the Consultant and shall include Her Majesty the Queen in right of Canada, represented by the Minister of Public Works and Government Services as an Additional Insured, with respect to liability arising out of the performance of the Services.

## 3. Professional Liability

- a. The Professional Liability insurance coverage shall be in an amount usual for the nature and scope of the Services but, shall have a limit of liability of not less than \$1,000,000 per claim or such higher limits as Canada, acting reasonably, may require from time to time, and be continually maintained from the commencement of performance of the Services until five (5) years after their completion.
- b. Notice of Cancellation of Insurance Coverage: The Consultant shall immediately advise the Contracting Authority in writing upon being informed or in receipt of any notification of a pending cancellation of its professional Liability insurance or of any reduction to the claim limits it maintains.

## **GC10 – Transition out**

If Canada takes the work out of the Consultant's hands, or if the Agreement is terminated, the Consultant shall, for a reasonable period of time following the date thereof, cooperate fully with Canada, and any potential successor consultant with regards to transitional arrangements that Canada may initiate prior to such date in order to achieve a smooth and orderly transfer of the Services and so as to avoid undue delay (in the Project or otherwise) inconvenience or cost to Canada, including any increase in the cost of the Services and the Construction Services. The Consultant shall use all reasonable efforts to ensure that all Team Members remain available to Canada and any successor consultant or to address transitional issues and to provide any required training as determined by Canada.

## **GC11 - Survival**

Except as otherwise provided in this Agreement, termination or expiry of this Agreement shall be without prejudice to, and shall not affect:

1. the representations, warranties and indemnities under this Agreement; and
  2. the obligations which are expressly provided to survive termination or expiry of this Agreement or which by their nature are intended to survive termination or expiry of this Agreement, including, without limiting the generality if the foregoing, GC1.11, GC1.12, GC2.2, GC4, GC5.6, GC5.11, GC7.3, GC8, GC9.1 and GC10;
- all of which shall survive the termination or expiry of this Agreement.