

COAA EPCM CONTRACT PHILOSOPHY

COAA EPCM Contract Committee

1. Introduction

The COAA EPCM Contract Committee, consisting of owner, contractor and affiliate members, has developed a standard form EPCM Contract for use in industrial projects in Alberta. Together with the Stipulated Price Contract (2003) and the EPC Contract (2005), the EPCM Contract is freely available to the industry as there is no copyright attached to the COAA contracts.

The COAA Contract Committee's Guiding Principles (2005) were used as a basis for the EPCM Contract Philosophy. This philosophy document provides background and context on the key issues the Committee addressed in preparing the EPCM Contract and is not meant to be an exclusive or exhaustive philosophy of EPCM contracting.

Where possible, and for consistency, definitions used in the earlier Stipulated Price and EPC contracts have been incorporated into the EPCM Contract. The result is a generic and equitable agreement that can serve as a starting point for Owners and Contractors to tailor their own contract. To accommodate a variety of projects, project-specific information is intended to be contained in the Appendices to the EPCM Contract.

The EPCM Contract is intended to serve as a starting point for negotiations and can be modified by the parties with respect to a specific project. It is preferred that changes be made to the EPCM Contract by way of supplementary conditions so that the COAA form remains as a precedent. However, care must be taken in the modification or editing of specific clauses to avoid changing the intent of referring or subsequent clauses.

2. Contract Structure

In the EPCM Contract, the EPCM Contractor performs engineering, procurement and construction management services. The EPCM Contractor's services will commence well before construction starts and will continue through project close-out and sometimes through the construction warranty period. The actual construction work is performed by one or more "Works Contractors" under the direction of the EPCM Contractor.

The EPCM Contractor acts as agent of the Owner in both procurement and construction management activities. The EPCM Contract also recognizes that the Owner may also procure materials and equipment directly which will be incorporated into the Work. Consequently, the Works Contracts are usually entered into between the EPCM Contractor (as agent for the Owner) and the Works Contractor.



3. Risks in EPCM Contracting

The Committee views the EPCM model as one in which more risk is retained by the Owner relative to the EPC model. Owners can typically exercise more control over the EPCM Contractor and have more input into the work being performed than is available in the EPC model.

The EPCM model allows the Owner to be more involved in the project execution, including the design process, and this relationship needs to be addressed between the Owner and the EPCM Contractor prior to project commencement. The parties must ensure they have the resources to meet the requirements as set out in Appendix A – Owner's Requirements and Appendix B – Owner's Obligations.

The contracting strategy for the project, and the selection of Works Contractors, is ultimately the Owner's responsibility. However, the Owner and the EPCM Contractor work in a consultative mode to select the optimum strategy for the project. The EPCM Contractor will provide advice on work breakdown, contract types (lump sum, unit rates, cost reimbursable, etc.), and candidate Works Contractors. The Owner retains responsibility for the Works Contractors and the EPCM Contractor does not take responsibility for the project estimates or final completion schedules.

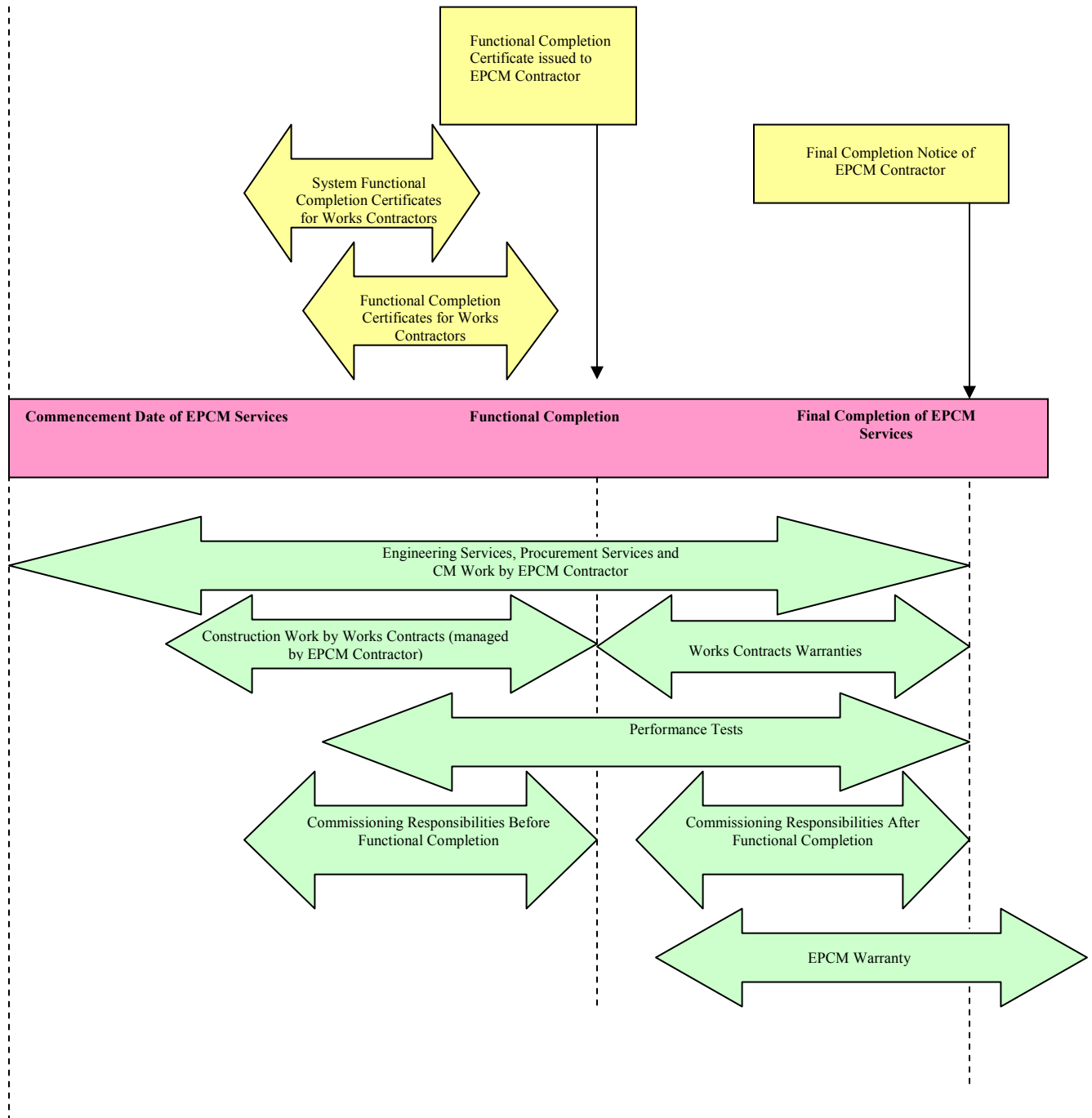
When an EPCM contract is entered into, the definition of the scope may be low though generally understood as the engineering has not yet been performed; yet the Owner is intending to proceed with construction. The fact that the definition of scope may be low increases the need for communication between the Owner and the EPCM Contractor so that, as the project develops, the appropriate choices and decisions can be made to ensure alignment with the Owner's vision.

EPCM contracts need to anticipate the potential for changes in scope and incorporate a well defined change management process for the purpose of cost and project control. Scope growth may be more difficult to control as the Owner team may be less resistant to change when working with an EPCM Contractor who is acting as agent on a reimbursable basis.

The Committee recognizes that the Owner will have more control over the outcome where the Owner uses an experienced team to work with the EPCM Contractor. This is especially important in EPCM contracting where the Owner has more project risk because of the Owner's direct exposure to the risks under the Works Contracts.

4. Timing of Activities Relative to Functional Completion and Final Completion

The timing of the major activities contemplated in the EPCM Contract are set out in the chart below:



5. Payment Terms

The EPCM Contract is structured to provide for compensation to the EPCM Contractor on a cost-reimbursable, plus a fee, basis. While the parties may also wish to include an incentive component (whether positive or negative), a standard approach or format is not provided or recommended by the Committee. Incentives were discussed at length by the Committee. Given the project-specific nature of incentive schemes, and the varying corporate philosophies with respect to incentives, incentives cannot be developed as an industry standard. In general, the intent of the payment terms is to motivate the EPCM Contractor to be rewarded for superior performance through fair risk and compensation provisions.

(a) Reimbursable Costs

Reimbursable Costs generally include all costs incurred by the EPCM Contractor directly as a result of performing the EPCM services. These should be summarized in the EPCM Contractor's regular invoice and supported with appropriate receipts or other documentation.

Some elements of cost are not easily attributable to the performance of a specific project-related task (examples: corporate finance, business development). These are usually reflected in a general cost allocation, such as "Overhead", and applied at a fixed rate per reimbursable hour. It is important that all such cost items, and the methods by which they will be quantified and reimbursed, are specified in the EPCM Contract. Appendix C – Reimbursable Costs and Fee provides a standard template of reimbursable costs and their calculation.

(b) Fee

The Fee includes all of the EPCM Contractor's entitlement (including profit) other than Reimbursable Costs and, if applicable, incentive payments. The amount of the Fee, its method of calculation, and the formula for calculating adjustments (if any) must be negotiated between the parties, clearly documented, and incorporated into the EPCM Contract. Where an adjustment of the Fee is contemplated during the life of the EPCM Contract, the parties must ensure that adequate administrative resources are available during project execution to track and verify the basis of the adjustment.

6. Communication

Effective communication between the Owner and the EPCM Contractor is crucial to the success of a project. The two organizations must remain aligned in all aspects of project execution: scope of work, technical specifications, change management, subcontracting and purchasing strategies, site access and use, HSE requirements, interfaces with ongoing operations, financial authorities, accounting procedures, progress reporting, public affairs, and so on. Direct communication between the EPCM Contractor's various functional departments and the Owner's counterparts is necessary – but certain protocols must be followed to ensure overall control of the project. In general, all communications dealing with issues that affect the project's cost, schedule, quality, safety, or reputation must be routed through the Owner's and EPCM Contractor's named representatives.

For procurement and construction management functions, the underlying relationship between the Owner and EPCM Contractor is one of agent and principal and in that relationship the EPCM Contractor needs to communicate project needs and the Owner must provide instructions. A communication plan is crucial to the success of an EPCM project and must include the following:

- key contacts on both sides for concerns regarding design, scope, schedule and cost;
- meeting frequency during the design and construction phases of the project;
- frequency of drawing reviews based on progress; and
- management of field queries from the Works Contractors to minimize cost and schedule impacts.

7. Change Management

Compared with other contract types, the EPCM form of contract facilitates a more rapid transition from front-end development into detailed engineering and construction. The contractual terms and conditions can be established early, allowing the EPCM Contractor to commence work - even though the detailed scope of work may still be in development. However, a robust change management process must be implemented in order to maintain control of cost and schedule, and to provide reasonably accurate forecasts of project results.

The parties must commit to open and regular communication generally, and, in particular, a formal change management procedure. All deviations from the project's basis documents (e.g. design basis memorandum, cost estimate, and construction schedule) must be documented with appropriate authorizations. This procedure should be included in Appendix E - Work Procedures, and the parties should ensure that they have sufficient project staff to meet the requirements of the procedure.

8. Safety

The Committee recognizes the importance of safety and, where possible, has incorporated the Best Practices relating to safety developed by the COAA. In addition, the EPCM Contract specifically recognizes the role of "prime contractor" under the *Occupational Health and Safety Act*. Whether the prime contractor responsibilities are carried out by the Owner, the EPCM Contractor or a Works Contractor, the EPCM Contract also recognizes that the party fulfilling this role must have the requisite control over safety to perform in the prime contractor function.

9. Warranty

The EPCM Contract contains a warranty from the EPCM Contractor relating to the engineering, procurement and construction and construction management services to the extent of re-work only.

The warranty relative to EPCM services commences at the start of the services and concludes at a specified time frame following Functional Completion. With regard to the actual construction work, the Owner relies on the warranty flowing from the Works Contractors.

10. Allocation of Risk and Consequential Damages

Following the EPC Contract model, the Committee has incorporated an exclusion of consequential damages. This exclusion applies both to the EPCM Contractor and the Owner.

Proposed Appendices

The Committee has developed templates for those Appendices it considers to be industry standards. Where a template is not possible, a checklist has been provided. In relation to those Appendices which are project-specific, the Committee has provided some points as to the proposed content. The following are the proposed Appendices:

(a) **Appendix A – Owner’s Requirements**

- See Checklist

(b) **Appendix B – Owner’s Obligations**

- Proposed Content:
 - (i) Scope of the Owner’s work (preferred suppliers, procurement, construction, etc.)
 - (ii) List of Owner’s Key Personnel
 - (iii) Communications Plan

(c) **Appendix C – Reimbursable Costs and Fee**

- See Template

(d) **Appendix D – Invoicing and Payment Procedures**

- Proposed Content:
 - (i) Payment of Invoices
 - (ii) Conditions for Withholding of Payment
 - (iii) Allowance for Changes in Rates
 - (iv) Cash management
 - (v) Right to Audit

(e) **Appendix E – Work Procedures**

- Proposed Content:
 - (i) Health, Safety and Environment
 - (ii) QA/QC
 - (iii) Change Management
 - (iv) Risk Management
 - (v) Document Management
 - (vi) Meeting and Reporting
 - (vii) Scheduling and Progressing

- (viii) Cost Trending and Forecasting
 - (ix) Contingency Management
 - (x) Construction Management
 - (xi) Contract Management
 - (xii) Handover – Functional Completion
 - (xiii) Project Close-Out
 - (xiv) Apprentice Employment Plan
 - (xv) Local Business Incorporation Plan
- (f) **Appendix F – Key Performance Indicators**
- See Template
- (g) **Appendix G – Policies and Guidelines**
- Proposed Content:
 - (i) Health, Safety and Environment
 - (ii) Labour Relations
 - (iii) Procurement Plan
 - (iv) COAA Canadian Model for Providing a Safe Workplace: Alcohol and Drug Guidelines and Work Rule
 - (v) COAA Workplace Respect Policy
- (h) **Appendix H – Forms**
- See Templates for (i), (v) and (vi):
 - (i) Key Employee Confidentiality, Intellectual Property and Consent Agreement
 - (ii) Change Order
 - (iii) Change Directive
 - (iv) Final Completion Notice
 - (v) Release and Certificate of Final Payment
 - (vi) Statutory Declaration
- (i) **Appendix I – Dispute Resolution Procedure**
- Attach project-specific document
- (j) **Appendix J –Key Personnel and Addresses for Notice**
- Attach project-specific document

COAA EPCM Contract 2008
(Engineering, Procurement and
Construction Management Contract)

Between

*

- and -

*

Effective Date: *

Note to Users: This EPCM Contract contains a number of blanks to be completed on a project-specific basis. These blanks are indicated by: *. There are also notes within the text which require further consideration of the specific project requirements before completing.

Draft: For COAA Board Approval

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APPENDICES

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- Appendix B – Owner’s Obligations
- Appendix C – Reimbursable Costs and Fee
- Appendix D – Invoicing and Payment Procedures
- Appendix E – Work Procedures
- Appendix F – Key Performance Indicators
- Appendix G – Policies and Guidelines
- Appendix H – Forms
- Appendix I – Dispute Resolution Procedure
- Appendix J – Key Personnel and Addresses for Notice

Engineering, Procurement and Construction Management Contract

This *Contract* is made effective this * day of *, 20*

Between

*

- and -

*

Introduction:

A. The *EPCM Contractor* has agreed to perform the *Services* for the *Owner* as set out in this *Contract*, on the terms and conditions set forth in this *Contract*.

IN CONSIDERATION of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1 - Definitions and Appendices

1.1 The following terms, wherever capitalised and italicised in the *Contract*, or in any document produced pursuant to the terms of the *Contract*, shall have the following meanings:

- (a) *Affiliate* has the meaning it is given in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended;
- (b) *Appendix* or *Appendices*, as the case may be, means one or more of the appendices attached to and incorporated in this *Contract* as set forth in Section 1.2;
- (c) *As-Built Drawings* means the controlled and complete set of documents upon which is reflected all differences between the *Facilities*, together with temporary facilities still in place, as constructed, and the *Facilities*, together with temporary facilities, as designed in the documents issued by the *EPCM Contractor* for *Construction Work*;
- (d) *Change* means any change in, addition to, or deletion from the *Owner's Requirements*, *Owner's Specified Materials and Services*, the *Milestones*, or the *Contract Time*;
- (e) *Change Directive* means a written instruction from the *Owner* directing a *Change*;

- (f) *Change Order* means a written order signed by both the *EPCM Contractor* and the *Owner* authorizing a *Change*;
- (g) *Change Quotation* means a written quotation from the *EPCM Contractor* for an adjustment in any one or more of the *Services*, *Contract Time*, *Milestones* or the *Compensation*;
- (h) *Commencement Date* means the date that the *Services* are to commence, which, at the effective date of this *Contract*, is *, 20*;
- (i) *Commissioning after Functional Completion* means those commissioning duties of the *Owner* and of the *EPCM Contractor* that shall take place after *Functional Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *EPCM Contractor*;
- (j) *Commissioning before Functional Completion* means those commissioning duties of the *Owner* and of the *EPCM Contractor* that shall take place before *Functional Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *EPCM Contractor*;
- (k) *Compensation* means the compensation which the *Owner* shall pay for performance of the *Services* in accordance with Appendix C – Reimbursable Costs and Fee;
- (l) *Confidential Information* means all information relating to the *Services* and any process or technology, including any process or technology from a licensor, relating thereto, and information relating to the nature of the *EPCM Contractor's* and the *Owner's* business, affairs or trade secrets, which either party directly or indirectly receives or acquires from the other party, or the other party's representative, either in writing or verbally, including information in the *Contract*, or through observation of the *Owner's Site*, the *Services* or services or work performed by *Other Contractors*, except information falling into any one or more of the following categories:
 - (i) information which the disclosing party can show was in its possession on a non-confidential basis before receipt or acquisition of the information from the other party;
 - (ii) information which is lawfully in the public domain at the time of the disclosing party's receipt or acquisition of the information from the other party, other than from the *Owner's Requirements* or through the process of proposal calls or performing the *Services*;
 - (iii) information which, after the disclosing party's receipt or acquisition of the information from the other party, becomes part of the public domain through no act of the disclosing party or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or



- (iv) information which, after receipt or acquisition of the information from the other party, is lawfully obtained by the disclosing party from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.
- (m) *Construction Contract* means the contract between the *Owner*, or the *EPCM Contractor* as agent for the *Owner*, and a *Works Contractor*;
- (n) *Construction Management Services* means those services described in the *Owner's Requirements* and provided by the *EPCM Contractor* for the construction management of the *Project*;
- (o) *Construction Work* means the work performed by *Works Contractors* and includes, but is not limited to, delivery, fabrication, assembly, construction, testing, commissioning and correction, including professional and technical personnel, labour, supervision, administration, materials, transportation, supplies, tools, equipment, and such other services and materials necessary to be performed or supplied to meet the requirements of the *Construction Contract*, including any work which is not expressly described in the *Construction Contract* but which is nevertheless necessary for the proper execution of the work;
- (p) *Contemplated Change Notice* means a written notice from the *Owner* advising the *Contractor* that the *Owner* is contemplating a *Change*;
- (q) *Contract* means:
 - (i) this Engineering, Procurement and Construction Management Contract;
 - (ii) *Change Orders* and *Change Directives*;
 - (iii) *Execution Plan*; and
 - (iv) other documents which come into existence and are incorporated into the *Contract*, including all *Appendices*;
- (r) *Contract Time* means the period of time from the *Commencement Date* to the scheduled date for issuance of the *Final Completion Notice*;
- (s) *Deficiency* means any portion of the *Services* that has not been performed in accordance with the *Contract*, whether because of error or omission;
- (t) *Engineering Services* means those services described in the *Owner's Requirements* and provided by the *EPCM Contractor* for the design, planning and engineering of the *Project* and includes the deliverables required to be provided by the *EPCM Contractor* as specified in the *Owner's Requirements*, but does not include *Construction Management Services* or *Procurement Services*;



- (u) *EPCM Contractor* means *;
- (v) *EPCM Contractor's Key Personnel* means the *EPCM Contractor's* key personnel for the *Services* identified in Appendix J – Key Personnel and Addresses for Notice, or if not determined before the execution of this *Contract*, identified in an organisational chart in accordance with Article 17 - Key Personnel and approved by the *Owner*;
- (w) *EPCM Contractor's Representative* means that person identified as such in Section 45.2, or an approved replacement;
- (x) *Estimated Contract Price* means the estimated cost to perform the *Services* and to perform the *Construction Work*, which shall be identified as separate costs for each of the *Services* and the *Construction Work* by the *Owner* in Appendix C – Reimbursable Costs and Fee;
- (y) *Event of Force Majeure* means any occurrence, other than the financial incapability of a party or an event constituting a delay under Article 31 - Delays Caused by the *EPCM Contractor*, which prevents or delays a party from performing its obligations under the *Contract* (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not, at the time the *Contract* was executed, have reasonably contemplated happening and which, at the time of such occurrence, is beyond the reasonable control of the party required by the *Contract* to perform such obligation and such party is unable to reasonably prevent or provide against such occurrence;
- (z) *Execution Plan* means the programme developed by the *EPCM Contractor* for the *Services* in accordance with Section 4.2 and which shall include, but not be limited to:
 - (i) the organisation to be established by the *EPCM Contractor* for carrying out the *Services*, including, but not limited to, the identities and curriculum vitae of *Key Personnel*, or if not yet identified, then the titles of the positions that will be held by *Key Personnel*;
 - (ii) limits of authority of the *EPCM Contractor*;
 - (iii) the sequences and methods for the performance of the *Services*; and
 - (iv) a detailed schedule with dates for the completion of *Milestones*;
 - (v) a contracting plan;
 - (vi) a materials management plan;
 - (vii) a procurement plan;
 - (viii) a third party vendor plan;



- (ix) a QA/QC program; and
- (x) a communication plan;
- (aa) *Facilities* means the physical works engineered, procured, constructed and incorporated into the works as a result of the *Services* and *Construction Work* performed, but does not include temporary facilities;
- (bb) *Final Completion Notice* means that notice in the form contained in Appendix H – Forms issued by the *Owner* to the *EPCM Contractor* pursuant to Section 20.2 certifying completion and acceptance of the *Services* under the *Contract*;
- (cc) *Functional Completion* means that date the *Construction Work* performed by the *Works Contractors* has developed to the point where the *Facilities*:
 - (i) have passed the required *Performance Tests*; and
 - (ii) are ready to be put into service, or being used for the purpose intended;
- (dd) *Functional Completion Certificate* means that notice issued by the *Owner*, or by the *EPCM Contractor* on the *Owner's* behalf, to *Works Contractor* certifying achievement of *Functional Completion*;
- (ee) *Goods* means any goods, supplies, materials or equipment required as part of the *Construction Contract*, and which are supplied or fabricated by a *Works Contractor* and do not include *Procured Goods*;
- (ff) *Hazardous Material* means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined by *Law*, as well as any prescribed product under the Nuclear Safety and Control Act (Canada);
- (gg) *Intellectual Property* means all discoveries, inventions, know-how, improvements, developments, processes, technology, compositions, designs, techniques, methods, industrial designs, compositions, prototypes, models, literary work, research, drawings, software and trade secrets whether capable of patent, industrial design, copyright or trademark protection, or any other type of protection, or not;
- (hh) *Law* means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, building codes, permits and licences thereunder, which apply to or otherwise affect the *Services*, the *Owner* or the *EPCM Contractor* with respect to the *Services*, or the property of the *Owner* or the *EPCM Contractor*, real or personal;
- (ii) *Milestone* or *Milestones* means, as the case may be, one or more milestones that the *EPCM Contractor* must meet as set forth in the *Owner's Requirements*;



- (jj) *Other Contractors* means the contractors (including *Works Contractors*), consultants, or engineers retained by the *Owner* or its consultants or contractors, to perform any work or services at, or related to, the *Owner's Site*, other than the *EPCM Contractor*;
- (kk) *Owner* means *;
- (ll) *Owner's Key Personnel* means the *Owner's* key personnel for the *Project* who are identified in Appendix J – Key Personnel and Addresses for Notice;
- (mm) *Owner's Representative* means that person identified as such in Section 45.1 which may include a consultant hired by the *Owner*, if so designated, or that person's designated replacement;
- (nn) *Owner's Requirements* means the description of the scope, standards, design criteria, *Milestones* and the programme of *Services* set out in Appendix A – *Owner's Requirements*, as amended by any *Changes*;
- (oo) *Owner's Site* means the *Owner's* land upon which the *Work Site* is located and which may have on it other projects by *Other Contractors* or existing facilities, activities or operations;
- (pp) *Owner's Specified Materials and Services* means those materials, goods, products, processes, equipment and subconsultants specified in the *Owner Requirements* to be used in, or to be incorporated into, the *Services* by the *EPCM Contractor*;
- (qq) *Performance Tests* mean the performance tests set out in the *Owner's Requirements* for the testing the *Services* and the *Construction Work*, and such other tests as may be agreed between the *Owner* and *EPCM Contractor*;
- (rr) *Personnel* means the employees or individuals engaged by a party, or its *Affiliates*, to supplement that party's work force and, where applicable, includes corporate entities used for the sole purpose of engaging an individual by a party, or its *Affiliates*, to supplement that party's work force;
- (ss) *Policies* means the policies of the *Owner* as attached in Appendix G – Policies and Guidelines;
- (tt) *Procured Goods* means those goods, supplies, materials or equipment obtained for incorporation in, or to perform, the *Construction Work*, and procured by the *EPCM Contractor* as part of its *Procurement Services*;
- (uu) *Procurement Services* means the procurement by the *EPCM Contractor* of *Procured Goods* and *Construction Work*, which procurement services are performed by the *EPCM Contractor*, either as agent or non-agent for the *Owner*, as stipulated in the *Owner's Requirements*;
- (vv) *Project* means *;



- (ww) *Records* means the books, statements, records and accounts pertaining to the *Contract* and the performance of the *Services*, whether in paper or electronic form;
- (xx) *Safety Plan* means the plan, as specified in the *Owner's Requirements*, which includes, but is not limited to, safety performance requirements, mitigation plans, training and orientation requirements, site safety and access rules, reporting and safety meeting frequency, site cleanliness requirements and other occupation health and safety requirements and compliance issues;
- (yy) *Scheduled Functional Completion Date* means the date on which the *Project* is scheduled to achieve *Functional Completion*, which, at the effective date of this *Contract*, is *, 20*;
- (zz) *Services* means all *Engineering Services*, *Procurement Services*, *Construction Management Services*, including those duties allocated to the *EPCM Contractor* in the *Commissioning before Functional Completion* and *Commissioning after Functional Completion*, as may be necessary to fulfill the *Owner's Requirements* and includes anything that is ancillary or necessary by implication to fulfill the *Owner's Requirements*;
- (aaa) *Subcontractor* means a subcontractor of the *EPCM Contractor* which subcontractor is engaged for a discreet scope of services in relation to a portion of the *Services*, but does not include *Personnel* where those individuals are performing as part of the *EPCM Contractor's* team and not as stand alone subcontractors;
- (bbb) *Suspended Services* means any *Services*, or portion thereof, which the *Owner* has suspended pursuant to Article 32 - Suspension;
- (ccc) *System* means any component system of the *Services*, or any part thereof as the context requires; **[Note to Users: This definition is to be reviewed on a project-specific basis and components are to be identified in the Owner's Requirements.]**
- (ddd) *Warranty Period* means a period of * months from the date the *Final Completion Notice* is issued;
- (eee) *WCB* means the Workers' Compensation Board of Alberta or any other applicable jurisdiction;
- (fff) *Work Days* means any day, except for a Saturday, Sunday, a general holiday or a holiday which is observed in the construction industry in Alberta, or defined as a holiday in a collective agreement pertaining to the *Work Site*; **[Note to Users: This definition should be revised on a project-specific basis.]**
- (ggg) *Work Site* means those lands where the *Project* is located and which are legally and municipally described as such in the *Owner's Requirements*; and



(hhh) *Works Contractor* means any contractor, consultant, supplier or vendor hired by the *Owner* to perform any portion of the *Construction Work*, supply any *Goods*, or perform ancillary services.

1.2 The following *Appendices* attached hereto shall form part of and are incorporated in this *Contract*:

(a) Appendix A – Owner’s Requirements

- See COAA Contracts Committee Checklist
- See Workface Planning Provisions tailored for this Contract

(b) Appendix B – Owner’s Obligations

- Proposed Content:
 - Scope of the Owner’s work (preferred suppliers, procurement, construction, etc.)
 - List of Owner's Key Personnel
 - Communications Plan

(c) Appendix C – Reimbursable Costs and Fee

- See COAA Contracts Committee Template

(d) Appendix D – Invoicing and Payment Procedures

- Proposed Content:
 - Payment of Invoices
 - Conditions for Withholding of Payment
 - Allowance for Changes in Rates
 - Cash management
 - Right to Audit

(e) Appendix E – Work Procedures

- Proposed Content:
 - Health, Safety and Environment
 - QA/QC
 - Change Management
 - Risk Management
 - Document Management
 - Meeting and Reporting
 - Scheduling and Progressing
 - Cost Trending and Forecasting
 - Contingency Management
 - Construction Management
 - Contract Management
 - Handover – Functional Completion
 - Project Close-Out
 - Apprentice Employment Plan
 - Local Business Incorporation Plan

- (f) Appendix F – Key Performance Indicators
 - See COAA Contracts Committee Template
- (g) Appendix G – Policies and Guidelines
 - Proposed Content:
 - Health, Safety and Environment
 - Labour Relations
 - Procurement Plan
 - COAA Canadian Model for Providing a Safe Workplace: Alcohol and Drug Guidelines and Work Rule
 - COAA Workplace Respect Policy
- (h) Appendix H – Forms
 - See COAA Contracts Committee Templates for forms (i), (v) and (vi):
 - (i) Key Employee Confidentiality, Intellectual Property and Consent Agreement
 - (ii) Change Order
 - (iii) Change Directive
 - (iv) Final Completion Notice
 - (v) Release and Certificate of Final Payment
 - (vi) Statutory Declaration
- (i) Appendix I – Dispute Resolution Procedure
 - Attach project-specific document
- (j) Appendix J – Key Personnel and Addresses for Notice
 - Attach project-specific document

[Note to Users: List any additional *Appendices*]

Article 2 - Interpretation and Order of Precedence

- 2.1 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.
- 2.2 The headings and sub-headings of the *Contract* are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the *Contract*.
- 2.3 If there is a conflict in the *Contract*, the order of precedence of documents, from highest to lowest, shall be:
- (a) this Engineering, Procurement and Construction Management Agreement, excluding the *Appendices*;
 - (b) *Change Orders* and *Change Directives*;

- (c) Appendix A – Owner’s Requirements;
- (d) Appendix B – Owner’s Obligations;
- (e) Appendix C – Reimbursable Costs and Fee; and
- (f) all other *Appendices*.

2.4 The following shall, in all instances, apply:

- (a) for documents revised by either party and approved by the *Owner*, the revision most recently approved by the *Owner* shall govern;
- (b) figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
- (c) drawings of larger scale shall govern over those of smaller scale of the same date; and
- (d) specifications shall govern over drawings regardless of time.

2.5 Wherever this *Contract* requires an action to be performed or an obligation to be undertaken, unless otherwise specified, such action or obligation shall be performed in a prompt and commercially reasonable manner by the party taking the action or fulfilling its obligation.

Article 3 - Owner’s Requirements and Obligations

3.1 The *Owner’s Requirements* describes the scope of the *Services* and Appendix B – Owner’s Obligations describes those things the *Owner* is required to do to facilitate the performance of the *Services*, including the *Owner’s* scope of work and its communication plan with the *EPCM Contractor*.

3.2 The *Owner’s Requirements* shall specify the requirements of the *Safety Plan* and identify the party, or parties, responsible for the development and implementation of the *Safety Plan*.

3.3 Subject to Section 15.9, all conflicts with respect to the interpretation of the *Owner’s Requirements* shall be resolved by the *Owner’s Representative*.

3.4 The *EPCM Contractor* may rely on the accuracy of all documentation regarding the *Project* and the *Owner’s Site* provided by the *Owner*, whether prepared by the *Owner* or some other party, except where a review or confirmation is required by the *Owner* and the scope of such review or confirmation is described in the *Owner’s Requirements*.

Article 4- General Requirements of the Services

- 4.1 Subject to re-work covered by Article 21 - Warranty, or coverage that is available pursuant to the insurance coverage provided by the *EPCM Contractor*, the scope of the *Services* includes correction of *Deficiencies* by the *EPCM Contractor* at the *Owner's* expense.
- 4.2 By the date or dates specified in the *Owner's Requirements*, the *EPCM Contractor* shall prepare and submit for the *Owner's* approval and acceptance a detailed *Execution Plan* for the performance of all of, or any part of, the *Services*, and shall update and obtain the *Owner's* acceptance of the *Execution Plan* at the intervals identified in the *Owner's Requirements* or, if not identified, as may be required during the performance of the *Services*. The *EPCM Contractor* shall control the progress of the *Services* to achieve compliance with the *Execution Plan*.
- 4.3 In the execution of the *Services*, the *EPCM Contractor* shall comply with, and the completed *Services* shall comply with, the *Law* and the standards specified in the *Owner's Requirements*.
- 4.4 References in the *Contract* to applicable codes, standards or regulations shall be understood to be references to the edition applicable on the effective date of the *Contract*, unless stated otherwise. If changed or new applicable codes, standards or regulations come into force after the effective date of the *Contract*, the *EPCM Contractor* shall submit a *Change Quotation* for compliance to those changed or new codes, standards or regulations to the *Owner's Representative*. Any *Change* in the *Services*, the *Contract Time* or the *Compensation* as a result shall be dealt with under Article 15 - Changes.
- 4.5 The *EPCM Contractor* accepts the *Owner's Site*, the *Work Site* and the obligation to perform the *Services* in the condition existing at the effective date of this *Contract* and acknowledges that it has investigated and satisfied itself to the following, except for subsurface or other physical conditions not disclosed by the *Owner*:
- (a) the nature of the *Services*;
 - (b) the location of and all conditions relating to the *Owner's Site* and the *Work Site*, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;
 - (c) all environmental risks, conditions, *Law* and restrictions applicable to the *EPCM Contractor* or the *Services* that may affect the *Services*; and
 - (d) the magnitude of the *Services*.
- 4.6 The *EPCM Contractor* accepts the obligation to perform the *Services* and acknowledges that it has investigated and accepts what is known and can be reasonably anticipated regarding:

- (a) the general character, quality, quantity and availability of resources required to execute and complete the *Services* and *Construction Work*; and
 - (b) all conditions affecting labour for the provision of the *Services*.
- 4.7 The *Owner* reserves the right to award separate contracts to *Other Contractors* for services or work to be performed at the *Work Site* and to perform services with its own forces at the *Work Site*. In such event, the *EPCM Contractor* shall co-ordinate and schedule the *Services* with the services of the *Other Contractors*, the *Works Contractors*' work and the *Owner's* own forces, and the *EPCM Contractor* shall share access to and use of the *Work Site* to accommodate the services of *Other Contractors*. If the proposed services performed by *Other Contractors*, as directed by the *Owner*, will interfere with the *Services* performed by the *EPCM Contractor* or the *Works Contractors*' work, the *EPCM Contractor* shall notify the *Owner* of such interference.
- 4.8 The *EPCM Contractor* shall co-operate fully with the *Owner*, *Other Contractors* and all other parties with whom the *EPCM Contractor* or *Owner* may be involved during the performance of the *Services*.
- 4.9 The *Owner* shall advise the *EPCM Contractor* of any separate contracts or other work or events that may affect the *Services* or the *Construction Work*.
- 4.10 In the performance of the *Services*, the *EPCM Contractor* shall give due consideration to the interest and property of others wherever involved, and shall carry out and perform the *Services* in a manner which shall cause the minimum of inconvenience, injury, and damage to others.
- 4.11 Approval of the *Services*, or acceptance of any part of the *Services* by the *Owner*, or payment to the *EPCM Contractor* shall not relieve the *EPCM Contractor* from its responsibilities under the *Contract*.
- 4.12 The *EPCM Contractor* shall manage the *Services* as stipulated in the *Owner's Requirements* and shall provide:
- (a) cost monitoring, scheduling and reporting to the *Owner*;
 - (b) scheduling the *Services* and monitoring and reporting on the progress of the *Construction Work* relative to the *Milestones* to the *Owner*;
 - (c) coordination, scheduling and supervision of *Works Contractors*;
 - (d) coordination and management of transportation and related services for the *Services* and, as applicable, the *Construction Work*;
 - (e) management of the *Services* to ensure the *Services* are performed in an efficient and coordinated manner; and

- (f) written reports detailing the status of the *Services* and the *Construction Work* and all issues relating thereto, on a reporting cycle agreed by the *Owner* and the *EPCM Contractor*, and shall attend meetings as required by the *Owner's Requirements*, or as otherwise requested by the *Owner's Representative*.
- 4.13 The *EPCM Contractor* shall ensure that no activities or actions are undertaken in the performance of the *Services* which would adversely affect, restrict or limit in any way the continued operation of the *Owner's* facilities which are in operation, unless required to perform the *Services*, done in accordance with the *Execution Plan* and authorized in writing by the *Owner's Representative*.
- 4.14 The *Owner* shall provide, and the *EPCM Contractor* shall abide by, all documents provided by the *Owner* relating to the *Owner's Site*, including, but not limited to, any special restrictions and conditions contained in any easement, regulatory board order, crossing agreement, or other permit relating to the *Work Site*.
- 4.15 Each of the parties shall fully inform each other of any errors, omissions or inconsistencies in the *Contract*, *Deficiencies* in the *Services* and of any inconsistencies between the *Contract* and the *Law*, of which they become aware. Both the *Owner* and the *EPCM Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies or *Deficiencies*. If the *Owner* or the *EPCM Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any *Deficiencies* in the *Services*, that party shall notify the other party and in the case of the *EPCM Contractor* discovering such inconsistencies shall resolve all such inconsistencies with the *Owner* before proceeding with the affected portion of the *Services*. If the *EPCM Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any *Deficiencies* in the *Services*, and proceeds without approval of the *Owner* or issuance of a *Change Directive*, the *EPCM Contractor* shall proceed at the *EPCM Contractor's* own risk and expense and waives all rights to claim against the *Owner* for the same.
- 4.16 Within ___ days of the *Commencement Date*, the *EPCM Contractor* shall prepare for approval by the *Owner* all work procedures listed in Appendix E – Work Procedures that are not provided by the *Owner* such that they comply with the *Owner's Requirements*. The *Owner* shall review and either approve the work procedures prepared by the *EPCM Contractor* or provide the *EPCM Contractor* with written reasons specifying why one or more of the work procedures is not approved. Upon receiving such reasons, the *EPCM Contractor* shall promptly revise the work procedures in accordance with such reasons and re-submit the revised procedures to the *Owner* for approval. The process shall be repeated until all of the work procedures are approved by the *Owner*. The *Owner* may at any time, by providing notice of at least 14 days, direct the *EPCM Contractor* to revise any of the work procedures. The *EPCM Contractor* shall perform the *Services* in accordance with all approved work procedures.
- 4.17 All documents and drawings prepared as part of the *Services* shall be in English.

- 4.18 At all times during the progress of the *Services*, the *Owner* shall have the right to inspect or witness any part of the *Services*.

Article 5 - Engineering Services

- 5.1 The *EPCM Contractor* shall perform the *Engineering Services* and be responsible for the design and engineering necessary to execute the *Construction Work*.
- 5.2 The *Engineering Services* shall be prepared under the supervision of the *EPCM Contractor's* qualified professional engineers licensed by the Association of Professional Engineers, Geologists and Geophysicists of Alberta.
- 5.3 The professional supervisors referred to in Section 5.2 shall be available to meet with the *Owner's Representative* at all reasonable times during the *Contract Time* and the *Warranty Period*.
- 5.4 The *Owner* shall have the right of inspection and review of the design drawings and specifications at all reasonable times. No inspection, or failure to inspect, by the *Owner* shall relieve the *EPCM Contractor* of the *EPCM Contractor's* obligations.
- 5.5 The *EPCM Contractor* shall:
- (a) prepare, and keep up-to-date, the *As-Built Drawings* with cross-references to relevant specifications, standards and codes;
 - (b) keep the *As-Built Drawings* on the *Work Site*;
 - (c) during the *Contract Time*, provide the *Owner* with access to the *As-Built Drawings*; and
 - (d) upon completion of the *Services*, or at such other time as may be determined by the *Owner*, submit the *As-Built Drawings* and copies to the *Owner's Representative* in accordance with the *Owner's Requirements*.
- 5.6 Should the *EPCM Contractor* become aware of a deficiency in the *Owner's Requirements*, the *EPCM Contractor* shall advise the *Owner* of such deficiency.

Article 6 - Owner's Specified Materials and Services

- 6.1 Where the *Owner's Requirements*, a *Change Order* or a *Change Directive* directs the *EPCM Contractor* to use the *Owner's Specified Materials and Services*, the *EPCM Contractor* shall review the *Owner's Specified Materials and Services* to determine whether such *Owner's Specified Materials and Services* are acceptable to the *EPCM Contractor* and can be incorporated in the *Services* without interfering with the achievement of the *Milestones*.
- 6.2 If the *EPCM Contractor* determines that the *Owner's Specified Materials and Services* are not acceptable to the *EPCM Contractor* for incorporation in the *Services*, then the

EPCM Contractor shall give notice to the *Owner* that the *Owner's Specified Materials and Services* are not suitable for the *Services*, which notice will provide details of the reasons why the *Owner's Specified Materials and Services* are not acceptable for use or incorporation into the *Services*. If such notice is not provided by the *EPCM Contractor*, then the *EPCM Contractor* shall accept the *Owner's Specified Materials and Services* as if specified by the *EPCM Contractor*.

- 6.3 Where the *EPCM Contractor* has provided notice to the *Owner* that the *Owner's Specified Materials and Services* are not acceptable for the *Services*, the *Owner* shall notify the *EPCM Contractor* of the *Owner's* decision as to whether or not to include the *Owner's Specified Materials and Services* in the *Services*.
- 6.4 If the *Owner* chooses to direct the *EPCM Contractor* to use the *Owner's Specified Materials and Services* after the *EPCM Contractor* has notified the *Owner* that the *Owner's Specified Materials and Services* are not acceptable for the *Services*, then the *Owner* shall take sole responsibility for specifying the *Owner's Specified Materials and Services*.

Article 7 - Procurement Services

- 7.1 As specified in the *Owner's Requirements*, the *EPCM Contractor* shall provide *Procurement Services*, as applicable, using such selected vendor lists, *Works Contractor* lists, contract documentation and *Owner's Specified Materials and Services* as directed by the *Owner*.
- 7.2 The *EPCM Contractor* shall not recommend or award contracts to an *Affiliate* of the *EPCM Contractor* without written disclosure of that relationship to, and the prior written approval of, the *Owner*.
- 7.3 The *Owner* shall provide to the *EPCM Contractor* sufficient instructions and guidelines to enable the *EPCM Contractor* to effect delivery, receiving and handling into and within the *Owner's* system of materials handling and warehousing.
- 7.4 In accordance with the *Owner's Requirements*, the *EPCM Contractor* shall:
- (a) verify documentation, pay vendor invoices, manage financial resources and report to the *Owner* on the payment for *Procured Goods*;
 - (b) make reasonable enquiries and checks to determine that *Procured Goods* are free of all claims, liens, charges, encumbrances and security interests;
 - (c) make reasonable enquiries and checks to determine that *Procured Goods* do not infringe on the *Intellectual Property* rights of others and negotiate terms that project the *Owner* from claims of infringement of *Intellectual Property* rights;
 - (d) submit any required samples for the approval of the *Owner's Representative*, together with any relevant information; and

- (e) monitor and report on the scheduled and actual delivery of *Procured Goods* in accordance with the *Owner's Requirements*.

Article 8- Construction Management Services and Construction Work

- 8.1 The *Owner* has ultimate responsibility for *Works Contractors* which are under the direction of *EPCM Contractor* and the *Owner* carries the risk of the *Construction Work* being performed in accordance with the applicable *Construction Contracts*.
- 8.2 The *Owner* and the *EPCM Contractor* shall work in a consultative mode to select and implement the optimum construction strategy for the *Project*.
- 8.3 The *EPCM Contractor* shall:
 - (a) provide the *Construction Management Services* in accordance with the *Execution Plan* and the *Owner's Requirements*;
 - (b) provide advice to the *Owner* on work breakdown, contracting strategy and candidate *Works Contractors*; and
 - (c) administer, supervise, manage and monitor the *Works Contractors*, and where any *Works Contractor* fails to conform to the *Construction Contract*, the *EPCM Contractor* shall provide adequate reporting to the *Owner*, seek the appropriate authority from the *Owner* and manage that non-conformance.

[Note to Users: The Committee recommends the use of the COAA Stipulated Price Construction Contract and the COAA EPC Contract for the *Construction Contract* between the *Owner* and *Works Contractors*]

- 8.4 The *EPCM Contractor* shall have the authority to make, and shall be responsible for making, all arrangements to perform inspections and testing and to deal with *Performance Tests*, if any, in accordance with Article 19 - Inspection and Testing. The *EPCM Contractor* shall provide full reporting to the *Owner* regarding such inspections and testing and provide recommendations to the *Owner* regarding all failed inspections and testing.
- 8.5 The *EPCM Contractor* have systems in place to and shall:
 - (a) monitor whether any materials, supplies or equipment incorporated into the *Construction Work* are subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the vendor, or any other party and shall report any occurrence of the same to the *Owner*;
 - (b) monitor the title to the *Work Site* for liens or other encumbrances and immediately take steps to deal with any affected payments and report any occurrence of the same to the *Owner*;

- (c) ensure that the appropriate permits and regulatory approvals have been obtained and are easily accessible to *Personnel* requiring copies of the same;
- (d) manage, support and report on the *Construction Work*, site and camp management, site operations and site safety;
- (e) determine when and perform audits of *Construction Contracts*;
- (f) support, facilitate transportation, storage, inspection, testing, and all related documentation;
- (g) maintain and, at completion of the *Services*, turn-over all project documentation; and
- (h) fulfill the requirements set out in the *Owner's Requirements*.

8.6 The *EPCM Contractor* shall provide notice to the *Owner's Representative* when the *EPCM Contractor* believes that the *Construction Work* performed by a *Works Contractor* is ready for the issuance of a *Functional Completion Certificate*. Such notice shall be issued to the *Owner* not earlier than 7 days before the *Construction Work* or a *System* will, in the *EPCM Contractor's* opinion, be complete and ready for taking over by the *Owner*. Such notice shall include the *Deficiencies* identified by the *EPCM Contractor*.

8.7 The *EPCM Contractor* shall, in accordance with the *Owner's Requirements*, be responsible for collection, collation and the turn-over of:

- (a) all project documentation, including to all plans, drawings, operational and maintenance manuals to the *Owner*; and
- (b) all documentation created and produced by the *EPCM Contractor* as agent of the *Owner*.

Article 9 - Agency

9.1 Where the *EPCM Contractor* performs any *Services* as agent of the *Owner*:

- (a) the *EPCM Contractor* shall carry out the *Owner's* instructions and shall act:
 - (i) in good faith and in the best interests of the *Owner*; and
 - (ii) within the scope of the agency specified in Article 7 - Procurement and the *Owner's Requirements*.
- (b) the *EPCM Contractor* shall not enter into any agreement, contract, settlement or arrangement with any person, firm or corporation, or other enterprise imposing any compromise, legal obligation or liability of any kind whatsoever on the *Owner*, unless such is in accordance with this *Contract* or unless *EPCM Contractor* has prior specific written authority to do so from the *Owner*;

- (c) the appointment of the *EPCM Contractor* as the *Owner's* agent shall be limited as follows:
- (i) to the limits of authority contained in the *Owner's Requirements*;
 - (ii) the *Services* shall be in accordance with the *EPCM Contractor's* internal process, but subject always to the final written approval of the *Owner's Representative*;
 - (iii) the *Services* shall only relate to the *Project* and the *EPCM Contractor* shall not act as agent for the *Owner* in any other respect;
 - (iv) the *Services* shall be on commercial terms and conditions pre-approved by the *Owner* and the *EPCM Contractor* shall not modify or change any of the terms and conditions approved by the *Owner* without the *Owner's* prior written consent, which consent may be withheld at the *Owner's* sole discretion;
 - (v) title to all *Procured Goods* shall be in the *Owner's* name;
 - (vi) all warranties and guarantees relating to the *Procured Goods* shall be made to the *Owner* and shall be enforceable by the *Owner*; and
 - (vii) the *EPCM Contractor* shall strictly follow the *Owner's* instructions and guidelines that identify the levels of review and approval required by the *Owner* in relation to the *Procured Goods*.

Article 10 - Commissioning

10.1 The duties of the *Owner* and of the *EPCM Contractor* in relation to *Commissioning before Functional Completion* and *Commissioning after Functional Completion*, together with the *Milestones* to be reached for commissioning, shall be performed as set out in the *Owner's Requirements*.

Article 11 - EPCM Contractor's Representations

11.1 The *EPCM Contractor* shall:

- (a) perform the *Services* in accordance with all applicable professional standards and in an efficient and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the *Contract* and in accordance with sound and currently accepted design, engineering, procurement, construction management and commissioning practices normally employed in industrial construction similar to the *Services*;
- (b) perform the *Services* in a safe and environmentally sound manner and in compliance with the *Law*;

- (c) perform the *Services* to meet the *Owner's Requirements*; and
- (d) comply with the *Contract*, including, but not limited to, all time schedules set out in, or called for by, the *Contract* or the *Execution Plan*.

11.2 The *EPCM Contractor* represents and warrants to the *Owner* that:

- (a) it has the experience, resources, *Personnel* and capability to perform the *Services*;
- (b) it is duly incorporated and validly existing under the laws of the jurisdiction(s) of its incorporation and is registered to carry on business in the Province of Alberta;
- (c) it has all required permits, licences and authorizations necessary to carry on its business and the *Services*; and
- (d) the *EPCM Contractor* has the right to give the *Owner* all licences described in Section 27.5.

Article 12 - Contract Time

12.1 Subject to any *Change Order* or *Change Directive*, the *EPCM Contractor* shall commence the *Services* on the *Commencement Date* and shall diligently pursue the *Services* to facilitate the achievement of the *Milestones* until the *Final Completion Notice* is issued to the *EPCM Contractor*.

12.2 The *EPCM Contractor* shall, unless otherwise provided for in this *Contract*, or altered by any *Change Order* or a *Change Directive*, perform the *Services* in accordance with the *Execution Plan*.

12.3 If a party fails to meet its obligations set out in this *Contract* in a timely manner, the other party may raise the failure of a timely action as provided for in Appendix I – Dispute Resolution Procedure; however, in such case the parties shall continue to perform the their respective obligations under this *Contract* while the matter is being resolved.

Article 13 - Payment

13.1 As full and complete compensation for the *Services*, the *Owner* shall pay the *EPCM Contractor* the *Compensation*, as adjusted by any *Change Order* or *Change Directive*.

13.2 The *EPCM Contractor* shall comply with this Article and prepare and submit invoices for all *Services* performed in accordance with Appendix D – Invoicing and Payment Procedures for all payments whether for the *Services* or arising under Article 32 - Suspension, Article 33 - Termination for Convenience or Article 34 - Termination for Cause.

13.3 As a condition precedent to each progress payment to the *EPCM Contractor* by the *Owner*, the *EPCM Contractor* shall deliver to the *Owner*:

- (a) *WCB* clearance in the form of a *WCB* “Letter of Clearance”, that its account is in good standing and that it has paid any assessments made by the *WCB* in relation to the *Services*; and
 - (b) a Statutory Declaration, on second and subsequent progress billings, in the form set out in Appendix H – Forms.
- 13.4 The *Owner* shall retain from all payments due and payable to the *EPCM Contractor* an amount equal to 10% of the value of the *Services* actually done and materials furnished by the *EPCM Contractor* in accordance with the Builders’ Lien Act (Alberta).
- 13.5 Where the *EPCM Contractor* engages a *Subcontractor*, the *Owner* shall release 10% of the value of the *Services* actually done and materials actually furnished under a subcontract at the date of issue of a certificate of substantial performance issued in relation to that subcontract, if:
- (a) a certificate of substantial performance is issued for the *Subcontractor's* subcontract,
 - (b) a period of specified in the Builders' Lien Act for that particular portion of the *Services* has expired from the date of issue of the certificate of substantial performance, and
 - (c) no lien has been registered.
- 13.6 When the *EPCM Contractor* has substantially performed the *Services*, as substantial performance is defined in the Builders’ Lien Act (Alberta), the *EPCM Contractor* shall issue and deliver to the *Owner* a certificate of substantial performance in accordance with the Builders’ Lien Act (Alberta). The *EPCM Contractor* shall post the certificate of substantial performance in accordance with the Builders’ Lien Act (Alberta).
- [Note to Users: The Builders' Lien Act is cumbersome for use in this type of contract. The COAA Best Practices has authorised a sub-committee of the Contracts Committee to develop proposals regarding the applicability of the Builders' Lien Act to major industrial projects.]**
- 13.7 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award of arbitration or judgment of a court, interest at the rate of *% per annum compounded semi-annually on any unpaid amounts shall also become due and be payable.

Article 14 - Cost and Price Control

- 14.1 The *Owner* is responsible for the *Project* meeting the *Scheduled Functional Completion Date* and the *EPCM Contractor* is responsible for meeting the *Milestones*.

- 14.2 The *Owner* is responsible for the cost of the *Construction Work* and the *EPCM Contractor* is responsible for managing the *Estimated Contract Price* as set out in Section 14.3 and the *Owner's Requirements*.
- 14.3 In relation to the cost of the *Services* and the *Construction Work*, the *EPCM Contractor* shall, in accordance with the *Owner's Requirements*:
- (a) monitor costs, perform cost control and forecasting;
 - (b) prepare reports, estimates, budgets and trend analyses; and
 - (c) update or revise the *Estimated Contract Price* as required by the *Owner*.

Article 15- Changes

- 15.1 The *Owner* shall have the right, at any time, to make a *Change*.
- 15.2 When a *Change* is proposed by the *Owner*, then the *Owner* shall provide a *Contemplated Change Notice* to the *EPCM Contractor* describing the proposed *Change*.
- 15.3 The *EPCM Contractor*, upon receipt of a *Contemplated Change Notice*, shall within * *Work Days* provide the *Owner's Representative* with a *Change Quotation* which shall include a method of adjustment or an amount of adjustment to the *Compensation*, if any, and any adjustment in the *Contract Time* for the proposed *Change*.
- 15.4 Following receipt of a *Change Quotation*, the *Owner* shall within * *Work Days* either agree to the adjustments in the *Contract Time* and the *Compensation* or to the method to be used to determine the adjustments, or give the *EPCM Contractor* notice that the *Change Quotation* is not acceptable.
- 15.5 If the *Change Quotation* is agreed to, then the *Owner* shall issue a *Change Order* recording the *Change*, which shall be signed by the *Owner* and the *EPCM Contractor*. The value of the *Services* performed as a result of a *Change Order* shall be included in invoices for payment submitted by the *EPCM Contractor* in accordance with the terms of payment in Appendix C – Reimbursable Costs and Fee and shall identify those portions of the invoice charged for the *Change Order*.
- 15.6 If the *Owner* requests the *EPCM Contractor* to provide a *Change Quotation* and subsequently elects not to proceed with the *Change*, the *EPCM Contractor* shall be reimbursed in accordance with Appendix C – Reimbursable Costs and Fee, or as otherwise agreed between the parties, for its reasonable costs incurred in preparing the *Change Quotation* and the *Owner* shall issue a *Change Order* for these costs.
- 15.7 If the *Owner* requires the *EPCM Contractor* to proceed with the *Change* before the *Owner* and the *EPCM Contractor* agree, or, if the *Owner* and the *EPCM Contractor* have failed to agree upon the adjustment in *Contract Time* and the *Compensation*, then the *Owner* shall issue a *Change Directive* directing the *EPCM Contractor* to proceed with the *Services*.

- 15.8 Upon receipt of a *Change Directive*, the *EPCM Contractor* shall proceed with the *Change* and:
- (a) keep daily records of the time, materials and equipment employed in the *Change* and shall submit such records to the *Owner's Representative* on a daily basis;
 - (b) the *Compensation* shall be adjusted in accordance with the rates set forth in Appendix C – Reimbursable Costs and Fee or as negotiated by the parties, or failing such resolution, those portions of the *Change Directive* not agreed to shall be settled in accordance with Appendix I – Dispute Resolution Procedure; however, payment for such portions of the *Change Directive* that are not disputed shall be paid in accordance with Article 13 - Payment; and
 - (c) the *Contract Time* shall be adjusted by agreement between the *Owner* and the *EPCM Contractor*, or shall be settled in accordance with Appendix I – Dispute Resolution Procedure.
- 15.9 If, during the performance of the *Services*, the *EPCM Contractor* is of the opinion that any instruction, interpretation, decision or direction relating to the *Project* and communicated to it by the *Owner* should have, but has not, resulted in a *Contemplated Change Notice* or *Change Directive* being issued, then, within * *Work Days*, the *EPCM Contractor* shall give the *Owner* notice that the instruction, interpretation, decision or direction is a *Change* and, within the same number of *Work Days* specified in Section 15.3 from the notice of the *Change*, shall issue a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation*, as may be required. If the *EPCM Contractor* does not issue the notice of a *Change* or a *Change Quotation* within the specified times, then the *EPCM Contractor* shall have no claim against the *Owner* attributable to that instruction, interpretation, decision or direction.
- 15.10 If, during the performance of the *Services*, the *EPCM Contractor* is of the opinion that any revision in the *Law* or regulatory regime occurring after the date of execution of this *Contract* has changed the *Owner's Requirements*, surface conditions differ from those disclosed by the *Owner*, or there is some other external factor which occurred after the date of execution of the *Contract* which results in a *Change*, and should, but has not, resulted in a *Contemplated Change Notice* or *Change Directive* being issued, then, within * *Work Days*, the *EPCM Contractor* shall give the *Owner* notice that the instruction, interpretation, decision or direction is a *Change* and, within the same number of *Work Days* specified in Section 15.3 from the notice of the *Change*, shall issue a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation*, as may be required. If the *EPCM Contractor* does not issue the notice of a *Change* or a *Change Quotation* within the specified times, then the *EPCM Contractor* shall have no claim for any claim against the *Owner* attributable to that revision to the *Law* or regulatory regime, subsurface conditions being different than disclosed by the *Owner*, or other external factor.
- 15.11 If the *Owner* receives a *Change Quotation* from the *EPCM Contractor* pursuant to Section 15.9 or Section 15.10 the *Owner* shall consider the *Change Quotation* and, within

the same number of *Work Days* specified in Section 15.4, issue a *Change Order*, *Change Directive* or advise the *EPCM Contractor* in writing that the *EPCM Contractor's* request is denied. If the *EPCM Contractor* disputes the *Owner's* decision, the *EPCM Contractor* shall, before proceeding with the *Services*, provide notice to the *Owner* disputing the *Owner's* decision, but in all cases, the *EPCM Contractor* shall proceed with the *Services*. In such event, the *EPCM Contractor* shall keep daily records in accordance with Section 15.8(a), in respect of the disputed services. The *EPCM Contractor's* entitlement to an adjustment in the *Contract Time*, the *Compensation*, or both, shall then be resolved in accordance with Appendix I – Dispute Resolution Procedure.

- 15.12 No modification, addition, deletion or other revision to the *Owner's Requirements* shall be binding on either party unless set out in a *Change Order*, required by a *Change Directive* or determined in accordance with Appendix I – Dispute Resolution Procedure. Neither the keeping of daily records in respect of disputed services nor the signing of those records by the *Owner's Representative* shall be considered an admission of entitlement to payment by the *Owner*. Such records, if signed by the *Owner*, shall only constitute the *Owner's* agreement that the time, materials and equipment were spent or employed in respect of the *Services* for which a *Change Directive* has been issued, or in respect of the *Services* in relation to which the *EPCM Contractor* has given notice of a dispute pursuant to Section 15.9 or Section 15.10.
- 15.13 The *EPCM Contractor* shall include in its *Change Quotation* all costs and changes in *Contract Time* reasonably expected to result from a *Change* including any impact or ripple costs or costs of acceleration.

Article 16 - Personnel, including Key Personnel

- 16.1 All communications between the *Owner* and the *EPCM Contractor* and all documents of whatever kind submitted to the *Owner* by the *EPCM Contractor* and its *Subcontractors* shall be in the English language. All of the *EPCM Contractor's* and the *Subcontractors' Personnel* that deal with, or communicate with, the *Owner* shall be fluent in the English language.
- 16.2 The *EPCM Contractor's* supervisory *Personnel* for the *Services* shall be qualified, trained and experienced in safety, efficiency and quality of supervision, and if requested by the *Owner*, accredited or enrolled in a program for accreditation, in the manner specified by the *Owner* in the *Owner's Requirements*.
- 16.3 At the *Owner's* request, the *EPCM Contractor* shall reassign, replace or remove *Personnel* who, in the *Owner's* opinion, acting in good faith, negatively affect the efficiency, safety or the ability to meet the *Scheduled Functional Completion Date* or who have committed a violation of the *Policies*.
- 16.4 The *EPCM Contractor* shall not employ, or continue to employ, workers who are not Canadian citizens or permanent residents of Canada in Canada, except in compliance with the Immigration and Refugee Protection Act (Canada) and regulations, as amended from time to time. The *EPCM Contractor* shall obtain, and upon request produce to the

Owner's Representative, valid and subsisting employment authorizations with respect to all workers who are not Canadian citizens or permanent residents of Canada who perform the *Services*.

- 16.5 Neither party nor its *Affiliates* may at any time during the period starting on the *Commencement Date* and until * days after the *Final Completion Notice* is issued, without the prior written consent of the other party, hire, employ, or solicit for the purpose of hiring, employing or contracting, any of the other party's *Personnel* as a member of its own work force. This Section shall not apply to any enquiries from, or resultant hiring of, *Personnel* from the other party's work force as a result of a general advertisement or solicitation of employment circulated on the internet, newspaper or other mass media. The parties agree that this Section is reasonable and required by each party for the protection of their respective businesses.
- 16.6 The *EPCM Contractor* shall not engage any of the *Owner's Personnel* to perform the *Services* who has resigned or has been terminated by the *Owner* for any reason, unless specifically authorized by the *Owner*.

Article 17 - Key Personnel

- 17.1 If not agreed to before the execution of the *Contract*, as part of the *Execution Plan*, the *EPCM Contractor* shall submit a proposed organisational chart for the *Owner's* approval and at agreed upon intervals during the execution of the *Services* shall submit a list of the *EPCM Contractor's Key Personnel* to accord with the timing of the performance of the *Engineering Services, Procurement Services* and *Construction Management Services*. At such agreed upon intervals, the *EPCM Contractor* shall update the organisational chart to show the *EPCM Contractor's Key Personnel* and other supervisory *Personnel* who shall be executing the *Services*, together with their respective job titles.
- 17.2 The *Owner* shall identify any of the *EPCM Contractor's Key Personnel* to which the *Owner* objects within 14 *Work Days* of receiving the proposed list in accordance with Section 17.1. If the *Owner* does not provide the *EPCM Contractor* with its objections to the *EPCM Contractor's Key Personnel* within such time period, the *Owner* shall be deemed to have accepted the *EPCM Contractor's Key Personnel*.
- 17.3 If the *Owner* objects to any of the *EPCM Contractor's Key Personnel* in accordance with Section 17.2, then the *EPCM Contractor* will prepare a new organisational chart and list identifying alternate individuals for the roles of the *EPCM Contractor's Key Personnel* for the *Owner's* approval. This process shall be repeated until the *Owner* approves the organisational chart and the list of the *EPCM Contractor's Key Personnel*.
- 17.4 Once the *Owner* has approved the organizational chart and list identifying the *EPCM Contractor's Key Personnel*, from time to time, the *EPCM Contractor* shall within * *Work Days* arrange for each of the *EPCM Contractor's Key Personnel* to complete and execute an agreement in the form of the Key Employee Confidentiality Proprietary Information and Consent Agreement, attached as part of Appendix H – Forms.

- 17.5 Subject to Section 17.6, the *EPCM Contractor* shall not, without the *Owner's* consent, make any changes to the *EPCM Contractor's Key Personnel* who have been approved by the *Owner*.
- 17.6 If any of the *EPCM Contractor's Key Personnel* leave the *EPCM Contractor's* workforce, the *EPCM Contractor* shall forthwith replace such individuals with *Personnel* possessing those qualifications necessary for the proper performance of the functions to which each is assigned. The *Owner* shall have the right to determine if the individual proposed as a replacement is suitable to the *Owner*, and if not suitable, the *EPCM Contractor* shall propose further individuals until the *Owner* determines that the replacement person is suitable to the *Owner*.
- 17.7 The *Owner* shall use reasonable efforts to keep the *Owner's Key Personnel* on the *Project* team and where this is not possible, will advise the *EPCM Contractor* of changes together with the name of the individual replacing any of the *Owner's Key Personnel*, if applicable.

Article 18 - Subcontracts and Assignment

- 18.1 The *EPCM Contractor* shall provide prior notice to the *Owner* of its intention to subcontract the performance of any *Services* and of the name and address of the intended *Subcontractor* before entering into any subcontract. The *Owner* may for reasonable cause, and acting in good faith, advise the *EPCM Contractor* that it does not approve the use of a proposed *Subcontractor*. In such a case, the *EPCM Contractor* shall advise the *Owner* of the cost of replacing the *Subcontractor* and, upon the *Owner's* direction, replace such *Subcontractor* at the *Owner's* cost. Any reviews or approvals by the *Owner* pursuant to the provisions of this *Contract* shall not release or relieve the *EPCM Contractor* of any of its obligations under this *Contract* or create any contractual relations between the *Owner* and any *Subcontractor* nor between the *Owner* and any subcontractors of the *Subcontractor*.
- 18.2 The *EPCM Contractor* shall require and ensure that all of its *Subcontractors* and all of its *Subcontractors'* subcontractors, at every tier, comply with the *Owner's* requirements relating to the *Work Site*.

[Note to Users: In this *Contract*, there are numerous provisions that require the *EPCM Contractor* to ensure that its *Subcontractors* comply with certain provisions. This does not flow through to low tier subcontractors. Depending on the *Project* specifics, the *Owner* may want to require the *EPCM Contractor* to ensure that its *Subcontractors* bind low tier subcontractors to certain obligations (such as confidentiality, publicity, intellectual property and insurance). If this is the case, it should be added to this Article.]

- 18.3 Subject to Article 6 - *Owner's Specified Materials and Services*, the *EPCM Contractor* shall be fully responsible for any part of the *Services* performed by *Subcontractors* and any of their respective subcontractors and for the acts or omissions of *Subcontractors* and any of their respective subcontractors and all persons either directly or indirectly

employed by them, to the same extent as the *EPCM Contractor* is for its own acts or omissions. Without in any way limiting the *EPCM Contractor's* obligations pursuant to this *Contract*, the *EPCM Contractor* shall secure compliance with and enforce for the benefit of the *Owner*, each of the contracts entered into by the *EPCM Contractor* with its *Subcontractors* and any of their respective subcontractors.

- 18.4 The *EPCM Contractor* shall not assign the *Contract*, or any part thereof, without the prior approval of the *Owner*.
- 18.5 The *Owner* may assign this *Contract*, including all rights and obligations hereunder, at any time, without the prior agreement of the *EPCM Contractor*, provided that the *Owner* shall remain liable for the *Owner's* obligations under this *Contract* unless the *EPCM Contractor* provides its consent to release the *Owner*, which consent shall not be unreasonably withheld.
- 18.6 *EPCM Contractor* shall promptly furnish to *Owner* such information concerning the *Subcontractors* and any subcontractors as owner may reasonably request.

Article 19 - Inspection, Testing and Performance Tests

- 19.1 If and as specified in the *Owner's Requirements*, the *EPCM Contractor* shall develop and provide to the *Owner*, an *Inspection and Test Plan* for the *Owner's* review and approval in time to allow the *Owner* to perform the inspections contemplated by the *Inspection and Test Plan*.
- 19.2 If the *Owner's Requirements* require any test to be performed or witnessed by the *Owner*, the *EPCM Contractor* shall ensure that *Works Contractors* provide sufficient advance notice of such test and shall provide the *Owner's Representative* with sufficient advance notice of readiness for the test when scheduled; any re-testing required by the *Owner* shall constitute a *Change*.
- 19.3 The *Owner* reserves the right to inspect all tools and equipment brought on to the *Work Site* by the *EPCM Contractor* at any time during the progress of the *Services*. The *Owner's Representative* may require the *EPCM Contractor* to supply a qualified, independent engineering evaluation or certification that any item in question is suitable for its intended purpose, or to reject any item and require replacement with a proper and suitable item which is satisfactory to the *Owner's Representative*. If any of the *EPCM Contractor's* tools or equipment are deemed by the *Owner* to be unsafe, environmentally unsound or incapable of performing the work for which it is intended, then the *EPCM Contractor* shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at the *EPCM Contractor's* expense.
- 19.4 *Performance Tests* may be stipulated in the *Owner's Requirements* to be performed before, after, or both before and after *Functional Completion* and shall be performed by that party specified in the *Owner's Requirements*.
- 19.5 Prior to commencement of the *Performance Tests*, if any, the *EPCM Contractor* shall obtain from the *Works Contractors*, and collate or prepare, as the case may be, and

submit to the *Owner's Representative*, operation and maintenance manuals and other documentation in accordance with the *Owner's Requirements*.

- 19.6 When the *EPCM Contractor* considers that the *Construction Work*, or any *System*, will pass the *Performance Tests*, the *EPCM Contractor* shall notify the *Owner* that the *EPCM Contractor* may perform the *Performance Tests* on, or to, the *Construction Work* or a *System*.
- 19.7 If the *Construction Work* or a *System*, or part thereof, fails or passes one or more *Performance Tests*, the *EPCM Contractor* shall give notice of the outcome of the same to the *Owner* and, in accordance with the *Owner's Requirements*, the *EPCM Contractor* shall advise the applicable *Works Contractor*.

Article 20 - Final Completion of the Services

- 20.1 It is a condition precedent to the issuance of a *Final Completion Notice* that the *EPCM Contractor* satisfy each of the following requirements:
- (a) the *Services* have been fully completed in accordance with this *Contract*;
 - (b) all *Deficiencies* with respect to the *Services* have been remedied to meet the requirements of this *Contract*, other than warranty items pursuant to Article 21 – Warranty.
 - (c) all obligations of the *EPCM Contractor* to other parties in relation to the *Services*, for which the *Owner* could in any way be held responsible, have been fully satisfied; and
 - (d) the *EPCM Contractor* has delivered to the *Owner* the following:
 - (i) a statutory declaration in the form included in Appendix H – Forms and modified as required to include the following:
 - (a) the amount of final sums payable;
 - (b) the date the *EPCM Contractor* completed the *Services*, to evidence the expiration of the term for filing liens; and
 - (c) acknowledgement of full payment of all payrolls and other similar indebtedness, and all other sums and obligations whatsoever incurred by the *EPCM Contractor* in carrying out the *Services*;
 - (ii) *WCB* clearance in the form of a *WCB* “Letter of Clearance”, that its account is in good standing and that it has paid any assessments made by the *WCB* in relation to the *Services*;
 - (iii) any *As-Built Drawings* and operations and maintenance manuals for which the *EPCM Contractor* is responsible; and



- (iv) a Release and Certificate of Final Payment, in the form provided in Appendix H – Forms.

20.2 When conditions precedent set out in Section 20.1 have been met by the *EPCM Contractor*, the *Owner* shall issue to the *EPCM Contractor* a *Final Completion Notice*.

Article 21 - Warranty

21.1 If a *Deficiency* in the *Services* is discovered during the *Warranty Period* and if the *Owner* has notified the *EPCM Contractor* in writing of such *Deficiency* no later than 30 days after the expiry of the *Warranty Period*, the *EPCM Contractor* shall, at its own risk and expense, re-perform the *Services* to correct the *Deficiency* which shall constitute the full extent of the warranty in relation to that *Deficiency*.

21.2 Should the *EPCM Contractor* fail to remedy a *Deficiency*, or commence a remedy on a *Deficiency* within 7 days of the *Owner* providing a notice to the *EPCM Contractor* to remedy the same or within such period as the *EPCM Contractor* has proposed in writing and which the *Owner* has approved, the *Owner* may proceed with any activities necessary to remedy the *Deficiency* and the *EPCM Contractor* shall be liable to and shall indemnify the *Owner* for any and all reasonable costs and expenses incurred by the *Owner* in doing so and the *Owner* may retain and deduct such amount from payments or other monies due, or which may become due, to the *EPCM Contractor*, howsoever arising.

21.3 The *EPCM Contractor* further warrants any and all remedial services it performs for a further period of * months from completion of the remedial services.

21.4 The *EPCM Contractor* shall immediately advise the *Owner's Representative* of any *Deficiencies* in workmanship, defects, errors, omissions or mistakes in the *Services* that it discovers or becomes aware of during the *Contract Time* or the *Warranty Period*.

21.5 The *EPCM Contractor* shall perform its warranty obligations set forth in this Article 21 - Warranty in a manner that minimises disruptions to the *Owner's* continued operations.

21.6 Neither acceptance of the *Services* by the *Owner*, nor payment for performance of the *Services*, shall relieve the *EPCM Contractor* from any responsibility for *Deficiencies* in the *Services*.

Article 22 - Compliance with Law and Policies

22.1 The *EPCM Contractor* shall act in accordance with all *Policies* and the *Law*.

22.2 Where there is a change in the *Law* after the effective date of this *Contract*, the *EPCM Contractor* shall be responsible for ensuring that the *Services* comply with the *Law*, but any time or cost associated with such change to the *Services* shall be to the account of the *Owner*. If the *EPCM Contractor* considers such change to be a *Change*, the *EPCM Contractor* may make a claim for such *Change* under Section 15.10.

- 22.3 The *EPCM Contractor* shall comply with, shall ensure that its *Personnel* and agents comply with and shall contractually require its *Subcontractors* and their respective *Personnel* and agents to comply with all applicable *Law* in connection with the *Services*.
- 22.4 The *EPCM Contractor* shall obtain from governmental authorities or other third parties, and pay for, those licences, permits and approvals required by the *Law* and the *Contract* to perform the *Services*, except those licences, permits and approvals required with respect to the land-use aspects of the *Services* to be performed on the *Work Site*, and except for any licences, permits and approvals required by the *Contract* to be obtained by the *Owner* as stipulated in Appendix B – *Owner’s Obligations*.
- 22.5 Subject to Section 22.2, if the *EPCM Contractor* discovers any variance between the *Law* and any materials specified by the *EPCM Contractor* or its *Subcontractors*, the *EPCM Contractor* shall notify the *Owner* before proceeding with the part of the *Services* affected, and shall make the necessary revisions to the materials to comply with the *Law*, at the *EPCM Contractor’s* expense.

Article 23 - Safety and Loss Management

- 23.1 The *Owner* and the *EPCM Contractor* are committed to safety and the application of loss management principles in the conduct of their respective businesses. The parties recognize that excellence in safety and loss management can only be achieved through the active participation of everyone, including *Subcontractors* and their respective *Personnel*, consultants and agents.
- 23.2 The *EPCM Contractor* shall have the highest regard for safety, emergency procedures and loss management at all times during the performance of the *Services*. The *EPCM Contractor* shall at all times be responsible for safety and loss management in the performance of the *Services*, including, but not limited to, protecting the *Personnel* of the *Owner*, the *EPCM Contractor*, *Subcontractors*, *Other Contractors*, visitors to the *Work Site* and the general public from injury or death and protecting the *Work Site*, the *Owner’s* property and the property of third parties from loss or damage. Without limiting the generality of the foregoing, the *EPCM Contractor* shall comply with all safety requirements specified in the *Contract*.

[Note to Users: This clause is drafted for a project where the Contractor has exclusive control of the worksite. Modify as necessary on a project-specific basis.]

- 23.3 The *EPCM Contractor* shall comply with the *Safety Plan* and any *Policies* relating to safety, emergency and loss management.
- 23.4 All *Personnel* of the *EPCM Contractor*, its *Subcontractors*, the *Owner* and *Other Contractors* shall, and the *EPCM Contractor* shall, ensure that all *Work Site* visitors successfully complete all of the *Owner’s* safety orientation courses and other similar courses stipulated in the *Owner’s Requirements* before being allowed access to the *Work Site*.

- 23.5 Subject to Section 23.6, * [Note to Users: Insert Owner, EPCM Contractor or the name of the Other Contractor, as applicable.] shall be the “prime contractor”, as that term is defined in the Occupational Health and Safety Act (Alberta), for the *Services* as stipulated in the *Owner’s Requirements*. Where the *EPCM Contractor* is the “prime contractor”; it shall be the required authority over all persons entering the *Work Site* to satisfy its responsibility for safety at the *Work Site*.
- 23.6 Where the *EPCM Contractor* is stipulated as the “prime contractor” for the purposes of the Occupational Health and Safety Act (Alberta) in the *Owner’s Requirements*, the *Owner* may take over the role of “prime contractor” at any time as may be stipulated in the *Owner’s Requirements*.
- 23.7 For all *Services* performed on the *Work Site*, the *EPCM Contractor* shall have an alcohol and drug policy that is at least equivalent to the requirements set out in the Canadian Model for Providing a Safe Workplace, Alcohol and Drug Guidelines and Work Rules, A Best Practice for the Construction Owners Association of Alberta, current as of the effective as date of this *Contract*.
- 23.8 The *EPCM Contractor* shall ensure that its, and its *Subcontractors’*, *Personnel* attending at the *Work Site* complete the Construction Safety Training System (CSTS) instituted by the Alberta Construction Safety Association, together with any renewable training necessary to maintain applicable CSTS certification, and are in possession of accredited documentation evidencing the same.
- 23.9 The *EPCM Contractor* shall coordinate and participate in all security measures relating to the *Services* and the *Work Site* as described in the *Owner’s Requirements*.

Article 24 - Services Area and Clean Up

- 24.1 The *EPCM Contractor* shall not use, transport or store *Hazardous Material*, and shall ensure that *Hazardous Material* is not used, transported, or stored by *Works Contractors*, at or on the *Owner’s Site*, except with the prior written approval of the *Owner’s Representative*.

Article 25 - Responsibility for and Title to the Services

- 25.1 Subject to the responsibility for *Services* remaining with the *EPCM Contractor* in accordance with Section 25.2, the title to all *Services* completed or in the course of construction at the *Work Site* and all *Procured Goods* purchased for the *EPCM Contractor’s* own account, except tools and equipment owned or rented by the *EPCM Contractor* or *Subcontractors* and not intended to be incorporated into the *Services*, shall pass to the *Owner* upon payment by the *Owner* for such *Services*. Where the *Owner* has paid for a portion of the *Services*, the title to that portion that the *Owner* has paid for shall pass to the *Owner* upon such partial payment.
- 25.2 Notwithstanding the provisions of Section 25.1, until the *Owner* has issued a *Final Completion Notice* and during the performance of any remedial services pursuant to Article 21 – Warranty and while in the care, custody and control of the *EPCM*

Contractor, the *EPCM Contractor* shall retain all risk with respect to and be responsible for:

- (a) all items supplied by the *EPCM Contractor* or its *Subcontractors* which are to be incorporated into the *Services* or used in performance of the *Services*;
- (b) all items supplied by the *Owner* to the *EPCM Contractor* for incorporation into the *Services* or for use in performing the *Services*; and
- (c) any *Services*, whether in electronic or physical form, completed or in progress.

25.3 If the *Services* or items referred to in Section 25.2, or any part thereof, are lost, damaged or destroyed while the *EPCM Contractor* retains the risk and responsibility as set out in Section 25.2, then the *Services*, or the part thereof, as applicable, shall be redone and replaced in its original format by the *EPCM Contractor*, at its expense, unless the loss, damage, or destruction was caused by the *Owner* or persons for whom the *Owner* is responsible.

Article 26 - Prohibition on Sale of Engineering Services

26.1 Subject to the *Owner's* rights under Section 18.5 and Article 27 - Protection of Intellectual Property, the *Owner* agrees that it shall not:

- (a) sell to third parties any part of the *Engineering Services*, except as part of the sale of the *Project*;
- (b) distribute the *Engineering Services* to third parties except for the purpose of operating, maintaining, repairing or replacing, re-building or renovating the *Owner's* property encompassing or relating to the *Services*, or, for the purpose of performing other services directly related to the *Services*; and
- (c) **[Note to Users: The EPCM Committee considered whether there should be a prohibition on whether the *Owner* could "use the *Engineering Services* to build other facilities, plants or structures of a similar nature or purpose"; but the Committee could not reach consensus on this subsection. There were concerns raised about payment for re-use of *Services* and that there may be liability or defence costs associated with the use of the *Contractor's* documents on projects not covered by this *Contract*.]**

Article 27- Protection of Intellectual Property

27.1 Subject to any rights, title or interests expressly granted by the *Contract*, neither party shall acquire any right, title, or interest in or to any *Intellectual Property* of the other party which is in existence prior to the execution of the *Contract*.

27.2 Subject to Section 27.1, all *Intellectual Property* which the *EPCM Contractor*, its *Personnel*, *Subcontractors* or agents may conceive or make, alone or with others, and which may directly or indirectly result from the *Owner's Confidential Information*, shall

be the sole and absolute property of the *Owner* without any further compensation, payment or consideration to the *EPCM Contractor*, and shall be disclosed or divulged by the *EPCM Contractor*, or by such *Personnel*, *Subcontractors* or agents, only to the *Owner*.

- 27.3 In relation to *Intellectual Property* which is the property of the *Owner* pursuant to Section 27.2, the *EPCM Contractor* shall, whenever so requested by the *Owner*, execute and deliver or cause to be executed and delivered all documentation and facilitate all assignments which the *Owner* may deem advisable in connection with the *Intellectual Property*. The *EPCM Contractor* shall render such assistance when and as may be deemed desirable or necessary by the *Owner* in order to apply for and obtain letters patent, trademark, copyright and industrial design registrations or certifications in any jurisdiction for the *Intellectual Property* and in order to assign and convey to the *Owner* the sole and absolute right, title and interest in and to the same. All proper, reasonable and approved expenses in connection with such assistance shall be borne by the *Owner*.
- 27.4 Subject to Sections 27.1 and 27.2 and the exception contained in this Section, all *Intellectual Property* which the *EPCM Contractor*, its *Personnel*, *Subcontractors* or agents may conceive or make, alone or with others, and which may directly or indirectly result from or in the performance of the *Services* performed by them, shall be the property of the *EPCM Contractor* or its *Subcontractors* or agents, as the case may be. Notwithstanding the foregoing, but subject to Article 26 - Prohibition on Sale of Engineering Services, the *EPCM Contractor* have no rights in or to the *As-Built Drawings* and the *As-Built Drawings* shall be the sole property of the *Owner*.
- 27.5 In relation to *Intellectual Property* which is the property of the *EPCM Contractor* pursuant to Section 27.4, the *EPCM Contractor* grants to the *Owner* an irrevocable, royalty-free, perpetual, non-exclusive right and licence to use and make copies of any and all *Intellectual Property* related to the *Services*, or the performance of the *Services*, to operate, maintain, repair, replace, expand or reduce the *Project*. Such right and licence shall be assignable by the *Owner* to a party to whom the *Owner* may transfer all or part of the *Project*; however, where the *Owner* transfers a discrete portion of the *Project* only that *Intellectual Property* applicable to that discrete portion of the *Project* may be assigned by the *Owner*. **[Note to Users: This Section needs to dovetail with Section 26.1(c) and where the Owner can use the Services in further projects, then the rights in this Section need to be reconsidered.]**
- 27.6 Except to the extent that the *Services* performed by the *EPCM Contractor* are performed entirely to the *Owner's* design, specifications or instructions, the *EPCM Contractor* shall be liable to and, in addition, shall indemnify and hold harmless the *Owner* from and against any and all claims arising out of or resulting from the actual or alleged infringement of any *Intellectual Property* rights in respect of the *Services* performed by the *EPCM Contractor*.
- 27.7 In relation to the *EPCM Contractor's* obligations set out in Section 27.6, if either party becomes aware of any claims arising out of or resulting from the actual or alleged infringement of any *Intellectual Property* rights in respect of the *Services* performed by

the *EPCM Contractor*, that party shall immediately notify the other party of the same. The *EPCM Contractor*, if requested to do so by the *Owner*, shall, at its sole expense, defend the *Owner* against any such claim. At its own expense, the *EPCM Contractor* shall have the right to substitute *Services* which do not infringe or to modify infringing *Services* so they become non-infringing, or to obtain the necessary licences to use the infringing *Services*, but only to the extent that such substituted or modified *Services* meet all the requirements of the *Contract*. The *Owner* shall be entitled, at its own expense, to participate in or conduct the defence of any claim with respect to which it is entitled to indemnity under Section 27.6.

Article 28 - Confidentiality

28.1 Each party shall keep all *Confidential Information* in confidence and shall not:

- (a) disclose it to others without the prior written consent of the other party; and
- (b) in the case of the *EPCM Contractor*, shall not use the *Owner's Confidential Information* except in performance of the *Services*.

28.2 In addition to Section 28.1, the *EPCM Contractor* shall not disclose any of the *Owner's Requirements*, any details of the *Services* or *Owner's Confidential Information* except:

- (a) to the extent necessary to perform the *Services*:
 - (i) to its *Personnel* associated with the *Project* who have a need to know the *Confidential Information*, the *Owner's Requirements* or the details of the *Services*, without the prior written consent of the *Owner's Representative*;
 - (ii) to any third party to which disclosure of the *Owner's Requirements* or details of the *Services* is reasonably required if, prior to disclosure, consent is obtained from the *Owner* for such disclosure; or
 - (iii) to any third party to which disclosure of the *Confidential Information* is reasonably required if, prior to disclosure, consent is obtained from the *Owner* for such disclosure and such third party executes an agreement in a form and substance acceptable to the *Owner*, in its sole discretion, reflecting the confidential nature or the *Confidential Information* and the restrictions on its use; or
- (b) to comply with the *Law* and, in such case, shall immediately upon becoming aware of the requirement to disclose notify the *Owner* of such requirement.

28.3 Notwithstanding Section 28.1 or Section 28.2, *Confidential Information*, *Owner's Requirements* or details of the *Services* may be disclosed by a party if that party is required to make such a disclosure in the course of or as a result of a direction by an arbitrator appointed under Appendix I – Dispute Resolution Procedure or an order of a court of competent jurisdiction. If disclosure is required by an arbitrator or a court, the disclosing party shall provide the other party with immediate notice and, as soon as

possible a copy of, of such arbitration direction or court order and shall only disclose the minimum amount of *Confidential Information, Owner's Requirements* or details of the *Services* to comply with the arbitration or court order.

- 28.4 The *EPCM Contractor* shall ensure that its *Subcontractors* are bound by similar terms of confidentiality and shall, upon the request of the *Owner*, provide written evidence of the same.
- 28.5 This Article shall survive the expiry or earlier termination of this Contract for a period of * years.

Article 29- Publicity

- 29.1 The *EPCM Contractor* shall not, and shall ensure that its *Subcontractors* do not, use the *Owner's* or any of its *Affiliates'* name or the registered or unregistered trademarks of the *Owner*, or its *Affiliates*, in any slogans or otherwise in any advertising, promotional materials or information or publicity releases, and shall not take, permit to be taken or use any photographs of the *Project* or the *Work Site*, without the prior written consent of the *Owner's Representative*.

Article 30- Force Majeure

- 30.1 Either the *Owner* or the *EPCM Contractor* may claim that an *Event of Force Majeure* has taken place, by giving the other party verbal notice within 24 hours of the *Event of Force Majeure*, and, in addition, notice, together with a proposed plan of corrective action to resolve or minimize the effect of the *Event of Force Majeure*, within 72 hours of the *Event of Force Majeure*.
- 30.2 If there is an *Event of Force Majeure*, the party claiming such event shall:
- 30.2.1 complete its obligations as soon as possible, subject to adjustment of the time for performing such obligations as is required as a result of the *Event of Force Majeure*;
 - 30.2.2 make all reasonable efforts to mitigate the effect of such occurrence on the other party; and
 - 30.2.3 not treat other parties with whom it contracts more favourably where its obligations to such other parties are affected by the same *Event of Force Majeure*.
- 30.3 If the *Owner* does not agree that the *Services* or any portion of the *Services* is affected as a result of an *Event of Force Majeure* for which the *EPCM Contractor* has given notice under Section 30.1, then the *EPCM Contractor* shall complete the *Services* in accordance with the *Execution Plan* and may request an adjustment to the *Contract Time* and the *Compensation* in the manner provided in Section 15.9.
- 30.4 If an *Event of Force Majeure* exists and continues for a period in excess of * continuous *Work Days* and results in substantially all of the *Services* being stopped or suspended

during that period, the *EPCM Contractor* may terminate the *Contract* and the *Owner* shall pay the *EPCM Contractor* for the *Services* performed to the date of termination.

- 30.5 Any delay or failure on the part of either the *Owner* or the *EPCM Contractor* which is a result of an *Event of Force Majeure*, shall not constitute default hereunder or give rise to any claim for damages or result in any increase to the *Compensation*.

Article 31 - Delays Caused by the EPCM Contractor

- 31.1 If the *EPCM Contractor* is responsible for a delay in the progress of the *Services*, fails to complete any portion of the *Services* within the time limits set forth in the *Execution Plan*, or is aware that *Milestones* will not be reached, for any reason, then the *EPCM Contractor* shall provide a recovery plan and perform whatever acts are required or requested by the *Owner's Representative* to make up the lost time and to avoid any further delay in the performance of the *Services*.

Article 32 - Suspension

- 32.1 In addition to any other right that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time, by notice to the *EPCM Contractor* specifying the effective date of the suspension, require the *EPCM Contractor* to suspend the *Services*, or any portion thereof.
- 32.2 Upon providing notice in accordance with Section 32.1, the *Owner* shall arrange to immediately discuss with the *EPCM Contractor* the specific requirements of the suspension and whether or not the *Owner* anticipates that demobilization, remobilization or idle equipment or *Personnel* will occur as a result of the suspension.
- 32.3 Upon receiving notice, the *EPCM Contractor* shall discontinue the *Suspended Services*, place no further purchase orders or subcontracts with respect to the *Suspended Services*, and make reasonable efforts to obtain suspension terms satisfactory to the *Owner* with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the *Suspended Services*. The *EPCM Contractor* shall continue to perform all other portions of the *Services* which have not been suspended by the *Owner*.
- 32.4 Where requested by the *Owner*, the *EPCM Contractor* shall advise the *Owner* of:
- (a) the number of the *EPCM Contractor's Personnel* made idle by the suspension;
 - (b) the labour costs resulting from the *EPCM Contractor's Personnel* made idle by the suspension;
 - (c) transportation costs for the *EPCM Contractor's Personnel* released during the suspension;
 - (d) any impact on any of the *Works Contractors* or the *Construction Work*;

- (e) the equipment made idle and associated equipment costs resulting from the suspension; and
 - (f) any other costing, labour, material or equipment information relating to the suspension that the *Owner* may require.
- 32.5 At the option and cost of the *Owner*, the *EPCM Contractor* shall maintain the availability of the *EPCM Contractor's Key Personnel*, however, the *EPCM Contractor* shall mitigate, where possible, the cost of maintaining the availability of the *EPCM Contractor's Key Personnel*
- 32.6 The *Owner* may at any time authorize resumption of the *Suspended Services*, or any part thereof, by giving the *EPCM Contractor* reasonable notice specifying the part of the *Suspended Services* to be resumed and the effective date of such resumption. The *EPCM Contractor* shall resume the *Suspended Services* on the date and to the extent specified in the notice provided that if the date for resumption is more than * days after the date of suspension, the *EPCM Contractor* may, by *Change Quotation* given within the same number of *Work Days* specified in Section 15.3 after receipt of the notice of resumption, request a *Change Order* deleting the *Suspended Services* from the *Contract*.
- 32.7 The *EPCM Contractor* shall use its *Personnel*, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the *Suspended Services*. During the period of *Suspended Services*, the *EPCM Contractor* shall secure and protect the *Suspended Services* and all materials and equipment to be used or incorporated therein.
- 32.8 In relation to *Suspended Services*, the *Owner* shall reimburse the *EPCM Contractor* for the costs reasonably incurred by the *EPCM Contractor* as a direct result of the suspension of the *Services* in accordance with Appendix C – Reimbursable Costs and Fee.

Article 33 - Termination for Convenience

- 33.1 In addition to any other rights that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time, terminate the *Contract*, the *Services*, or any portion thereof, by giving notice to the *EPCM Contractor* specifying the *Services*, or portion thereof, to be terminated and the effective date of the termination. Upon such termination, in addition to the other rights and responsibilities negotiated by the parties, the *Owner* shall have the rights and the *EPCM Contractor* shall have the obligations set out in Subsections 34.4(b) and 34.4(c).
- 33.2 Upon receipt of a notice under Section 33.1, the *EPCM Contractor* shall discontinue the *Services* in accordance with the notice, and shall take whatever steps are necessary or desirable to terminate the *Services* in a safe, cost effective and timely manner with due consideration to environmental impacts. The *EPCM Contractor* shall continue to perform all other portions of the *Services* not terminated, if any, in accordance with the *Contract*.

- 33.3 The *Owner* shall reimburse the *EPCM Contractor* for the *Services* performed to the date of termination and those costs reasonably incurred by the *EPCM Contractor* as a direct result of the termination of the *Contract*, the *Services*, or any portion thereof, in accordance with Appendix C – Reimbursable Costs and Fee.
- 33.4 In addition to the payment set out in Section 33.3, the *Owner* shall pay to the *EPCM Contractor* that portion of the fee for the *Milestones* achieved as at the date of termination in accordance with Appendix C – Reimbursable Costs and Fee.

[Note to Users: The Committee recommends a cancellation clause dealing with fees payable at various *Milestones* be incorporated in Appendix C – Reimbursable Costs and Fee.]

Article 34 - Termination for Cause

- 34.1 Without limiting the generality of Section 33.1, the *Owner* may immediately terminate the *Contract* by notice to the *EPCM Contractor* in any of the following circumstances:
- (a) if the *EPCM Contractor* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *EPCM Contractor*;
 - (b) if an order is made or resolution is passed for the winding up or liquidation of the *EPCM Contractor*;
 - (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *EPCM Contractor* or any of the *EPCM Contractor's* property;
 - (d) if the *EPCM Contractor* ceases to carry on business in the ordinary course; or
 - (e) if a creditor takes possession of any of the *EPCM Contractor's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *EPCM Contractor* and is in an amount greater than \$25,000.00.
- 34.2 In addition to any rights the *Owner* may have at *Law*, if the *EPCM Contractor* is in default in carrying out any of the terms, conditions, covenants or obligations of the *Contract*, or has made a false representation, declaration or warranty, the *Owner* may give the *EPCM Contractor* notice of default.
- 34.3 Where the *Owner* gives the *EPCM Contractor* a notice of default pursuant to Section 34.2, the *EPCM Contractor* shall have * *Work Days* immediately following receipt of the notice, or such longer time as the *Owner* determines to be reasonable and has specified in the notice of default, or has subsequently agreed upon in writing, to remedy such default, or to prepare a remedial plan satisfactory to the *Owner* and commence to prosecute a remedy. If the *EPCM Contractor* fails to remedy the default, the *Owner* may by * *Work Days* notice to the *EPCM Contractor* terminate the whole or any part of the *Contract*.

34.4 In the event the *Contract* is terminated pursuant to Section 34.1 or Section 34.3:

- (a) the *EPCM Contractor* shall discontinue the *Services* in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the *Owner* associated with the termination of the *Services* and the *Owner* shall not be liable for those costs incurred by the *EPCM Contractor* as a result of the termination of the *Services*;
- (b) the *Owner* shall have the right to take possession of the *Procured Goods* and the *EPCM Contractor's* equipment, materials and plant which are located on the *Work Site* or other location specifically designated for the *Project* and shall have the right to use the same to complete the *Services*;
- (c) the *EPCM Contractor* shall execute and deliver to the *Owner* all documents required by the *Owner*, and shall take all steps required by the *Owner*, to assign to and fully vest in the *Owner* the rights and benefits of the *EPCM Contractor* under existing agreements with the its *Subcontractors*, which are related to the *Services*.
- (d) the *Owner* shall pay the *EPCM Contractor* for all *Services* satisfactorily performed to the date of termination, in accordance with Article 13 - Payment, less the sum of any monies already paid to the *EPCM Contractor* and any additional cost, loss or expense, including legal fees on a solicitor-and-own-client (full indemnity) basis, that the *Owner* incurs, suffers or sustains, including, if applicable, any amount the *Owner* must pay to have any of the *Services* re-performed to obtain satisfactory completion of such *Services* by others; and
- (e) the *Owner* shall not be liable for any penalties, damages or loss of profits as a result of the termination of the *Services* or the *Contract* by the *Owner*.

34.5 The *EPCM Contractor* may immediately terminate the *Contract* by notice to the *Owner* in any of the following circumstances:

- (a) if the *Owner* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *Owner*;
- (b) if an order is made or resolution is passed for the winding up or liquidation of the *Owner*;
- (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *Owner* or any of the *Owner's* property;
- (d) if the *Owner* ceases to carry on business in the ordinary course; and
- (e) if a creditor takes possession of any of the *Owner's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *Owner* and is in an amount greater than \$25,000.00.

- 34.6 Subject to a legitimate dispute between the parties, or a dispute being pursued in accordance with Appendix I – Dispute Resolution Procedure, should the *Owner* be in material default of its obligations under this *Contract*, the *EPCM Contractor* may provide a notice of * *Work Days* to the *Owner* that should the material default not be remedied, or the *Owner* commence to prosecute a remedy in relation to the material default, that the *EPCM Contractor* may suspend or terminate the *EPCM Contractor's* obligations under the *Contract*.
- 34.7 Should the *EPCM Contractor* terminate this *Contract* pursuant to Section 34.5 or 34.6, the *EPCM Contractor* shall be entitled to payment from the *Owner* in accordance with Sections 33.3 and 33.4
- 34.8 The rights and remedies provided in this Article are in addition to the rights and remedies provided by the *Law*, or under any other provision of the *Contract*.

Article 35 - Taxes

- 35.1 The *EPCM Contractor* shall be responsible for the payment of:
- (a) all taxes imposed by reason of the performance or completion of the *Services* including, but not limited to, licence, permit and registration fees and the *EPCM Contractor's* income, profit, franchise, business, and personal property taxes;
 - (b) all employment taxes and contributions imposed by the *Law* or required to be paid on behalf of the *Personnel* of the *EPCM Contractor* or its *Subcontractors*, including, but not limited, to taxes and contributions for income tax, workers' compensation, unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance; and
 - (c) all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment to be supplied by the *EPCM Contractor* and used in performance of or incorporated into the *Services*, except for goods and services tax payable by the *Owner* with respect to payments due to the *EPCM Contractor*.
- 35.2 Any increase in taxes and charges described in Section 35.1(a) and Section 35.1(b) shall be the sole responsibility of the *EPCM Contractor*.
- 35.3 The *EPCM Contractor* shall indemnify and hold the *Owner* harmless from any liability resulting from the failure of the *EPCM Contractor* or its *Subcontractors* to make timely payments of the items referred to in this Article or such similar items for which the *EPCM Contractor* is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the *EPCM Contractor*.

Article 36 - Workers' Compensation

- 36.1 The *EPCM Contractor* shall ensure all of its and its *Subcontractor's Personnel*, agents, representatives and visitors, attending at the *Work Site* are registered for workers'

compensation coverage regardless of whether such coverage is required by the statutory requirements of the Province of Alberta.

- 36.2 The *EPCM Contractor* shall ensure all of its and its *Subcontractor's Personnel*, agents and representatives, who perform the *Services* but do not attend at the *Work Site* are registered for workers' compensation coverage in accordance with the statutory requirements of the Province of Alberta.
- 36.3 The *EPCM Contractor* shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers' Compensation Act (Alberta) and upon failure to do so, the *Owner*, in addition to any other rights it may have at *Law* or under the *Contract*, may retain the amount of such assessment or contribution from the *Compensation*.
- 36.4 The *EPCM Contractor* shall indemnify and save harmless the *Owner* from all workers' compensation assessments due by the *EPCM Contractor* in relation to the *Services*.
- 36.5 Prior to the performance of any *Services*, before the release of the holdback and upon request by the *Owner* at any other time, the *EPCM Contractor* shall provide, or cause to be provided, evidence:
- (a) that it has an account with the *WCB*;
 - (b) in the form of a *WCB* "Letter of Clearance", that its account is in good standing and that it has paid any assessments made by the *WCB* in relation to the *Services*; and
 - (c) of any of the above in respect of all *Subcontractors*.

Article 37 - Liens

- 37.1 To the extent that the *EPCM Contractor* is not acting as agent of the *Owner*, and if all undisputed amounts due to the *EPCM Contractor* have been paid in accordance with this *Contract*, the *EPCM Contractor* shall reimburse, protect, indemnify and save free and harmless the *Owner*, including, without limitation, legal fees on a solicitor-and-own-client (full indemnity) basis, the *Work Site* and the other lands and property of the *Owner* from and against:
- 37.1.1 all liens and claims made or liability incurred by the *Owner* on account of the *Services* performed; and
 - 37.1.2 any lien wrongfully registered as described in Section 40 of the Builders' Lien Act, whether registered by the *EPCM Contractor* or any other party providing the *Services*.
- 37.2 Upon becoming aware of any lien or claim described in Section 37.1, the *EPCM Contractor* shall forthwith discharge any such lien or claim which may be registered or filed, at the expense of the *EPCM Contractor*.

37.3 If the *EPCM Contractor* fails to discharge of any such lien or claim as described in Section 37.2, then the *Owner* may, but shall not be obliged to, discharge or otherwise deal with such lien or claim and the *EPCM Contractor* shall pay any and all costs and expenses incurred by the *Owner* in so discharging or otherwise dealing with the lien or claim, including but not limited to, legal fees on a solicitor-and-own-client (full indemnity) basis. Any amounts so expended by the *Owner* may be deducted from any amounts due the *EPCM Contractor* whether under this *Contract* or otherwise.

Article 38- Liability and Indemnity for Third Party Claims

38.1 To the extent that the *EPCM Contractor* is not acting as agent of the *Owner*, the *EPCM Contractor* shall be liable to and shall indemnify, and hold harmless the *Owner*, its officers, directors, *Personnel*, consultants and agents for all losses, damages and expenses, including legal fees on a solicitor-and-own-client (full indemnity) basis, which they or any of them may incur as a result of claims, demands, actions or proceedings made or taken against them by persons not party to the *Contract* for:

- (a) any acts or omissions in connection with the performance, purported performance or non-performance of the *Contract* or of the *Services* by the *EPCM Contractor* or its *Subcontractors* or their respective *Personnel* or agents;
- (b) any acts or omissions of the *Owner*, *Other Contractors* or their respective *Personnel* or agents, or in connection with such acts or omissions, while acting under the direction and control of the *EPCM Contractor*, its *Subcontractors* or their respective *Personnel* or agents; or
- (c) any liability, claims, damages, penalty, fines, costs and expenses arising from the failure of the *EPCM Contractor* or its *Subcontractors*, or their respective *Personnel* or agents to comply with the *Law*.

38.2 The *EPCM Contractor* shall, at its sole expense, if requested by the *Owner*, defend those persons entitled to be indemnified pursuant to Section 38.1. The *Owner* shall have the right, if it so elects, to participate in any such defence and the *EPCM Contractor* shall have the right to settle claims to a maximum of \$* without first consulting with the *Owner* and thereafter only with the consent of the *Owner*.

38.3 In the event that the *Owner* considers that the failure by the *EPCM Contractor* to settle any claim, demand, action or proceeding to which it or others are entitled to be indemnified by the *EPCM Contractor* would be detrimental to its interests, it may so notify the *EPCM Contractor*. If, within * *Work Days* of the notice, the *EPCM Contractor* fails to conclude a settlement with the claimant, or fails to advise the *Owner* that a settlement would prejudice the *EPCM Contractor's* insurance coverage for such claim, demand, action or proceeding, then the *Owner* may settle the claim, demand, action or proceeding in such amount as it considers reasonable and the *EPCM Contractor* shall immediately pay to the *Owner* all or such portion of the amount so paid in settlement as the *Owner* designates as the *EPCM Contractor's* liability. However such settlement by the *Owner* shall not require the *EPCM Contractor* to repay the *Owner*

where the *EPCM Contractor* notified the *Owner* that such settlement would prejudice the *EPCM Contractor's* insurance coverage for such claim, demand, action or proceeding.

- 38.4 The *Owner* shall indemnify the *EPCM Contractor* for all third party claims that relate to, or arise out of, the *EPCM Contractor* performing the *Services* as agent of the *Owner* in compliance with Article 9 - Agency or the performance of its obligations pursuant to Section 23.7 and, subject to Section 38.6, all legal costs on a solicitor-and-own-client (full indemnity) basis.
- 38.5 The *Owner* shall indemnify the *EPCM Contractor*, its *Subcontractors*, and their respective officers and directors from and against all claims, demands, losses, damages, expenses, actions and proceedings made or taken by persons not party to the *Contract* and which arise on account of and are attributable to the *Owner's* obligations expressly set out in this *Contract*.
- 38.6 Pursuant to Sections 38.4 and 38.5, the *Owner* shall be entitled to retain and instruct counsel to act for and on behalf of those indemnified parties and to settle, compromise and pay any claim, demand, action or proceeding without first obtaining prior approval from the party in whose favour the indemnity has been provided. The *EPCM Contractor* shall, and any indemnified party shall, co-operate in all respects in contesting any third party claim for which the *Owner* has accepted responsibility.

Article 39 - Liability and Indemnity

- 39.1 To the extent that the *EPCM Contractor* is not acting as agent of the *Owner*, the *EPCM Contractor* shall be liable to and shall indemnify the *Owner* for all losses, damages and expenses, relating to, caused by or resulting from the actions of the *EPCM Contractor* or its *Subcontractors*, on account of:
- (a) all physical damage to the *Services*, the *Work Site*, the property of the *Owner* or *Other Contractors* or property under the care, custody or control of the *Owner* or *Other Contractors*; and
 - (b) the cost to repair or make good any and all damage to roads, bridges, railroads, highways, land adjacent to the *Owner's Site*, irrigation canals or facilities, ditches or equipment excepting out normal use and tear, other than as part of the *Services*.
- 39.2 Except to the extent to which coverage is provided by a policy or policies of insurance, as applicable, and excepting out the indemnifications set out in Article 27 - Protection of Intellectual Property and Article 28 - Confidentiality, and any payment arising pursuant to Section 33.4 or 34.7, neither the *Owner* or the *EPCM Contractor* and their respective officers, directors, *Personnel*, consultants or contractors shall be liable to the each other, or anyone claiming through or under one or more of them, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:
- (a) special, punitive, indirect, economic or consequential loss or damage;

- (b) loss of use, whether complete or partial, of the *Services* or existing facilities of the *Owner* or third parties;
- (c) loss of product;
- (d) loss of revenue, overhead and profit; or
- (e) loss of any contract that may be suffered by the other party.

39.3 The *EPCM Contractor* shall contractually bind its *Subcontractors* to the limitations on liability set out in Section 39.2 for the benefit of both the *EPCM Contractor* and the *Owner*.

39.4 Notwithstanding any other provision of the *Contract*, the *EPCM Contractor's* total aggregate liability to the *Owner* shall be limited to \$*.

[Note to Users: The Committee suggests that the parties negotiate whether the following indemnities obligations of the *EPCM Contractor* should be carved-out of the cap:

Article 27 - Protection of Intellectual Property;

Section 35.3, *EPCM Contractor* indemnification for taxes;

Section 36.4, *EPCM Contractor* indemnification for *WCB* premiums;

Article 37 - Liens

Article 38 - Liability and Indemnity for Third Party Claims

Article 42 - Independent Contractor]

39.5 In the event of a sale by the *Owner* of the *Work Site*, the *Owner* agrees to cause the purchaser to enter into an agreement whereby the purchaser covenants to be bound by and to afford to the *EPCM Contractor* the benefit of Sections 39.2 and 39.3.

Article 40 - Insurance Provided by EPCM Contractor

[Note to Users: There are numerous approaches to insuring project risks. These provisions are drafted to show one example of how the insurance can be structured. Insurance must be determined on a project-specific basis and users should consult their risk managers and insurance professionals to determine the most suitable insurance for each project.]

40.1 The *EPCM Contractor* shall, and shall ensure that its *Subcontractors* shall, without limiting any of the obligations or liabilities under the *Contract*, continuously carry during the performance of the *Services*, at their own expense and cost, the following insurance coverage with limits where applicable not less than those shown in the respective items as set out below:

- (a) employer's liability insurance for all *Personnel* engaged in the *Services* and not covered by workers' compensation, in the amount of \$*;

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Appendix A – Owner’s Requirements
Attachment**

1. General

This Appendix defines the Owner’s Requirements for the Services for the Project.

Brief Description of the Facilities

Brief Description of:

- 1.1.1. Scope
- 1.1.2. Engineering Scope
- 1.1.3. Procurement Scope
- 1.1.4. Construction Management Scope

The Facilities shall be complete, fully operable and maintainable, in accordance with industry standards for _____, and shall conform to the Owners operational requirements. The planned commercial operation date for the project is xxxxxxxx date

The date of completion of Services will be the date stated in the Final Completion Notice (see Appendix I for the standard form)

Should the Owner require, and both parties agree, the date of completion may be extended following the issue of the Final Completion Notice to include the warranty periods of the Works Contractors.

Furthermore, should the Owner require, and both parties agree, the EPCM Contractor Services may be extended further to include the operation and maintenance of the Facilities for periods of time to be determined.

Pursuant to Article xxx, the EPCM Contractor will submit to the Owner, for approval, the Project Execution Plan (PEP) on or before

_____.

The EPCM Contractor will provide support to the Owner in environmental regulatory applications.

1.8 Appointment of Prime Contractor

2. Engineering

- 2.1. Detailed Engineering Scope
- 2.2. Engineering Design Deliverables
- 2.3. FEED (Front End Engineering Document)
- 2.4. Conceptual Design
- 2.5. Design Base Memorandum (DBM)
- 2.6. Engineering Cost of Service Estimate
- 2.7. Modularization Strategy
- 2.8. Automation Plan
- 2.9. Engineering Management
- 2.10. Engineering Quality
 - 2.10.1 Building Codes & Statutes
 - 2.10.2 Owners Standards & Specifications
- 2.11. Procurement

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Appendix A – Owner’s Requirements
Attachment**

- 2.11.1. Material Requisitions
- 2.11.2. Material Technical Bid Evaluations
- 2.11.3. Equipment Technical Bid Evaluations
- 2.11.4. Works Contractors Bid Evaluations
- 2.12. Construction & Field Engineering Support
- 2.13. Constructability Reviews
- 2.14. Value Engineering Studies
- 2.15. Safety in design Studies

- 3. Procurement
 - 3.1. Procurement Protocols For:
 - 3.1.1. Bulk Material
 - 3.1.2. Owner’s Tagged Equipment
 - 3.1.3. Long Lead & Schedule Driven Items
 - 3.1.4. FEED Estimate and Schedule Support
 - 3.2. Vendor Data
 - 3.3. Operating Manuals and Spare Parts
 - 3.4. Quality Surveillance
 - 3.5. Expediting Procedure
 - 3.6. Customs Clearances and Insurance
 - 3.7. Transportation, Logistics, and Warehousing
 - 3.8. Logistics/Materials Management/Receiving Inspection/Check-in, Storage, etc.
 - 3.9. Qualified Carriers – Local & International
 - 3.10. Approved Vendor/Supplier of Choice Lists
 - 3.11. Material Receiving and Distribution

- 4. Construction Management
 - 4.1. Construction Execution
 - 4.1.1. Labor & Industrial Relations
 - 4.1.2. Resource Availability
 - 4.1.3. Environmental, Health, Safety, and Site Security
 - 4.1.4. Emergency Services
 - 4.1.5. Mobilization of Both EPCM & Works Contractors
 - 4.1.6. Construction Quality Control
 - 4.1.7. Personnel Housing and Transportation
 - 4.1.8. Construction Infrastructure
 - 4.1.9. Construction Equipment
 - 4.1.10. Construction Services
 - 4.1.11. Construction Supervision
 - 4.1.12. Demobilization, Demolition, Salvage and Abandonment
 - 4.1.13. Red Line and As-Built Drawing
 - 4.1.14. Home Office and Engineering Support
 - 4.1.15. Vendor Support
 - 4.2. Apprenticeship Employment Plan
 - 4.3. Work Site Policies and Procedures **(NTD – see also Appendix F)**
 - 4.4. Productivity Enhancement Program(s)
 - 4.5. Scaffolding
 - 4.6. Site Access

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- 4.7. Site Bulletins/Notices
- 4.8. Site Vehicles (Operation, Permits, etc.)
- 4.9. Site Offices and Facilities
- 4.10. Site Services (Access roads maintenance & snow removal, parking, debris removal, temporary heat, light, power, washrooms, parking, time control, brass alleys, etc.)
(NTD – place comprehensive list here)
- 4.11. Site Utilities (electrical power, gas, fire and potable water, telephone, internet, etc.)
(NTD – place comprehensive list here)
- 4.12. Snow removal ~ Responsibility for, in work areas
- 4.13. Workface Planning – see Attachment A
- 4.14. Continuous Improvement Process (CIP)
- 4.15. Cranes/Checklists/Certification
- 4.16. Critical Lifts/Lift Studies
- 4.17. Direct Hire Labour (Minor work)
- 4.18. Equipment, Small Tools, Consumables
- 4.19. Communication Plan
- 4.20. Interface & Integration of Management Systems
 - 4.20.1. Interface (With Owner’s Programs)
 - 4.20.2. Integration (With Owner’s Programs)
- 5. Organizational Plan
 - 5.1. Accounting Plan
 - 5.2. Team Building Plan
 - 5.3. Rewards and Recognition
 - 5.4. Retention & Development
 - 5.5. Organization Charts ~ Owner and EPCM Contractor
 - 5.6. Owner’s Key Personnel/Areas and Limits of Authority
 - 5.7. Responsibility Matrix
 - 5.8. Staffing Plan / Contacts List
- 6. Project Safety Plan
 - 6.1. Risk Management
 - 6.1.1. Risk Management
 - 6.1.2. Risk Identification, Assessment, Mitigation, & Monitoring Plan
 - 6.2. Independent Project Review
 - 6.3. Operability and Maintainability Review
 - 6.4. PHA, HAZOP, SIL Review
 - 6.5. Incident Investigation & Reporting
 - 6.6. Work Permit Procedures
 - 6.7. Lock Out Procedures
 - 6.8. Loss Management
 - 6.9. Safe Work Procedures
 - 6.10. Safety Meetings
 - 6.11. Weather (Work policy in extremes of temperature)
 - 6.12. Drug & Alcohol Policy
 - 6.13. Emergency Evacuation
 - 6.14. Fire Protection/Prevention/Evacuation

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- 6.15. First Aid/Medical Facilities
- 6.16. HAZOP Studies

- 7. Regulatory Compliance & Stakeholder Relations
 - 7.1. Environmental Management
 - 7.2. Application and Permitting
 - 7.3. Management of Regulatory Changes
 - 7.4. Site Reporting

- 8. Quality Management
 - 8.1. QA/Shop Supervision
 - 8.2. Quality Management Program
 - 8.3. Inspection & Test Plan (ITP)

- 9. Technical Information & Document Management
 - 9.1. Records Management & Document Control
 - 9.2. System Management & IT Plan
 - 9.3. Models – Review & Maintenance
 - 9.4. Vendor Data Management
 - 9.5. Information Management & Support for Interface Management
 - 9.6. Information Exchange
 - 9.7. Information Quality and Integrity
 - 9.8. Information Turn Over Protocols
 - 9.9. Requests for Information (RFI) Procedure

- 10. Financial
 - 10.1. Financial Control/Reporting
 - 10.2. Cash Forecasting
 - 10.3. Financial Audit
 - 10.4. Financial Loss Management
 - 10.5. Cash Management
 - 10.6. Claims Management

- 11. Project Controls
 - 11.1. Project WBS
 - 11.2. Cost Estimate and Control Base
 - 11.3. Contingencies
 - 11.4. Performance and Progress Monitoring
 - 11.5. Project Cost Control System
 - 11.6. Project Reporting
 - 11.7. Overall Project Master Schedule
 - 11.8. Industry Benchmarking
 - 11.9. Reporting and Stewardship

- 12. Contracts
 - 12.1. Contracting Program for Works Contractors
 - 12.2. SubContracting Plan
 - 12.2.1. Off Site Fabrication Shops
 - 12.2.2. Specialized Work

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- 12.3. Construction Contracting Strategy
- 12.4. Pre-qualified Works Contractor Lists

- 13. Ready for Operations **(NTD – see also Appendix F)**
 - 13.1. Operating Plan Prior to RFO Mobilization
 - 13.2. Turn Over Plan / As-Built Drawings
 - 13.3. Deficiency List
 - 13.4. Start Up Support

- 14. Commissioning
 - 14.1. Commissioning Guide
 - 14.2. Commissioning Procedures
 - 14.3. Commissioning Services

- 15. Operations and Maintenance
 - 15.1. Operations Design
 - 15.2. Maintenance Design
 - 15.3. Turn Around Design

- 16. Administration
 - 16.1. Accounting Procedures

- 17. Management of Change **(NTD – see also Appendix F)**
 - 17.1. Management of Change (MOC)

- 18. Information Systems
 - 18.1. Information Technology
 - 18.2. Information Systems
 - 18.3. System Management
 - 18.4. Embassy Support
 - 18.5. Information Management and Systems (interface between Owner’s systems and EPCM Contractor’s systems)
 - 18.6. Job Execution Authorization

ATTACHMENT A – WORKFACE PLANNING for EPCM CONTRACTS

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WORKFACE PLANNING FOR EPCM CONTRACTS

Owner requires that Engineering, Procurement and Construction Management (EPCM) Contractor work with and support the Construction Contractor with its requirement to implement Workface Planning, in accordance with the Construction Owners Association of Alberta (COAA) model as published on the COAA website (www.coaa.ab.ca.) The EPCM Contractor shall review and comment on the Construction Contractor submitted Workface Execution Plan taking into account the minimum standards of the COAA model contents and shall monitor Construction Contractor’s implementation in being in accordance with terms and conditions agreed between Owner and Construction Contractor.

The Construction Contractor’s - Workface Planning Execution Plan, complete with a Workface Planning Score Card, shall be prepared by the Construction Contractor and submitted to the EPCM Contractor for review and Owner for review and approval no later than 90 days in advance of the beginning of permanent plant installations at the Site or as otherwise agreed. The EPCM Contractor comments shall be submitted to the Owner for review and may be incorporated with the Owners comments and submitted to the Construction Contractor for inclusion to the Plan prior to approval by Owner

The EPCM Contractor shall, as part of work scope as require by Owner, conduct periodic audits and ongoing surveillance of the Construction Contractors - Workface Planning efforts including its lower tier subcontractors using the Workface Planning Score Card at the frequency and times noted therein. Owner shall monitor and reserves the right at any time deemed necessary to audit the Construction Contractor using the Workface Planning Score Card on the execution of the Construction Contractor’s Workface Execution Plan throughout the duration of the contract to determine if Workface Planning is being implemented in accordance with the agreed upon Workface Planning Execution Plan. In cases where significant deviations to the Workface Planning Execution Plan are identified either by the Owner or the EPCM Contractor: the Construction Contractor shall immediately prepare an action plan for correction of the deficiencies and shall immediately implement this plan upon approval of the owner.

The Construction Contractor will divide a Work Design Area into a series of preferred Construction Work Packages (each a “CWP”). These CWP’s will be issued to the Owner and EPCM Contractor in order to align relevant portions of the overall Scope of Work with the EPCM Contractor deliverables e.g.: Engineering Work Packages (EWP’s), Materials and Equipment. With Owner participation, Construction Contractor and EPCM Contractor shall discuss and

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form agreement for mutual benefit with regard to these packaging boundaries. This cooperation shall continue throughout the project to completion.

If EPCM Contractor and Construction Contractor can not agree on the EWP/CWP breakdown the Owner together with the EPCM Contractor and Construction Contractor will formulize an agreement that is beneficial to the overall project.

During the EDS or preliminary engineering stage of the project, as a result of agreement between the EPCM Contractor and the Construction Contractor, the Construction Contractor will identify the CWP’s and develop a CWP Release Plan that will specify the number, approximate manhour size, and release date of each CWP. The CWP Release Plan will include standard templates to be used, the number of packages, and planned craft loading to accomplish the tasks in the CWP’s. Construction Contractor shall submit the CWP Release Plan to the EPCM Contractor for review and Owner for review and approval. If Owner or EPCM Contractor has comments on the initial submittal and if requested by Owner, the Construction Contractor will resubmit the CWP Release Plan which will include Owner’s and/or EPCM Contractors comments in order to gain Owner’s approval. The date of the Construction Contractor’s initial submittal of the CWP Release Plan is to be agreed upon between Owner and Construction Contractor at the beginning of the EDS or preliminary engineering phase.

Each CWP will include but not limited to the following:

- A detailed description of the Scope of Work for a defined area that has been released for execution by the Construction Contractor
- A detailed Bill of Materials (BOM) specifying all quantities making up the scope of Work released by the CWP.
- A schedule detailing commencement and completion dates for scope of Work released by the CWP.
- Technical requirements, references and information pertinent to the scope of Work released in the CWP.
- Safety considerations with respect to the Work / Risk Assessment.

As Issued-for-Construction (IFC) CWP’s are released, the Construction Contractor and/or its lower tier subcontractors shall provide the following:

- Roles and responsibilities for Construction Contractor and Sub-Contractors
- Safety considerations with respect to the Work / Risk Assessment.
- Dedicated, suitably trained Workface Planners who have either completed the COAA Fundamentals Course or equivalent Owner-developed course to break the CWP into a series of specific Workface Planning work

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packages called Field Installation Work Packages (FIWP’s). These dedicated Workface Planners will be accountable to complete and signoff as ready the FIWP’s before the FIWP is released to the crew.

- Dedicated Integration Planner with assigned responsibility to coordinate and lead the efforts of the Workface Planners and resolve anticipated conflicts proactively between the different FIWP’s.
- Dedicated Resource Coordinators with assigned responsibility for areas such as material identification and control, scaffolding, construction equipment, specialty tools, and other resources needed to support the Workface Planning effort.
- Experienced personnel including craft supervision to review the scope and completeness of FIWP’s.
- Work force and leadership to execute FIWP’s.
- Personnel and systems to report progress and performance of FIWP’s in an agreed upon format and frequency with the Owner.
- Prepare and maintain detailed schedules and spreadsheets tracking, monitoring, and closing-out FIWP’s from start to completion of each FIWP during the construction phase of the project.
- Provide quality assurance personnel to audit compliance to FIWP instructions and requirements

Prior to the CWP’s reaching IFC stage, the Construction Contractor and/or its lower tier subcontractors shall develop a preliminary FIWP Release Plan for each CWP indicating the approximate size and planned release date for each FIWP. The Owner and EPCM Contractor will review the Contractor’s FIWP Release Plan and Owner shall approve with input from the EPCM Contractor. If Owner or EPCM Contractor has comments on the initial submittal and if requested by Owner, the Construction Contractor will resubmit the FIWP Release Plan which will include Owner’s and/or EPCM Contractor comments in order to gain Owner’s approval. The date of the Contractor’s initial submittal of the FIWP Release Plan is to be agreed upon between Owner, EPCM Contractor and Construction Contractor during the EDS or preliminary engineering phase of the project.

The EPCM Contractor shall be responsible for the following:

- Review and comments on the Construction Contractor’s - CWP Release Plan, CWP – EWP alignment and other appropriate items, these comments shall be submitted to the Owner for review and may be included with the Owners comments and submitted to the Construction Contractor for inclusion to the Plan prior to approval by Owner
- Review the detailed description of the CWP Scope of Work for a defined area and submit comments to Owner for review and may be include with the Owner’s Comments and submitted to the Construction Contractor for

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inclusion in the Plan prior to the release for execution by the Construction Contractor

- Monitor, audit and perform ongoing surveillance on the Construction Contractor’s - CWP Release Plan and its execution as requested by Owner
- Review and comments on the Construction Contractor’s – FIWP Release Plan, comments shall be submitted to the Owner for review and may be included with Owners comments and submitted for inclusion to the Plan prior to approval by Owner
- Monitor, audit and perform ongoing surveillance on the Construction Contractor’s – FIWP Release Plan and its execution as requested by Owner

- (b) automobile liability insurance covering all licensed motor vehicles owned or leased by the *EPCM Contractor* having a limit of not less than \$* inclusive per accident for bodily injury, death and damage to property;
- (c) aircraft and watercraft liability insurance covering all owned or non-owned aircraft or watercraft, if used in the performance of the *Services*, having a limit of not less than \$* inclusive per occurrence for bodily injury, death, and damage to property and not less than \$* for aircraft passenger hazard. Such insurance shall include the *Owner* as an additional insured with respect to *Services* performed by the *EPCM Contractor* and its *Subcontractors*;
- (d) all risks property insurance covering all property including valuable papers that is owned, rented or leased by the *EPCM Contractor* and to be used for the performance of the *Services* for the full replacement cost value of such property. Such insurance shall contain a waiver of the insurers' rights of subrogation against the *Owner*, its officers, directors, *Personnel*;
- (e) employee dishonesty insurance covering all *Personnel* engaged in the *Services* having a limit of not less than \$* each occurrence;
- (f) professional errors and omissions liability insurance in an amount not less than \$* each claim and in the annual aggregate and such insurance shall be maintained for a further period of * years from the issuance of the *Final Completion Notice*;
- (g) commercial general liability insurance covering all operations in connection with the *Contract* (except for operations covered by wrap-up liability insurance provided for by the *Owner*) on an occurrence basis with a combined single limit not less than \$* inclusive of each accident or occurrence for third party bodily injury, including death, personal injury and damage to property, including loss of use thereof. Such coverage shall include but not be limited to the following:
 - (i) blanket contractual liability;
 - (ii) sudden and accidental pollution liability;
 - (iii) products and broad form completed operations;
 - (iv) broad form property damage;
 - (v) cross liability and severability of interest clause;
 - (vi) non-owned automobile liability; and
 - (vii) the *Owner* as an additional insured with respect to *Services* performed by the *EPCM Contractor* and its *Subcontractors*.

40.2 Insurance coverage in Subsections 40.1(c) and 40.1(g) will be primary to the *Owner* to the extent of fault of the *EPCM Contractor* or its *Subcontractors*.

40.3 The *EPCM Contractor* shall and shall ensure that its *Subcontractors* shall:

- (a) provide the *Owner* with a certificate of insurance for the policies described in Section 40.1 within * *Work Days* of written notice of award of the *Contract* or prior to commencement of the *Services*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within * *Work Days* of their expiry date where such policies expire prior to the issuance of a *Final Completion Notice*;
- (b) be responsible for the deductibles relating to insurance proceeds under the insurance required pursuant to Section 40.1;
- (c) place all policies with insurers which are licensed to provide insurance in the Province of Alberta with an A.M. Best rating of no less than *, and in a form acceptable to the *Owner*; and
- (d) ensure that all policies pursuant to Section 40.1 provide for at least 30 days prior written notice to the *Owner* of cancellation or change that is material to the *Contract*.

40.4 If the *EPCM Contractor* or its *Subcontractors* fail to furnish the *Owner* with a certificate of insurance for each policy required to be obtained pursuant to Section 40.1, or if after furnishing the certificate of insurance, the policies lapse, are cancelled or are materially changed, then in every case the *Owner* may, but shall not be obligated to, obtain and maintain such insurance in the name of the *EPCM Contractor* or any *Subcontractor*. The cost thereof (including *Subcontractor's* insurance costs) shall be payable by the *EPCM Contractor* to the *Owner* on demand, and the *Owner* may at its election deduct the cost from any monies which are due or may become due to the *EPCM Contractor*.

40.5 Neither the providing of insurance by the *EPCM Contractor* in accordance with the requirements of this Article 40 - Insurance Provided by EPCM Contractor, nor the insolvency, bankruptcy, or failure of any insurance company to pay any claim shall be held to relieve the *EPCM Contractor* from any other provisions of the *Contract* with respect to *liability* of the *EPCM Contractor*, or otherwise.

Article 41 - Insurance Provided by Owner

41.1 The *Owner* will maintain from the *Commencement Date* and at its own expense policies of insurance as described in Section 1.1(a) and 1.1 (b) and such policies shall include the *EPCM Contractor* and its *Subcontractors* as unnamed insureds for *Services* performed:

- (a) course of construction insurance to a limit of the value of the full replacement cost of the *Facilities* covering all risks of direct physical loss or damage to the *Facilities*, *Goods* and *Procured Goods*, temporary structures used in the erection of the *Facilities*, including such property at temporary or off-site storage and project lay-down areas, in transit to and from the *Work Site* or in storage while at the *Work Site*, before and during erection and until completed and while awaiting

tests and during testing and commissioning until issuance of a *Final Completion Notice*, and in relation to such insurance:

- (i) the *Owner* shall be responsible for the deductibles relating to insurance proceeds unless otherwise agreed between the *Owner* and *EPCM Contractor*;
- (ii) the policy shall contain a waiver of the insurers' rights of subrogation against any person, corporation or organization owned or controlled by any insured who is employed in the performance of the services, by whose fault or negligence the loss or damage is caused; and against any other insured by whose fault or negligence the loss or damage was caused;
- (iii) the policy shall provide for at least 30 days prior written notice to the *EPCM Contractor* of cancellation or change that is material to the *Contract*.

[Note to Users: The description of the property to be insured may be modified depending upon the scope of work and allocation of responsibilities for testing and commissioning and where the *Owner* elects to insure the equipment used by the *Works Contractor*. The scope of coverage should specify if transit insurance is to include inland or marine transit, or both]

- (b) commercial general liability insurance covering any operations in connection with the *Facilities*, including temporary or off-site storage and project lay-down areas, on an occurrence basis with a combined single limit not less than \$* inclusive of each accident or occurrence for third party bodily injury, including death, personal injury and damage to property, including loss of use thereof and in the aggregate for products and completed operations. Such insurance shall include but not be limited to the following:
 - (i) blanket contractual liability;
 - (ii) sudden and accidental pollution liability;
 - (iii) products and completed operation coverage is to be maintained for a period of not less than * months from the date of issuance of the *Functional Completion Notice*;
 - (iv) broad form completed operations;
 - (v) non-owned automobile liability;
 - (vi) broad form property damage;
 - (vii) blasting, pile driving, caisson work, underground work (XCU coverage); and



- (viii) cross liability and severability of interest; and
- (c) in relation to the insurance described in Subsection 41.1(b):
 - (i) such insurance shall be primary to any other insurance maintained by an insured;
 - (ii) the negligent party or parties shall be responsible for the deductibles relating to insurance proceeds for damage to third parties;
 - (iii) the policy shall contain a waiver of the insurers' rights of subrogation against any person, corporation or organization owned or controlled by any insured who is employed in the performance of the services, by whose fault or negligence the loss or damage is caused; and against any other insured by whose fault or negligence the loss or damage was caused; and
 - (iv) the policy shall provide for at least 30 days prior written notice to the *EPCM Contractor* of cancellation or change that is material to the *Contract*.

[Note to Users: The completed operations period commences upon the expiry date of the CGL wrap-up liability policy and runs for the specified number of months following completion. It appears that there may be commissioning done after *Functional Completion* and that there also may be a delay between the end of commissioning and issuance of the *Final Completion Notice*. Any *Services* performed at the *Facilities* by the *EPCM Contractor* following *Functional Completion* would not be covered under this policy unless such *Services* fall within the definition of the "Completion Operations Hazard" in the insurance policy.]

- 41.2 The *Owner* makes no representation or warranty with respect to the extent or adequacy of the insurance protection to be provided by it described in Section 41.1 and the *EPCM Contractor* and its *Subcontractors* shall satisfy themselves as to the coverage afforded by such policies and the adequacy thereof. The furnishing of this insurance by the *Owner* shall not limit any of the obligations or liabilities of the *EPCM Contractor* or *Subcontractors* as expressed elsewhere in the *Contract*.
- 41.3 The *Owner* shall provide the *EPCM Contractor* with a certificate of insurance for the policies described in Section 41.1 and certificates of insurance evidencing renewal of these policies within * *Work Days* of their expiry date where such policies expire prior to issuance of a *Final Completion Notice*.
- 41.4 The *EPCM Contractor* shall not be entitled to any *Compensation* to duplicate the insurance coverage provided by the *Owner* pursuant to Section 41.1 and the *Compensation* shall not include the cost of premiums for the insurance to be provided by the *Owner*.

41.5 The *Owner* has the sole right to act as agent on behalf of the *EPCM Contractor* in the settlement of any claim(s) under the policies to be provided by the *Owner* pursuant to Section 41.1.

Article 42- Independent Contractor

42.1 For the purposes of the *Contract* and the *Services*, the *EPCM Contractor* shall be an independent contractor and not be the agent or employee of the *Owner*, except to the extent that the *Owner's Requirements* or the *Contract* specify that the *EPCM Contractor* shall act as the *Owner's* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

42.2 All persons employed or retained by the *EPCM Contractor* in connection with the performance of its obligations shall be its *Personnel* or those of its *Subcontractors*, as the case may be, and not the employees of the *Owner* in any respect.

42.3 The *EPCM Contractor* shall indemnify and hold harmless the *Owner*, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including legal fees on a solicitor-and-own-client (full indemnity) basis, which may be incurred by the *Owner* as a result of any determination by any tribunal or court that any *Personnel* provided by the *EPCM Contractor* pursuant to this *Contract* are for any purposes employees of the *Owner*, except as a result of the policies and practices of the *Owner* or to the extent of actions undertaken by the *EPCM Contractor*, as specified in the *Owner's Requirements* or the *Contract*, where the *EPCM Contractor* acts as the *Owner's* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

42.4 The *EPCM Contractor* shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on the *Owner*, except as provided for in this *Contract*, as authorized in writing by the *Owner* or in connection with the performance of the *Procurement Services* or *Construction Management Services* where the *Owner's Requirements* specify that the *EPCM Contractor* shall act as the *Owner's* agent in relation to some, or all, of the *Procurement Services* and *Construction Management Services*.

Article 43 - Conflict of Interest

43.1 The *EPCM Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the *Owner's* best interests. This obligation shall apply to the activities of the *EPCM Contractor* and its *Subcontractors* and their respective *Personnel* and agents, in their relations or dealings with the *Personnel* of the *Owner* and their families, and other third parties, arising from the *Contract* or the performance of the *Services*. The efforts made by the *EPCM Contractor* in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent *Subcontractors* and their respective *Personnel* from offering, or providing entertainment, gifts, loans, payments or other considerations to the *Owner's Personnel*, consultants and agents or their family members.

Article 44 - Audit Access

44.1 To the extent that the *EPCM Contractor* is not acting as agent of the *Owner*, the *EPCM Contractor* shall:

- (a) preserve the *Records* in good order during the *Contract Time* and for a period of * years thereafter;
- (b) permit authorized representatives of the *Owner* to review the *Records* at all reasonable times during the *Contract Time*, and for a period of two years thereafter for the purposes of:
 - (i) determining the *EPCM Contractor's* compliance with all of the terms of the *Contract*, including, but not limited to:
 - (a) claims pursuant to Article 31 - Delays Caused by the EPCM Contractor;
 - (b) the *Policies*; and
 - (c) verifying of all *Services* performed and charges under Appendix C – Reimbursable Costs and Fee and other charges payable under the *Contract*.

44.2 Where the *EPCM Contractor* is acting as agent of the *Owner*, the *Owner* shall, at all reasonable times, have full access to all *Records* produced by the *EPCM Contractor* as agent.

[Note to Users: Breadth of audit is to be negotiated on a project-specific basis]

Article 45 - Representatives and Notices

45.1 The *Owner's Representative* is the person identified as such in Appendix J – Key Personnel and Addresses for Notice. The *Owner's Representative* has the authority to bind the *Owner* on all matters relating to the *Services* and the *Contract*, and all communications to or with the *Owner's Representative* shall be deemed to be communications to or with the *Owner*.

45.2 *EPCM Contractor's Representative* is the person identified as such in Appendix J – Key Personnel and Addresses for Notice. The *EPCM Contractor* shall not change the *EPCM Contractor's Representative*, except with the prior approval of the *Owner*. The *EPCM Contractor's Representative* has the authority to bind the *EPCM Contractor* on all matters relating to the *Services* and the *Contract*, and all communications to or with *EPCM Contractor's Representative* shall be deemed to be communications to or with the *EPCM Contractor*.

45.3 Unless otherwise specifically indicated in the *Contract*, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to the *Contract*,

shall be in writing and shall be communicated to the *EPCM Contractor's Representative* or the *Owner's Representative*, as the case may be, and shall be delivered by personal delivery, courier or facsimile to the parties at the addresses and facsimile numbers set out in Appendix J – Key Personnel and Addresses for Notice.

- 45.4 Either party may change its address or facsimile number for service by providing the other party with 10 days notice of such a change.
- 45.5 Where such electronic transmission meets the minimum requirements set forth in the Electronic Transactions Act (Alberta), e-mail may be used for communication between the parties, but e-mail shall not be used for the communication of a notice which is prescribed by the *Contract*.

Article 46- Survival

- 46.1 If the *Contract* or any part of the *Services* is terminated pursuant to Article 33 - Termination for Convenience or Article 34 - Termination for Cause, then Article 21 - Warranty shall survive such termination, as applicable.
- 46.2 Any terms, covenants, provisions or conditions of the *Contract* which expressly or by their nature survive the termination of the *Contract* shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

Article 47 - General

- 47.1 No waiver of any right, power or privilege by a party shall limit or affect that party's rights with respect to any failure, delay or breach of the *Contract* by the other party.
- 47.2 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to the *Contract*.
- 47.3 If a court of competent jurisdiction determines that any provision of this *Contract* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the *Contract*.
- 47.4 All of the covenants and agreements in this *Contract* contained on the part of either party shall apply and enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.
- 47.5 Each of the parties hereby represents and warrants that it has the power and authority to enter into the *Contract* and to perform all of its obligations hereunder.
- 47.6 The *Contract* constitutes the entire agreement between the parties with respect to the *Services* and supersedes and replaces all previous communications, representations and agreements, either written or verbal.

47.7 This *Contract* shall be governed by and construed in accordance with the laws of the Province of Alberta, and, subject to Appendix I – Dispute Resolution Procedure, the parties attorn to the jurisdiction of the Courts of the Province of Alberta.

47.8 This *Contract* shall be executed by the parties, or their representatives, in person with original signatures, but may be executed in counterpart. Subsequent documents may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this *Contract*, by their duly authorized officers, as of the effective date indicated on the first page.

Owner: *

Per: *

Name:
Per: *

Name:
[apply corporate seal]

EPCM Contractor: *

Per: *

Name:
Per: *

Name:
[apply corporate seal]

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**SMALL TOOLS, OFFICE SUPPLIES & EQUIPMENT AND CONSUMABLES &
EXPENDABLES LIST**

This list is provided as a guide and is not deemed to be a full and complete list.

PART I

SMALL TOOLS, OFFICE SUPPLIES & EQUIPMENT LIST

The following schedule of small tools, office supplies and equipment is included as a guide in defining and/or classifying items as small tools, office supplies and equipment, and is not deemed to be a full and complete list.

A

- Adapter – socket drive
- Adding Machine
- Adzes
- Agitators – paint
- Air Hoses
- Aligner – metal door frame
- Aligner – pipe, lever type
- Anvil
- Augers
- Axes

B

- Band-it-tool
- Banding Machine
- Bar – crow, wrecking, pitch point
- Belts – safety, pole climbing
- Bender – conduit pipe, rebar, sheet metal, tubing
- Binder/Cinch – load and chains/belts/cables
- Block – metal, snatch single all
- Block
 - Metal, snatch single sheave
 - Cable type all
- Block
 - Metal, snatch double sheave
 - Cable type all
- Block – metal, triple sheave, cable all
- Block – wood, snatch all
- Block – wood, single sheave, rope all
- Block – wood, double sheave, rope all
- Block – wood, triple sheave, rope all
- Block – metal, single sheave, chain all
- Block – metal, double sheave, chain all
- Block – metal, triple sheave, chain all
- Book Cases
- Box – rod heated
- Box – gang, metal
- Box – tool, hand
- Brace – carpenter

C

- Cabinet – File – all
- Cable – Welding
- Calculators
 - handheld, desk – all
- Calliper – Inside 6”
- Calliper – Outside 6”
- Calliper – Vernier 12”
- Cameras – video, Polaroid and still with lenses and tripods – all
- Car mover
- Carrier
 - Brick, timber
 - Hand
- Cart – Welding, cylinder trucks
- Caulking gun
- Caulking irons
- Cement, masonry jointing tools
- Chains – Log and cable
- Chain – Measuring, complete with reducer - 100 ft.
- Chain – Measuring, complete with reducer – 200 ft.
- Chain – Measuring, Engineer’s with reel
- Chairs – all
- Charger – Battery 6 and 12 volt
- Chisels
 - Hand
 - Wood, metal
- Chuck – Drill ½”, ¾”
- Chuck – Nipple ½” to 2” with adapter and wrench
- Chuck – Electric hammer ½” to ⅝”
- Chuck – Electric hammer ¾” to ⅞”
- Clamp – Pipe line up straight
- Clamp – Pipe line up angle
- Clamp – Pipe line up elbow
- Clamp – Pipe line up flange
- Clamp – Plate lifting all
- Cleaner – Vacuum, wet/dry
- Climber – Pole adjustable
- Clock – Watchman’s
- Concrete Floats – All

- Concrete Buddie - Hand
- Consumables – paper (including letterhead), pens, pencils (wood & mechanical), erasers, white out, staples, paper and bulldog clips, knives and blades, scissors, ruler and other straight edges, scales, file folders and hangers, white, chalk and peg boards, markers, tape dispensers and tape, computer disks, push pins, binders, elastics
- Cooler
 - Water, electric
 - Construction
- Creeper – Auto mechanic
- Cutter – Angle iron
- Cutter – BX armor
- Cutter – Bolt all
- Cutter – Cable
- Cutter – Hydraulic with heavy duty cutter head
- Cutter – gasket, machine, vise mount or hand
- Cutter – Pipe all
- Cutter – Pipe, saran
- Cutter – Pipe, soil snap offing leads
- Cutter – Tubing

D

- Desk – wood, metal – all
- Die – Bolt ¼: to 1”
- Die – Heat 1” to 2” ratchet
- Digger
 - Post hole
 - Hand and screw type
- Dispensers – water, coffee, cups, paper – all
- Dollies – Warehouse truck 700 lo.
- Drawing Files – stick – all
- Drill – Hand
- Drill – Air
- Drill – Electric, heavy duty ¼”, ⅜”
- Drill – Electric, heavy duty ½”, ¾”
- Drill – electric, hammer ⅜”

- Drill press stand – ¾”
- Driver – Electric, screw

E

- Edger(s)
- Electric Erasers
- Embosser – Label lettering – all
- Emery wheel stands
- Etcher – Metal electric
- Extension cord – Electrical
- Extension - Socket

F

- Facsimile Machine
- Fan – Electric all
- Fan – Electric, exhaust 24” to 36”
- Field Radio Base Station and handheld transceivers
- Files – Construction
- Fire extinguisher – Hand operated for temporary construction
- Flaring tools
- Flatters
- Float – Concrete with hand smooth 60”
- Float – Concrete with hand corrugated 40”
- Float
 - Concrete, hand
 - Metal, wood
- Floodlights
- Forge – Blacksmith, hand operated
- Fork – Pitch 4-tine
- Furnace – Butane with shield (plumbers)

G

- Gas mask
- Gauge – Set centre
- Gauge – Set drill
- Gauge – Set thickness
- Gauge – Height, venire 6”
- Gauge – Screw pitch
- Gauge
 - Pressure
 - Water, air
- Glass cutters
- Grease – Dispenser, transfer pump
- Grinder – Pencil, air or electric
- Grinder - Air right angle
- Grinder – Electric, bench 2-wheel all

- Grinder – Electric, bench, straight
- Grinder – Right angle heavy duty air or electric with guard
- Grinder – Electric, die ¼” chuck
- Grinder – Electric, portable 5” and 6”
- Grinder – Electric, flexible shaft
- Grips – Cable, all
- Groover – Victaulic pipe
- Gun – Grease, air or electric
- Gun – Jet line, CO₂
- Gun – Powder activated all
- Gun – Rivet, pop
- Gun – Soldering (electric)
- Gun – Paint spray
- Gun – Insect spray

H

- Hacksaw frames
- Hammer – Sledge, all
- Hammer – Claw, all
- Hammer – Panel beaters
- Hammer – Ball peen, cross-peen
- Heater – LPG, all
- Heater – Electric, all
- Heater – Oil – salamander
- Helmets – Welding
- Hickeys
- Hods
- Hoes
- Hoists – Chain with 30 ft. pull chain up to 4 tons
- Hoist – Come-along, all
- Hook – Pipe, concrete 3”
- Hook – Timber
- Hook – Cant
- Horns
 - Signal
 - Loud hailer and siren
- Horses – Carpenter, mason, all
- Hose – Air, water, welding, steam, garden, fire, all
- Hose – Pump suction and discharge
- Hose – Construction tools
- Hydrometer

I

- Ice tongs
- Indicator – Dian
- Indicator – Dian, test
- Iron – Soldering, electric, heavy duty

J

- Jack – Hydraulic, all
- Jack – Journal, 15-ton with lever bar
- Jack – Porta power, all
- Jack – Railroad, all
- Jack – Reel, all
- Jitterbug, hand, concrete

K

- Kettles – Paint
- Knives – Putty, draw
- Knockout set – ½” to 1¼” hand operated

L

- Ladder – A frame, wood, metal, all
- Ladder – Extension, wood, metal, all
- Ladder
 - Step
 - Wood, metal, all
- Ladle – Lead
- Lanterns
- Level – Carpenter, mason, all
- Level – Precision machinist, all
- Level – Torpedo magnetic
- Lighting – drafting
- Lights – Flood

M

- Machine – drafting
- Machine – Pexto bender, crimper
- Machine – Spark plug cleaner with tester
- Mattocks
- Mauls
- Meter – Amp, clip-on (Type A)
- Meter – AMP, volt AC
- Meter – Volt, ohm, with case
- Micrometer – Depth 2” to 32”
- Micrometer – Inside 1½” to 8”
- Micrometer – Outside 2” to 6”
- Mops – Head, bucket, stick, wringer

N

- Nailer – Automatic
- Nibbler – Sheet metal
- Nozzles – Water, air, steam hose

O

- Oil can – All
- Oiler – Line, lubricator
- Oiler – Rigid

P

- Paint – Shaker electric
- Pencil – Engraving electric
- Photocopier
- Picks
- Pins – Drift and taper
- Plane – Adjustable, bench
- Plane – Electric, heavy duty
- Pliers
- Plumbob – All
- Plumbers friend
- Pole – Range, engineering
- Pot – Lead melting
- Press – Drill stand
- Protractor – Pipe
- Puller – Wire lightweight
- Puller – Gear 6”
- Puller – Nail
- Puller – Gear, chain type
- Pulley – Cable, single
- Pulley – Cable, triple
- Pulley - 90° angle
- Pulley – Well 9” to 14”
- Pump – Submersible – 110V – 1½”
- Pump – Hand test 100 PSI
- Pump
 - Lubrication
 - Hand
- Pump - Tire
- Punch – Center automatic
- Punch – Sheet metal, hand Witney No. 8
- Punch – Sheet metal, hand Witney No. 10
- Punches – paper – all

R

- Radios
- Radius – Gauges
- Rake – Garden
- Rake – Stone
- Rammer – Bench, hand
- Rasps – Wood
- Ratchet – Wrenches open end

- Reamers
- Recorder – Temperature
- Reel – Tie wire
- Regulator
 - Acetylene, oxygen, nitrogen
 - Single stage
- Regulator (flowmeter) – Argon
- Respirators
- Rivet – Set size 0 through 8
- Rod – Level, Engineer’s 2-piece
- Rollers – Pipe, wood, tube
- Router
- Rule
 - Steel, wood
 - Measuring
- Runner – Electric nut

S

- Sander – Electric, air
- Saw
 - Hacksaw
 - Power
- Saw – Chain, electric, gas
- Saw – Jig, electric
- Saw – Electric portable builder’s, 4½” to 12”
- Saw – Reciprocal and sabre, air operated
- Saw
 - Reciprocal and Sabre
 - Electric
- Saw – Porta band
- Saw – Hand, all
- Saw – Table
- Scale – Optical tooling
- Scoops – Hand
- Scrapers
- Screwdrivers - Electric
- Screwdriver – Hand, all
- Screw stop
- Scribe – Pocket (diamond tip)
- Scribe – Pocket (tungsten carbon point)
- Shackles
- Shaft – Universal drive 41” to 50”
- Shear – Electric, hand
- Shear – Angle iron 2 X 2 X ¼
- Shovels – All
- Skreeds – Manual

- Slings – Rope, canvas, woven synthetic material, wire rope
- Snips – Tin, all
- Socket – Set ½” ¾”, 1” drive
- Soldering irons – All
- Spikes – Marlin
- Spray equipment – Conventional
- Square – Combination, all
- Stand – Drill press
- Stand – Chain, pipe, vise
- Staplers
 - Construction
 - Electric, air, hand
 - Office - all
- Star drills
- Stirrers – Paint
- Stool – drafting – all
- Stoves – Portable
- Straight edge – Steel or cast iron to 8 ft.
- Strap – Climber with pads
- Stud gun – Percussion

T

- Table – drafting, reference, computer – all
- Tachometer – 0 to 10,000 RPM
- Tampers – Hand
- Tank – LP gas 20 lb.
- Tap and dies – Bolt and pipe
- Tape
 - Measuring
 - All up to 100 ft.
- Tape – Measuring 100 ft.
- Tape Recorder - all
- Telephone – Field use
- Telephones – regular, cordless, cellular – all
- Tester – Battery and ignition
- Threader – Hand, pipe, ⅛” to 1”
- Threader – Pipe die head ¼” to 2”
- Tong – Brick, all
- Tong – Chain, all
- Tong – Pipe, all
- Tong – Rivet, all
- Tool boxes
- Torch – Heating
- Torch – Blow
- Torch – Heliarc
- Torch – Combination set

- Torch – Argon
- Torch
 - Gas
 - Propane
- Torch – Arc air gougers
- Torch – Straight cutting
- Trolley – I-beam
- Trowels – Cement, mortar, plaster, mastic, all
- Truck
 - Platform
 - 4-wheel
 - Hand
- Truck
 - Warehouse
 - 2-wheel
 - Hand
- Tube rollers
- Turnbuckles – Eye-to-eye, all
- Typewriters – all

V

- Vacuum cleaner – Wet/dry
- Vibrator – Electric, 2 ft. X 1” head
- Vibrator – Electric, 7ft. X 1” head
- Vise – Bench, yoke 1/8” to 6”
- Vise – Bench, chain 1/8” to 5”
- Vise – Bench, machine stationary 3” to 6”
- Vise – Bench, machine swivel 3”, 4”
- Vise – tri-stand, chain 1/8” to 5”
- Vise – tri-stand, yoke 1/8” to 2½”

W

- Waste baskets – all, including garbage cans of all types
- Weed trimmer – Electric, gas, manual
- Wheelbarrow – All
- Winches – Manual 1-ton
- Wrenches
 - Impact
 - Air, electric, ½”, ⅝” and ¾” drive including metric and imperial sockets
- Wrench – Adjustable, all
- Wrench
 - Box end
 - Complete set, metric and imperial

- Wrench
 - Socket
 - Complete set, metric and imperial ½” and ¾” drive
- Wrench – Pipe, straight, all
- Wrench – Pipe, compound, all
- Wrench – Strap, all
- Wrench – Chain, all
- Wrench - Spud
- Wrench
 - Striker
 - Offset, all
- Wrench
 - Torque
 - Up to 1,000 lbs., 1” drive

PART II

CONSUMABLES & EXPENDABLES LIST

The following list of consumable and expendable supplies is included as a guide in defining and/or classifying items as consumable and expendable supplies that are applicable to this Contract, and is not deemed to be a full and complete list.

A

- Abrasives
- Acid – Battery and soldering
- Adaptors on regulators – Oxygen and acetylene
- Adhesives – Glue, tape, etc.
- Anti-freeze – Construction equipment
- Apparel – Wet weather, protective (**Does not include fire retardant outerwear**)

B

- Badge and employee identifications
- Bags – Paper, cotton and burlap
- Bands – Rubber and steel for banding machines
- Barrel pins
- Batteries – Flashlight, blasting, automotive construction equipment and charging
- Battery water
- Belts – Fan and other for construction equipment
- Belt lacings and dressing
- Bits
 - Steel, wood, masonry
 - Drill or brace
 - Portable or stationary
 - Powered or manual
- Blades
 - Hacksaw, brick saw, circular saw, rip saw, concrete/steel cutoff saw, jigsaw, sabre saw, band saw
 - Wood, metal, masonry
 - Portable or stationary
- Bolts – For miscellaneous temporary construction use
- Boots - Rubber
- Brads
- Brazing and soldering flux
- Bricks – Rubbing
- Brooms
- Brush cleaning materials

- Buckets – Water and cement

C

- Cans – Gas, oil measuring
- Cartridges – Computer, printer, telecopier all
- Casite and other motor cleaning fluids
- Caulking compound
- Chains – Tire
- Chalk
- Chalk line
- Charcoal

G

- Gas mask parts - Construction
- Gasoline, oil, grease, and diesel fuel – Construction
- Gloves
 - Leather, canvas, plastic, rubber, rubber-dipped
 - Electrician, welder, general worker
- Glue
- Glycerine – Construction
- Glyptal – Electric sealing compound
- Goggles – Safety, welding
- Graphite
- Grease – For construction
- Grind wheels
- Grinding compound

H

- Handles – Hammer, shovel, rake, pick, adze, axe, sledge, mattock, hoe, float, file
- Hard hats
- Hard hat liners
- Hardware cloth – Construction
- Hasps
- Head lamps – Hard hats
- Hinges
- Hose coupling – Construction

I

- Ice (including hauling)

- Ink

J

- Juke

K

- Kegs
- Kerosene

L

- Lard oil
- Lenses – Clear or coloured for welding helmets, goggles, safety glasses
- Light bulbs and tubes – Construction warehouse or office
- Lighters for welding torches
- Lines – Mason, cable, chalk
- Linseed oil – Other than for paint
- Locks – Temporary construction
- Lubricant – Cable pulling
- Lugs – For welding leads

M

- Markers – Steel, wood, masonry
- Material protection equipment
- Medicine and first aid supplies
- Muriatic acid

N

- Nuts

O

- Oakum
- Oil – Thread cutting
- Overshoes

P

- Packing – Construction equipment
- Padlocks
- Pails – Water

- Paint, oil, brushes and pots – Used on tools and equipment in daily maintenance
- Paint thinner
- Paper – Sandpaper, towels, toilet, wrapping and other like items
- Paper – Building, tar, roofing and other like items
- Paper clips
- Paper towel
- Paste – Soldering
- Pencils
- Permatex – Construction
- Pins, chaining
- Pipe dope – Litharge and glycerine
- Pipe joint cement
- Pipe joint tape – Teflon
- Pipe tool parts – Replacement dies, cutter wheels, wrench parts
- Plugs – Electrical
- Plungers for air tools
- Poles, range field fabrication
- Protective clothing (**Does not include fire retardant outerwear**)
- Putty

R

- Rags – Cleaning
- Razor blades – For scrapers
- Refills for fire extinguishers
- Respirator – Disposable
- Respirator filter pads
- Rollers – Tube
- Rope
 - Manila, sisal, jute, synthetic fibre, wire
 - For miscellaneous lashing, construction
- Router bits
- Rulers
- Rust preventatives

S

- Safety belts, harnesses all
- Safety clothing – disposable coveralls, foot coverings, gloves, mitts, all
- Safety hearing protectors and earplugs, all
- Safety rope with clips

- Safety signs, signals and literature (Syn crude Site, including Work Site, and highway)
- Safety vests – Reflective
- Salt tablets and dispensers
- Sandpaper
- Sanding discs
- Sand cord – Construction
- Screens – Sand and other screened material
- Shear pins – Construction equipment
- Shellac – Other than finish
- Soap
- Soapstone's
- Solder
- Sponges
- Sprays – Insecticide
- Steel wedges – Construction temporary
- Steel Wool
- Stone – Rubbing
- Straps – For goggles

T

- Tags – Material, tool, shipping
- Tape – Gum, scotch, cambric
- Tempilsticks
- Thermos jug
- Thumbtacks, push pins
- Threading oil
- Tire and tube repairs such as bots, patches, cores, stems
- Toilet tissue
- Torches, highway flares
- Tubes – Mailing
- Tubs
 - Cleaning/washing, storing
 - Construction
- Turpentine – Paint
- Twine – Wrapping

W

- Washers
 - Hose, cut, lock
 - Construction
- Waste – wiping
- Water – drinking, distilled
- Water and heater hose for equipment
- Wedges – Steel temporary
- Wheels – Abrasive

- Whet stone
- White lead
- White gas
- Winch line
- Wing nuts
- Wood – Fuel

Z

- Zerk fittings – Construction equipment

APPENDIX C
REIMBURSABLE COSTS AND FEES

1. Definitions

- 1.1. Capitalised and italicised terms in this Appendix that are not expressly defined herein shall have the same meaning set forth in the main body of the *Contract*.
- 1.2. The following terms, wherever capitalised and italicised in this Appendix, or in any document produced pursuant to the terms of the *Contract*, shall have the following meanings:
- (a) *Staffing Agency Invoice* means the invoice, including GST, received by the *EPCM Contractor* from a personnel rental agency for the cost of its *Staffing Agency Personnel* assigned to the *Services*;
 - (b) *Staffing Agency Personnel* means any personnel hired by the *EPCM Contractor* from a personnel rental agency to perform the *Services*, or any portion thereof, and who receive their wages and benefits directly from the personnel rental agency and not from the *EPCM Contractor*;
 - (c) *Base Rate* means the actual wage paid, on an hourly basis, to an individual *Staff* member which shall be calculated as follows:
 - (i) for *Work Site Employees, Home Office Staff, Project Hire Employees* and *Staffing Agency Personnel*, the hourly rate paid, if paid by the hour, or if paid by the month or year, calculated by dividing the annualized salary by 2,080 hours; and
 - (ii) for *Contract Personnel*, the hourly rate paid by the *EPCM Contractor* which includes the *Contract Personnel's Burden*;
 - (d) *Burden* means all benefits of whatever type or nature which are set forth in Section 2.8 (Burden);
 - (e) *Contract Personnel* means individuals who are not employees of the *EPCM Contractor* and are not *Subcontractors* but who have been retained by the *EPCM Contractor* to perform *Services* under a contract to the *EPCM Contractor* and who are responsible for the cost of their own burden;
 - (f) *Consumables and Expendables* means items that are used or used up during performance of the *Services* and do not form part of the permanent *Services* or *Construction Work* including, but not limited to, the consumables and expendables listed in Exhibit ["X"]; **[Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of consumables and expendables that can be attached as an Exhibit to this Appendix C; see "Small Tools, Office Supplies & Equipment and Consumables &**

Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document];

- (g) *Fee* means the payment made by the *Owner* to the *EPCM Contractor* for profit and which shall include and cover all of the *EPCM Contractor*’s costs not otherwise recovered in the *Base Rate*, *Burden* or *Overhead*, or paid as a *Reimbursable Expense*;
- (h) *Home Office Overhead* has the meaning set forth in Section 2.9(c);
- (i) *Home Office Staff* means the employees of the *EPCM Contractor* who provide *Services* at the home office of the *EPCM Contractor* but does not include *Project Hire Employees*;
- (j) *Job Classification* means the classification of positions as set forth in Exhibit 1 - Schedule of Rates attached to and incorporated in this Appendix;
- (k) *Monthly Staff List* means the list, prepared by the *EPCM Contractor*, of all *Staff* who are anticipated to perform the *Services* in the following calendar month and shall include the following information for each person:
 - (i) name and payroll/identification number;
 - (ii) employee status: whether a *Work Site Employee*, *Home Office Staff*, *Staffing Agency Personnel* or *Contract Personnel*;
 - (iii) if the person is *Staffing Agency Personnel*, the organization employing the person;
 - (iv) *Job Classification*;
 - (v) eligibility for premium pay for overtime work as set out in Exhibit 1 – Schedule of Rates; and
 - (vi) *Base Rate*;
- (l) *Non-Reimbursable Employee* means the *EPCM Contractor*’s employees, agents and subcontractors listed in Exhibit 3 – Non-Reimbursable Employees, attached to and incorporated in this Appendix, whose payroll costs are recovered through the application of *Overhead* on *Staff*;
- (m) *Office Supplies and Equipment* means, but is not limited to, the office supplies and equipment listed in Exhibit [“X”]; [**Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of office supplies and equipment that can be attached as an Exhibit to this Appendix C; see “Small Tools, Office Supplies & Equipment and Consumables & Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document];**
- (n) *Overhead* means either or both of *Work Site Overhead* and *Home Office Overhead* as context dictates;

- (o) *Project Hire Employees* means employees of the *EPCM Contractor* who are hired for a limited term for the *Project*;
- (p) *Reimbursable Expense* means *Owner* authorized costs incurred by the *EPCM Contractor* for which reimbursement by the *Owner* is provided under Section 4 (Reimbursable Expenses);
- (q) *Salary Range* means a salary range set forth in Exhibit 1 – Schedule of Rates which corresponds to a particular *Job Classification*;
- (r) *Small Tools* means tools with a replacement value of less than \$2,000.00; [**Note to Users: The Owner and EPCM Contractor may want to consider formulating a list of small tools that can be attached as an Exhibit to this Appendix C; see “Small Tools, Office Supplies & Equipment and Consumables & Expendables List” on the 2008 COAA Best Practices Contract Documents CD or contact COAA for a copy of this document**]
- (s) *Staff* means all of the *Work Site Employees*, *Home Office Staff*, *Project Hire Employees*, *Contract Personnel* and *Staffing Agency Personnel* assigned by the *EPCM Contractor* to perform the *Services* and are reimbursable in accordance with Exhibit 1 – Schedule of Rates;
- (t) *Staff Expenses* means those expenses incurred by *Staff* members, and approved, which are claimed as an expense on an individual *Staff* member’s expense account for which the *EPCM Contractor* is reimbursed by the *Owner*;
- (u) *Work Site Assignment Policy* means the site assignment policy of the *EPCM Contractor* as approved in writing by the *Owner* and attached hereto as Exhibit 4 – Work Site Assignment Policy;
- (v) *Work Site Employees* means the employees of the *EPCM Contractor* who provide *Services* at the *Work Site* but does not include *Project Hire Employees*; and
- (w) *Work Site Overhead* has the meaning set forth in Section 2.9(a).

2. Reimbursement for Staff

2.1. Monthly Staff List, Job Classifications and Salary Ranges

- (a) The *EPCM Contractor* shall provide the *Owner* with the *Monthly Staff List* no later than the last *Work Day* of each month. The *Monthly Staff List* shall forecast the *Staff* that will be performing the *Services* during the subsequent month.
- (b) The *EPCM Contractor* may amend the *Monthly Staff List* during the month that the *Services* are performed by adding other *Staff* to the list, provided that such *Staff* has been authorized by the *Owner* to work on the *Project*.

- (c) The *EPCM Contractor* shall only be reimbursed for *Staff* who have been identified in the *Monthly Staff List* provided, however, that reimbursement is for only that portion of their time spent providing the *Services*.
- (d) Subject to Section 2.1(e), the *Salary Ranges* are subject to review by *EPCM Contractor* once per calendar year during performance of the *Services*, and any adjustment to Exhibit 1 - Schedule of Rates, shall be subject to the written approval of the *Owner*.
- (e) The *EPCM Contractor* shall be reimbursed for increases in *Base Rates* paid by the *EPCM Contractor* to all *Staff*, except *Staffing Agency Personnel*, after [] days written notice to the *Owner* of such increase where such increase to the *Base Rate* is:
 - (i) within the salary ranges set forth in Exhibit 1 – Schedule of Rates, (except where the *Owner* has authorized in writing an increase above the *Salary Range*);
 - (ii) administered in good faith and in accordance with the established practices of the *EPCM Contractor*; and
 - (iii) made no more that once in each calendar year, except where the *Owner* has authorized in writing such increase.

2.2. Calculation of Reimbursement for Staff

- (a) In accordance with the other provisions of this Section 2 (Reimbursement for Staff), the *EPCM Contractor* shall be reimbursed for *Staff* as follows:

	<i>Work Site Employees</i>	<i>Home Office Staff</i>	<i>Project Hire Employees</i>	<i>Contract Personnel</i>	<i>Staffing Agency Personnel</i>
<i>Base Rate</i>	Yes	Yes	Yes	Yes	No
<i>Staffing Agency Invoice</i>	No	No	No	No	Yes
<i>Burden</i>	Yes	Yes	Yes	Yes	No
<i>Site or Home Office Overhead (as applicable)</i>	Yes	Yes	Yes	Yes	Yes
<i>Fee</i>	Yes	Yes	Yes	Yes	Yes

[Note to Users: This chart represents one example of how costs are allocated and should be negotiated to reflect each Project specific application.]

2.3. Work Site Employees

- (a) The *EPCM Contractor* shall be reimbursed by the *Owner* for the hours during which the *Services* are performed by *Work Site Employees* on the following basis:
 - (i) reimbursement in accordance with Section 2.3(b) for actual hours of *Services* performed by *Work Site Employees*; and
 - (ii) payment of the overtime premium of 0.5 times the *Base Rate* for those hours of *Services* in excess of the *Project* work week, as notified by the *Owner* from time to time, performed by *Work Site Employees* who are eligible for premium pay for overtime work, as set forth in Exhibit 1 – Schedule of Rates, provided however this premium shall not be subject to the application of *Overhead*, *Burden* or *Fee*.
- (b) The *Owner* shall reimburse the *EPCM Contractor* for *Work Site Employees* by paying the *EPCM Contractor* for each hour of *Services* actually performed:
 - (i) the sum of:
 - (A) the *Base Rate* for *Work Site Employees* in accordance with the *Job Classification* specified for each individual multiplied by the applicable *Burden* multiplier, as provided for in Section 2.8 (*Burden*);
 - (B) the *Work Site Overhead* mark-up, in accordance with Section 2.9 (*Overhead*); and
 - (C) the costs associated with the *Work Site Assignment Policy*;
 - (ii) which sum shall be multiplied by the *Fee* mark-up in accordance with Section 2.10 (*Fee*).

[Note to Users: Section 2.3(b) is based on each hour of Services actually performed but needs to be considered on a Project specific basis; example formulas may be added to illustrate the calculations.]

2.4. Home Office Staff

- (a) The *EPCM Contractor* shall be reimbursed by the *Owner* for the hours during which the *Services* are performed by *Home Office Staff* in the home office of the *EPCM Contractor* on the following basis:
 - (i) reimbursement in accordance with Section 2.2(a), Exhibit 1 (Schedule of Rates) and Exhibit 2 (Home Office Overhead and Burden) for actual hours of *Services* performed by *Home Office Staff* at the home office of the *EPCM Contractor*;
 - (ii) reimbursement in accordance with Section 2.3(b), except that the reference to *Work Site Employees* shall be read as *Home Office Staff*, for

actual hours of *Services* performed by *Home Office Staff* outside of the home office of the *EPCM Contractor*; and

- (iii) payment of the overtime premium of 0.5 times the *Base Rate* for those hours of *Services* in excess of the *Project* work week, as notified by the *Owner* from time to time, performed by *Home Office Staff* who are eligible for premium pay for overtime work, as set forth in Exhibit 1 – Schedule of Rates, provided however this premium shall not be subject to the application of *Overhead, Burden* or *Fee*.
- (b) The *Owner* shall reimburse the *EPCM Contractor* for *Home Office Staff* performing *Services* in the home office of the *EPCM Contractor* by paying the *EPCM Contractor* for each hour of *Services* actually performed:
 - (i) the sum of:
 - (A) the *Base Rate* for *Home Office Staff* in accordance with the *Job Classification* specified for each individual multiplied by the applicable *Burden* multiplier, as provided for in Section 2.8 (*Burden*);
 - (B) the *Home Office Overhead* mark-up, in accordance with Section 2.9 (*Overhead*); and
 - (C) the *Burden* in accordance with Section 2.8(a);
 - (ii) which sum shall be multiplied by the *Fee* mark-up in accordance with Section 2.10 (*Fee*).

[Note to Users: Section 2.4(b) is based on each hour of Services actually performed but needs to be considered on a Project specific basis; example formulas may be added to illustrate the calculations.]

2.5. Project Hire Employees

- (a) The *Owner* shall reimburse the *EPCM Contractor* for *Project Hire Employees* performing *Services* at the *Work Site* by paying the *EPCM Contractor* for each hour of *Services* actually performed:
 - (i) the sum of:
 - (A) the *Base Rate* for *Project Hire Employees* in accordance with the *Job Classification* specified for each individual multiplied by the applicable *Burden* multiplier, as provided for in Section 2.8 (*Burden*);
 - (B) the *Work Site Overhead* mark-up, in accordance with Section 2.9 (*Overhead*); and
 - (C) the *Burden* in accordance with Section 2.8(a), as applicable;

- (ii) which sum shall be multiplied by the *Fee* mark-up in accordance with Section 2.10 (Fee).
- (b) The *Owner* shall reimburse the *EPCM Contractor* for *Project Hire Employees* performing *Services* in the home office of the *EPCM Contractor* by paying the *EPCM Contractor* for each hour of *Services* actually performed:
 - (i) the sum of:
 - (A) the *Base Rate* for *Project Hire Employees* in accordance with the *Job Classification* specified for each individual multiplied by the applicable *Burden* multiplier, as provided for in Section 2.8 (Burden);
 - (B) the *Home Office Overhead* mark-up, in accordance with Section 2.9 (Overhead); and
 - (C) the *Burden* in accordance with Section 2.8(a), as applicable;
 - (ii) which sum shall be multiplied by the *Fee* mark-up in accordance with Section 2.10 (Fee).

2.6. Contract Personnel

- (a) *Contract Personnel* shall not be eligible for premium pay for overtime hours.
- (b) The *Owner* shall reimburse the *EPCM Contractor* for *Contract Personnel* by paying to the *EPCM Contractor* for each hour of *Services* actually performed by the *Contract Personnel*:
 - (i) the sum of:
 - (A) the *Base Rate* for *Contract Personnel*, in accordance with the *Job Classification* specified for each individual, multiplied by the *Burden* multiplier, as provided for in Section 2.8 (Burden); and
 - (B) the *Work Site Overhead* mark-up, in accordance with Section 2.9 (Overhead);
 - (ii) which sum shall be multiplied by the *Fee* mark-up applied in accordance with Section 2.10 (Fee).

2.7. Staffing Agency Personnel

- (a) Unless otherwise agreed to by *Owner*, *Staffing Agency Personnel* shall not be eligible for premium pay for overtime hours.
- (b) The *Owner* shall reimburse the *EPCM Contractor* for *Staffing Agency Personnel* by paying to the *EPCM Contractor* for *Services* performed by the *Staffing Agency Personnel* the *Staffing Agency Invoice* plus a markup for *Fee* in accordance with Section 2.10 (Fee).

2.8. Burden

- (a) *Burden* includes but is not limited to:
- (i) accidental death and dismemberment plan (AD&D) (basic and optional);
 - (ii) bereavement leave;
 - (iii) Canada/Quebec Pension Plan;
 - (iv) deferred profit sharing plan;
 - (v) dental plan;
 - (vi) Employment Insurance and supplement unemployment benefit plan;
 - (vii) extended health care and enhanced medial services plan, including foreign travel plan;
 - (viii) incentive plans;
 - (ix) bonuses;
 - (x) life insurance (basic, dependent and optional);
 - (xi) long term disability;
 - (xii) maternity/paternity leave;
 - (xiii) pension plan;
 - (xiv) prescription drug plan;
 - (xv) provincial health care premiums;
 - (xvi) RRSP (group plan);
 - (xvii) savings plan;
 - (xviii) sick leave/weekly indemnity;
 - (xix) stand-by pay;
 - (xx) statutory or other publicly or religiously celebrated holidays;
 - (xxi) stock purchase plan;
 - (xxii) supplemental hospital insurance;
 - (xxiii) survivor income benefit;
 - (xxiv) travel insurance;

- (xxv) vacations;
- (xxvi) vision/hearing plan; and
- (xxvii) worker's compensation (WCB) premiums.

[Note to Users: this list to be considered on a Project specific basis]

- (b) For greater certainty, *Burden* shall not include *Overhead*.
- (c) The *EPCM Contractor* shall be reimbursed using a multiplier for the *Burden* in accordance with this Section.
- (d) In each calendar year starting in the year 20____, the *EPCM Contractor* shall be reimbursed for the *Burden* by multiplying the *Base Rate* for actual hours charged by the *EPCM Contractor* pursuant to this Appendix by 1.____ for actual hours during which the *Services* are performed by all *Staff*, except *Contract Personnel* and *Staffing Agency Personnel*. **[Note to Users: Need to address the burden rates for normal and overtime hours.]**
- (e) For each calendar year subsequent to 20____, the *EPCM Contractor* shall be reimbursed for *Burden* in accordance with Section 2.8(d), except that the multiplier stipulated therein shall be re-calculated to reimburse the *EPCM Contractor* for *Burden* such that the actual *Burden* from the previous year shall be used as the basis for reimbursement in the current year and shall be calculated in the following manner:
 - (i) the *EPCM Contractor* shall determine the actual *Burden* incurred for the previous calendar year as a percentage of the *Base Rate* paid to all of its full and part-time employees for that same period;
 - (ii) the *EPCM Contractor* shall apportion each of the components of *Burden* incurred in the previous year, corresponding with the list set forth in Sections 2.8(a)(i) to 2.8(a)(xxvii), adding as needed any further categories, as an expressed percentage of the total *Burden* incurred by the *EPCM Contractor* for all of its employees for the previous year;
 - (iii) the *EPCM Contractor* shall provide to the *Owner* evidence of the calculations referred to in Sections 2.8(e)(i) and 2.8(e)(ii), and the *Owner* shall have the right to audit documentation regarding this calculation and the *Burden* paid by the *EPCM Contractor* related to all of its full and part-time employees for the previous year;
 - (iv) following the first year that the calculation referred to in Section 2.8(e)(ii) is performed, which will calculate the *Burden* multiplier for the 20____ calendar year, and each subsequent year during performance of the *Services*, the *Owner* may, subject always to Section 2.8(f), elect to not reimburse the *EPCM Contractor* for any further programs or benefits or enhancements which increases, year over year, the calculated percentage of overall *Burden* of any particular

category of *Burden*, provided however, the *Owner* shall reimburse the *EPCM Contractor* for any increase in *Burden* mandated or required by *Law* or settled in accordance with Appendix J – Dispute Resolution Procedure;

- (v) the *Owner* shall, subject always to Section 2.8(f), advise the *EPCM Contractor*, in writing, when it accepts the calculation of the *Burden* for the previous year;
 - (vi) when the *Owner* has advised the *EPCM Contractor* that it has accepted the calculation of the *Burden* for the previous year the percentage calculated as the percentage of *Base Rate* for *Burden* for the previous year shall be converted to a multiplier that shall then replace the multiplier to the *Base Rate* to reimburse the *EPCM Contractor* for the *Burden* for the current calendar year;
 - (vii) changes in the multiplier to reimburse the *EPCM Contractor* for the *Burden* shall be effective January 1st of each year during performance of the *Services* for which the above calculation is performed; and
 - (viii) where the calculation and acceptance of the *Burden* multiplier is not made until after January 1st of any given year during performance of the *Services*, the *EPCM Contractor* shall continue to apply the multiplier for the previous year until the multiplier for the current year is calculated and accepted, upon which, the *EPCM Contractor* shall prepare and submit to the *Owner* an adjustment of invoices submitted in the current year to account for any adjustment in the multiplier used to reimburse the *EPCM Contractor* for *Burden* and the *EPCM Contractor* shall be paid, or shall pay to the *Owner*, as the case may be, the amount of such adjustment within 15 days of delivery of the invoice for adjustment to the *Owner*.
- (f) Where the *EPCM Contractor* disputes:
- (i) the election of the *Owner* in Section 2.8(e)(iv) to not reimburse the *EPCM Contractor* for any further programs or benefits or enhancements; or
 - (ii) any notice from the *Owner* in Section 2.8(e)(v) that it has accepted the calculation of the *Burden* for the previous year;

such election or notice, or both, shall not be effective until the dispute thereof is settled in accordance with the Appendix J – Dispute Resolution Procedure.

2.9. Overhead

- (a) *Work Site Overhead* means the overhead of the *EPCM Contractor* for *Staff* working on the *Work Site* and shall include the following:
 - (i) business development;

- (ii) business licenses;
- (iii) business losses and financing costs;
- (iv) charitable and other donations;
- (v) *Consumables and Expendables*;
- (vi) corporate governance;
- (vii) employee development and training programs including *Work Site* orientation;
- (viii) employee termination and severance costs;
- (ix) holding (storekeeping, handling and the like);
- (x) insurance premiums purchased specifically for the *Project*;
- (xi) legal costs, subject to approval in writing by the *Owner*, that are incurred by the *EPCM Contractor* in resolving disputes with third parties;
- (xii) maintenance, obsolescence & deterioration of equipment used solely to provide the *Services*;
- (xiii) *Office Supplies and Equipment*;
- (xiv) penalties or fines incurred for any reason;
- (xv) professional and corporate registrations;
- (xvi) recruitment;
- (xvii) salaries and burdens for *Non-Reimbursable Employees*;
- (xviii) security services;
- (xix) *Small Tools*;
- (xx) taxes, except those expressly paid to the *EPCM Contractor* by the *Owner* pursuant to the *Contract*;
- (xxi) basic personal protective equipment including, but not limited to, hard hat, safety boots, safety glasses and hearing protection; and
- (xxii) cost of electronic communication devices and base plans associated with such electronic communication devices.

[Note to Users: this list to be considered on a Project specific basis]

- (b) The *EPCM Contractor* shall be reimbursed for *Work Site Overhead* by applying an hourly fee of \$ per hour, for both *Work Site* and overtime hours,

during which *Services* are performed by *Work Site Employees* and *Contract Personnel*.

- (c) *Home Office Overhead* means the home office overhead of the *EPCM Contractor* and shall include the following:
- (i) administrative & financial co-ordination;
 - (ii) building maintenance;
 - (iii) business development;
 - (iv) business licenses;
 - (v) business losses and financing costs;
 - (vi) charitable and other donations;
 - (vii) *Consumables and Expendables*;
 - (viii) corporate governance;
 - (ix) depreciation of buildings and equipment other than in respect of equipment used solely to provide the *Services*;
 - (x) employee development and training programs including *Work Site* orientation activities;
 - (xi) heat, water, light and all other utilities;
 - (xii) inter-office and inter-departmental communications (including all software and hardware);
 - (xiii) interest on capital invested;
 - (xiv) legal costs, subject to approval in writing by the *Owner*, that are incurred by the *EPCM Contractor* in resolving disputes with third parties;
 - (xv) local telephone and courier;
 - (xvi) *Office Supplies and Equipment*;
 - (xvii) penalties or fines incurred for any reason;
 - (xviii) profession and corporate registrations;
 - (xix) property insurance;
 - (xx) recruitment;
 - (xxi) rent and all equipment, except as expressly provided for in this Appendix;

- (xxii) reproduction costs in the home office of the *EPCM Contractor*;
- (xxiii) research and development;
- (xxiv) safety programs;
- (xxv) salaries and burdens for *Non-Reimbursable Employees*;
- (xxvi) *Small Tools*; and
- (xxvii) taxes, except those expressly paid to the *EPCM Contractor* by the *Owner* pursuant to the *Contract*.

[Note to Users: this list to be revised by the EPCM Contractor and the Owner on a case by case basis]

- (d) The *EPCM Contractor* shall be reimbursed for *Home Office Overhead* by applying an hourly fee of \$_____ per hour for regular and overtime hours during which *Services* are performed by *Home Office Staff*.
- (e) In each calendar year starting in the year 20_____, the *EPCM Contractor* shall be reimbursed for *Overhead* by multiplying the *Base Rate* for actual hours charged by the *EPCM Contractor* pursuant to this Appendix by 1.____ for actual hours during which the *Services* are performed by all *Staff*, except *Contract Personnel* and *Staffing Agency Personnel*.
- (f) For each calendar year subsequent to 20_____, the *EPCM Contractor* shall be reimbursed for *Overhead* in accordance with Section 2.9(e), except that the multiplier stipulated therein shall be re-calculated to reimburse the *EPCM Contractor* for *Overhead* such that the actual *Overhead* from the previous year shall be used as the basis for reimbursement in the current year and shall be calculated in the following manner:
 - (i) the *EPCM Contractor* shall determine the actual *Overhead* incurred for the previous calendar year as a percentage of the *Base Rate* paid to all of its full and part-time employees for that same period;
 - (ii) the *EPCM Contractor* shall apportion each of the components of *Overhead* incurred in the previous year, corresponding with the list set forth in Sections 2.9(a)(i) to 2.9(a)(xxii), adding as needed any further categories, as an expressed percentage of the total *Overhead* incurred by the *EPCM Contractor* for all of its employees for the previous year;
 - (iii) the *EPCM Contractor* shall provide to the *Owner* evidence of the calculations referred to in Sections 2.9(f)(i) and 2.9(f)(ii), and the *Owner* shall have the right to audit documentation regarding this calculation;
 - (iv) following the first year that the calculation referred to in Section 2.9(f)(ii) is performed, which will calculate the *Overhead* multiplier for the 20_____ calendar year, and each subsequent year during

performance of the *Services*, the *Owner* may, subject always to Section 2.9(g), elect to not reimburse the *EPCM Contractor* for any incremental increase in *Overhead* provided however, the *Owner* shall reimburse the *EPCM Contractor* for any increase in *Overhead* mandated or required by *Law* or settled in accordance with Appendix J – Dispute Resolution Procedure;

- (v) the *Owner* shall, subject always to Section 2.9(g), advise the *EPCM Contractor*, in writing, when it accepts the calculation of the *Overhead* for the previous year;
 - (vi) when the *Owner* has advised the *EPCM Contractor* that it has accepted the calculation of the *Overhead* for the previous year the percentage calculated as the percentage of *Base Rate* for *Overhead* for the previous year shall be converted to a multiplier that shall then replace the multiplier to the *Base Rate* to reimburse the *EPCM Contractor* for *Overhead* for the current calendar year;
 - (vii) changes in the multiplier to reimburse the *EPCM Contractor* for *Overhead* shall be effective January 1st of each year during performance of the *Services* for which the above calculation is performed; and
 - (viii) where the calculation and acceptance of the *Overhead* multiplier is not made until after January 1st of any given year during performance of the *Services*, the *EPCM Contractor* shall continue to apply the multiplier for the previous year until the multiplier for the current year is calculated and accepted, upon which, the *EPCM Contractor* shall prepare and submit to the *Owner* an adjustment of invoices submitted in the current year to account for any adjustment in the multiplier used to reimburse the *EPCM Contractor* for *Overhead* and the *EPCM Contractor* shall be paid, or shall pay to the *Owner*, as the case may be, the amount of such adjustment within 15 days of delivery of the invoice for adjustment to the *Owner*.
- (g) Where the *EPCM Contractor* disputes:
- (i) the election of the *Owner* in Section 2.9(f)(iv) to not reimburse the *EPCM Contractor* for increased incremental costs of *Overhead*; or
 - (ii) any notice from the *Owner* in Section 2.9(f)(v) that it has accepted the calculation of the *Overhead* for the previous year;

such election or notice, or both, shall not be effective until the dispute thereof is settled in accordance with the Appendix J – Dispute Resolution Procedure.

- (h) In the event that the *Owner* approves an increase to the hourly fee to compensate the *EPCM Contractor* for *Overhead* in accordance with this Section, the increased hourly fee to compensate the *EPCM Contractor* for either *Work Site Overhead* or *Home Office Overhead*, or both as the case may be, shall become effective the first day of the calendar month following the approval.

2.10. Fee

- (a) The *EPCM Contractor* shall be paid the following *Fees*, which are expressed as multipliers, for the different types of *Staff* members:
- (i) *Work Site Employees, Home Office Staff, Project Hire Employees and Contract Personnel* shall be subject to either a:
- (A) *Fee* multiplier of _____; or
- (B) _____% mark-up;
- of the sum of *Base Rate*, applicable *Burden* and *Overhead*, in accordance with Section 2 (Reimbursement for Staff); and
- (ii) *Staffing Agency Personnel* shall be subject to either a:
- (A) *Fee* multiplier of _____; or
- (B) _____% mark-up;
- of *Staffing Agency Invoices*, in accordance with Section 2 (Reimbursement for Staff).

3. Non-Reimbursable Employees

- 3.1. The salaries, payroll burdens, overhead and administration costs related to *Non-Reimbursable Employees* are included in the *Overhead* hourly fee applied to *Staff*. The *EPCM Contractor* shall receive no additional compensation for *Non-Reimbursable Employees* except as provided in Section 3.2.
- 3.2. The *Owner* may request the services of *Non-Reimbursable Employees* to perform a specified task or to provide consultation and expertise not otherwise contemplated in the *Contract*. The *EPCM Contractor* shall be reimbursed for services performed by *Non-Reimbursable Employees* that the *Owner* requests in writing. Even where reimbursement is approved by the *Owner*, in no event shall the *Owner* be liable to pay for any services by *Non-Reimbursable Employees* other than those identified in the request, or for more hours than *EPCM Contractor* has estimated as required to satisfy the request.

4. Reimbursable Expenses

- (a) Excepting that the *EPCM Contractor* shall not be entitled to any mark-up for goods and services procured by the *EPCM Contractor* for and in the name of the *Owner* other than the appropriate reimbursement for actual hours spent performing *Procurement Services*, the *EPCM Contractor* shall be entitled to reimbursement in respect of:
- (i) *Subcontractor* invoices;

- (ii) *Staff Reimbursable Expenses* in accordance with the *EPCM Contractor's* staff expense policy (at cost) titled “[*Note to Users: Insert title of staff expense policy.*]”;
- (iii) rental costs of tools, machinery and equipment not owned by the *EPCM Contractor* and used solely in the performance of the *Services*;
- (iv) an amount for depreciation and fees for tools, equipment and machinery owned by the *EPCM Contractor*;
- (v) consumables specifically acquired for the *Services* & not recovered as overhead;
- (vi) the cost of all equipment and services required for the office of the *EPCM Contractor* at the *Work Site* not recovered as *Overhead*;
- (vii) deposits lost arising out of the provision of the *Services*;
- (viii) costs paid in royalties or patent license fees, in respect of *Intellectual Property* owned by others; damages for infringement of patents and costs of defending suits subject always to the obligation of the *EPCM Contractor* to indemnify the *Owner* pursuant to the Contract; costs of protection of *Intellectual Property* generated in the course of performing the *Services* including, but not limited to, costs relating to filing an application, fees payable to the competent authorities to grant *Intellectual Property* or its territorial extension or extension of duration, translation costs;
- (ix) premiums for all bonds and project specific insurance which the *EPCM Contractor* is required, by the *Contract Documents*, to purchase and maintain;
- (x) losses and expenses sustained by the *EPCM Contractor* for matters which are the subject of the insurance coverages obtained pursuant to insert INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable;
- (xi) charges for long distance charges, photocopying, reproduction of documents, courier services, and petty cash items;
- (xii) costs incurred due to emergencies affecting the health and safety of persons or property;
- (xiii) legal costs, subject to approval in writing by the *Owner*, that are incurred by the *EPCM Contractor* in resolving disputes with third parties;
- (xiv) costs incurred by the *EPCM Contractor*, with the *Owner's* permission, in expediting the rejected work or the warranty work of *Works Contractors*

and costs incurred by the *EPCM Contractor* in correcting defects or deficiencies in the work undertaken by his own forces and repairing damages resulting therefrom either during the course of construction or the warranty period except those arising from a negligent or willful act of the *EPCM Contractor*;

- (xv) basic personal protective equipment including, but not limited to, hard hat, safety boots, safety glasses and hearing protection;
- (xvi) hazard-specific personal protective equipment including, but not limited to, gloves, fire retardant clothing, breathing apparatus;
- (xvii) health and safety equipment such as monitors and detectors, fire extinguishers, signage, security tape, fencing and flagging;
- (xviii) the cost of computer time and usage in accordance with the method determined by the parties; and
- (xix) such other costs directly incurred by the *EPCM Contractor* in the performance of the *Contract*.

5. Non-Reimbursed Costs

5.1. The *EPCM Contractor* is not entitled to reimbursement of the following unless otherwise agreed to in writing by the *Owner*:

- (a) resources made available to the *EPCM Contractor* at no charge;
- (b) free issue items;
- (c) value of contributions in kind;
- (d) unnecessary, unapproved or ill-considered expenses;
- (e) entertainment or hospitality expenses except such reasonable expenses wholly and exclusively necessary for carrying out the *Services*;
- (f) extra over costs of leasing compared with purchase;
- (g) cost of events for which the *Contract* requires the *EPCM Contractor* to insure; and
- (h) traffic and parking fines of *Staff*.

6. Taxes

- 6.1. The *EPCM Contractor* shall identify on each invoice the amount of GST as a separate line item, immediately following the summation of all other charges and costs.
- 6.2. All taxes other than the GST for which the *EPCM Contractor* seeks reimbursement, except for those included in *Base Rates, Burden, Overhead* and *Fee*, shall be itemized, including, but not limited to import duties, provincial sales tax and other similar government or regulatory assessments.

EXHIBIT 1

Schedule of Rates

SALARY RANGES FOR REIMBURSABLE PERSONNEL

Location	Position	Salary Range	Typical/Norm

EXHIBIT 2(A)

Home Office Overhead and Burden

Location	<i>Overhead</i>	<i>Burden</i>

EXHIBIT 2(B)

Project Hire Employees Overhead and Burden

Location	<i>Overhead</i>	<i>Burden</i>

EXHIBIT 3

Non-reimbursable Employees

NON-REIMBURSABLE PERSONNEL CLASSIFICATIONS

EXHIBIT 4

Work Site Assignment Policy

APPENDIX F KEY PERFORMANCE INDICATORS

Introduction

Performance should be measured and reported for all key project parameters which typically include safety, cost, schedule, quality, and other parameters specific to the Owner or Project. These key performance indicators (“KPI’s”) are a defined set of deliverables that cover the life cycle of the Project and are trended over time to facilitate objectives, transparent, auditable, and consistent measurement of Contractor’s performance.

Documentation of Contractor performance is intended to rate how well the Contractor is managing the Project, demonstrate the Contractor’s ability to continue to perform work on the current Contract, and indicate if the Contractor is qualified to perform work on future projects. The applicable KPI’s and the specific performance targets should be defined at the start of each phase of the Project so that it is clearly understood what is reflective of exceptional and unacceptable performance..

Performance monitoring and reporting provides an opportunity for the Owner and Contractor to proactively manage the project, and may determine the administration of contract fees, incentives, or penalties as applicable. Progress against the KPI’s should be reviewed by the Parties at agreed intervals with the designated representatives of the Owner and Contractor. Subsequently, the evaluation documents are important documents for both the Contractor and Owner since they will define the future relationship between these organizations.

Contractor performance reports shall provide the project status, project progress, and variance analysis for each of the key performance indicators. Such reports should be at an appropriate level of detail and may be of various formats, subject to the tools and techniques utilized to measure, track and report Contractor performance.

Key Performance Indicators

1. Safety - *specified safety performance*

Has the safety program been implemented consistently and is it achieving the expected results?

2. Cost - *total installed cost compared with approved project budget*

Earned value progress is commonly included in performance reporting. Earned value compares the value of work performed (at the allocated budget rate) to the actual cost of work performed.

3. Schedule - *actual progress compared with planned progress*

Schedule variance tracking and variance analysis to assess the potential impacts to the overall project are a critical area of project performance tracking and reporting. Early detection can be extremely valuable and may alleviate the need for costly corrective action.

4. Quality - *actual functional performance compared with performance specification and guarantee*

Project quality management processes, tools, and techniques are designed to guarantee project success for the benefit of both the Contractor and the Owner. While there are numerous quality applications that are necessary to achieve this, the real test is *does it perform in conformance with the contract requirements?*

5. Other - *Owner or project specific metrics that may vary for each phase of the Project*

**Appendix H – Forms
Release and Certificate of Final Payment**

1. This is Appendix H – Forms, Release and Certificate of Final Payment, referred to in the Engineering, Procurement and Construction Management Contract effective _____, 20__ (the “*Contract*”).
2. The capitalised and italicised terms used and not defined in this Appendix H – Forms, Release and Certificate of Final Payment, shall have the meanings given to them in the *Contract*.
3. In consideration of \$1.00, the sufficiency of which is hereby acknowledged, the *Contractor* solemnly declares that:
 - (a) the *Contractor* has made full payment, or will make full payment from the final payment to be received from the *Owner*, of all costs, charges and expenses incurred by the *Contractor* or on its behalf for the *Work*, *Goods* and *Procured Goods* supplied in connection with the *Contract*, or otherwise used in connection with the *Work*;
 - (b) to *Contractor's* best knowledge and belief, each of its *Subcontractors* have made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, services, materials and equipment in connection with the *Contract*, or otherwise used by them in connection with the *Work*;
 - (c) all assessments, levies and charges under the Employment Insurance Act, the Workers' Compensation Act and other legislation in respect of the *Contract* have been paid and, to the *Contractor's* best knowledge and belief, each and all of its *Subcontractors* have paid such assessments, levies and charges on their own account;
 - (d) the *Contractor* unconditionally releases and forever discharges the *Owner* and acknowledges that it has not claim against the *Work Site* or the property of the *Owner* for any builder's liens or other liens of whatsoever kind or nature arising out of or in connection with the performance of the *Contract*;
 - (e) the *Contractor* unconditionally releases and forever discharges the *Owner* from any and all claims, demands, actions or proceedings arising out of the performance of the *Work* of which it has knowledge, and in respect of which notice in writing has not, by the date hereof, been given by the *Contractor* to the *Owner*; and
 - (f) the *Contractor* acknowledges and agrees that nothing herein contained relieves it of any obligations under the provisions of the *Contract* which by their nature survive completion of the *Work* including, without limitation, warranties, guarantees and indemnities.

The *Contractor* makes this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at _____, in the Province of Alberta, this ___ day of _____, 20__

A Commissioner for Oaths in and for the Province of Alberta.

(Signature)

(Name of Contractor’s Representative signing)



APPENDIX H1 – FORMS
KEY PERSONNEL CONFIDENTIALITY,
PROPRIETARY INFORMATION AND CONSENT AGREEMENT
DATED EFFECTIVE _____, 20__

TO: _____
(the "*EPCM Contractor*")

AND TO: _____
(the "*Owner*")

I, _____, in consideration of the *Owner* consenting to my participation in the performance of certain work (the "*Services*") by the *EPCM Contractor* for the *Owner* pursuant to an agreement (the "*Agreement*") made between the *Owner* and the *EPCM Contractor* dated as of ____ day of _____, 20__ with respect to _____ [*Project*]; and for the further consideration of \$1.00, from each of the *EPCM Contractor* and *Owner*, the receipt and the sufficiency of which are hereby acknowledged, do hereby agree, separate and apart from the *EPCM Contractor*, as follows:

1. I have had my role and responsibilities explained to me by the *EPCM Contractor*, or I have reviewed a copy of the Agreement and agree to observe the terms and conditions that relate to employees, subcontractors, and those otherwise engaged by the *EPCM Contractor*.
2. I acknowledge that the *Owner* has an interest in securing the performance of the *Services* by the *EPCM Contractor* and that the ability of the *EPCM Contractor* to perform the *Services* primarily depends on my continued engagement with the *EPCM Contractor*.
3. I shall perform for the *EPCM Contractor* such duties as may be assigned to me by the *EPCM Contractor* from time to time pertaining to the *Services*. I agree that all inventions, copyright, copyrightable works, discoveries, improvements, industrial designs and other intellectual and proprietary rights conceived, originated or prepared by me, arising directly or indirectly from the performance of the *Services*, are and shall be the exclusive property of the *Owner* or the *EPCM Contractor* as determined in accordance with the terms of the Agreement.
4. I shall not, without the prior written consent of the *EPCM Contractor* and the *Owner*, either during or for a 5 year period after my engagement by the *EPCM Contractor*, use or disclose any information acquired by me in the course of or by reason of my participation in the performance of the *Services*, nor will I disclose to any person engaged by the *EPCM Contractor* any such information, including, without limitation, any information as to technology, policies, operations, processes or formulae used, owned or supervised by the *Owner* or by any of its affiliates. At the termination of the Agreement or earlier if so required, I shall forthwith return to the *Owner* all confidential information in my possession.

I agree that, if any provision in this undertaking is found to be invalid or otherwise unenforceable by law, such provision shall be severed, and the remaining provisions shall continue in full force and effect.

Witness (print name in full)

Name (print in full)
Position:

Appendix H – Forms

Statutory Declaration

IN THE MATTER OF an Engineering, Procurement and Construction Management Contract bearing no. _____ and dated the _____ day of _____, 20__

Between:

(Insert full name of Owner) and

(Insert full name of Contractor)

hereinafter referred to as the “Contractor”,

for _____
(Description and location of work)

_____,
and IN THE MATTER OF (INDICATE BY checkmark in APPLICABLE BOX)

- a Progress Claim covering work done up to the _____ day of _____, 20__
- the Functional Completion Certificate
- the Final Completion Notice

WITNESS:

I, _____, of _____
(Print or type name of Declarant) (Declarant's city/town and province of residence)

do solemnly declare:

(1) that I am _____
(Print or type Declarant's title or position with the Contractor)

and as such have personal knowledge of the Contract and of the facts and matters stated herein.

(INDICATE BY checkmark in APPLICABLE BOX)

- that, up to the date of the attached progress claim, the Contractor has complied with all its lawful obligations to its workers in respect of the work contracted for and has discharged all of its lawful obligations to its subcontractors and its suppliers except for the amounts owing which total \$ _____ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or
- that, up to the date hereof, the Contractor has complied with all its lawful obligations to its workers, its subcontractors and its suppliers in



respect of the work contracted for and to all tax authorities respecting the payment of all applicable taxes arising from or related to the performance of the work under the Contract, except for the amounts owing which total \$_____ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration; or

that, up to the Final Completion Notice, the Contractor has complied with all its lawful obligations to its workers, its subcontractors and its suppliers in respect of the work contracted for and discharged and satisfied all lawful claims against it that arose out of the performance of this Contract except for the amounts owing which total \$_____ (if nil, state nil). A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration.

And I make this SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

DECLARED before me at _____
this _____ day of _____, 20____

(Signature of person before whom the Declaration is made)

(Print name of person before whom the Declaration is made)

A Notary Public, Commissioner for Oaths etc.

(Please state authority for receiving Declarations
Notaries to affix Notarial Seal)

(Signature of Declarant)

NOTICE

If this Declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

Those sections of the *Criminal Code of Canada* which deal with offenses relating to affidavits are hereby brought to the attention of the Declarant.

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