

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



**CONSTRUCTION OWNERS ASSOCIATION
OF ALBERTA**

EPCM Contract (2008)
COAA Best Practices Contract
Page 1 of 51

TABLE OF CONTENTS

Introduction:.....	1
Article 1 - Definitions and Appendices	1
Article 2 - Interpretation and Order of Precedence.....	9
Article 3 - Owner’s Requirements and Obligations.....	10
Article 4 - General Requirements of the Services	11
Article 5 - Engineering Services	14
Article 6 - Owner’s Specified Materials and Services.....	14
Article 7 - Procurement Services	15
Article 8 - Construction Management Services and Construction Work	16
Article 9 - Agency.....	17
Article 10 - Commissioning.....	18
Article 11 - EPCM Contractor’s Representations.....	18
Article 12 - Contract Time	19
Article 13 - Payment	19
Article 14 - Cost and Price Control.....	20
Article 15 - Changes	21
Article 16 - Personnel, including Key Personnel.....	23
Article 17 - Key Personnel.....	24
Article 18 - Subcontracts and Assignment.....	25
Article 19 - Inspection, Testing and Performance Tests.....	26
Article 20 - Final Completion of the Services	27
Article 21 - Warranty	28
Article 22 - Compliance with Law and Policies	28
Article 23 - Safety and Loss Management.....	29
Article 24 - Services Area and Clean Up.....	30
Article 25 - Responsibility for and Title to the Services	30
Article 26 - Prohibition on Sale of Engineering Services.....	31
Article 27 - Protection of Intellectual Property.....	31
Article 28 - Confidentiality.....	33
Article 29 - Publicity.....	34
Article 30 - Force Majeure.....	34



Article 31 - Delays Caused by the EPCM Contractor	35
Article 32 - Suspension.....	35
Article 33 - Termination for Convenience.....	36
Article 34 - Termination for Cause.....	37
Article 35 - Taxes.....	39
Article 36 - Workers' Compensation.....	39
Article 37 - Liens	40
Article 38 - Liability and Indemnity for Third Party Claims.....	41
Article 39 - Liability and Indemnity	42
Article 40 - Insurance Provided by EPCM Contractor	43
Article 41 - Insurance Provided by Owner	45
Article 42 - Independent Contractor	48
Article 43 - Conflict of Interest.....	48
Article 44 - Audit Access.....	49
Article 45 - Representatives and Notices.....	49
Article 46 - Survival.....	50
Article 47 - General	50

APPENDICES

- Appendix A – Owner’s Requirements
- 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 \$*;

- (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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