GENERAL CONDITIONS
OF
CONSTRUCTION

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(Owner Controlled Insurance Program)

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GENERAL CONDITIONS OF CONSTRUCTION

1.0 DEFINITIONS

1.1 The following terms, wherever used in any Contract Document or in any amendment thereto, mean:

1.1.1 “Addenda” means a written communication, prior to the parties executing the Agreement, from the University to the Contractor revising a term of the Contract Documents;

1.1.2 “Agreement” means the Stipulated Price Construction Agreement, or the Construction Management Agreement, or the Standing Order Agreement, as the case may be, or any other agreement duly signed by the University and the Contractor and numbered in accordance with GC 2 representing the undertaking by the University and the respective duties, responsibilities, and obligations of the parties as set out in the Contract Documents;

1.1.3 “Agreement on Internal Trade” means the agreement so entitled and implemented by the Agreement on Internal Trade Implementation Act, S.C. 1996, c. 17, or any amendments thereto;

1.1.4 “Approved Construction Budget” means the University’s budget for the Work;

1.1.5 “Bid Forms” means the documents that the Contractor executed to bid the Work, and includes but is not limited to, the price, terms, conditions, and schedules included in the Contract Documents and entitled Bid Forms;

1.1.6 “Certificate of Construction Completion” means that notice issued by the Consultant certifying that the entire Work, but exclusive of warranty period(s), and all defects and deficiencies as identified and recorded by the Consultant, including damage to other work resulting therefrom, has been completed;

1.1.7 “Certificate of Facility Takeover” means that notice issued by the Consultant certifying that all the prerequisites of Facility Takeover required by the Contract Documents have been completed by the Contractor and ratified by the Consultant;

1.1.8 “Certificate of Total Performance” means that notice issued by the Consultant certifying that the entire Work has been completed in accordance with the requirements, standards, quality, and intent of the Contract Documents; all defects due to faulty materials and/or workmanship have been corrected including damage to other work resulting therefrom, and the general one-year warranty period, notwithstanding any warranties as apply for such longer periods for specific products or parts of the Work as the Contract Documents require, has expired;

1.1.9 “Certificate of Payment” means that notice issued by the Consultant to the University certifying a claim for payment made by the Contractor in the amount applied for or in such amount as the Consultant determines to be properly due;

1.1.10 “Certificate of Recognition” means the certificate issued by the Alberta Construction Safety Association or a certifying partner in the Partnership for Health and Safety Program sponsored by the Ministry of Human Resources and Employment;

1.1.11 "Certificate of Substantial Performance" means that notice issued by the Contractor in accordance with the Builders Lien Act of Alberta;

1.1.12 “Change Directive” means a written order prepared by the Consultant and signed by both
the Contractor and the University authorizing a change in the Work on a time & Material basis to a maximum, which will be confirmed by means of a Change Order when the Work is complete and final cost established;

1.1.13 "Change in the Work" means any change in, addition to, or deletion from the Work;

1.1.14 "Change Order" means a written order signed by both the Contractor and the University authorizing a Change in the Work;

1.1.15 "Change Quotation" means a written quotation from the Contractor outlining the adjustments, if any, to the Contract Price and the Contract Time, or both, as the result of a proposed Change in the Work;

1.1.16 "Commencement Date" means the date that the Work is to commence as set out in the Bid Forms;

1.1.17 "Construction Cost Estimate" is an estimate of the cost of the project prepared by the Consultant at various times throughout the project;

1.1.18 "Consultant" is the corporation, person, or entity, identified in the Agreement and includes those sub-consultants engaged by the Consultant to render complementary professional services relative to the Work.

1.1.19 "Contemplated Change Notice" means a written notice from the Consultant of a contemplated Change in the Work;

1.1.20 "Contract Documents" means the executed Agreement between the University and the Contractor, the General Conditions, the Supplemental General Conditions, General Requirements, Drawings, Specifications, Addenda, Bid Forms, Change Orders as executed, and if applicable, insurance certificates, performance bond, labour and materials bond;

1.1.21 "Contract Price" means the total amount payable to the Contractor for the performance of the Work, as set out in the Bid Forms or as adjusted during the course of the Work in accordance with the Contract Documents;

1.1.22 "Contract Time" means the period of time set forth in the Agreement;

1.1.23 "Contractor" means the corporation, person or entity designated as such in the Agreement;

1.1.24 "Contractor's Prepared Documents" means all plans, shop drawings, other drawings, specifications, calculations, reports, opinions, notes, models, bid documents, software, data and other documents prepared by the Contractor pursuant to the Contract Documents whether written or stored electronically;

1.1.25 "Contractor's Superintendent" means that person identified as such in the Bid Forms or a replacement approved by the University in accordance with the Contract Documents as being the individual that represents the Contractor by directing daily activities on the Work Site;

1.1.26 "Day" means a calendar day, unless otherwise defined in an article in the GC or in a Supplementary General Condition;

1.1.27 "Drawings" mean all drawings, plans, sketches and maps and any revisions thereto, issued by the Consultant to the Contractor during the performance of the Work;
1.1.28 "Employer" has the meaning ascribed to it in the Occupational Health and Safety Act of Alberta;

1.1.29 "Event of Force Majeure" has the meaning ascribed thereto in GC 18;

1.1.30 "Facility Takeover" follows Substantial Performance of the Work and is the date when all the prerequisites to Facility Takeover required by the Contract Documents have been completed by the Contractor and ratified by the Consultant. Upon the date of Facility Takeover, the University shall assume responsibility for the facility.

1.1.31 "Field Order" shall mean a written communication from the Consultant to the Contractor clarifying the Contract Documents, issuing additional instructions, or requesting information; a Field Order shall have no impact on the Contract Price or Contract Time unless responded to by the Contractor in accordance with GC 9;

1.1.32 "Final Cost of Construction" means the Contract Price following the issuance of a Certificate of Construction Completion by the Consultant and calculations of the final cost of construction by the University;

1.1.33 "General Conditions" means the terms and conditions contained in the Contract Documents entitled General Conditions and sometimes abbreviated as GC;

1.1.34 "Hazardous Materials" means any substance which is hazardous to persons, animals, property, or the environment and includes biological hazards, hazardous substances, controlled products, hazardous waste, chlorofluorocarbon (CFC or ozone depleting substances), pesticides, and dangerous goods, all as identified or defined under applicable Law, as well as any prescribed product under the Nuclear Safety and Control Act (Canada);

1.1.35 "Key Personnel" means those personnel so identified in the Bid Forms or as amended in accordance with the Contract Documents;

1.1.36 "Law" means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, codes, permits and licenses thereunder, which apply to or otherwise affect the University or the Contractor with respect to the Work, or the property of the University or the Contractor, real or personal, or any part thereof, including but not limited to all environmental, occupational, health and safety laws;

1.1.37 "Lien Holdback Release Certificate" means a notice issued by the Consultant to the University certifying the date of the expiry of the holdback period required by the Builders' Lien Act of Alberta and the amount of lien holdback that may be released to the Contractor;

1.1.38 "Material" shall mean collectively all material and commodities required to be furnished under the Contract Documents;

1.1.39 "Milestone Dates" means those dates set out in the Bid Forms;

1.1.40 "Non-Arms Length Entity" is any corporation, partnership or entity in which the Contractor, its directors, officers, consultants, agents, or family members has or has had a financial interest;

1.1.41 "Other Contractor" means any corporation, person, or entity having a contract or agreement directly or indirectly with the University other than through the Contractor or
Consultant;

1.1.42 "Plant" means collectively all tools, implements, machinery, vehicles, structures, equipment, and other things required for the execution of the Work and provided by the Contractor;

1.1.43 "Prime Contractor" has the meaning ascribed to it in the Occupational Health and Safety Act of Alberta or any amendments thereto;

1.1.44 "Product" shall mean collectively machinery or assembled components or structures specifically provided for the Work and a standard product designed and produced for a specific use;

1.1.45 "Schedule of Deliverables" means the documents prepared by the Contractor and approved by the University listing the schedule and requirements for the sequentially tendered Trade Packages required to implement the fast track multiple stage construction program;

1.1.46 "Sub-Contractor" is any corporation, person or entity having a direct contract with the Contractor for the execution of a part or parts of the Work included in the Contract Documents as identified in accordance with GC 8, provided however that the term Sub-Contractor shall not include a Supplier;

1.1.47 "Supplementary General Conditions" means the terms and conditions contained in the Contract Documents entitled Supplementary General Conditions;

1.1.48 "Supplier" means any corporation, person or entity having a direct contract with the Contractor or Subcontractor to supply Material or Product for the Work without any reworking of the Material or Product for the purpose of incorporation into the Work;

1.1.49 "Suspended Work" has the meaning ascribed thereto in GC 23;

1.1.50 "Trade Work" means the construction services required to complete an individual portion of the Work as defined by the Contractor and approved by the University and shall include, but not be limited to, furnishing of Materials and/or labour by individual trades, Sub-Contractors and Suppliers for the Work, and procurement or rental of the necessary Materials, Plant, and Product required for the Work;

1.1.51 "University" means The Governors of the University of Alberta

1.1.52 "University's Confidential Information" has the meaning ascribed thereto in GC 33;

1.1.53 "Warranty" means those warranties set forth in GC 30;

1.1.54 "Warranty Period" means that period of time set forth in GC 30;

1.1.55 "Work" means all labour, supervision, administration, Materials, transportation, supplies, Plant, Product, temporary facilities, storage facilities, and such other work and materials necessary to be performed or supplied for the construction work required by the Contract Documents and including any construction work which is not expressly described in the Contract Documents but which is nevertheless necessary for the proper execution of the construction work required by the Contract Documents;

1.1.56 "Work Schedule" means a detailed schedule for performance of the Work as referred to in GC 6;
1.1.57 "Work Site" means the site or location where all or any of the Work is to be performed, provided however that the spatial boundaries shall not extend outside the area identified in the Supplementary General Conditions;

1.1.58 “Work Site for the Purpose of the Occupational Health and Safety Act” is that area defined as such in the Supplementary General Conditions.

2.0 AGREEMENT AND INTERPRETATION

2.1 The Agreement shall be executed in duplicate by The Governors of the University of Alberta and the Contractor with original signatures and shall be identified by a number as assigned by the University.

2.2 The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all labour and Materials, Plant, Product, transportation, and all other requirements for the proper execution of the Work. The Contractor shall abide by and comply with the true intent and meaning of the Contract Documents taken as a whole, and shall not avail itself to the detriment of the Work of any manifestly unintentional error or omission should any exist.

2.3 In the event of a conflict or inconsistency among or between the Contract Documents, the following shall apply:

2.3.1 subject to the provisions of this GC 2.3, for documents as revised by either party and approved by the Consultant, the latest revisions shall govern;

2.3.2 figured dimensions on Drawings shall govern, even though they may differ from scaled dimensions;

2.3.3 Drawings of larger scale shall govern over those of smaller scale of the same date;

2.3.4 technical specifications issued by the Consultant shall govern over all Drawings regardless of date;

2.3.5 subject to GC 2.3.6, GC 2.3.7 and GC 2.3.8, the General Conditions shall govern over all other Contract Documents;

2.3.6 Supplementary General Conditions, if any, shall govern over the General Conditions;

2.3.7 Addenda issued if any, shall govern over all other Contract Documents except the executed Agreement; and

2.3.8 the executed Agreement between the University and the Contractor shall govern over all other Contract Documents.

2.4 The provisions of the Contract Documents shall survive the completion of the Work.

2.5 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the Contract Documents, and of any errors, omissions or inconsistencies between the Contract Documents and the Law, of which they become aware. The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in any errors, omissions, or inconsistencies. Subject to GC 2.3, if the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, or between the Contract Documents and the Law, it shall resolve all such errors, omissions or inconsistencies with the Consultant before proceeding with the affected portion of the Work. Where the Contractor fails to resolve errors, omissions or ambiguities in the Contract Documents about which the Contractor
knew or reasonably ought to have known, the Contractor shall be responsible for the results of failing to interpret or apply the Contract Documents correctly.

2.6 The Contract Documents constitute the entire agreement between the parties with respect to the Work and supersede all previous communications, representations, warranties and agreements, either written or verbal.

3.0 THE CONSULTANT

3.1 The Consultant shall have authority to act on behalf of the University to the extent provided in the Contract Documents or as otherwise specified by the University.

3.2 The Consultant is, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder and shall use its powers under the Contract Documents to enforce the faithful performance by both parties thereto. Matters in question, relating to the quality and/or progress of the Work including rejected Work or the interpretation of the Contract Documents shall be referred to the Consultant in writing for decision. The Consultant shall give its decision in writing to the Contractor and the University within a reasonable time and, subject to GC 29.2, the Contractor and the University shall act in accordance with such written decision.

3.3 The Consultant may visit the Work Site at sufficient intervals at its discretion to determine that the Work is being performed in general accordance with the Contract Documents. No inspection or evaluation contemplated herein by the Consultant shall release or relieve the Contractor from the requirement to perform the Work in accordance with the Contract Documents.

3.4 The Consultant shall prepare Contemplated Change Notices and Change Orders for University authorization, in accordance with the Contract Documents. The Consultant has authority to authorize Changes in the Work in accordance with GC 9 which do not involve an adjustment in Contract Price or a change in the scope of the Work, or an extension to the Contract Time.

3.5 Nothing contained in the Contract Documents shall create any contractual relationship between the Consultant and the Contractor, its Sub-Contractors, its Suppliers, or their agents, employees or other persons performing any of the Work.

3.6 Notwithstanding the Contractor’s obligations as the Prime Contractor pursuant to GC 13.3, if the Consultant discovers an Employer’s non-compliance with the University Health and Safety Program, the requirements of the Occupational Health and Safety Act and its Regulations, or with any other safety requirement and there are no Key Personnel from the Contractor available or capable of addressing the non-compliance, and no occupational health and safety officer is available to take charge, then the Consultant may issue a written notice to the Contractor to take immediate corrective action, and shall also notify appropriate University authorities having jurisdiction. Any action taken by the Consultant shall not relieve the Contractor of any responsibility for loss, injury, or damage, which does occur.

4.0 ADDITIONAL INSTRUCTIONS

4.1 During the progress of the Work, the Consultant may furnish as necessary for the performance of the Work, additional instructions by means of Field Orders. All such additional instructions shall be consistent with the Contract Documents, and shall be issued by the Consultant with reasonable promptness and the Work shall be performed in conformity therewith.

5.0 OTHER CONTRACTORS

5.1 The University may let separate contracts in connection with the undertaking of which the Work is a part or otherwise and the Contractor shall connect properly and co-ordinate its Work with that of
Other Contractors. If any part of the Work depends for its proper execution or result upon the work of any Other Contractor, the Contractor shall in writing report promptly to the Consultant any defects in the work of such Other Contractor as may interfere with the proper execution of the Work. Should the Contractor fail to so inspect and report, it shall have no claim against the University by reason of the defective or unfinished work of any Other Contractor except as to latent defects not reasonably noticeable at the time of the commencement of the portion of the Work so affected.

6.0 PERFORMANCE

6.1 The Contractor shall have complete control and responsibility, subject to GC 7, of its organization as to construction means, methods, techniques, sequences or procedures, safety precautions, other regulations and general construction practice. Although the Consultant may consent to special methods of performing the Work, the Contractor will not be relieved of its responsibility for the result. The Consultant's permission to use such special methods shall not constitute grounds for claims by the Contractor for any Change in the Work.

6.2 The Contractor accepts the Work Site and acknowledges that it has investigated and satisfied itself as to:

6.2.1 the nature of the Work;

6.2.2 the location of, and subject to GC 9.8, all conditions relating to the Work Site including but not limited to accessibility, general character, surface utilities, roads, subsurface conditions, uncertainties of seasonal weather, including the effects of winter construction, and all other physical, topographical and geographical conditions;

6.2.3 the general character, quality, quantity and availability of Plant and Materials required to execute and complete the Work;

6.2.4 all environmental risks, conditions, Laws and restrictions that might affect the Work;

6.2.5 all labour conditions and administrative practices, including those relating to safety, prevailing at or applicable to the Work or Work Site; and

In addition, any failure by the Contractor to discover matters that affect or could affect the Work shall not relieve the Contractor from its obligations under the Agreement or otherwise affect the Contract Price.

6.3 The Contractor and the University shall co-operate fully with each other and Other Contractors and Suppliers, and all other parties with whom the Contractor and the University may be involved during the performance of the Work.

6.4 The Contractor agrees that it will:

6.4.1 efficiently and expeditiously perform all Work in a good and workman-like manner and in accordance with the Contract Documents;

6.4.2 exercise in its performance of the Work, that standard of care and skill normally exercised by Contractors performing this type of construction work;

6.4.3 perform the Work in a safe and environmentally sound manner and in compliance with applicable Law;

6.4.4 not perform activities of or related to the Work that cause, in the opinion of the University or the Consultant, undue noise or other disturbance.
6.4.5 not load or permit any part of the Work or any part of the University's structures to be loaded with a load greater than the loads for which the structure has been designed or in any other way that may endanger safety or the integrity of the part of the Work or any part of the University's structures.

6.5 The Contractor shall supervise its employees, Sub-Contractors, and Suppliers and inspect their work to ensure that such work and the Work conforms in each and every respect to the Contract Documents and to good and proper construction practices.

6.6 Neither acceptance of any part of the Work by the Consultant, by way of a certificate or otherwise, nor payment to the Contractor, shall relieve the Contractor from its responsibilities under the Contract Documents, whether pursuant to any of the warranties or guarantees expressed or implied herein, or otherwise.

6.7 The Contractor shall ensure that no activities or actions are undertaken in the performance of the Work by the Contractor, its Sub-Contractors or Suppliers, which would adversely affect, restrict or limit in any way, the continued operation of any part of the University's facilities or plant which are in operation. If the Contractor deems it necessary to affect the continued operation of the facilities or plant, it will advise the Consultant in writing, requesting approval to proceed with a minimum of 72 hours prior to the scheduled activity or action. The Contractor shall not proceed without written approval from the Consultant.

6.8 Prior to the Commencement Date the Contractor shall prepare a detailed Work Schedule consistent with the Milestone Dates and detailing, the sequence in which the Contractor intends to perform the Work and completion dates for all separate portions of the Work, manpower forecasts by trade or discipline, key Materials and Product procurement and delivery dates, and other relevant data and information required by the Contractor, acting reasonably, for the performance of all or any part of the Work required under the Contract Documents. The Contractor shall control the progress of the Work to achieve compliance with the Work Schedule.

6.9 The Contractor shall inspect and shall ensure that all Plant, temporary facilities and other items used in accomplishing the Work, whether purchased, rented or otherwise, provided by the Contractor, Sub-Contractors or Suppliers, are in a safe, environmentally sound and good condition, capable of performing the functions for which they are intended and used. If any Plant, temporary facilities or other items used is unsafe, environmentally unsound or incapable of doing the work for which it is intended, the Contractor shall repair or replace it with a safe, environmentally sound and capable Plant, temporary facility or other items at the Contractor's expense.

6.10 The Contractor shall record and report progress of all elements of the Work by a method and format that is acceptable to the Consultant. This record shall be open to the inspection of the Consultant and copies shall be furnished to the Consultant.

7.0 PERSONNEL

7.1 The Contractor shall provide sufficient personnel to enable timely and proper execution and completion of the Work. All such personnel shall be lawfully employable, competent, and qualified by education, training, and experience and in all other respects capable of carrying out the tasks to which each is assigned. At the University's request, the Contractor shall reassign, replace or remove personnel who, in the University's sole and unfettered discretion, do not meet the above requirements, or become intoxicated, intemperate, disorderly, incompetent, or negligent, or who have committed a violation of the University's regulations or procedures, including those related to safety and security. Such requests by the University shall not limit in any way the Contractor's responsibilities and obligations, pursuant to the Contract Documents or in Law.
7.2 The Contractors shall not make any changes to Key Personnel without the University’s written approval.

7.3 Pursuant to GC 7.1, at all times, in connection with the performance of the Work, the Contractor shall keep and employ at the Work Site a suitably qualified Contractor’s Superintendent who is skilled, fluent in the English language, experienced and competent, who shall be available at the Work Site at all times during the performance of the Work. The Superintendent shall represent the Contractor in its absence and any explanations, orders, instructions, directions, requests and notices given by the Consultant or the University to the Superintendent shall be held to be given to the Contractor. All verbal or written communications made by the Contractor’s Superintendent in the Contractor’s absence shall be binding on the Contractor.

7.4 If, during the performance of the Work, the Contractor’s Superintendent is required to leave the Work Site for a period of time such that the Contractor cannot reasonably oversee the progress of the Work, the Contractor shall notify the Consultant of the anticipated duration of the absence and shall appoint an acting Contractor’s Superintendent during the anticipated absence from the Work Site. The Superintendent shall, prior to leaving the Work Site, deliver or cause to be delivered to the Consultant the name of the person acting as Contractor’s Superintendent and shall not leave the Work Site prior to receiving approval from the Consultant.

8.0 SUB-CONTRACTORS AND ASSIGNMENTS

8.1 The Contractor shall provide in writing to the University, details in a form acceptable to the University, acting reasonably, of the Sub-Contractors and Suppliers that the Contractor intends to engage for the performance of the Work and any proposed changes to the Sub-Contractors and Suppliers that the Contractor intends to engage for the performance of the Work. The University may, for reasonable cause, object to the use of a proposed Sub-Contractor or Supplier and require the Contractor to obtain other Sub-Contractors or Suppliers. Any reviews or approvals by the University pursuant to the provisions of this GC 8 shall not release or relieve the Contractor of any of its obligations under the Contract Documents. The Contractor shall, to the extent applicable, require any Sub-Contractors or Suppliers to agree to be bound by the Contract Documents and to abide by the University’s requirements for safety and loss management.

8.2 The Contractor shall be fully responsible for any part of the Work performed by Sub-Contractors or Suppliers and for the acts or omissions of Sub-Contractors and Suppliers and all persons either directly or indirectly employed by them, to the same extent as the Contractor is for its own acts or omissions. Without in any way limiting the Contractor's obligations pursuant to the provisions of this GC 8 or elsewhere under the Contract Documents, the Contractor shall secure compliance with and enforce, at its own expense, for the benefit of the University, each of the contracts concluded by the Contractor with Sub-Contractors and Suppliers.

8.3 The Contractor shall not assign the Agreement or any part thereof without the prior written approval of the University, which approval may be arbitrarily withheld. The University may assign the Agreement including all rights and obligations hereunder, at any time without the prior agreement of the Contractor, provided that the assignee agrees to be bound by all of the provisions of the Contract Documents.

8.4 The Contractor shall request and use its best efforts to obtain for the benefit of the University, the best warranties and guarantees that it is possible to secure from its Sub-Contractors and Suppliers and as a minimum shall provide the warranties required by the Contract Documents. The Contractor shall enforce the warranty obligations of its Sub-Contractors and Suppliers. All contracts between the Contractor and its Sub-Contractors and Suppliers shall provide that warranties given by the Sub-Contractors or Suppliers shall be given to both the Contractor and the University and the warranties may be enforced by either the Contractor or the University.
8.5 Except as otherwise specified in GC 8.4, nothing in the Contract Documents shall create any contractual relationship between Sub-Contractor and the University.

9.0 CHANGES IN THE WORK

9.1 The University shall have the right, at any time, to make Changes in the Work through additions, deletions, modifications, or variations. The value of such Changes in the Work shall be taken into account in accordance with GC 10 in ascertaining the final amount of the Contract Price. All such Work shall be executed under the conditions of the Contract Documents. Subject to GC 19.2, no extension of the Contract Time or change to the Contract Price shall be made on account of Changes in the Work unless expressly provided for in a Change Order.

9.2 When a Change in the Work is proposed or required, the Consultant shall provide a Contemplated Change Notice to the Contractor describing the proposed Change in the Work.

9.3 The Contractor, upon receipt of a Contemplated Change Notice, shall promptly provide the Consultant with a Change Quotation which shall include a method of adjustment or an amount of adjustment to the Contract Price, if any, in accordance with GC 10 and the adjustment in the Contract Time, if any, for the proposed Change in the Work. The Contractor shall include in its Change Quotation all costs and changes in Contract Time, if any, reasonably expected to result from a Change in the Work including any impact costs or costs of acceleration.

9.4 The Contractor may, in writing, propose a Change in the Work by way of a Change Quotation.

9.5 The Consultant shall promptly following receipt of the Change Quotation review and recommend acceptance to the University or give the Contractor notice that the Change Quotation is not acceptable. If the Change Quotation is agreed to, then the Consultant shall immediately prepare a Change Order recording the Change in the Work, which shall be signed by the University and the Contractor. The value of Work performed, as a result of a Change Order shall be included in invoices for payment given in accordance with GC 20.

9.6 If, during the performance of the Work, the Contractor is of the opinion that any instruction, interpretation, decision or direction from the Consultant should have but has not resulted in a Contemplated Change Notice being issued, the Contractor shall within the earlier of:

9.6.1 commencement of the affected Work; or

9.6.2 seven (7) days of receipt of such instruction, interpretation, decision or direction

give the Consultant written notice with a Change Quotation requesting any adjustment in the Contract Price and Contract Time required whereby the Consultant will proceed in accordance with GC 9.4. Upon receipt of the Change Quotation, the Consultant shall promptly consider the Change Quotation and recommend acceptance to the University or advise the Contractor that the Contractor's request is denied. If the Contractor disputes the University's decision, the Contractor shall, before proceeding with the Work, provide notice to the Consultant disputing the University's decision, but shall promptly proceed to perform the Work. The Contractor shall keep daily records, signed daily by the Consultant, of the time, Materials and Plant employed in respect of the disputed Work. The Contractor's entitlement to an adjustment in the Contract Price and Contract Time shall then be resolved under GC 29. Under no circumstances shall the disputed Work result in an adjustment to the Contract Price or an extension to the Contract Time unless notice is provided in accordance with this GC 9.6.

9.7 No modification, additions, deletions or other revisions to the Contract Documents will be binding on either party unless set out in a Change Order. Neither the keeping of daily records in respect of disputed work nor the signing of those records by the Consultant shall be considered as an admission of entitlement to payment by the University but shall constitute a record of the time,
Materials and Plant employed in respect of the work for which the Contractor has given notice of a dispute.

9.8 Subject to GC 9.9, if the Contractor encounters actual subsurface or other latent physical conditions at the Work Site which are materially different from the conditions represented to exist in the Contract Documents, then the Contractor shall provide notice to the University within five (5) days of encountering the conditions and shall allow the University the opportunity for inspection before the conditions are further disturbed. The University will promptly investigate the conditions described by the Contractor and if, in the University's opinion, the actual conditions encountered by the Contractor at the Work Site differ materially from the conditions represented in the Contract Documents so as to substantially increase the cost to the Contractor or the time to perform the Work, then the University will issue a Change Order to cover the increased cost and changed time to perform the Work. The Contract Price or the Contract Time shall not be adjusted if notice is not provided in accordance with this GC 9.8.

9.9 Under no circumstances is the University liable for subsurface water or surface water conditions arising at the Work Site after the commencement of the Work.

9.10 No claim by the Contractor for additional payment, or for an extension to the Contract Time, on the basis of a Change in the Work shall be valid and enforceable against the University unless it is made pursuant to the provisions of this GC 9.

10.0 VALUATION OF CHANGES IN THE WORK

10.1 The valuation of Changes in the Work due to differences between actual measured quantities at the time of construction and the approximate estimated quantities shown in the Bid Forms shall be determined on the basis of the unit prices named in the Bid Forms, if applicable. No Change Order is required.

10.2 The valuation of Changes in the Work due to deletion of work within the scope of the Contract Documents or addition of work to the scope of the Contract Documents shall be determined by unit prices named in the Bid Forms, if applicable. A Change Order is required.

10.3 When there is a Change in the Work which is not covered by unit prices named in the Bid Forms, the valuation of such Change in the Work shall be determined:

10.3.1 by estimate, and acceptance by the University, in a lump sum, submitted with the Contractor's, Sub-Contractors' and Suppliers' signed quotations and breakdown estimates for material, equipment and labour. The Contractor shall apply a mark-up to a Suppliers quote in accordance with GC 10.3.2.2 and to a Sub-Contractors quote in accordance with GC 10.3.3.7;

10.3.2 at:

.1 the rates for the provision of labour and Plant named in the Bid Form; and

.2 the Contractor's cost plus fifteen percent (15%) for Material and Product F.O.B. the Work Site for Changes in the Work not exceeding a value of $5000 and twelve percent (12%) thereafter, as established by invoices; and

.3 a mark-up on rental plant applied in accordance with GC 10.3.3.4, GC 10.3.3.5 and GC 10.3.3.6; or,

10.3.3 on a Contractor's cost basis as follows:
.1 payroll cost of labour as defined on a fully burdened payroll schedule to be submitted and which shall include all overheads and premiums paid as direct wages and salaries for the hours worked, including workers' compensation, unemployment insurance, holiday pay, paid statutory holidays and other valid payroll burdens; plus

.2 where the Contractor or Sub-Contractors procure Materials and Product directly the Contractor’s or the Sub-Contractor's cost for Material and Product F.O.B. the Work Site, less trade discounts, as established by invoices; plus

.3 fifteen percent (15%) fee on the sum of items .1 and .2 for Changes in the Work not exceeding a value of $5000 and twelve percent (12%) thereafter for the Contractor or Sub-Contractor actually performing the work, to cover office and general overhead, use of small tools and profit. Overhead shall include all normal overhead costs such as supervision, insurance, small tools, office expense, permit fees, and bonding; plus

.4 the cost of rental of Plant for the hours worked, at locally-accepted rates for complete units including fuel, grease, maintenance and, unless the cost of such labour is included as an item under GC 10.3.2.1 or GC 10.3.3.1, operator, and all such other costs as are normal to an operating unit on the Work Site; plus

.5 a 10% mark-up on item .4 provided that the Contractor or Sub-Contractor does not own the Plant; plus

.6 valid transportation costs for Plant, specifically required for the Change in the Work, with no mark-up; plus

.7 if the Change in the Work is to be completed by a Sub-Contractor, or a Sub-Contractor of a Sub-Contractor, each subsequent Sub-Contractor or Contractor shall apply a five percent (5%) fee on the sum of items .1, .2 and .4 for the Change in the Work to cover office and general overhead.

The choice of valuation methods GC 10.3.1, 10.3.2, or 10.3.3, or a combination thereof, shall be made by the University in its sole and unfettered discretion.

10.4 When a valuation of a Change in the Work is completed in accordance with GC 10.3.2 or 10.3.3, the Contractor shall submit to the Consultant or the University designate if the Consultant is not available, an accounting for work done on the same day. The accounting shall include a listing of the hours of labour and Plant and a listing of the Material used. The Consultant shall, each day, check the Contractor's accounting and, if it is numerically correct, sign the three (3) copies and return one (1) signed copy to the Contractor. The Consultant’s signature shall not constitute an approval for payment. If, on any day, the Contractor fails to submit an account of the Change in the Work in accordance with this GC 10.4, the Consultant shall prepare the accounting, and this accounting shall be used as the basis of payment for that portion of the Change in the Work, and no payment will be made for any other amount subsequently claimed by the Contractor for that portion of the Change in the Work.

11.0 INSPECTION

11.1 At all times during the progress of the Work, the University or the Consultant shall have the right to inspect or witness any part of the Work, but such inspection or witnessing shall not be construed to be an acceptance of any such Work or as relieving the Contractor of its responsibilities pursuant to the Contract Documents.

11.2 The Contractor shall inspect and be solely responsible for the inspection of all workmanship, Materials and Product furnished by the Contractor, Sub-Contractors or Suppliers in respect of the Work, to ensure conformity in each and every respect to the requirements of the Contract.
Documents and the Law and to ensure that good and proper construction practices are followed and that the Work is performed in a safe and environmentally sound manner.

11.3 If the Law requires testing of any part of the Work, the Contractor shall provide the Consultant with sufficient advance notice of the arrangements for the test and shall provide the Consultant with two (2) copies of the results upon completion of the test.

11.4 If the Contract Documents require any test to be performed or witnessed by the Consultant, the Contractor shall provide the Consultant with sufficient advance notice of its readiness for the test and the Consultant will then promptly perform or witness the test. If the Consultant fails to witness the test when scheduled, any re-testing required by the Consultant shall constitute a Change in the Work. If any portion of the Work is closed or covered by the Contractor without the Consultant’s permission and before the Consultant has been given the opportunity to perform or witness a required test, then if requested by the Consultant, that portion of the Work will be opened or uncovered for testing and re-closed or re-covered, all at the Contractor’s expense.

11.5 Any Work which shall be tested will not be considered ready for inspection by the Consultant until the Contractor has satisfied itself and notified the Consultant, that in the Contractor’s opinion, that Work can successfully pass the test.

11.6 Work that has not been rejected specifically by the Consultant shall not be deemed accepted or approved by the Consultant.

12.0 PROTECTION OF THE WORK AND PROPERTY

12.1 The Contractor shall for the duration of the Contract Time or any extension thereto be fully and solely responsible for the protection of the Work and of all Plant, Materials, and Product delivered to the Work Site for incorporation into the Work and of all Materials, Plant, buildings or structures provided by the University for use in connection with the Work and all adjacent properties. If, during Contract Time or any extension thereto, any damage, loss, theft, or injury shall happen to the Work, Plant, Materials, Product, building or structures or adjacent structures or any part thereof, from any cause whatsoever, excepting damage which occurs as a result of errors in the Contract Documents or acts or omissions by the University, the Consultant, or Other Contractors, the Contractor shall at its own expense repair and make good said damages, loss, theft, or injury such that at its completion the Work is in accordance with the Contract Documents.

13.0 HEALTH AND SAFETY

13.1 Subject to the provisions of this GC, the Contractor shall have a valid Certificate of Recognition or a valid Temporary Letter of Certification issued by a Certifying Partner approved under the Partnerships in Health and Safety Program, Ministry of Employment, Immigration and Industry, Government of Alberta before commencement of Work, and shall maintain the validity of the Certificate of Recognition or Temporary Letter of Certification until receiving a Certificate of Total Performance for the Work. Notwithstanding the foregoing, where a valid Temporary Letter of Certification is issued instead of a Certificate of Recognition, the Contractor agrees that the Temporary Letter of Certification is only to be in place for a limited period of time and the Contractor shall deliver a copy of a Certificate of Recognition to Supply Management Services before the expiration date noted on the Temporary Letter of Certification. Failure to deliver a copy of a valid Certificate of Recognition to Supply Management Services prior to the expiration date noted on the Temporary Letter of Certification may constitute a default by the Contractor of the terms, conditions, covenants and obligations of the Contract Documents, which will entitle the University to pursue all rights and remedies it has under the General Conditions and at Law against the Contractor, including, without limitation, termination of the Agreement.

13.2 The Contractor shall assume the role of Prime Contractor for the purposes of the Occupational Health and Safety Act and its Regulations for the duration of the Contract Time or any extensions.
thereto and, pursuant to this role, the Contractor is to establish and maintain a system or process that ensures compliance with the Act at the Work Site. Accordingly, the system or process shall take into account, and encompass the employees and agents of the University, the Consultant, the Contractor, Sub-Contractors, Suppliers, Other Contractors and the general public.

13.3 Site access will be restricted and only personnel completing the safety orientation program, and following the proper sign-in procedure shall be allowed on site.

14.0 WORK AREA AND CLEAN UP

14.1 The University or the Consultant may designate space at the Work Site for the Contractor's working and storage areas. The Contractor shall be responsible for keeping these areas clean, orderly and secure and shall confine its apparatus, the storage of Materials and the activities of its workers, Sub-Contractors, and Suppliers to limits required by law, ordinances, permits, or directions of the University and shall not unreasonably encumber the Work with its Material or Plant. Should the Contractor require additional facilities or areas, the Contractor shall make all the necessary arrangements with the University or occupants of such other facilities and shall pay all rentals and all consequential, indirect or similar damages caused by such occupancy.

14.2 The University is not responsible for theft, loss or damage to the Contractor's Plant or Materials at the Work Site howsoever caused, except for the negligent act or omission of the University or those for whom in Law it is responsible.

14.3 During the performance of the Work, the Contractor shall comply fully with the University's safety and emergency regulations, guidelines, and publications regarding cleanup. The Contractor shall cleanup, remove and dispose of all surplus Materials, containers, trash and debris caused by the activities of it's workers, Sub-Contractors, or Suppliers. Upon completion of the Work, or earlier termination of the Agreement, the Contractor shall promptly clean up and remove all of its Plant and surplus Materials from the Work Site as specified by the University and shall leave the Work Site clean and restored to the original condition and ready for the University's use and occupancy. In the event of a dispute in this regard, the University may remove such debris, Plant, and surplus Materials and charge the cost of such removal to the Contractor as the Consultant shall determine to be just.

15.0 REJECTED WORK

15.1 Defective work which has been rejected by the Consultant as failing to conform to the intent of design as expressed in the Contract Documents whether the result of poor workmanship, use of defective Material or Product, or damage through carelessness or other act or omission of the Contractor, and whether incorporated in the Work or not, shall be removed promptly from the premises by the Contractor and replaced or re-executed promptly at the Contractor's expense. Work or property destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.

15.2 If, in the opinion of the Consultant or the University it is not expedient to correct defective Work or Work not done in accordance with the intent of design as expressed in the Contract Documents, the University may deduct from the Contract Price the difference in value between the Work as done and that called for by the Contract Documents. The difference shall be determined in the first instance by the Consultant.

16.0 UNIVERSITY OCCUPANCY

16.1 Should the University wish to use or occupy any portion of the Work, the Consultant shall inspect the portion of the Work so affected and give notice to the Contractor and the University of the suitability of the Work for occupancy. The Contractor shall not unreasonably deny the University the right to access, occupy or use the portion of the Work.
16.2 No payment made by the University relative to such partial or entire use or occupancy of the Work shall constitute an acceptance of any portion of the Work involved which is not in accordance with the requirements of the Contract Documents nor shall it relieve the Contractor of its obligations thereunder.

16.3 In the event that the University uses or occupies the Work or any part thereof prior to substantial completion the cost of electricity, heating, and water for any portions of the Work so used or occupied shall be borne by the University.

17.0 LIENS

17.1 Any lien or claim that may be filed or made on account of the Work performed or Materials supplied by Sub-Contractors or Suppliers of the Contractor, or on account of a lien filed by the Contractor shall be released and discharged by the Contractor and at the expense of the Contractor within thirty (30) days after filing. If the Contractor fails to release or obtain the release and discharge of any such lien or claim, then the University may, but shall not be obliged to, discharge, release or otherwise deal with the lien or claim, and the Contractor shall pay any and all costs and expenses incurred by the University in so releasing, discharging or otherwise dealing with the claim or lien. Any amounts so paid by the University shall be deducted from any amounts due the Contractor, or recovered by the University by any other means.

18.0 FORCE MAJEURE

18.1 "Event of Force Majeure" as used herein, means an event (including but not limited to acts of God, acts of war, terrorism, revolution, riot, insurrection and civil commotion, fires, floods, storms, slides, epidemics, quarantine restrictions, freight embargoes or power failure) which is a major disabling event or circumstance and which:

18.1.1 is beyond the reasonable control and without fault or negligence of the party relying on such occurrence;

18.1.2 could not have been prevented by reasonable precautions by the party relying on such occurrence; and

18.1.3 results in a material delay, interruption or failure by the affected party in carrying out its obligations under the Contract Documents,

provided however that neither lack of money, financing or credit, nor strikes or lockouts, including illegal work stoppages or slow downs, shall be deemed an Event of Force Majeure.

18.2 Either the University or Contractor may claim that an Event of Force Majeure has taken place, by giving the other party verbal notice within twenty-four (24) hours of the Event of Force Majeure, and written notice, together with a written proposed plan of corrective action to resolve or minimize the effect of the Event of Force Majeure, within forty-eight (48) hours of the Event of Force Majeure. Upon approval by the other party to the proposed plan, the parties shall implement the approved plan.

18.3 If the University has given notice of an Event of Force Majeure or agrees with the Contractor's notice that the Work or any portion thereof is affected as a result of an Event of Force Majeure, then the University shall do one of the following:

18.3.1 cause the Contractor to complete the Work, with such time adjustments as are required by the Event of Force Majeure and confirmed in accordance with GC 9; or

18.3.2 suspend the Work or any portion thereof in accordance with GC 23; or

18.3.3 terminate the Agreement or any portion thereof in accordance with GC 24.
18.4 If the Contractor has given notice of an Event of Force Majeure under GC 18.2 and the University does not agree that the Work or any portion thereof is affected as a result of an Event of Force Majeure, then the Contractor shall complete the Work and may request an adjustment to the Contract Price and Contract Time in the manner provided in GC 9.

18.5 Any delay or failure on the part of either the University or the Contractor, which is a result of an Event of Force Majeure, shall not constitute default hereunder or give rise to any claim for consequential, indirect or similar damages.

18.6 Except as otherwise expressly set forth in the Contract Documents and or agreed by both parties in writing, an Event of Force Majeure shall not result in any increase to the Contract Price.

19.0 DELAYS

19.1 If the Contractor is delayed in the performance of the Work by any act or omission of the University, the Consultant or Other Contractor or any employee of any one of them contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as may be necessary to allow the Contractor to make up the delay as the Consultant may decide, and the Contractor shall be reimbursed by the University for reasonable costs incurred by the Contractor as the result of such delay.

19.2 If the Contractor is delayed in the performance of the Work by an order issued by a court or other public authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Contractor, a Sub-Contractor, or a Supplier or any person employed or engaged by the Contractor, a Sub-Contractor, or a Supplier directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. The University shall reimburse the Contractor for reasonable costs incurred by the Contractor as the result of such delay.

19.3 No claim for delay and no extension of time on account of delay shall be considered unless notice with a Change Quotation is given by the Contractor to the Consultant not later than ten (10) days after the commencement of delay, providing however, that in the case of a continuing cause of delay only one notice of claim shall be necessary. Upon receipt of said Change Quotation, if any, the Consultant shall proceed in accordance with GC 9.

19.4 If, in accordance with the Contract Documents, no schedule is made under GC 6.8 of these General Conditions, no claim for delay shall be allowed on account of failure to furnish Drawings or instructions until fourteen (14) days after demand for such Drawings or instructions and not then unless such claim be reasonable.

20.0 PAYMENT

20.1 As full and complete compensation for performance of the Work, the University shall pay the Contractor the Contract Price in accordance with this GC 20.

20.2 Prior to the Commencement Date, the Contractor shall provide to the Consultant a “cash flow forecast”, which shall indicate the Contractor’s best estimate of construction progress claim amounts on a monthly basis.

20.3 The Contractor shall also, a minimum of fourteen (14) days before the first application for payment, submit to the Consultant a projected forecast of the construction progress claim amounts for the various parts of the Work (the “Schedule of Values”) with each part of the Work to include its proportionate share of cost, overhead and profit, for Consultant approval, aggregating the total amount of the Contract Price, divided so as to facilitate payments and
prepared in such form and supported by such evidence as to its accuracy as the Consultant may direct.

20.4 At the end of each month, or such other date as may be agreed upon between the Contractor and the University, the Contractor shall submit to the Consultant a Progress Claim for payment covering the percentage of Work performed to the end of the previous month. The Contractor’s claim shall be based on the Schedule of Values and shall include the following information:

20.4.1 total contract price for each item;

20.4.2 previous, current and total percentage complete for each item;

20.4.3 previous, current and total progress invoice amount for each item; and

20.4.4 Change Order monthly summary

20.4.5 supporting documentation as required by the University of all monies due to any or all Sub-Contractors;

20.5 Claims for Products delivered to the Work Site at any date but not yet incorporated into the Work shall be supported by such evidence as the Consultant and University may reasonably require establishing the value and delivery of the Products. The supporting evidence for such Products shall include:

20.5.1 the storage location and methods of protection which shall be subject to the approval of the University, acting reasonably;

20.5.2 evidence that individual Products are complete with respect to fabrication and/or manufacture.

20.6 Notwithstanding any other General Condition, the University may withhold from any amount claimed by or payable to the Contractor:

20.6.1 the full value of Products delivered to the place of Work but not yet incorporated into the Work which are found to be damaged, incomplete or missing and which were previously claimed for and for which payment was made;

20.6.2 the full value of any portion of the Work which is found to be not in accordance with the Contract Documents and which was previously claimed for and for which payment was made;

20.6.3 all overpayments relating to the Work for which payment was previously made.

20.7 The Consultant shall within ten (10) calendar days of receipt of the Contractor’s claim for payment, review the claim and issue a Certificate of Payment or advise the Contractor of the reasons that the claim or any portion of the claim is not certified for payment.

20.8 The University shall pay upon receipt of a Certificate of Payment or portions thereof within twenty (20) days of receipt of from the Consultant on the condition that:

20.8.1 there are no builders’ liens arising out of the Work; and

20.8.2 the Contractor has provided the University with a true statutory declaration in the form approved for use by the University.
20.9 The University shall retain from all payments due and payable to the Contractor hereunder the amount required according to the provisions of the Builders Lien Act of Alberta.

20.10 Except for work completed by a Sub-Contractor, monies retained pursuant to GC 20.9 shall not be forwarded to the Contractor until:

20.10.1 A minimum of forty-five (45) days from the date of the Certificate of Substantial Performance, or such other minimum period as required by the Builders Lien Act of Alberta;

20.10.2 the Contractor has removed all surplus Materials, Plant, and debris from the Work Site in accordance with GC 14.

20.10.3 the Consultant has issued the Certificate of Construction Completion;

20.10.4 the Contractor confirms in writing that there are no outstanding claims in respect of the Work for which notice has not been provided to the University in writing, and that there are no builders’ liens arising out of the Work registered against lands owned by the University or claims in respect of which rights to file builders’ liens arising out of the Work against lands owned by the University exist;

20.10.5 the Contractor has provided to the Consultant written clearance from the Workers’ Compensation Board.

The University may, in its sole and unfettered discretion, choose to release such monies, or a portion thereof, prior to the completion of any or all of the obligations set out in GC 20.10.2, GC 20.10.3, GC 20.10.4, or GC 20.10.5.

20.11 Monies retained pursuant to GC 20.9 for Work completed by a Sub-Contractor shall not be forwarded to the Contractor until:

20.11.1 A minimum of forty-five (45) days from the date of the Certificate of Substantial Performance, or such other minimum period as required by the Builders Lien Act of Alberta;

20.11.2 the Sub-Contractor has removed all surplus Materials, Plant, and debris from the Work Site in accordance with GC 14 and the Contractor confirms same;

20.11.3 the Contractor confirms in writing that there are no outstanding claims in respect of the Work for which notice has not been provided to the University in writing, and that there are no builders’ liens arising out of the Work registered against lands owned by the University or claims in respect of which rights to file builders’ liens arising out of the Work against lands owned by the University exist;

20.11.4 the Contractor has provided to the Consultant written clearance from the Workers’ Compensation Board.

The University may, in its sole and unfettered discretion, choose to release such monies, or a portion thereof, prior to the completion of any or all of the obligations set out in GC 20.11.2, GC 20.11.3 or GC 20.11.4.

20.12 Monies payable to the Contractor shall be payable by issuance of a cheque by the University made payable to the Contractor, and payment shall be mailed and delivered by Canada Post.

21.0 COMPLETION AND ACCEPTANCE
21.1 Concurrent with its submission of a Certificate of Substantial Performance, the Contractor shall submit to the Consultant a comprehensive list, in a form acceptable to the Consultant, acting reasonably, of items to be completed or corrected (the “Deficiency List”). Failure to include an item that has not been satisfactorily completed shall not relieve the Contractor of its obligations to complete the Work.

21.2 After the Contractor has completed all the Work and corrected all known deficiencies, it shall give the Consultant notice that the Work has been finally completed and provide to the Consultant the appropriate declaration, on a declaration form approved for use by the University. Within ten (10) days of receipt of that notice, the Consultant will either issue a Certificate of Construction Completion or give notice to the Contractor of the deficiencies to be remedied before a Certificate of Construction Completion can be issued. In the latter case, the foregoing procedure with respect to the deficiencies shall be repeated until the Consultant issues the Certificate of Construction Completion. Notwithstanding the foregoing, the Consultant’s issuance of the Certificate of Construction Completion shall not relieve the Contractor of any of its obligations under the Contract Documents, or otherwise.

21.3 The Consultant shall not issue a Certificate of Construction Completion until the Contractor has fulfilled all of its obligations as set out in the Contract Documents including, but not limited to, the Contractor’s obligations with respect to commissioning, training of the University employees including completion of required training seminars, if any, provision of as-built drawings, issuance of applicable certificates or permits for all utilities or any other certificates or permits required for the University to take possession of and use the completed Work, and provision of operating and maintenance manuals.

22.0 TAXES, DUTIES, PERMITS, AND APPLICABLE LAWS

22.1 The Contractor shall be responsible for the payment of:

22.1.1 all taxes imposed by reason of the performance or completion of the Work including but not limited to license and registration fees and the Contractor's income, profit, franchise, business, and personal property taxes;

22.1.2 all employment taxes and contributions imposed by Law or required to be paid on behalf of the employees of the Contractor, Sub-Contractors or Suppliers, 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

22.1.3 all duties and sales tax owing with respect to any labour, Materials, and Plant supplied by the Contractor for use in the performance of or to be incorporated into the Work, except for goods and services tax payable by the University with respect to payments due to the Contractor. It is the responsibility of the Contractor to minimize costs where possible, by taking advantage of any applicable Canada Customs and Revenue Agency duties relief programs.

22.2 Any increase in taxes and charges described in GC 22.1.1 and GC 22.1.2 shall be the sole responsibility of the Contractor. In the event of a change in taxes or charges described in GC 22.1.3, a Change Order shall be issued changing the Contract Price to account for the difference between the amount of tax that would have been payable by the Contractor as of the date of the close of tender and the actual amount of tax that becomes payable as a result of the change in the tax.

22.3 The Contract Documents are governed and construed in accordance with the Laws of the Province of Alberta and the parties attorn to the jurisdiction of the applicable Courts of the Province of Alberta.
22.4 The Contractor shall comply with and shall ensure that its employees and agents comply with and shall contractually require its Sub-Contractors and Suppliers and their respective employees and agents to comply with all applicable Laws in connection with the Work.

22.5 The Contractor shall obtain from governmental authorities or other third parties, and pay for those licenses, permits and approvals required by Law or by the Contract Documents for the Work, except those licenses, permits and approvals required with respect to the land-use aspects of the Work to be performed on the Work Site, and except for those licenses, permits and approvals to be obtained by the University as listed in the Supplementary General Conditions or elsewhere in the Contract Documents.

22.6 The Contractor shall comply with the Safety Codes Act of Alberta (covering building, electrical, elevator, fire, gas, plumbing and boiler & pressure vessel disciplines) and obtain the necessary permits and approvals as required. The University has “Accredited Corporation status” under this Act and administers the Safety Codes process in all buildings owned or leased by the University. The University shall pay any applicable fees directly to the University’s approved safety codes inspection agency.

22.7 The Contractor shall make the necessary inspection requests to satisfy the Safety Codes Act and adhere to the policies outlined within the University’s quality management plans for accredited status under the Safety Codes Act (covering building, electrical, elevator, fire, gas, plumbing and boiler & pressure vessels disciplines).

22.8 If the Contractor discovers any variance between the Law and any Materials purchased or supplied by the Contractor, Sub-Contractors or Suppliers, then the Contractor shall promptly notify the University before proceeding with the part of the Work affected, and shall make the necessary revisions to the Materials to comply with the Law, at the Contractor’s expense.

22.9 The Contractor is not required to obtain City of Edmonton development or building permits or have the City inspect the Work.

22.10 Without limiting the generality of GC 22.4, the Contractor shall at its own expense, comply with all Laws and regulations from time to time in force relating to the protection of the environment and to all Hazardous Material in or on University lands, buildings, premises or any part thereto. The Contractor is responsible for all of its own Hazardous Material to the extent that such Hazardous Material or the existence thereof results in fines or penalties, damages, costs or liabilities (including third party liabilities) being levied against that party.

23.0 SUSPENSION OF THE WORK

23.1 In addition to any other rights that the University may have hereunder or in Law, the University may in the exercise of its sole and unfettered discretion, at any time or times, by notice to the Contractor specifying the effective date of the suspension, require the Contractor to suspend the Work or any portion thereof (the “Suspended Work”). Upon receiving notice, the Contractor shall:

23.1.1 discontinue the Suspended Work, except for those activities necessary for the care and preservation of the portions of the Work;

23.1.2 place no further purchase orders or subcontracts with respect to the Suspended Work;

23.1.3 promptly make reasonable efforts to obtain suspension terms satisfactory to the University with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the Suspended Work;

23.1.4 continue to perform all work which is not Suspended Work; and
23.1.5 not remove from the Work Site any part of the Work or any Material, Product, or Plant without the written approval of the University.

23.2 The University may at any time authorize resumption of the Suspended Work or any part thereof, by giving the Contractor reasonable notice specifying the part of the Suspended Work to be resumed and the effective date of such resumption. The Contractor shall resume the Suspended Work on the date and to the extent specified in the notice provided that if the date for resumption is more than thirty (30) days after the date of suspension, or as otherwise specified by the University, acting reasonably, in the notice to suspend the Work, the Contractor may, by Change Quotation, given within five (5) days of receipt of the notice of resumption, request a Change Order in the manner provided in GC 21 deleting the Suspended Work from the Work and adjusting the Contract Price and Contract Time on account of the suspension and deletion of the Suspended Work. In the event of a Change Quotation issued by the Contractor in accordance with this GC 23.2, the Contractor shall not be entitled to any compensation for loss of profit, if any, due to the deletion of the Suspended Work.

23.3 The Contractor shall use its employees, Plant and Materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the Suspended Work. During the period of suspension of the Work, the Contractor shall secure and protect the Suspended Work and all Materials and Product to be used or incorporated therein.

23.4 The University shall issue a Change Order to reimburse the Contractor for those direct costs reasonably incurred by the Contractor as a result of the Suspended Work. Under no circumstances shall the University be liable for any consequential, indirect or similar damages or loss of profits on account thereof.

24.0 UNIVERSITY’S RIGHT TO TERMINATE THE AGREEMENT OR THE CONTRACTOR’S RIGHT TO DO THE WORK

24.1 In addition to any other rights that the University may have hereunder, or in Law, the University may at any time, in the exercise of its sole and unfettered discretion, terminate the Contractor’s right to perform the Work, or any portion thereof, or the Agreement by giving notice to the Contractor specifying the Work or portion thereof to be terminated and the effective date of the termination. Upon receipt of such notice, the Contractor shall:

24.1.1 discontinue the Work in accordance with the notice;

24.1.2 continue to perform all portions of the Work not terminated, if any, in accordance with the Contract Documents including, as applicable, the placing of orders for Materials, manpower, facilities, Plant and supplies;

24.1.3 make all reasonable effort to obtain cancellation of all existing orders and subcontracts on terms satisfactory to the University; and

24.1.4 take whatever other steps may be reasonable to minimize the costs associated with the termination of the Work.

24.2 Except in the event that the Contractor’s right to perform the Work or the Agreement is terminated in accordance with GC 18, 24.3 or 24.4, the University shall reimburse the Contractor for those costs reasonably incurred by the Contractor as a direct result of the termination. In this regard, the Contractor shall submit a termination settlement proposal to the University for consideration within thirty (30) days of the date of the notice of termination and shall maintain full and complete records of all cancellation and termination charges and shall make such records available on request to audit and inspection by the University or the Consultant and shall allow the University or Consultant to make copies of and to take extracts from any or all of the records and related
material and to furnish the University or the Consultant with any information it may require from time to time in connection with such records and material.

24.3 Not so as to limit the generality of GC 24.1, the University may in its sole and unfettered discretion terminate the Contractor’s right to perform the Work, or any portion thereof, or the Agreement by notice to the Contractor or, if applicable, receiver or trustee in bankruptcy, in any of the following circumstances:

24.3.1 if the Contractor becomes insolvent or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the Contractor;

24.3.2 if an order is made or resolution is passed for the winding up or liquidation of the Contractor;

24.3.3 if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the Contractor or any of the Contractor’s property;

24.3.4 if the Contractor ceases to carry on in the ordinary course of business;

24.3.5 if an encumbrancer takes possession of any of the Contractor’s property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the Contractor; or

24.3.6 if the Contractor fails or refuses at any time to comply with the provisions of GC 11, GC 32.2, or GC 22.

Upon receipt of such notice, the Contractor or receiver or trustee in bankruptcy shall discontinue the Work in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs to the University associated with the termination of the Work. The University shall not be liable for those costs incurred by the Contractor as a result of the termination of the Work pursuant to this GC 24.3.

24.4 If the Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of the Contract Documents, or has made a false representation, declaration, or warranty, the University may give the Contractor notice of default. Except as otherwise specified in GC 24.3, the Contractor shall have five (5) days following receipt of the notice or such longer time as the University has specified in the notice of default within which to rectify the default. If the Contractor fails to rectify the default in the time required the University may by further notice in writing to the Contractor terminate the whole or any part of the Agreement or the Contractor’s right to perform the Work, or any part thereof. In the case of any default which would reasonably require more than the time allowed to rectify the default the Contractor shall be deemed to have rectified the default if within the allowed time it has submitted to the University a schedule for rectification of the default which the University has accepted and it has commenced rectification and thereafter promptly and diligently and continuously proceeded with the rectification of the default, in accordance with the approved schedule. Upon notice of termination, the Contractor shall discontinue the Work in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the University associated with the termination of the Work. The University shall not be liable for those costs incurred by the Contractor as a result of the termination of the Work pursuant to this GC 24.4.

24.5 In the event the Agreement or the Contractor’s right to perform the Work, or any portion thereof, is terminated, the University may complete or have others complete the Work.

24.6 If the Contractor’s right to perform the Work or the Agreement is terminated pursuant to GC 24.3 or GC 24.4, the University:
24.6.1 shall, subject to GC 20.9, pay the Contractor for all Work satisfactorily performed to the date of termination, less the sum of all monies already paid to the Contractor and all costs the University shall pay in excess of the Contract Price to obtain satisfactory completion of the Work by others. If the costs the University shall pay in excess of the Contract Price exceeds the sum of all monies owed by the University to the Contractor for work satisfactorily performed less the sum of monies already paid, the Contractor shall pay said costs to the University immediately on demand;

24.6.2 may on expiry of the Warranty Period charge the Contractor the amount by which the cost of corrections to its Work under GC 30 exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, the University shall pay the Contractor the difference;

24.6.3 may at its discretion exercise the provisions of any surety bonding or other instrument that have been provided in accordance with the Contract Documents;

24.6.4 is entitled to take possession of the Work, Products, Materials, and to utilize the Plant at the Work Site subject to the rights of third parties, and finish the Work by whatever method the University may consider expedient, but without undue delay or expense;

24.6.5 is entitled to pursue all other rights and remedies which it may have at Law against the Contractor.

24.7 Upon termination of the Agreement or the Contractor’s right to perform the Work or any part thereof, the Contractor shall:

24.7.1 turn over to the University all work performed prior to the date of termination including Materials and Product that the University has paid for and being within the Work, or part of the Work, identified in the aforesaid notice as terminated;

24.7.2 properly protect and secure all property at the Work Site;

24.7.3 provide the University with all operating manuals, quality control documentation, as-built drawings and other documents all as related to the terminated Work or part thereof;

24.7.4 execute and deliver to the University all other documents required by the University; and

24.7.5 take all steps required by the University, to fully vest in the University all right, title and interest of the Contractor under existing agreements with the Contractor, Sub-Contractors and Suppliers, which are related to the Work.

24.8 Notwithstanding GC 24.2, the University shall not be liable for any penalties, consequential, indirect, or similar damages or loss on account of anticipated profits as a result of the termination of the Contractor’s right to perform the Work or the Agreement by the University. The rights and remedies provided in this GC 24 are in addition to the rights and remedies provided by Law, or under any other provision of the Contract Documents.

24.9 The Contractor’s obligations under the Contract Documents as to quality, correction and warranty of the Work performed by it up to the time of termination of its right to perform the Work or of the Agreement shall continue in force after such termination.

24.10 Any disagreements between the parties to the Contract Documents arising here from and which are not resolved by negotiation or interpretation of the Consultant shall be resolved in accordance with the provisions of GC 29.
25.0 CONTRACTOR'S RIGHT TO TERMINATE THE AGREEMENT

25.1 If the University fails to make a payment to the Contractor when due and payable pursuant to the Contract Documents, the Contractor may give the University notice of default. If the University fails to rectify the default within five (5) days, or is not contesting the Contractor's entitlement to payment in good faith, then the Contractor may suspend the further performance of the Work, without prejudice to all other rights and remedies it may have at Law. In the event that the University remains in default of payment for a further period of fourteen (14) days after suspension of the Work by the Contractor, the Contractor may terminate the Agreement, without prejudice to all other rights and remedies it may have at Law. The University shall be liable for and pay to the Contractor all amounts on account of Work satisfactorily performed to the date of suspension under this GC 25.2.

25.2 If an Event of Force Majeure exists and continues for a period in excess of sixty (60) days and results in substantially all of the Work being stopped or suspended during that period, the Contractor may terminate the Agreement and the University shall be liable for and pay to the Contractor all amounts on account of Work satisfactorily performed to the date of suspension under this GC 25.3.

25.3 The Contractor's obligations under the Contract Documents as to quality, correction and warranty of the Work performed by it up to the time of suspension of the Work or termination of the Agreement shall continue in force after such termination.

26.0 WORKERS' COMPENSATION

26.1 The Contractor and Sub-Contractors shall have proof of an account in good standing with the Workers' Compensation Board (Alberta) and such accounts shall remain in good standing for the duration of the Contract Time. Coverage shall include all employees of the Contractor and Sub-Contractor as well as Personal Coverage for any employers, proprietors, partners and directors performing work at the University.

26.2 Prior to the Commencement Date, and at any time thereafter at the University's request, the Contractor shall arrange to have the Workers' Compensation Board of Alberta send a clearance letter to the University, verifying that all required assessments and contributions have been paid, or other confirmation that coverage has been obtained by the Contractor.

27.0 INSURANCE

27.1 Insurance for the Work under the Agreement shall be provided by the Contractor and the University. The Contractor shall provide all the insurance coverage as required in GC 27.2 and in compliance with GC 27.2.7 through 27.2.15. The University, through its Owner Controlled Insurance Program and its regular Insurance Programs, shall provide all the insurance coverage required in GC 27.3 and in compliance with GC 27.3.7 through 27.3.10.4

27.2 Insurance to be provided by the Contractor

Without restricting the generality of GC 28, the Contractor shall provide continuously, maintain and pay for insurance coverage as set forth in this GC 27.2 to include the following:

27.2.1 Commercial General Liability Insurance with limits of liability not less than Five Million Dollars ($5,000,000) per occurrence with an annual aggregate of not less than Five Million Dollars ($5,000,000) or as otherwise specifically stated in the Supplementary General Conditions for personal injury, bodily injury, death and damage to property of the University or others including loss of use thereof and including liability arising from consequential loss. This insurance shall include coverage for the following:
.1 coverage for claims to existing structures(s);
.2 cross liability and severability of interest as between the University, the Consultants, Contractor and Sub-Contractors;
.3 broad form property damage;
.4 broad form completed operations;
.5 elevator liability;
.6 University’s and Contractors’ protective;
.7 products and completed operations contractual liability;
.8 blanket contractual liability;
.9 non-owned automobile liability including contractual liability;
.10 contingent employer’s liability;

and where required to complete the Work:

.11 hook liability (crane equipment and/or lift equipment);
.12 use of explosives
.13 pile driving, caisson work, shoring, and under-pinning and other underground exposures

This insurance shall include the University, its officers, directors, employees, consultants, subcontractors and agents, and the Consultants as additional insured.

This insurance shall be maintained continuously from commencement of the Work until issuance of the Certificate of Total Performance and with respect to completed operations coverage for a period of not less than Twenty-Four (24) months from the date of receipt by the University of the Certificate of Total Performance.

This insurance shall be secondary insurance to the Wrap-Up Liability insurance as described in GC 27.3.1 of this Agreement

**Hook Liability:** If Hook Liability coverage is not provided under the Contractor’s general liability insurance and this type of equipment is required to complete the Work, then a separate insurance policy must be purchased to provide this coverage. Alternatively the Contractor for the purposes of this Agreement may a) self-insure this coverage under their self-insured program or b) obtain the coverage for third party liability from the company providing the equipment to be used for the Work. If Hook Liability coverage is provided by the equipment company and not the Contractor, the Contractor will endeavour where possible to have this insurance include the University, its officers, directors, employees, consultants, and agents, the Consultants, Contractor and Sub-Contractors as additional insureds.

Should additional coverage limits be required, the cost for this increased coverage will be paid for by the University.

**27.2.2 Automobile Liability Insurance** in respect of licensed vehicles with limits of not less than Two Million Dollars ($2,000,000) inclusive per occurrence for bodily injury, death and damage to property, providing third party liability and accident benefits Insurance and covering licensed vehicles owned, leased or operated by or on behalf of the Contractor.

**27.2.3 Equipment Floater coverage** insuring against physical damage or loss to equipment, tools, and property owned, leased, rented or borrowed by the Contractor and/or the Contractor’s Sub-Contractors which will be used to perform the Work. The insured equipment shall include without limitation:

.1 Mobile equipment;
.2 Hand tools;
.3 Office/storage trailers; and
.4 Other tools

This policy shall waive all rights of subrogation against the University, its officers, directors, employees, consultants, and agents. This insurance shall be maintained continuously from commencement of the Work until ten (10) days after receipt of the Certificate of Construction Completion from the Contractor.

This insurance shall be primary insurance to the All Risks Course of Construction insurance provide by the University as described in GC 27.3.2 of this Agreement.

Property purchased by the University and/or the Contractor which becomes part of the Work will be insured under the insurance (primary coverage) provided by the University in GC 27.3.1.

The Contractor will endeavour where possible to have this insurance include the University, its officers, directors, employees, consultants, subcontractors and agents as additional insureds.

27.2.4 **Employer's Liability Insurance** (separate coverage required if not provided as part of GC 25) as may be required by the provisions of law or otherwise deemed reasonably necessary in an amount sufficient to provide indemnification against any and all claims. This insurance shall include the University, its officers, directors, employees, consultants, and agents as additional insureds.

27.2.5 **Contractor's Pollution Liability Insurance** with the University, its officers, directors, employees, consultants, and agents, the Consultant, the Contractor and Sub-Contractors added as additional insureds insuring against bodily injury, property damage, and environmental cleanup costs for pollution conditions arising from the Contractor's operations in performing the Work in an amount not less than Two Million Dollars ($2,000,000) per occurrence. The insurance shall include cross-liability and severability of interests' provisions. This insurance shall be maintained continuously from commencement of the Work until receipt of the Certificate of Total Completion from the Contractor or for one (1) year following Certificate of Total Completion if the coverage provided is on a "claims made" basis.

The Contractor shall ensure that all insurance coverage required in GC 27.2 is in compliance with the following Articles: 27.2.7 through to 27.2.15.

27.2.6 **Licensed Insurers:** All insurance policies required herein shall be placed with insurance companies licensed to insure risks in the Province of Alberta and acceptable to the University (acceptance shall not be unreasonably withheld). The Contractor will ensure that all of the insurance policies shall contain a provision that coverage will not be cancelled or materially changed by the insurers without providing Thirty (30) days prior written notice to the University.

27.2.7 **Proof of Insurance - Certificate(s) of Insurance:** Contractor shall provide the University with proof of insurance, by having their insurers complete the University's standard forms Certificate of Insurance (the "Certificate of Insurance"), prior to the commencement of the Work, at renewal of any insurance coverage at any point in time of the project and from time to time as may be requested during the progress of the Work. If so requested by the University (acting reasonably) the Contractor shall also provide a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of such insurance.

27.2.8 **Hook Liability:** As per GC 27.2.1.11, if hook liability (crane and/or lift equipment) is
required to complete the Work, proof of insurance coverage under the requested commercial general liability insurance must be listed on the Certificate of Insurance. If a separate insurance policy must be purchased, evidence of the coverage must be provided on a separate Certificate of Insurance. If this coverage is self insured by the Contractor, the Contractor shall advise the University in writing that this coverage is being self-insured. If the insurance is provided as part of the lease agreement for the rental of the equipment, the Contractor must obtain a certificate of insurance from the owner of the equipment evidencing their coverage.

27.2.9 **Deductible Amounts:** The Contractor shall identify on the University's forms of Certificate of Insurance the deductible amount for each of the forms of coverage for which it is responsible. The University may request (acting reasonably) a change in the deductible amount and the Contractor will obtain from their insurer, a notice of any resulting change in premium amounts which a) may be payable to, and submit by the Contractor for reimbursement to the Contractor by the University or b) the Contractor will reimburse the University for any refunded premium for the Work for which the University has paid through this Agreement.

27.2.10 **Failure to Provide:** If the Contractor fails in anyway to provide the required insurance coverage as specified in GC 27.2, then, in addition to its other remedies, the University shall have the right acting reasonably, at its option, to provide and maintain insurance as described herein and give evidence thereof to the Contractor. The cost thereof shall be payable by the Contractor to the University on demand or the University may deduct the costs thereof from monies which are due or may become due to the Contractor. Deductibles shall remain as stipulated in the Certificate of Insurance and shall be borne by the Contractor in the event of a claim.

27.2.11 **Change in Insurance Requirements:** If the University desires that the Contractor obtain further or increased insurance against any risk beyond the coverage provided by the aforesaid policies, the Contractor shall, at the University’s expense, obtain such insurance.

27.2.12 **Coverage in Place:** The Contractor shall ensure that any and all Consultants, the Contractor or Sub-Contractors engaged in the Work will maintain coverage to the same extent as outlined in GC 27.2 as applicable and appropriate to the Work they will perform.

27.2.13 **Claims Management and Settlement:**

.1 **Incident / Accident Reporting:** The Contractor shall provide information to the University of any incidents and/or accidents which could potentially result in litigation or an insurance claim under the insurance policies required to be purchased by the Contractor and the University respectively provided by GC 27.2 and GC 27.3. Details on the University’s reporting process will be made available to the Contractor at the commencement of the project. The Contractor will ensure that this reporting process is followed by all their employees, the Contractor and Sub-Contractors and their respective employees.

.2 **Settlement:** The insurance policies shall provide that, in the event of a loss or damage, payment shall be made to the University, the Consultant, and/or the Contractor, and/or the Contractor’s Sub-Contractors and/or third parties as their respective interests may appear.

.3 **Acting on Behalf:** The Contractor shall act on behalf of the University and itself for the purpose of settlement of such loss or damage payment with their Insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and the obligations
of either party under the Contract Documents except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as may be decided. The Contractor in the settlement of any claim will not accept or admit liability by or on behalf of the University without the written consent of the University (consent may be withheld for any reason).

.4 **Deductible Amounts:** Notwithstanding anything else in this Agreement, in the event of a loss covered by any of the insurance policies required in Section GC 27.2 the University shall not be responsible for the costs of any insurance deductible.

**27.2.14 Coverage of Others:** The Contractor will ensure that any and all Consultants, the Contractor and Sub-Contractors engaged in the Work shall maintain coverage to the same extent as outlined in GC 27.2 as it pertains to the Work to be performed by the Consultants, the Contractor and/or Sub-Contractors.

**27.3 Insurance To Be Provided By The University**

Without restricting the generality of GC 28, the University, through its Owners Controlled Insurance Program and its regular Insurance Programs, shall provide, continuously maintain and pay for insurance coverage as set forth in this GC 27.3 and in compliance with GC 27.3.7 through to 27.3.10.4 to include the following:

**27.3.1 Wrap-Up Liability Insurance** with limits of liability on a per occurrence basis in amounts conducive to the type and size of the project for bodily injury, death, and damage to property of the University or others including loss of use thereof and including liability arising from consequential loss. This insurance coverage shall also include coverage for the following:

.1 coverage for claims to existing structures(s);
.2 cross liability and severability of interest as between the University, the Consultants, the Contractor and Sub-Contractors;
.3 broad form property damage;
.4 broad form completed operations;
.5 elevator liability;
.6 University’s and Contractors’ protective;
.7 products and completed operations contractual liability;
.8 blanket contractual liability;
.9 non-owned automobile liability including contractual liability;
.10 contingent employer’s liability;
and where required to complete the Work:

.11 use of explosives
.12 pile driving, caisson work, shoring, and under-pinning and other underground exposures

This insurance shall include the University, its officers, directors, employees, consultants, and agents, the Consultants, the Contractor and Sub-Contractors as named insured.

This insurance shall be maintained continuously from commencement of the Work until issuance of the Certificate of Total Performance and with respect to completed operations coverage for a period of not less than twenty-four (24) months from the date of receipt by the University of the Certificate of Total Performance.

This insurance shall be primary insurance to the insurance as described in GC 27.2.1 of this Agreement
27.3.2 **All Risks Course of Construction or Builders Risk Insurance** with the University, its officers, directors, employees, consultants, and agents, the Consultant, the Contractor, and Sub-Contractors added as named insured’s insuring not less than the amount of the Contract Price and the full value of Products that are specified to be provided by the University for incorporation into the Work. This insurance shall be maintained continuously from commencement of the Work until Ten (10) days after receipt of the Certificate of Construction Completion from the Consultant.

27.3.3 **General Liability Insurance** with limits of liability not less than Ten Million Dollars ($10,000,000) per occurrence or as otherwise specifically stated in the Supplementary General Conditions for personal injury, bodily injury, death, and damage to property of the University or others including loss of use thereof and including liability arising from consequential loss. This insurance shall include coverage for the following: broad form property damage, products and completed operations, and contractual liability. This insurance shall be maintained continuously from commencement of the Work until receipt of the Certificate of Total Performance from the Contractor.

27.3.4 **Automobile Liability Insurance** in respect of licensed vehicles with limits of not less than Five Million Dollars ($5,000,000) inclusive per occurrence for bodily injury, death and damage to property, providing third party liability and accident benefits Insurance and covering licensed vehicles owned, leased or rented by the University for which it is responsible at law.

27.3.5 **Boiler and Machinery Insurance** insuring the interests of the University for not less than the full replacement value of boilers and pressure vessels forming part of the Work with such insurance maintained continuously from commencement of use or operation of the property insured until receipt of the Certificate of Construction Completion from the Contractor. If Boiler and Machinery insurance form part of the coverage provided under GC 27.3.2, a separate insurance is not required.

27.3.6 **Property Insurance** to provide coverage for any property used by the University that is not covered under GC 27.3.2 during the course of the Work to the replacement value of the property.

The University shall ensure that all insurance coverage required in GC 27.3 is in compliance with GC 27.3.7 through to GC 27.3.10.4.

27.3.7 **Licensed Insurers:** All policies required herein shall be placed with insurance companies licensed to insure risks in the Province of Alberta. The insurance policies shall contain a provision that coverage will not be cancelled or materially changed by the insurers without Thirty (30) days prior written notice to the Contractor.

27.3.8 **Proof of Insurance - Certificate(s) of Insurance:** University shall provide the Contractor with proof of insurance by providing a Certificate(s) of Insurance prior to the commencement of the Work, at renewal of any insurance coverage at any point in time of the project and from time to time as may be requested during the progress of the Work. If so requested by the Contractor the University (acting reasonably) shall also provide a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of such insurance.

27.3.9 **Deductible Amounts:** The University shall identify on the Certificate of Insurance the deductible amount for each of the forms of coverage.

27.3.10 **Claims Settlement:**

.1 The University shall provide information to the Contractor of any incidents and/or
accidents which could potentially result in litigation or an insurance claim under the insurance policies required to be purchased by the Contractor and the University respectively provided by GC 27.2 and GC 27.3.

.2 The insurance policies shall provide that, in the event of a loss or damage, payment shall be made to the University, the Contractor and/or Sub-Contractors and/or third parties as their respective interests may appear.

.3 The University acting on behalf of the Contractor and itself for the purpose of settlement of such loss or damage shall assist the insurers and insurance adjustors in mitigating any insurance claim adjusting the amount of such loss or damage payment with the Insurers under this section GC 27.3 only. When the extent of the loss or damage is determined and the insurers have agreed, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and the obligations of either party under the Contract Documents except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as may be decided. The University in the settlement of any claim will not accept or admit liability by or on behalf of the Contractor without the written consent of the Contractor.

.4 Notwithstanding anything else in this Agreement in the event of a loss covered by the insurance policies required in Sections GC 27.3.1, GC 27.3.2, and GC 27.3.5, the Contractor will be responsible to pay for any amount up to and including the full amount for the insurance deductible of those policies in the event of an insured loss.

28.0 INDEMNIFICATION

28.1 The Contractor shall:

28.1.1 be liable to the University for,

28.1.2 indemnify and hold harmless the University, its officers, directors, employees, consultants and agents from and against:

any and all liabilities, claims, suits or actions, costs, damages and expenses (including, without limitations, costs as between a solicitor and his own client) which may be brought or made against the University, its officers, directors, employees, consultants and agents or which the University may pay or incur as a result of or in connection with:

.1 any acts or omissions in connection with the performance, purported performance, or non-performance of the requirements of the Contract Documents, the Contractor’s Prepared Documents or of the Work by the Contractor, the Contractor, the Consultants, Sub-Contractors, Suppliers or their respective employees or agents;

.2 any acts or omissions of the University, the Consultants, Contractor or Sub-Contractors or their respective employees or agents or in connection with such act or omissions, while acting under the direction or control of the Contractor, Consultants, Contractors, Sub-Contractors, Suppliers or their respective employees or agents unless caused by the gross negligence of the University.

.3 any breach or violation of any covenant, condition or agreement set forth in the Contract Documents and required to be performed by the Contractor, the Contractor, Consultants, Sub-Contractors, Suppliers or their respective employees or agents.

provided always however that this indemnity shall not apply with respect to liabilities, claims, suits or actions, costs, damages and expenses occasioned by the gross negligence of the University.
This indemnity shall survive the expiry or earlier termination of this Agreement.

28.2 Notwithstanding any thing to the contrary expressed or implied in this Agreement, the University shall not be liable to the Contractor, Contractor, Consultants, Sub-Contractors or any other party for any general, indirect or consequential damages or any economic losses of any kind, regardless of whether the liability to which such damages relate arises in contract, tort or otherwise in Law. The University will be liable to the Contractor in situations where such damages as described in this clause are a result of or caused by the gross negligence of the University.

29.0 DISPUTE RESOLUTION

29.1 The parties shall make all reasonable efforts to resolve all disputes and claims by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate these negotiations. Notwithstanding the dispute resolution procedures set out herein, the parties may, at any point in the dispute resolution process, resolve any dispute through negotiation.

29.2 Should either the Contractor or the University dispute the written interpretation or determination made by the Consultant in the first instance in accordance with GC 3.2, or in the event of differences between the parties as to the interpretation, application, or administration of the Contract Documents, or in the event of a failure to agree where agreement between the parties is called for, then, within six (6) days of the parties receiving the Consultant’s decision in the first instance or of the parties acknowledging the existence of a difference or failure to agree, either party may submit to the Consultant a written notice of the dispute. Such notice shall set forth particulars of the matter in dispute, the probable extent and cost of the problem and the relevant provisions of the Contract Documents.

29.3 As soon as reasonably possible after receipt of a notice of a dispute, the Consultant shall give such instructions as in its opinion are necessary for the proper performance of the Work and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that no act by either party shall be construed as a renunciation or waiver of any of its rights or recourse.

29.4 The claimant shall forward the written dispute notice to the other party concurrent with its submission to the Consultant. The other party shall reply to such notice in writing to the Consultant and the claimant no later than seven (7) days after it receives or is considered to have received it, setting out in such reply its grounds and other relevant provisions of the Contract Documents.

29.5 Any disputes, claims, or differences not settled as provided in GC 29.1 to 29.4 may, by the consent of both parties, be resolved through mediation. The procedural terms of the mediation shall, unless otherwise agreed to by the parties, be conducted in accordance with Alberta Arbitration and Mediation Society procedures for mediation provided, however, that in the event of any inconsistency between the Alberta Arbitration and Mediation Society procedures and the Contract Documents, the provisions of the Contract Documents shall prevail. The parties shall use reasonable efforts to complete the mediation within ten (10) days of the parties consenting to proceed with mediation.

29.6 Any disputes, claims, or differences not settled as provided in GC 29.1 to 29.5 may, by the consent of both parties, be resolved through arbitration in accordance with the Arbitration Act of Alberta. The arbitral tribunal shall be composed of one (1) arbitrator where the subject of the dispute, claim or difference relates primarily to whether work required to be performed is within the scope of the Work or whether the Contractor has met the requirements of the Contract Documents, and the Work has not yet been completed when the matter is referred to arbitration.
In all other cases the arbitral tribunal shall be composed of three (3) arbitrators, one appointed by each party within fourteen (14) days of the parties agreeing to proceed to arbitration, which two (2) arbitrators shall select a third (3rd) who shall act as chair. The decision of a majority of the arbitrators shall be final and binding upon the parties and all costs of the arbitration shall be apportioned between the parties or against either of them as the single arbitrator or a majority of the arbitrators may decide. All other procedural terms of the arbitration shall, unless otherwise agreed to by the parties, be conducted in accordance with the Alberta Arbitration and Mediation Society procedures for arbitration provided, however, that in the event of any inconsistency between the Alberta Arbitration and Mediation Society procedures and the Contract Documents, the provisions of the Contract Documents shall prevail.

29.7 If the parties are unable to settle any disputes, claims or differences after reasonable attempts to use the dispute resolution mechanisms contained in this GC 29, then either party may submit the dispute to such judicial tribunal as the circumstances may require.

30.0 WARRANTIES

30.1 The Contractor represents and warrants to the University that:

30.1.1 it has the experience, resources, personnel and capability to expeditiously and diligently perform the Work and its obligations under the Agreement;

30.1.2 it has all required permits, licenses and authorizations necessary to carry on its business and to be obtained by it to conduct the Work;

30.1.3 the title to any and all Materials, Plant and Product which are to be provided by the Contractor for incorporation into the Work will be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever;

30.1.4 all Material, Plant, and Product furnished by the Contractor, Sub-Contractors or Suppliers shall:

.1 meet the specifications in the Contract Documents or, if not specified, then be of the quality best suited for the required operating conditions and intended use and purpose of the Materials, Plant, Product and services and of sufficient size and capacity for the Work, or as otherwise specified by the Consultant;

.2 be safe and environmentally sound; and

30.1.5 all Materials and Product furnished by the Contractor, Sub-Contractors, or Suppliers shall be new unless otherwise specified by the Consultant.

30.2 The Contractor warrants that, for a period of one (1) year (the “Warranty Period”), or as specified elsewhere in the Contract Documents, from the date of Facility Takeover as indicated on the Certificate of Facility Takeover issued by the Contractor, the Work shall be free from any and all defects and deficiencies in workmanship performed, Materials, and Product supplied by the Contractor, its Sub-Contractors or Suppliers.

30.3 The Warranty given hereby shall apply to the re-performance of any Work or the repair or replacement of Materials or Product and the Warranty Period shall again run from the time of the completion of the work performed under Warranty.

30.4 During the Warranty Period, the Contractor shall, at its expense, promptly repair, replace and make good all defects in the Work and correct all deficiencies, errors, omissions and mistakes with respect to the Work (or any component system thereof) at its own cost by re-performing the
Work or repairing or replacing any Material, or Product, which does not comply with the Contract Documents. The Contractor shall do so in a manner that minimizes disruptions to the University's continuing operations. Notwithstanding the foregoing, the University may, in the case of emergency or the failure of the Contractor to perform the requested warranty work in a timely manner, make or cause to be made the necessary corrections, repairs or replacements and charge the cost thereof to the Contractor provided that where practical, the University shall provide the Contractor with the opportunity to make the necessary corrections, repairs or replacements.

30.5 The Contractor shall immediately advise the Consultant of any defects in workmanship, Materials, or Product and of all deficiencies, errors, omissions, or mistakes in the Work that it discovers or becomes aware of during the Contract Time and Warranty Period.

30.6 If the Agreement or any part of the Work is terminated, then this GC 30 shall survive such termination, and the Warranty Period with respect to completed Work shall commence upon the effective date of termination.

30.7 The Contractor shall arrange and provide all parties with adequate notice of an inspection for the purpose of determining Total Performance of the Work with such inspection to be held approximately twenty (20) days prior to the expiry of the Warranty Period and at which representatives of the Consultant, its Sub-Consultants, Sub-Contractors and Suppliers, as directed by the Consultant, shall be present. The Consultant shall record all defects due to faulty Materials and/or workmanship, including damage to other work resulting therefrom, that are evident at such inspection of the Work for correction by the Contractor and determine, in consultation, with the Contractor, a reasonable period of time to correct. Upon the correction of such defects by the Contractor to the satisfaction of the Consultant, the Consultant shall confirm such state of the Work by the issuance of a Certificate of Total Performance, in duplicate, to the University and the Contractor. The issuance of the Certificate of Total Performance shall not release the Contractor from its obligations under the Contract Documents.

31.0 PATENTS AND LICENCES

31.1 The Contractor represents and warrants to the University that it either owns or has subsisting agreements pertaining to any patent, trademark, copyright, or industrial design and the rights associated thereto for any Product, Materials, compositions, processes, methods or designs supplied in the performance of the Work by the Contractor, its Sub-Contractors or Suppliers. The Contractor and the University shall comply with all such agreements, whether supplied by the Contractor or by the University.

31.2 The Contractor shall promptly give notice to the University if the Contractor has or acquires knowledge of any patent, trademark, copyright or industrial design or similar right under which an action could reasonably be expected to be maintained because of the use or purchase by the University of Product, Materials, compositions, processes, methods or designs incorporated or to be incorporated by the Contractor as part of the Work. Following notification to the University, the Contractor shall not incorporate any such Product, Materials, compositions, processes, methods or designs into any plans, drawings, specifications or other documents, or use the same in connection with the Work without the University's prior approval.

31.3 The Contractor hereby grants the University a non-exclusive, royalty-free, perpetual, irrevocable licence to use any and all patents, industrial designs, copyrights and technology related to the Work, that the Contractor owns or controls. The Contractor shall obtain any consents of third parties relating to such licences.

31.4 The Contractor hereby grants the University a non-exclusive, royalty-free, perpetual, irrevocable licence to make, have made and use the Product, Materials, compositions, designs, methods and
processes supplied by the Contractor as per the Contract Documents. The Contractor shall obtain any consents of third parties relating to such licences.

32.0 UNIVERSITY POLICIES

32.1 Prior to construction start up, the Contractor shall either obtain approval in writing from the University's fire protection officer for the Contractor's fire safety plan or agree in writing to use the University's "Demolition and Construction Fire Safety Plan".

32.2 In addition to the requirements under all environmental health and safety (EHS) standards established by Law and required pursuant to GC 22.4, the Contractor shall comply with applicable EHS standards established by the University. Failure to comply with these requirements will constitute a material default and may result in immediate termination pursuant to GC 24.3.6.

32.3 The Contractor shall comply with the University's waste management regulations, policies and procedures.

32.4 The Contractor shall comply with University policies regarding clean up of the Work Site, work permits, and parking.

32.5 Prior to commencement of any work on site, the Contractor must obtain Temporary Site Occupancy, Excavation and Welding Permits from the University. Written request for such permits must be given to the University a minimum of seventy two (72) hours in advance of need in order to ensure processing. These permits are made available to the Contractor at no cost.

32.6 The Contractor shall not, and shall ensure that its Sub-Contractors and Suppliers do not use, transport, or store Hazardous Materials on the Work Site except with the prior approval of the University. All Hazardous Materials so used, transported or stored shall be dealt with in accordance with the Law, the Contract Documents and all of the University's published regulations, guidelines or publications regarding Hazardous Materials.

32.7 The Contractor shall enforce all University policies and all regulations and rules regarding signs, advertisements, fires, smoking, and disposal of waste, as required by Law or by the University.

33.0 CONFIDENTIAL INFORMATION AND PUBLICITY

33.1 The term "University's Confidential Information", as used herein, shall mean all information relating to the Work and any process, technology or system relating thereto, the design, construction, operation, maintenance or any other aspect of the Work Site, or relating to the nature of the University's business and affairs, which the Contractor directly or indirectly receives or acquires from the University or anyone on behalf of the University, either in writing or verbally, or through observation of the Work Site or the Work, except information falling into any one of the following categories:

33.1.1 information that the Contractor can show was in the Contractor's possession on a non-confidential basis prior to the Contractor's receipt or acquisition thereof from the University;

33.1.2 information which, after the Contractor's receipt or acquisition thereof from the University as aforesaid, becomes part of the public domain through no act of the Contractor 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

33.1.3 information which, after receipt or acquisition thereof from the University as aforesaid, is lawfully obtained by the Contractor 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.

Specific information shall not be considered to be within the scope of any of the exceptions listed above merely because it is included with general information within the scope of the above exceptions.

33.2 The Contractor shall keep all of the University's Confidential Information in confidence and shall not disclose it to others without the prior approval of the University. The Contractor shall not use the University's Confidential Information, except in performance of the Work.

33.3 Notwithstanding GC 33.2 hereof, the Contractor may disclose the University's Confidential Information to those of its employees, Sub-Contractors and Suppliers and their respective employees to whom disclosure is required in order for the Contractor to perform the Work, provided the Contractor shall contractually require its employees, agents, Sub-Contractors and Suppliers and their respective employees and agents to comply with GC 33.2.

33.4 The Contractor shall not disclose the Contractor's Prepared Documents to others without the prior approval of the University, except as necessary to perform the Work.

33.5 The Contractor shall not use the University's name, registered or unregistered trademarks or any of the University's slogans in any advertising or promotional materials or publicity releases, and shall not take, permit to be taken or use any photographs of the Work Site, without the prior written approval of the University.

33.6 The Contractor acknowledges that the University of Alberta is a public body subject to the Freedom of Information and Protection of Privacy Act of Alberta (the "Act"). Confidentiality for any documents cannot be ensured by the University. Provisions exist under the Act to allow disclosure of personal or business information where disclosure would not be harmful to business interest or would not be deemed an unreasonable invasion of your personal privacy as defined within the Act.

If the University receives a request for information under the Act, which includes information provided by the Contractor, the University will give the Contractor notice of such request and the Contractor will respond to such notice in accordance with the Act. If the Contractor does not respond to the notice from the University, the University will proceed to process the request for information in accordance with its procedures as set forth within the Act.

If the University’s response to a request under the Act is appealed to the Office of the Information and Privacy Commissioner, the Contractor shall have the burden of proof as to exception from disclosure as defined under the Act. The Contractor shall be responsible for all costs related to its confidentiality requirements.

As applicable for University records and information under its care, the successful Contractor shall bear the burden and associated costs of records management practices required under the Act. As well, the Contractor shall be responsible to provide for the protection of confidential University records and information as required by the Act.

The Contractor and the University agree that the obligations of the parties as specified within the Act shall survive the termination or expiration of this Agreement.

34.0 CONFLICT OF INTEREST

34.1 The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions, which could result in a conflict with the University's best interests. This obligation shall apply to the activities of the Contractor and its Sub-Contractors and Suppliers, and their respective
employees and agents, in their relations or dealings with the employees of the University and their families, and other third parties arising from its obligations under the Agreement.

34.2 Immediately upon becoming aware of the circumstances, the Contractor shall disclose to Supply Management Services any facts which may or do constitute a conflict of interest relating to this Agreement, including details of any University employee or immediate family member who may receive a financial or other benefit or who holds an interest or directorship in the Contractor or its Sub-Contractors or Suppliers. If the University deems the particular circumstances or any other circumstances disclosed to or discovered by the University to constitute a conflict of interest, the University may, at its sole discretion determine that the Contractor is in default of its obligations under this Agreement and may give notice of default to the Contractor. If the Contractor does not remove the conflict in accordance with such notice of default, the University may, at its sole discretion, terminate the Agreement.

34.3 To preserve the image and integrity of the University and its employees and agents, business gifts other than items of minor value shall not be offered. Reasonable hospitality is an accepted courtesy of a business relationship. The frequency and nature of gifts or hospitality shall not be allowed whereby the recipient might be or might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality or gifts.

35.0 PARTNERSHIP

35.1 If the Contractor is a partnership:

35.1.1 a true copy of the partnership agreement shall be forwarded to the University;

35.1.2 where the partnership is established to provide Construction services to the University, the partnership agreement shall continue for the purposes it was established, and will not be dissolved until all Construction services are complete, a Certificate of Total Performance has been issued, all warranties and extended warranties have expired, and the University agrees in writing to a written request from the members of the partnership to dissolve the partnership, and the University is in agreement;

35.1.3 each member of the partnership shall be jointly and severally liable for the performance of the Construction services and for any liability of the Contractor thereunder or arising there from or otherwise arising pursuant to the Agreement;

35.1.4 any invoice submitted by the Contractor under the Agreement shall be in the name of the Partnership and shall be submitted in accordance with the provisions of the Agreement and the Partnership Agreement;

35.1.5 payment by the University of any invoice to the partnership shall discharge the payment obligations of the University to each of the members of the partnership for the Construction services invoiced and the University shall have no independent responsibility or liability for payment to the aforesaid members of the partnership or either of them;

35.1.6 no dispute between the members of the partnership shall entitle a member of the partnership to withhold Construction services that are the responsibility of the Contractor under the Agreement;

35.1.7 the insurance which the Contractor is required to provide pursuant to the Agreement shall provide coverage for each member of the partnership, jointly and severally;

35.1.8 none of the following shall release the Contractor or any member of the partnership from its obligations to the University under the Agreement;
.1 the wind-up, bankruptcy, insolvency or ceasing to exist of or the ceasing to carry on business by, any member of the partnership;

.2 the inability of any individual member of the partnership to perform its obligations for any reasons beyond its reasonable control in circumstances where all members of the partnership are not similarly affected;

.3 the termination of the partnership;

.4 the improper or inappropriate allocation of monies paid by the University pursuant to the Agreement among the members of the partnership, whether occurring honestly or otherwise;

.5 the failure of any member of the partnership to fulfill its obligations under the partnership agreement;

35.1.9 all costs incurred by the Contractor in establishing and operating the partnership shall be to the account of the Contractor and not the University and the Contractor shall take all steps reasonably necessary, at the Contractor's expense, to ensure that the University is not disadvantaged by reason of the Contractor consisting of the partnership rather than a single entity.

36.0 JOINT VENTURES

36.1 If the Contractor is a joint venture:

36.1.1 a true copy of the joint venture agreement shall be forwarded to the University;

36.1.2 where the joint venture is established to provide Construction services to the University, the joint venture agreement shall continue for the purposes it was established, and will not be dissolved until all Construction services are complete, a Certificate of Total Performance has been issued, all warranties and extended warranties have expired, and the University agrees in writing to a written request from the members of the joint venture to dissolve the joint venture, and the University is in agreement;

36.1.3 each member of the joint venture shall be jointly and severally liable for the performance of the Construction services and for any liability of the Contractor thereunder or arising there from or otherwise arising pursuant to the Agreement;

36.1.4 any invoice submitted by the Contractor under the Agreement shall be in the name of the Joint Venture and shall be submitted in accordance with the provisions of the Agreement and Joint Venture Agreement;

36.1.5 payment by the University of any invoice to the Joint Venture shall discharge the payment obligations of the University to each of the members of the joint venture for the Construction services invoiced and the University shall have no independent responsibility or liability for payment to the aforesaid members of the joint venture or either of them;

36.1.6 no dispute between the members of the joint venture shall entitle a member of the joint venture to withhold Construction services that are the responsibility of the Contractor under the Agreement;

36.1.7 the insurance which the Contractor is required to provide pursuant to the Agreement shall provide coverage for each member of the joint venture, jointly and severally;
36.1.8 none of the following shall release the Contractor or any member of the joint venture from its obligations to the University under the Agreement:

.1 the wind-up, bankruptcy, insolvency or ceasing to exist of or the ceasing to carry on business by, any member of the joint venture;

.2 the inability of any individual member of the joint venture to perform its obligations for any reasons beyond its reasonable control in circumstances where all members of the joint venture are not similarly affected;

.3 the termination of the joint venture;

.4 the improper or inappropriate allocation of monies paid by the University pursuant to the Agreement among the members of the joint venture, whether occurring honestly or otherwise;

.5 the failure of any member of the joint venture to fulfill its obligations under the joint venture agreement;

36.1.9 all costs incurred by the Contractor in establishing and operating the joint venture shall be to the account of the Contractor and not the University and the Contractor shall take all steps reasonably necessary, at the Contractor's expense, to ensure that the University is not disadvantaged by reason of the Contractor consisting of the joint venture rather than a single entity.

37.0 TITLE AND RESPONSIBILITY

37.1 All of the Contract Documents, the Contractor's Prepared Documents, and models and samples relative to the Work shall belong to the University, and accordingly the Contractor shall have no proprietary right or interest in the Contract Documents or Contractor's Prepared Documents. The Contractor shall not use, copy or disclose any of the Contract Documents and Contractor's Prepared Documents for any purpose other than performing the Work and shall, subject to GC 37.2, return to the University all Contract Documents, Contractor's Prepared Documents, and models and samples relative to the Work upon receipt of the Certificate of Construction Completion.

37.2 The Contractor may retain for its own records one (1) copy of the Contract Documents and the Contractor's Prepared Documents.

37.3 Notwithstanding GC 37.1 or any other provision of the Contract Documents, the Contractor shall be responsible for possession of all Contractors’ Prepared Documents completed or in progress until received by the University. If any of the Contractor's Prepared Documents are lost, damaged or destroyed prior to receipt by the University, then such Contractor's Prepared Documents shall be promptly redone and replaced by the Contractor, at the Contractor's expense unless the loss, damage or destruction was caused by the University or persons for whom in Law it is responsible.

37.4 The University agrees that it will not sell to third parties any of the Contractor's Prepared Documents nor will it distribute any of the Contractor's Prepared Documents to third parties except for the purpose of operating, maintaining, repairing, replacing, re-building or renovating the University's property resulting from the Work.

37.5 The title to all portions of the Work completed or in the course of construction at the Work Site and the title to all Materials, Product, and supplies furnished or fabricated by the Contractor in
connection with the Work shall become the property of the University upon the earlier of payment therefore or delivery to the Work Site.

37.6 Notwithstanding the provisions of GC 37.5, and except for any portion of the Work for which the University has taken possession as contemplated by GC 16.1, the Contractor shall retain all risk with respect to and be responsible for:

37.6.1 all items furnished by the Contractor, Sub-Contractors or Suppliers which are to be incorporated into the Work or used in the performance of the Work;

37.6.2 all items supplied by the University to the Contractor for incorporation into the Work or for use in performing the Work;

37.6.3 all temporary structures or facilities used in the performance of the Work; and

37.6.4 any Work completed or in progress until the Consultant has issued a Certificate of Construction Completion, in which case the risk shall pass to the University with respect to the Work covered thereby.

37.7 No Materials or Product incorporated into the Work shall be subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the seller or Supplier thereof.

38.0 RIGHT TO AUDIT AND RECORDS TO BE KEPT BY THE CONTRACTOR

38.1 The Contractor shall keep detailed, proper and accurate records and accounts for the Project in a form and manner consistent with standard accounting practices. The University shall have the right to inspect, audit, make copies and take extracts from the Contractor's records and accounts to ensure conformity with the provisions of the Agreement including changes to the contract amount as stipulated in the Agreement and for up to two (2) years following the date of the issuance of the Certificate of Total Performance of the Work. The Contractor shall cooperate with the University to undertake an inspection and audit of the records. The Contractor shall account for errors or omissions discovered as a result of such audit.

39.0 NOTICES AND COMMUNICATION

39.1 All notices required by the Agreement to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by registered mail addressed to the regular business address of such party as identified in the executed Agreement.

40.0 MISCELLANEOUS AND YEAR 2000

40.1 No waiver of any right, power, or privilege by a party shall limit or affect that party's rights with respect to any further breach of the Agreement by the other party.

40.2 If a Court of competent jurisdiction determines that any provision of the Contract Documents is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the Contract Documents.

40.3 Time is and shall continue to be of the essence.

40.4 All of the covenants and agreements herein contained on the part of either party shall apply to, enure to the benefit of and be binding upon their respective legal representatives, successors and approved assigns.
40.5 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.

40.6 The terms "herein," "hereunder," "hereto" and similar expressions refer to the Contract Documents, and not to any particular GC or paragraph of the Contract Documents.

40.7 Where reference is made to a "day," "week," "month" or "year," the reference is to a calendar day, week, month, or year, unless the context indicates otherwise.

40.8 The headings and sub-headings of GC's contained herein are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of any of its provisions.

40.9 Subject to GC 1, Materials, Product, Plant, or methods described in words, which so applied, have a well-known technical or trade meaning shall be held to refer to such recognized meaning.

40.10 The Contractor and the Consultant in the administration and performance of the Work shall use the University's standard (pre-printed) forms and documents.

40.11 All goods, products and services supplied to the Work by the Contractor and all relevant systems used by the Contractor in connection with their supply shall accurately, correctly and consistently process date/time data including, but not limited to, accepting, calculating, sorting, comparing, sequencing, interpreting and returning prior to, during and after January 1, 2000 (including leap year calculations) and, when used in combination with other information technology, will accurately access, exchange and process date/time data without extra cost to the University and without error.