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SECTION 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Where used in these General Conditions for Supply Contracts and in the other documents forming part of the Supply Contract:

- a. **“Business Day”** means any calendar day, other than a Saturday, Sunday or statutory or civic holiday in the Province of Manitoba;
- b. **“Change in Work”** means an addition, deletion or modification to the Work as described in the Supply Contract at the time that the Supply Contract is awarded and includes (without limitation) modifications in the Drawings, quantity or nature of Plant, Material, methods, or location;
- c. **“Change Order”** means an approval of a Change in Work, signed by the Supplier and the Engineer in accordance with GC:4;
- d. **“Construction Contract”** means the contract between MWSB and the Construction Contractor for the performance of the work by the Construction Contractor;
- e. **“Construction Contractor”** means the party contracted by the MWSB to carry out the overall construction work associated with the project including the installation of the Material supplied by the Supplier, and
 - .1 is identified as such in the Novation Agreement; and
 - .2 will have the duties and responsibilities of the “prime contractor” as set out in The Workplace Safety and Health Act;
- f. **“Construction Manager”** means the person designated by the MWSB to manage and administer the Supply Contract on behalf of the MWSB;
- g. **“Contract Price”** means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Supply Contract;
- h. **“Drawings”** means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Engineer and are referred to in the Supply Contract;
- i. **“Engineer”** is the person or entity engaged by the MWSB, or a person designated by the MWSB, to manage the project on behalf of the MWSB, and is identified as the Engineer in the RFP Documents;
- j. **“Extra Work Allowance”** means the amount specified by the MWSB in the RFP Documents to be used to account for payment for Changes in the Work, if any, at the MWSB’s discretion and approval, in accordance with GC:4.5;
- k. **“Final Completion”** means that the entire supply of Material, except those items arising from the provisions of GC:10, have been performed in accordance with the Supply Contract;
- l. **“General Manager”** means the person designated as the general manager of the MWSB;
- m. **“Manufacturer”** means the party responsible for the manufacture and fabrication of equipment provided for the Work, and may or may not be the Supplier;

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- n. “**Manufacturer’s Representative**” means a trained service provider authorized by the Manufacturer to provide installation, testing, and commissioning assistance to the Construction Contractor, and to certify that installation, testing and commissioning have been performed in accordance with the Manufacturer’s requirements.
- o. “**Material**” includes all goods, parts, equipment and other items the Supplier is required to provide to the MWSB in accordance with the Supply Contract;
- p. “**MWSB**” means The Manitoba Water Services Board;
- q. “**Novation Agreement**” means the novation agreement to be entered into by the MWSB, the Supplier and the Construction Contractor to assign and novate the Supply Contract between the MWSB and the Supplier over to the Construction Contractor and the Supplier;
- r. “**Plant**” includes all things brought to or constructed on the Site for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefore, but does not include Material;
- s. “**Proponent**” means any entity submitting a Proposal for the Work;
- t. “**Proposal**” means the offer submitted in writing by the Supplier (including applicable Proposal forms) in the format prescribed by the MWSB, to perform the Work;
- u. “**RFP Documents**” means the Instructions to Proponents, the Insurance, Performance Security and Safety Requirements, the portion of the RFP that contains the Proposal forms to be submitted by the Proponent, these General Conditions for Supply Contracts, the Special Provisions, Measurement and Payment, the Specifications, the Drawings, and all addenda;
- v. “**Shop Drawings**” means all drawings, diagrams, and illustrations prepared by the Supplier, Subcontractor, manufacturer, supplier or distributor that depict details of a portion of the Work;
- w. “**Site**” means the location(s) where the Work described in the Supply Contract is to be carried out, including the point of delivery of Material;
- x. “**Specifications**” are that portion of the contract documents, wherever located and whenever issued, consisting of the written requirements and standards for the Material, systems, workmanship, quality and the services necessary for the performance of the Work, and includes the MWSB’s Standard Construction Specifications;
- y. “**Subcontractor**” is an entity having a direct contract with the Supplier to perform a part or parts of the Work, and includes a Subcontractor’s subcontractor;
- z. “**Submittals**” means all Shop Drawings, schedules, performance charts, brochures and other data which are submitted by or are required to be submitted by the Supplier in accordance with the requirements of the RFP Documents or Supply Contract;
- aa. “**Substantial Performance**” shall have the meaning ascribed to it in The Builders’ Liens Act, or any successor legislation thereto. The date of Substantial Performance in respect of the Work under this Supply Contract shall be the date of Substantial Performance of the work under the Construction Contract;
- bb. “**Supplier**” means the successful Proponent that has been awarded the Supply Contract for the execution of the Work under the terms of the Supply Contract;

- cc. **"Supply Contract"** means the combined documents consisting of the agreement forwarded to the Supplier pursuant to Section 21(d) of the Instructions to Proponents – MWSB PART 1, together with all schedules attached thereto (or incorporated by reference), and any submissions required to be made by the Supplier after award which have been approved and signed by the General Manager, and all amendments to the foregoing;
- dd. **"Work"** means the carrying out and doing of all things, whether of temporary or permanent nature, that are to be done by the Supplier pursuant to the Supply Contract, and without limiting the generality of the foregoing, includes the supply of all Plant, Material, labour and services necessary for or incidental to the requirements of the Supply Contract, including all Changes in Work which may be ordered as herein provided.

1.2 Interpretation

- a. Where the Supplier consists of more than one person or entity, the obligations of the Supplier shall be joint and several.
- b. Wherever the singular is used, it shall be construed to mean the plural as the context may reasonably require.
- c. Headings, titles and margin notes in the Supply Contract are inserted for convenience only and shall not be considered in any interpretation of the Supply Contract.
- d. In the event of conflicts between portions of the Supply Contract, the following order of precedence shall apply:
 - .1 the main body of the executed agreement between the MWSB and the Supplier shall govern over all schedules or other documents forming part of the agreement;
 - .2 the Approved Exceptions to the RFP Documents agreed upon by the parties during pre-award negotiations (if any);
 - .3 the Special Provisions;
 - .4 the Insurance, Performance Security and Safety Requirements;
 - .5 the Measurement and Payment provisions;
 - .6 the Specifications;
 - .7 the Drawings; and
 - .8 the General Conditions for Supply Contracts;
 - .9 the Supplier's Proposal.
 - .10 With respect to the Drawings:
 - .1 Drawings of a later date shall govern over Drawings of an earlier date;
 - .2 Drawings of a larger scale shall govern over those of a smaller scale; and
 - .3 Dimensions shown on a Drawing shall govern over all other scaled or implied measurements
 - .11 In the case of a discrepancy between the RFP Documents issued by the MWSB and the Proposal submitted by the Supplier, the RFP Documents shall govern,

unless specifically stated as an exception taken to the RFP document, and the exception has been accepted in writing by MWSB in the Supply Contract. The MWSB shall not be responsible for the Supplier's failure to provide the minimum standard as established and required by the RFP Documents.

- e. The various portions of the Supply Contract are intended to be read together and complement each other and what is called for by any one shall be deemed to be called for by all.
- f. The MWSB and the Supplier acknowledge and agree that the Supplier is an independent Supplier and neither the Supplier nor any officer, employee, agent or representative of the Supplier shall be deemed to be an officer, employee, agent or representative of the MWSB.
- g. The Supply Contract shall constitute the entire agreement between the MWSB and the Supplier. There are no representations, warranties, covenants or agreements other than those contained in the Supply Contract.
- h. Specifications, Drawings, models and copies thereof furnished by the MWSB are and shall remain the MWSB's property. All Specifications, Drawings and models furnished by the MWSB shall only be used by the Supplier with respect to the Work and are not to be used on other Work. These Specifications, Drawings and models are not to be copied or altered in any manner without the written authorization of the MWSB.

SECTION 2 AUTHORITY OF THE ENGINEER

2.1 General

- a. The Engineer shall be the MWSB's representative throughout the duration of the Supply Contract and the Construction Contract with the Construction Contractor, and shall have authority to act on behalf of the MWSB to the extent expressly provided for in these contracts.
- b. The Engineer shall interpret or clarify the Supply Contract or any part thereof which appears indefinite, not clear or contradictory to the Supplier.
- c. The Engineer may at any time correct errors or omissions in the Supply Contract or issue additional Drawings or Specifications further detailing, explaining or modifying the Work. Such Drawings or Specifications shall either supplement or supersede those forming part of the Supply Contract at the time the Supply Contract was executed.

2.2 Approval and Inspection

- a. The Engineer may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Supply Contract. The Engineer may reject the Work or any part thereof which does not meet the requirements of the Supply Contract.

2.3 Control

- a. The Engineer may give written instructions or orders to the Supplier to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Supply Contract.

- b. Without limiting the generality of the foregoing provisions, none of the Engineer's actions or responsibilities shall be interpreted as taking away from the Supplier's role and responsibilities as an "employer", a "contractor" or a "supplier" under The Workplace Safety and Health Act, as more specifically set out in GC:3.2.
- c. Neither the direction of the Engineer pursuant to these provisions nor the carrying out of such orders by the Supplier shall entitle the Supplier to any extra payment unless warranted in accordance with GC:4, nor relieve the Supplier of their responsibilities under the Supply Contract.
- d. If the Supplier disputes the Engineer's determination or order on any of the foregoing matters, the Supplier shall act in accordance with the Engineer's determination or order. The Supplier may concurrently appeal the Engineer's determination or order to the Construction Manager as provided for in GC:14.

SECTION 3 RESPONSIBILITIES OF THE SUPPLIER

3.1 General

- a. The Supplier shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.
- b. The Supplier shall be responsible for any Work not explicitly set out in the Supply Contract but which may be reasonably implied for the proper completion of the Work.
- c. The Supplier shall perform, complete and maintain the Work in strict accordance with the Supply Contract. If the Supply Contract or any part of the Supply Contract appears indefinite, unclear or contradictory, the Supplier shall refer the matter to the Engineer in writing for interpretation or clarification.

3.2 Regulatory Requirements

- a. The Supplier shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the supply of Material. Where there are two (2) or more laws, by-laws, ordinances, regulations or codes applicable to the supply of Material, the most restrictive shall apply.
- b. Where building codes, material specifications, provincial or federal laws, local ordinance, industry standards and utility company regulations are quoted or implied, the latest revision shall apply.
- c. The Supplier shall give any notices required by law or by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Supply of Material.

3.3 Workplace Safety and Health

- a. The Supplier may be an "employer", a "contractor" or a "supplier", as those roles are set out in The Workplace Safety and Health Act, and shall have all the duties and responsibilities of an employer, a contractor or a supplier as the case may be.

3.4 Supervision and Instructions

- a. The Supplier shall provide competent, suitably qualified personnel to perform any

necessary Work. The Supplier shall at all times maintain good discipline and order at the Site.

- b. The Supplier shall obey, perform and comply with the Engineer's orders, instructions, rules and procedures promptly, efficiently and to the satisfaction of the Engineer; and the Supplier will assist other Suppliers, their employees, subcontractors and agents to do the same.

3.5 Protection of Work and Property

- a. Should the Supplier damage the Work, the Site or property adjacent to the Site, the Supplier shall be responsible for making good such damage at the Supplier's expense.

3.6 Document Review

- a. The Supplier declares that, before entering into this Supply Contract, the Supplier has reviewed the Supply Contract documents and has reported to the Engineer any error, inconsistency or omission the Supplier discovered (if any). The Supplier shall provide the Work in accordance with this Supply Contract and with a degree of care, skill and diligence that would normally be provided by an experienced and prudent Supplier performing similar work for similar projects. If, after the Supply Contract is awarded, the Supplier discovers any errors, inconsistencies or omissions in the contract documents, the Supplier shall promptly request clarification from the Engineer in writing. Additional work made necessary because of the failure by the Supplier to request clarification promptly following the discovery of such errors, inconsistencies or omissions by the Supplier in the contract documents shall be carried out and completed at the Supplier's expense.

3.7 Shop Drawings

- a. Detailed Shop Drawings, where required by the contract documents, shall be prepared and submitted to the Engineer for examination and review in accordance with the Delivery Schedule provided by the Supplier's Proposal. Prior to submission to the Engineer, the Supplier shall review all Shop Drawings (stamped with date and signature). By this review the Supplier represents that they have determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data and has checked and coordinated each Shop Drawing with the requirement of the Work and of the Supply Contract. Three (3) hard copies OR one (1) electronic copy in pdf format of each Shop Drawing shall be submitted to the Engineer. One (1) copy will be returned with any corrections noted thereon. Corrections shall then be made and a duplicate of the revised Shop Drawing(s) shall be submitted for the review of the Engineer. The Supplier shall not proceed with shop fabrication until such drawings have been reviewed by the Engineer. Such review shall not relieve the Supplier of any responsibility for errors or omissions discovered subsequently.

3.8 Site Security and Cleaning Up

- a. The Supplier shall maintain the Site in a tidy condition and free from the accumulation of waste and debris, other than that caused by the MWSB or by other Suppliers or contractors. Waste and debris shall be promptly disposed of in a manner that will not contaminate or mar the surrounding area.

SECTION 4 CHANGES IN WORK

4.1 General

- a. The MWSB may order a Change in Work at any time after award of the Supply Contract.
- b. The Supplier shall not perform a Change in Work without a Change Order.
- c. Changes in Work shall be performed in accordance with the applicable Change Order and in accordance with the Supply Contract.
- d. In emergency situations or to permit an orderly progress of the Work, a written authorization may be issued by the Engineer to proceed with the Change in Work with a Change Order to follow thereafter.

4.2 Change in Work initiated by the Engineer

- a. The Engineer may initiate a Change in Work by issuing a proposed change notice to the Supplier, in a form provided by the MWSB, describing the proposed Change in Work.
- b. The Supplier shall respond to the Engineer's proposed change notice within seven (7) calendar days after receiving it, or such longer period of time as the Supplier and Engineer may agree, by completing the proposed change notice document. The proposed change notice document shall include the Supplier's estimate of the value for the proposed Change in Work, including the proposed adjustment (increase or decrease) to the Contract Price, if any, pursuant to GC:4.4.
- c. The completed proposed change notice document will constitute an offer by the Supplier to provide the Changes in Work requested by the Engineer for the cost stated in the proposed change notice document. The proposed change notice will not be binding on the MWSB unless and until the Engineer accepts it in writing by issuing a Change Order to the Supplier approving the Change in Work, and any corresponding adjustment to the Contract Price, if any.
- d. If the Engineer does not accept the completed proposed change notice document, then neither party will have any further obligation with respect to that proposed change notice.

4.3 Change in Work Initiated by the Supplier

- a. If, at any time after award of the Supply Contract, the Supplier is of the opinion that a Change in Work is necessary to accomplish the result intended by the Supply Contract or if the Supplier considers it desirable that a Change in Work be approved, the Supplier shall promptly submit a proposed change notice to the Engineer, in a form provided by the MWSB, including:
 - .i the reason for the proposed Change in Work;
 - .ii a detailed description of the proposed Change in Work;
 - .iii the Supplier's estimate of the value for the proposed Change in Work, including the proposed adjustment (increase or decrease) to the Contract Price, if any, pursuant to GC:4.4.
- b. Upon receipt of the Supplier's proposed change notice, the Engineer shall then make an assessment as to whether a proposed Change in Work is necessary and whether the proposed change notice is approved or not, including any corresponding adjustment to

the Contract Price.

- c. The Supplier's proposed change notice will not be binding on the MWSB unless and until the Engineer accepts it in writing by issuing a Change Order to the Supplier approving the Change in Work, and any corresponding adjustment to the Contract Price, if any.
- d. If the Engineer does not accept the Supplier's proposed change notice, then neither party will have any further obligation with respect to that proposed change notice.

4.4 Valuation of a Change in Work

- a. The value of any Changes in Work and the adjustment (increase or decrease) in Contract Price (if any) shall be determined by one or more of the following methods:
 - .i by estimate in a lump sum;
 - .ii by the unit prices and methods of measurement set out in the Supply Contract or subsequently agreed upon.
 - .iii by the actual cost of the Change in Work to:
 - .1 the Supplier, plus ten percent (10%) on any portion of the Change in the Work undertaken by the Supplier's own forces.
- b. For the purposes of GC:4.4.a.iii, "actual cost" on any portion of the Change in Work undertaken by:
 - .i the Supplier's own forces shall mean the direct cost of labour plus an allowance for direct supervision and payroll burden (including Employment Insurance, Canada Pension, Payroll Tax, Workers Compensation assessments and vacation pay), purchase or rental of Plant and Material and any other payments made by the Supplier with the prior approval of the Engineer that are necessary for the performance of the Change in Work.
- c. If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground.
- d. If the valuation of the Change in Work or adjustment to the Contract Price cannot be promptly agreed upon and the Engineer requires the Change in Work to proceed, then the Engineer will determine the method of valuation and the adjustment to the Contract Price. The Engineer shall issue a Change Order to the Supplier approving the Change in Work and setting out the method of valuation, and any approved adjustments to the Contract Price.
- e. If the Supplier disputes a determination made by the Engineer, the Supplier shall act in accordance with the Engineer's determination. The Supplier may concurrently appeal the determination of the Engineer to the Construction Manager as provided for in GC:14.

4.5 Extra Work Allowance

- a. The MWSB reserves the right to include an Extra Work Allowance in the Contract Price. If an Extra Work Allowance is included, the MWSB shall use it to account for payment for Changes in Work, if any. Disbursements under the Extra Work Allowance shall be authorized in writing by the Engineer in a Change Order and valued as provided for in

GC:4.4. The Contract Price shall be adjusted by Change Order to provide for any difference between the disbursements authorized under this paragraph and the Extra Work Allowance.

SECTION 5 PLANT AND MATERIAL

5.1 General

- a. All Material shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of the same specified in the Supply Contract, except those specifically set forth in the Specifications or the Special Provisions. If required, the Supplier shall provide evidence satisfactory to the Engineer that the foregoing requirements have been met.
- b. The Supplier shall not remove any Plant or Material that has been brought to the Site and which is required to complete the Work without the prior written consent of the Engineer.
- c. Plant or Material that is the property of the MWSB, the Owner, or Construction Contractor shall not be removed from the Site, disposed of or used except for the purposes of the Work without the prior written consent of the Engineer.

5.2 Material Supplied by the MWSB

- a. The MWSB may enter into separate contracts with third parties for the supply of certain Material which shall be used by the Supplier.
- b. When a separate contract is entered into by the MWSB for the supply of certain Material, the MWSB shall pay the third party supplier directly (and therefore any costs for such Material shall not be included in the Contract Price), and the MWSB shall make arrangements with the third party supplier to have the Material delivered to the nearest MWSB approved storage facility or the Site.
- c. The Supplier shall not use any Material supplied by the MWSB except for the purpose for which it was supplied in connection with the Contract.

SECTION 6 RISK AND RESPONSIBILITY

- a. Risk of loss of the Material shall remain at the risk and responsibility of the Supplier up until delivery to the Site. Provided the Novation Agreement has been entered into in accordance with the Agreement, risk of loss of the Material will be assumed by the Construction Contractor upon delivery to the Site, and will remain at the risk and responsibility of the Construction Contractor until the date of Substantial Performance.
- b. The Supplier shall provide adequate protection (including proper storage facilities) for all Material that is subject to deterioration by weather conditions, during their transportation and handling until delivery to the Site.
- c. All Material shall be subject to inspection and acceptance by the Engineer and the Construction Contractor within ten (10) Business Days of delivery. During that ten (10) Business Day time period, the Engineer and the Construction Contractor will notify the Supplier of any visible damage or other apparent non-conformity. Upon acceptance of the Material, the Engineer, the Construction Contractor and the Supplier will sign a receipt and acceptance for the Material. Acceptance of the Material shall not serve to

negate Supplier's responsibilities to the Construction Contractor's or the Engineer's rights relating to defects, final inspection, testing and acceptance in accordance with this Supply Agreement.

- d. Title to all Material, equipment, including spare parts, or other goods delivered by the Supplier under the Supply Contract shall be transferred to the Owner upon Substantial Performance free and clear of all claims, liens, attachments, charges or encumbrances. Unless specifically stated elsewhere in this Supply Contract, the Supplier is not transferring any intellectual property rights or patent rights in the Material, equipment or other goods delivered. The Supplier grants to MWSB a perpetual, irrevocable, non-exclusive, royalty free licence to use the intellectual property in the Material, equipment or other goods to the extent necessary and solely for the MWSB's use, operation and maintenance of the Material, equipment or other goods. Such licence shall be transferable to the Owner or its designated representative upon Substantial Performance. The Owner shall be entitled to grant sub-licences, in accordance with the licence rights granted herein, provided that there shall be no further right of sub-licence, to third party contractors, performing operation or maintenance work for the Owner.

SECTION 7 INSPECTION

7.1 Inspection – General

- a. The Supplier shall provide the Engineer access, whether at the Site or at the premises of the Supplier or any Subcontractor, to observe and inspect the Material and its progress.
- b. The Supplier shall provide the Engineer any and all assistance which the Engineer may require to observe and inspect the Material.
- c. The Supplier shall provide the Engineer any samples required to inspect the Material.
- d. If the Supplier covers the Material that is subject to inspection, or before any special tests and approvals are completed without approval of the Engineer, the Supplier shall, if and when required by the Engineer, take down, uncover and rebuild that portion of the Material, to have the inspection satisfactorily completed. The costs of such taking down, uncovering and rebuilding, if any, shall be borne by the Supplier.
- e. The inspection of the Material shall not relieve the Supplier of full responsibility for the quality, proper operation and performance of the Material.
- f. Following the installation of the Material by the Construction Contractor, the Material will be subject to inspection by the Engineer, the Supplier and the Construction Contractor to confirm the installation is satisfactory. If the inspection identifies any defects, GC:7.2 shall apply.

7.2 Defective Material

- a. If the Engineer determines that the Material, or any part of the Material, is defective or deficient, the MWSB shall have the right to do any one or more of the following in addition to anything permitted in the Supply Contract or by law:
 - .i if the Engineer determines that any Material which is not yet incorporated into the work is defective, deficient or otherwise unfit for the purpose intended, the Engineer may direct the Supplier to remove such Material from the Site and

- promptly replace it with Material which meets the requirements of the Supply Contract and is fit for the purpose intended;
- .ii if the Engineer determines that any Material which is incorporated in the work, is defective, deficient or otherwise unfit for the purpose intended, the Engineer may direct the Supplier to repair, reconstruct, replace or otherwise remedy the defect or deficiency.
- b. The Supplier shall carry out the directives of the Engineer pursuant to GC:7.2 within seven (7) calendar days of being notified by the Engineer. Where a defect or deficiency causes an interruption of water services to consumers, the Supplier shall carry out the directives of the Engineer and restore service within twenty-four (24) hours of being notified by the Engineer. In addition, the Supplier shall be responsible for the cost of any additional inspections necessitated thereby.

SECTION 8 PROGRESS

- a. The Supplier acknowledges that time is of the essence with respect to the Supplier's obligations under this Supply Contract, and that the Supplier shall perform the Work, including timely delivery of the Materials, in accordance with the approved Delivery Schedule.
- b. If the Supplier is delayed in the performance of the Work by reasons of strikes or lockouts, an act of God, or any other cause which the Supplier satisfies the Engineer to be beyond the Supplier's reasonable control and occurred without the fault or neglect of the Supplier (not including lack of financial capability, changes in market conditions or any shortages or delays relating to supplies or services), the delivery dates in the Delivery Schedule that are directly affected by the delay shall be extended by a period of time equal to the time lost due to such delay. No extension for delay shall be approved unless a notice of claim is received by the Engineer from the Supplier within five (5) calendar days of the date on which the cause of the delay arose. Any notice or claim for extension must state the cause of the delay, the length of the extension requested, and include a clear work around plan explaining in detail the steps that the Supplier proposes to take to minimize the impact of the event causing the delay. In the case of a continuing delay, only one claim for an extension shall be necessary. Unless the MWSB has caused the delay by failing to meet an obligation under this Supply Contract, the MWSB will not be responsible for any costs incurred by the Supplier as a result of the delay, and the Supplier shall not be entitled to any escalation rates (if any).
- c. If the Supplier fails to submit Shop Drawings in accordance within the time specified in the Supply Contract, the Supplier shall pay the MWSB the amounts per Business Day (as specified in the Proposal Form (Form No. MWSB 3A) for each and every Business Day during which the failure continues. The Supplier acknowledges and agrees that the amounts specified as liquidated damages set out in the Proposal Form (Form No. MWSB 3A) are based on a genuine pre-estimate of the MWSB's losses (and is not a penalty) in the event the Supplier does not provide Shop Drawings by the time specified in the Supply Contract. The MWSB may reduce any payment to the Supplier by the amount of any liquidated damages assessed.
- d. The Construction Contractor's Construction Contract with the MWSB will include a liquidated damages clause for construction delays. The Construction Contractor may

hold the Supplier responsible for liquidated damages if the Supplier does not deliver the Material to Site within the time specified in the Supply Contract.

SECTION 9 CLAIMS AND PAYMENT

9.1 General

- a. The amounts to be paid by the MWSB to the Supplier shall be the sums approved by the Engineer in the progress estimates and the request for final payment.
- b. For unit price items, such sums shall be determined by the Engineer upon the basis of the unit prices for the various Material stated on the Supplier's Schedule of Prices. The total amount to be paid to the Supplier will be the amount arrived at by measuring the amount of each unit price item listed on the Schedule of Prices and performed in accordance with the Supply Contract, and pricing the same, in accordance with the unit prices stated thereon.
- c. For lump sum items, such sums shall be determined by the Engineer upon the basis of the lump sum price stated on the Schedule of Prices. Where, in the opinion of the Engineer, the lump sum prices are unbalanced, the payments for the applicable lump sum item may be made on a pro-rata basis over the duration of the Contract.
- d. As stated in the Instructions to Proponents, the unit or lump sum prices in the Schedule of Prices shall be all inclusive, and shall include: (i) the cost to furnish all Material (except as otherwise provided in the Supply Contract); (ii) the cost to furnish all transportation and incidentals necessary for the proper supply of Material which the Supplier is required to do in accordance with the terms and conditions of the Supply Contract; and (iii) all insurance, custom duties, provincial sales tax, excise taxes (except the Federal Goods and Services Tax) and all other charges, costs and assessments.

9.2 Non-Resident Withholding Taxes

- a. If the MWSB is obligated by law or international treaties or conventions to withhold or deduct taxes from any payment of amounts to the Supplier, the MWSB shall remit such withheld amounts as required by the Income Tax Act (Canada) or under the terms of any other law or international treaty or convention to which the MWSB is subject, and shall furnish to the Supplier official receipts evidencing MWSB's payment of such taxes.
- b. Invoices from the Supplier must clearly identify labour and expenses for services performed in Canada separate from services performed outside of Canada. Labour performed in Canada and unsupported expenses (expenses with no receipts) will be assessed Non-Resident Withholding Tax unless a waiver has been obtained from Canada Revenue Agency.

9.3 Increased or Decreased Costs

- a. The Contract Price shall not be increased or decreased by reason of any increase or decrease in the supply of Material to the Supplier except as provided for herein.
- b. The Contract Price shall be adjusted if any change in a tax imposed under the Excise Tax Act (Canada), the Customs Act (Canada), or The Retail Sales Tax Act (Manitoba):
 - .i occurs after the Submission Deadline; and

- .ii affects the cost of the Material to the Supplier.
- c. If a change referred to in GC:9.3.b occurs, the Contract Price shall be increased or decreased by an amount equal to the amount that is established, by an examination of the relevant records of the Supplier, to be the increase or decrease in the cost incurred that is directly attributable to that change.
- d. For the purpose of GC:9.3.b, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline and the Supplier shall not be entitled to an increase in the Contract Price.

9.4 **Measurement and Payment**

- a. Progress payments to the Supplier shall be made as per payment terms, including the Schedule of Prices and Payment Milestones.
- b. The Supplier shall prepare a progress estimate setting out the quantity and value of the Material supplied during the preceding month.
- c. The Engineer shall sign each progress estimate signifying that the Engineer agrees with and approves the Supplier's estimate of the quantity and value of the Material supplied. The Engineer's approval of a progress estimate will make the amount of the progress estimate valid for payment.
- d. Subject to GC: 9.4.e, acceptance by the Supplier of the final payment shall constitute a waiver and release by the Supplier of all claims against the MWSB whether for payment for Work done, damages or otherwise arising out of the Supply Contract.
- e. If the Supplier disputes a determination made by the Engineer with respect to a progress estimate or the final payment, the Supplier shall be paid in accordance with the Engineer's determination. The Supplier may concurrently appeal the determination to the Construction Manager as provided for in GC:14.

9.5 **Novation Agreement Holdbacks**

- a. The Supplier acknowledges and agrees that the supply of Material to the Construction Contractor under a Novation Agreement, may be subject to a holdback in the amount fifteen percent (15%) from all progress payments made by the MWSB to the Construction Contractor in accordance with the Construction Contract.
- b. The 15% holdback shall consist of:
 - .i seven and one-half percent (7.5%) builders' liens holdback that is required to be made pursuant to *The Builders' Liens Act*; and
 - .ii seven and one-half percent (7.5%) performance holdback for the MWSB to complete and rectify any defects, deficiencies and items of outstanding work.
- c. Any progress payments made by the MWSB to the Construction Contractor under the Construction Contract shall also be less any other amounts which the MWSB is entitled to withhold pursuant to the Construction Contract.

SECTION 10 WARRANTY

10.1 General

- a. The Supplier warrants that the Material will be free of any and all defects or deficiencies during the warranty period.

10.2 Warranty Period

- a. The standard warranty period shall begin on the date of Substantial Performance and shall expire one (1) year thereafter unless extended in which case it shall expire when provided for under the following:
 - .i if a defect or deficiency prevents the full and normal use or operation of the Material or any portion thereof, then for purposes of calculating the warranty period, time shall be deemed to cease to elapse for the defective or deficient component, as of the date the defect or deficiency is reported to the Supplier and shall begin to run again when the defect or deficiency has been corrected or the Material may be used or operated to the satisfaction of the Engineer; and
 - .ii if any outstanding defects or deficiencies have not been corrected to the satisfaction of the Engineer by at least two (2) weeks prior to the date on which the warranty would expire except for this section, then the Engineer may require the Supplier to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Material identified by the Engineer as still outstanding and uncorrected or for any portion of the Material whose use or operation is prevented by such defects or deficiencies.
- b. Notwithstanding the above, if any law of Manitoba or the jurisdiction in which the equipment was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.
- c. Extensions to the standard warranty period may be required as described in the Special Provisions.

10.3 Final Inspection

- a. Within a reasonable time before the warranty expires, the Engineer shall request that the Supplier arrange, attend at and assist the Engineer in carrying out an inspection of the Material. If the request for inspection is made prior to the expiration of the warranty period, but the inspection does not take place until after the expiration of the warranty period, then the warranty period shall be deemed to be extended until such time after the inspection of the Material takes place.
- b. If the Engineer has not requested an inspection at least two weeks prior to the expiry of the warranty period, then the Supplier shall advise the Engineer of the approaching expiry date and shall arrange for an inspection in accordance with GC:10.3.a.
- c. Where the warranty period has been extended pursuant to GC:10.2.a, a second inspection shall be carried out in accordance with GC:10.3 before the warranty period, as extended, expires.

10.4 Warranty Material

- a. The Engineer shall notify the Supplier of observed defects, deficiencies and damage within the warranty period.
- b. The Supplier shall correct, to the satisfaction of the Engineer, all defects, deficiencies and damage identified by the Engineer in the manner and within the time period(s) specified in the notice.
- c. If the Supplier disagrees with the Engineer's determination under GC:10.4.a, the Supplier shall nonetheless comply with GC:10.4.c. The Supplier may concurrently appeal the determination of the Engineer as provided for in GC:14.

10.5 Acceptance of the Material

- a. The Engineer shall certify acceptance of the Material upon:
 - .i the satisfactory performance of the Material during the warranty period;
 - .ii the Supplier fully complied with GC:10.4 (warranty work); and
 - .iii the successful conclusion of any tests required under the Supply Contract.
- b. Certification of acceptance of the Material shall not relieve the Supplier from their responsibilities for any breach of the Supply Contract, including, but not limited to, defective or deficient Material appearing after the date of such certification.

SECTION 11 EVENTS OF DEFAULT

- a. An event of default will be deemed to have occurred if the Supplier:
 - .i abandons the supply of Material; or
 - .ii is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of their creditors, or has a receiver or liquidator appointed in respect of their assets; or
 - .iii subject to GC:8.b, fails to deliver the Material in accordance with the Delivery Schedule;
 - .iv is not supplying Material or any part thereof, and in such a manner as to ensure the completion of the Construction Contractor's work or any part thereof, in accordance with the construction schedule; or
 - .v fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Engineer; or
 - .vi fails to comply with any laws, by-laws or statutory regulations; or
 - .vii refuses or neglects to comply with an order given by the Engineer; or
 - .viii commits any other breach of the Contract.
- b. Any provision of the Supply Contract may be waived only by express waiver in writing by the MWSB. No express waiver of any provision shall imply the waiver of any other provision.

SECTION 12 MWSB's RIGHTS AND REMEDIES

12.1 General

- a. If an event of default has occurred, the MWSB may do any one or more of the following:
 - .i withhold or retain the whole or part of any payment;
 - .ii take the whole of the Material, or any part or parts thereof out of the hands of the Supplier to the extent such materials are located at the Site;
 - .iii demand payment for any amount owed to the MWSB;
 - .iv all as more particularly set forth in GC:12.2 below.
- b. The duties and obligations imposed upon the Supplier by the Supply Contract and the rights and remedies available to MWSB hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Supplier or available to MWSB at law.

12.2 Withholding of Payment

- a. If an event of default has occurred, the MWSB may withhold or retain the whole or part of any payment to the Supplier.
- b. The MWSB may apply the amount withheld or retained to indemnify, compensate or reimburse the MWSB for amounts paid or costs incurred by the MWSB in connection with the event of default.
- c. Payment of such amounts shall discharge the MWSB's liability to the Supplier to the same extent as payment directly to the Supplier.
- d. Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Supplier.

12.3 Demand for Payment

- a. If an event of default has occurred, the MWSB may demand payment from the Supplier for amounts paid or costs incurred by the MWSB in connection with the event of default.
- b. The Supplier shall, within seven (7) calendar days of receipt of a notice from the MWSB, pay the MWSB the amount set out in the notice.

SECTION 13 SURETY'S OPTION TO ASSUME THE CONTRACT

- a. Where the MWSB has given notice to the Supplier of an event of default, the MWSB shall promptly provide the surety with a copy of such notice.
- b. The surety may, at its option, assume the Supply Contract in respect of the supply of Material specified in the notice and proceed to perform same.
- c. Within fourteen (14) calendar days after the date on which the surety is provided with a copy of the notice given to the Supplier, the surety shall advise the MWSB whether it intends to exercise such option. The said option shall expire if the surety fails to so advise the MWSB within the time specified.
- d. If the surety has exercised its option in accordance with the foregoing, it shall take the

Supplier's place in all respects. The surety shall be bound by all terms and conditions of the Supply Contract and shall be paid in accordance with the terms of the Supply Contract for all Material supplied by it.

- e. The surety may, with the consent of the Engineer, subcontract the supply of Material so taken over or any portion thereof.

SECTION 14 DISPUTE RESOLUTION

14.1 General

- a. The parties shall make all reasonable efforts to resolve their disputes by amicable negotiations and agree to provide, without prejudice, disclosure of relevant facts, information, and documents to facilitate these negotiations. Should it not be possible to resolve the dispute in this manner, then the dispute resolution provisions set out herein shall apply.

14.2 Supplier's Right to Appeal

- a. If the Supplier disagrees with a determination or order of the Engineer, the Supplier may within seven (7) calendar days after receiving notice of the Engineer's determination or order, notify the Construction Manager of their contention with respect thereto and request a determination thereon from the Construction Manager.
- b. If the Supplier disagrees with a determination or order of the Construction Manager, the Supplier may within seven (7) calendar days after receiving notice of the Construction Manager's determination or order, notify the General Manager of their contention with respect thereto and request a determination thereon from the General Manager.
- c. If the Supplier disagrees with the General Manager's determination, the Supplier may request that the dispute be referred to arbitration in accordance with GC:14.3, by providing notice to the General Manager within seven (7) calendar days after receiving notice of the General Manager's determination.
- d. If the Supplier neglects or fails to observe fully and faithfully the above conditions, the Supplier shall be deemed to have accepted the Engineer, the Construction Manager or the General Manager's determination and to have waived any said claim, at law or otherwise.

14.3 Arbitration

- a. If, at any time before the termination of the warranty period, any dispute, difference or question shall arise between MWSB and the Supplier regarding the Material, then every such dispute, difference or question may, with the consent of both the MWSB and the Supplier, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Substantial Performance.
- b. The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.
- c. The Other Party shall reply to the request within seven (7) calendar days of receiving same.

14.4 Referral to a Single Arbitrator

- a. If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the “Requesting Party’s Nominee) within seven (7) calendar days of receiving the reply. The Other Party shall have seven (7) calendar days after receiving notice of the nomination to accept or reject the Requesting Party’s Nominee.
- b. If the Other Party accepts the Requesting Party’s Nominee, the dispute, difference or question shall be promptly referred to that nominee.

14.5 Referral to a Panel of Arbitrators

- a. If the Other Party rejects the Requesting Party’s Nominee, it shall, within seven (7) calendar days of rejection, appoint its own arbitrator.
- b. The Requesting Party shall, within seven (7) calendar days of receiving the Other Party’s rejection, appoint its own arbitrator.
- c. The arbitrators appointed under GC:14.5.a and GC:14.5.b shall, within seven (7) calendar days of the date on which the last of them was appointed, appoint a third arbitrator (the “Panel Chair”) who will act as chair of the arbitration panel.

14.6 General

- a. The Arbitration Act or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions for Supply Contracts.
- b. The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with The Arbitration Act or any successor legislation thereto.
- c. Where the matter proceeds with a single arbitrator, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other evidences voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- d. Where the matter proceeds with an arbitration panel, each party shall be responsible for its own legal expenses, expenses to produce expert or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.

SECTION 15 GOVERNING LAW

- a. The Supply Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein.
- b. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.

SECTION 16 NOTICES

- a. All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required or permitted under the Supply Contract shall be in writing and shall be delivered by hand or by electronic mail (email).
- b. All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications shall be delivered to the parties at their respective addresses set out in the Form of Agreement for Equipment Supply.
- c. Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications.
- d. Delivery to the Supplier's designated site superintendent shall constitute delivery to the Supplier.
- e. Any notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:
 - .i if delivered by hand, be deemed to have been received on the date of receipt; and
 - .ii if delivered by electronic submission, be deemed to have been received on the date of the electronic mail, if a Business Day, or if not a Business Day, on the next Business Day.

SECTION 17 CONFIDENTIALITY

- a. During and after the term of the Supply Contract, the Supplier, and any officers, employees, subcontractors or agents of the Supplier, agree to treat as confidential, and not to disclose or permit to be disclosed to any person, corporation or entity, any information provided by the MWSB to the Supplier in confidence or information received by the Supplier in confidence from any other source, in connection with the project or this Supply Contract. However, the Supplier may disclose such information if:
 - .i The MWSB agrees to the disclosure; or
 - .ii Disclosure is required by law or any board, tribunal or administrative authority having jurisdiction (provided that prompt notice is given of such law or requirement).