

2023-09-07

Section 00 72 14
General Conditions of Contract

This Section contains standard general conditions of contract. Do not edit this Section; use as is. If necessary, the General Conditions of Contract may be modified by Supplementary Conditions or elaborated on in Section 01 00 15 - General Requirements.

Include **00 73 80B-A eForm, Statutory Declaration of Payment Distribution** only if the specified Contact Time exceeds one month. (Refer to Payment article 28.2 in the General Conditions of Contract for link.)

This Master Specification Section contains:

- .1 This Cover Page
- .2 Specification Section Text:
 - .1 Province's Representative
 - .2 Contract Documents
 - .3 Law of the Contract
 - .4 Relationship and Covenant
 - .5 Conflict of Interest and Ethical Conduct
 - .6 Accounting
 - .7 Freedom of Information and Protection of Privacy
 - .8 Non-Disclosure of Information
 - .9 Assignment
 - .10 Termination
 - .11 Subcontractors
 - .12 Federal Goods and Services Tax
 - .13 Protection of Work and Property
 - .14 Cleaning
 - .15 Waste Management
 - .16 Hold Harmless Agreement
 - .17 Insurance
 - .18 Regulatory Requirements
 - .19 Workers' Compensation Act and Occupational Health and Safety Act
 - .20 Defective Work
 - .21 Contract Time
 - .22 Materials and Equipment
 - .23 Product Options and Substitutions
 - .24 Warranty
 - .25 Changes in the Work
 - .26 Valuation of Changes on Stipulated Price Work
 - .27 Valuation of Changes on Unit Price Work
 - .28 Payment
 - .29 Claims
 - .30 Dispute Resolution Procedure
 - .31 Counterpart Signatures
 - .32 Safety, Health, and Security
 - .33 Vendor Performance
 - .34 Force Majeure
 - .35 Future Contracts

SPMS Small Projects Master Specification

Infrastructure
Master Specification System

Page 0

Changes made in this Section Update (2023-09-07):

1. Section Cover Page: Updated link reference to 00 73 80B-A eForm, Statutory Declaration of Payment Distribution
2. Article 28.2.3: Updated link to 00 73 80B-A eForm, Statutory Declaration of Payment Distribution
3. Article 33.1.3: Updated links to documents: Appendix 'A' Key Performance Indicators.

1. PROVINCE'S REPRESENTATIVE

- .1 Province shall appoint, in writing, a representative who shall, unless the Contractor is expressly advised otherwise by a duly authorized officer of the Province, have full authority to act on behalf of and bind the Province under the Contract.

2. CONTRACT DOCUMENTS

- .1 The Contract Documents shall be signed by the Province and the Contractor.
- .2 The Contract Documents are comprised of the following documents, as applicable:
 - .1 Amendments, if any, made after execution of the Agreement Form
 - .2 This Agreement Form, once executed by both parties
 - .3 Supplementary Conditions
 - .4 General Conditions of Contract
 - .5 Addenda published as part of the bidding process
 - .6 Change Orders
 - .7 Specifications published as part of the bidding process, except Sections prior to Section 00 41 14.
 - .8 Drawings published as part of the bidding process
 - .9 Schedules published as part of the bidding process
- .3 In the event of conflicts between Contract Documents the following shall apply:
 - .1 figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing,
 - .2 drawings of larger scale shall govern over those of smaller scale of the same date,
 - .3 schedules shall govern over drawings,
 - .4 specifications shall govern over schedules and drawings,
 - .5 addenda shall govern over applicable portions of documents published during the tendering process,
 - .6 change orders shall govern over applicable portions of documents identified above in 2.3.1 to 2.3.5 inclusive,
 - .7 the General Conditions of Contract shall govern over specifications, schedules and drawings,
 - .8 Supplementary Conditions shall govern over the General Conditions of Contract, specifications, schedules and drawings,
 - .9 the executed Agreement between the Province and the Contractor shall govern over all documents, and
 - .10 Amendments made after the execution of the Agreement Form shall govern over the executed Agreement between the Province and the Contractor.

Notwithstanding the foregoing, documents of later date shall always govern.

- .4 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- .5 Province, in the first instance, shall decide on questions arising under the Contract Documents, interpret requirements therein, and judge performance in accordance therewith.
- .6 The Contractor shall be responsible for printing, at its expense, as many copies of the Contract Documents or parts thereof as are reasonably necessary for the performance of the Work. The Province will make available appropriate source documents from which the Contract Documents may be printed.

3. LAW OF THE CONTRACT

- .1 Subject to Article 30. – Dispute Resolution Procedure, this Contract shall be governed by and interpreted in accordance with the laws in force in Alberta and the parties irrevocably attorn to the exclusive jurisdiction of the courts of Alberta.
- .2 The Contractor shall comply with the provisions of all laws, now in force or in force after the signing of this Contract, that expressly or by implication apply to the Contractor in performing the work of this Contract.
- .3 Article 3. – Law of the Contract, survives the Contract.

4. RELATIONSHIP AND COVENANT

- .1 The relationship of the Contractor to the Province in performing the Work under this Contract is that of an independent contractor, and nothing in this Contract is to be construed as creating an agency, partnership, joint venture or employment relationship between the Contractor and the Province.
- .2 The Contractor covenants with the Province to cooperate with the Consultant and to provide its skill and judgment in furthering and protecting the interests of the Province during execution of the Work. The Contractor shall provide the Work in accordance with the Contract Documents and accepted construction practices for a Project of this type. The Contractor shall employ its best efforts to perform the Work diligently and in an expeditious, economical, and financially prudent manner, consistent with the best interests of the Province.

5. CONFLICT OF INTEREST AND ETHICAL CONDUCT

- .1 The Contractor shall ensure that there is not a conflict of interest or an apparent conflict of interest on the part of the Contractor or its employees, subcontractors or agents in relation to the Work, and all Work shall be performed in accordance with high ethical standards, including without limitation the following:

- .1 the Contractor and its employees, subcontractors and agents shall not influence, or seek to influence, or otherwise take part in a decision of the Province knowing that the decision might further their private interests;
- .2 where the Work involves providing advice, making recommendations to the Province or exercising discretionary authority regarding a right, permission, privilege, status, contract or benefit, then such advice, recommendations or discretion must be provided, made or carried out impartially and without bias;
- .3 except for payment as set out in this Contract, the Contractor and its employees subcontractors or agents shall not accept any collateral gift, payment, commission or other direct benefit arising from or connected to the performance of the Services;
- .4 the Contractor and its employees, subcontractors and agents shall not have any financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Work;
- .5 the Contractor, upon request by the Province, shall deliver copies of all written ethical standards, conflict of interest policies and codes of conduct established or observed by the Contractor in its business practices or in relation to its employees, subcontractors or agents; and
- .6 the Contractor shall comply with, and ensure that, its employees, subcontractors and agents comply with, the *Lobbyists Act* (Alberta), as amended from time to time.

.2 In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the performance of the Work, the Contractor shall immediately disclose such matter to the Province in writing. Upon such disclosure, the Contractor shall not commence or continue performance of the Work without the prior written consent of the Province. If the Province is of the opinion the Contractor or its employees, subcontractors or agents are in a conflict of interest, the Province may terminate this Contract.

6. ACCOUNTING

- .1 The Contractor shall keep and maintain in accordance with Canadian generally accepted accounting principles complete and accurate books, records and accounts relating to this Contract and, on demand, provide to the Province these documents to examine, audit and make copies and take extracts; and
- .2 The Contractor shall keep the documents referred to in clause 6.1 for three (3) years following the completion or termination of the Contract.
- .3 Article 6. – Accounting, survives the Contract.

7. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- .1 “*FOIP Act*” means the Freedom of Information and Protection of Privacy Act (Alberta), as amended from time to time.
- .2 The Contractor acknowledges that this Contract, including without limitation the name of the Contractor, fees payable, the Term, and details of the Services may be subject to disclosure under the *FOIP Act*. The Contractor further acknowledges that the *FOIP Act* applies to the Province’s Information (as defined in Article 8. – Non-Disclosure of Information) collected, used or disclosed in the performance of Work, and the Contractor shall adhere to the *FOIP Act* in its collection, use and disclosure of any Personal Information,
- .3 The Contractor shall not collect, use or disclose any Personal Information under this Contract except as reasonably required to fulfill its obligations under this Contract, or as otherwise expressly authorized in writing by the Province.
- .4 Upon request, the Contractor shall, at the Contractor’s expense, and within five business days, provide to the Province any records that are requested under the access provisions of the *FOIP Act* that are in the custody or under the control of the Contractor. Should the Contractor receive an access request under the *FOIP Act*, the Contractor shall not respond to it, but shall immediately forward the access request to the Province for further handling.
- .5 In providing the Services the Contractor shall make every reasonable effort to ensure that Personal Information that is to be or is actually used to make a decision that directly affects an individual, is both complete and accurate. At the Province’s request the Contractor must correct, within five business days of the request, Personal Information that the Contractor may have either collected or compiled about an individual pursuant to this Contract.
- .6 The Contractor shall:
 - .1 protect Personal Information against any unauthorized access, use disclosure, loss, destruction or alteration;
 - .2 immediately advise the Province of any actual or potential unauthorized access, use, disclosure, destruction or alteration of Personal Information and provide all reasonable assistance to the Province to prevent or remedy the same; and
 - .3 provide the Province with any information regarding the Contractor’s security measures that the Province may require to verify compliance with the *FOIP Act*.

- .7 The Contractor shall store only in Canada all records of Personal Information which are disclosed to the Contractor under this Contract, including records that are collected, used or stored on behalf of the Province.
- .8 The Contractor shall act on any direction that the Province may provide with regard to the use, collection, access, security, disclosure, alteration, loss or destruction of the Personal Information.
- .9 Article 7. – Freedom of Information and Protection of Privacy, survives the Contract.

8. NON-DISCLOSURE OF INFORMATION

- .1 Except as provided in Article 7. - Freedom of Information and Protection of Privacy and Article 8. - Non-Disclosure of Information, all information, regardless of form, including Personal Information, that is obtained, generated, provided or collected by the Contractor in the performance of the Work (the “Province’s Information”), shall not be disclosed or published by the Contractor without the prior written consent of the Province. The Contractor may disclose the Province’s Information to employees, subcontractors or agents of the Contractor who have a need to know for the purpose of performing the Work, provided that the Contractor has a confidentiality agreement with the agent or permitted subcontractor containing confidentiality provisions substantially similar to this Contract.
- .2 Subject to Article 7. - Freedom of Information and Protection of Privacy, the Contractor’s obligations in Article 8. - Non-Disclosure of Information, do not apply to information or documents which:
 - .1 are or become publicly available through no act or omission of the Contractor;
 - .2 are independently developed without benefit of the Province’s Information; or
 - .3 are received by or from a third party without restriction and without a breach of an obligation of confidentiality.
- .3 The Contractor shall retain the Province’s Information as confidential and shall make reasonable security arrangements against unauthorized access, use, disclosure, loss, destruction or alteration of the Province’s Information. The Contractor shall immediately advise the Province of any unauthorized access, use, disclosure, loss or destruction of the Province’s Information, and shall provide the Province any assistance reasonably required to rectify such a situation.
- .4 The Contractor shall return or deliver the Province’s Information to the Province upon completion or termination of this Contract, or upon request of the Province.

- .5 The Province's Information may be disclosed to the extent required by law or court order, provided that the Province is given reasonable notice and opportunity to seek to prevent or limit its disclosure.
- .6 No press release, public announcement or other public commentary relating to this Contract shall be made by the Contractor without the prior written approval of the Province.
- .7 Article 8. – Non-Disclosure of Information, survives the Contract.

9. ASSIGNMENT

- .1 The Contractor shall not assign the Contract, either in whole or in part, nor shall the Contractor sublet the Contract as a whole, without previous written consent of Province, which consent shall be at Province's sole discretion.

10. TERMINATION

- .1 The Province may, by giving a written notice of termination to the Contractor, terminate the Contract at any time without cause.
- .2 If the Province terminates the contract because the Contractor is adjudged to be bankrupt or is insolvent or is declared in default of the Contract, the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination.
- .3 If the Province terminates the contract for any other reason the Contractor shall be entitled to be paid for all work performed in accordance with the Contract Documents up to the date of termination, including reasonable profit and for loss sustained upon Products and construction machinery and equipment and such other damages as the Contractor may have sustained as a result of the termination of the Contract.
- .4 The Province's right to terminate the Contract is not subject to dispute resolution under Article 30.

11. SUBCONTRACTORS

- .1 The Province will recognize the Contractor only. Nothing contained in the Contract Documents shall create a contractual relationship between a subcontractor and the Province.
- .2 The Contractor agrees that the Contractor will incorporate the terms and conditions of the Contract Documents into all subcontract agreements the Contractor enters into with the Contractor's subcontractors.

12. FEDERAL GOODS AND SERVICES TAX

- .1 Each application for payment shall exclude any amount for federal Goods and Services Tax.
- .2 The Province represents and warrants that, as the purchaser of the Services provided under this Contract, no amount payable under this Contract is subject to the Goods and Services Tax (GST) or Harmonized Sales Tax (HST) under Part IX of the *Excise Tax Act* (Canada) as amended. The Government of Alberta's GST Registration Number is 1240 72513 RT0001.

13. PROTECTION OF WORK AND PROPERTY

- .1 The Contractor shall take reasonable precautions necessary to protect the Work and the Province's property from damage during the performance of the Contract and shall make good any damage to the Province's property caused by the Contractor or any of the Contractors' subcontractors during the performance of the Contract at no cost to the Province.

14. CLEANING

- .1 The Contractor shall keep site free from unsightly or hazardous accumulations of waste material and shall leave site in a neat and tidy condition at completion of Work.

15. WASTE MANAGEMENT

- .1 The Contractor shall ensure that work on the Province's property is provided in an environmentally friendly manner using best practices that mitigate harmful environmental impacts. The Contractor shall provide the Province with a waste management plan listing materials that will be salvaged, reused or recycled during the course of the project for cardboard, wood, beverage containers, land clearing debris, aggregate (including concrete, asphalt and masonry), metals, gypsum board, plastic and carpet.
- .2 Other waste materials resulting from the Contractor's activities under this Contract must be disposed of as per provincially regulated recycling programs should they apply. This includes but is not restricted to electronics, paint, oils, cleaners, pesticides and tires.

16. HOLD HARMLESS AGREEMENT

- .1 Each party shall indemnify and hold harmless the other, its employees and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

- .1 that party's breach of this Contract, or
 - .2 the negligence, other tortious act of wilful misconduct of that party, or those for whom it is legally responsible, relation to the performance of its obligations under this Contract.
- .2 The Contractor shall indemnify and hold harmless the Province against and from any loss or damage to real or personal property of the Province to the extent arising from the Contractor's breach of this Contract or from the negligence, other tortious act or wilful misconduct of the Contractor, or those for whom it is legally responsible.
- .3 Article 16 – Hold Harmless Agreement, survives the Contract.

17. INSURANCE

- .1 The Contractor shall, at it's own expense, in accordance with the *Insurance Act* (Alberta) and without limiting its liabilities under this Contract:
 - .1 insure its operations under a contract of General Liability Insurance not less than \$2,000,000 inclusive per occurrence, against bodily injury, personal injury, and property damage, and including following endorsements: owner's and the Contractor's protective; blanket written contractual; non-owned auto; and broad form property damage.
 - .2 Maintain Automobile Liability Insurance on all vehicles owned, operated or licensed in the Contractor's name, with limits of not less than \$2,000,000.
 - .3 Where such risks exist, Property Insurance in the form of an All Risks Builder's Risk Policy or an All Risks Installation Floater insuring not less than the full insurable value of the Work plus an appropriate value for risk of loss to Province's property, if any, in the Contractor's care, custody and control.
- .2 The Contractor shall provide the Province with acceptable evidence of insurance, in the form of a detailed certificate of insurance, prior to commencing the Work and at any other time upon request of the Province.
- .3 Notice of Cancellation of Policy: Each required policy, except for the automobile policy, shall be endorsed to provide the Province with not less than 30 Days advance written notice of cancellation including cancellations for non-payment of premium.

18. REGULATORY REQUIREMENTS

- .1 The Contractor shall apply and pay for necessary permits or licences required for execution of Work, except obtaining permanent easements or rights of servitude.

19. WORKERS' COMPENSATION ACT AND OCCUPATIONAL HEALTH AND SAFETY ACT

- .1 Upon request from the Province, deliver to the Province a certificate from the Workers' Compensation Board showing that the Contractor is registered and in good standing with the Board.
- .2 The Contractor shall pay all fees in connection with Workers' Compensation and comply with all requirements of the *Workers' Compensation Act* (Alberta), and as amended from time to time.
- .3 The Contractor shall comply with all safety requirements as contained in the Regulations as issued under authority of the latest edition of the *Occupational Health and Safety Act* (Alberta).

20. DEFECTIVE WORK

- .1 Defective work is work that has been rejected by the Province as failing to conform to the Contract Documents. The Contractor shall promptly correct defective work, as required to conform to the Contract Documents, with no change in Contract Price.
- .2 If, in the Province's opinion, it is not expedient to correct defective work, the Province may deduct from the Contract Price the difference in value between the work as performed and that required by the Contract Documents, the amount of which will be determined in the first instance by the Province.

21. CONTRACT TIME

- .1 Time and all time limits stated in the Contract Documents are of the essence of the Contract. The Contractor shall perform work expeditiously and with adequate forces to complete the Work of the Contract within time specified in the Contract.

22. MATERIALS AND EQUIPMENT

- .1 Unless otherwise specified, the Contractor shall provide, maintain, and pay for all materials, tools, machinery, equipment, temporary facilities, controls, and conveniences, necessary for execution of the Work. Unless otherwise specified, all materials shall be new, of merchantable quality and suitable for the intended purpose.

23. PRODUCT OPTIONS AND SUBSTITUTIONS

- .1 For products specified by non-proprietary specification, select any product which meets requirements of the Contract Documents, by any manufacturer.

- .2 For products specified by proprietary specification and accompanied by words indicating that substitutions will not be accepted, select any product or manufacturer named. Substitutions are not permitted.
- .3 Except where substitutions are not permitted, when a product is specified by proprietary specification, other unnamed products will be accepted, subject to such substitutions being the same generic type as, being capable of performing the same functions as, and meeting or exceeding the standards of quality and performance of the named product. Substitutions shall not require revisions to the Contract Documents.
- .4 In making a substitution, the Contractor represents that the Contractor:
 - .1 has investigated substitute product or manufacturer, or both, and has determined that it meets the criteria specified in 23.3,
 - .2 will make any changes to the Work necessitated by the substitution as required for the Work to be complete in all respects, and
 - .3 waives claims for additional costs and time caused by such substitution which may subsequently become apparent.

24. WARRANTY

- .1 Neither the final payment, nor any provision in the Contract Documents shall relieve the Contractor from responsibility for faulty materials or workmanship which appear within a period of one (1) year from the date of acceptance of the Work, or such other periods as may be specified for parts of the Work, and the Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which appear within such periods.
- .2 The Province shall give notice of observed defects promptly.

25. CHANGES IN THE WORK

- .1 Province may order changes in the Work by means of a written Change Order. The Contractor shall not proceed with any change in the Work without a written Change Order.

26. VALUATION OF CHANGES ON STIPULATED PRICE WORK

- .1 The value of a change, and the change in Contract Price and Contract Time, shall be as agreed upon in writing, before the Province orders the Contractor to proceed with the change in the Work.

- .2 Alternatively, if the Province orders the Contractor, in writing, to proceed with a change in the Work before there is an agreement on the value of the change, the value of the change shall be based on the Contractor's actual costs and savings attributable to the change. If a change results in a net increase in the Contractor's costs, the Contract Price shall be increased by the amount of the net increase in costs, plus an allowance for overhead and profit, as follows:
 - .1 For work performed by Contractor's own forces, including work performed to accommodate work performed by subcontractors, the Contractor shall be entitled to a mark-up of 15% on its actual Direct Costs related to the change in the work for overhead costs and profit.
 - .2 For work performed by subcontractors, including work performed to accommodate work performed by Sub-subcontractor:
 - .1 Each Subcontractor shall be entitled to a mark-up of 15% on actual Direct Costs related to the change in the work for overhead and profit.
 - .2 The Contractor shall be entitled to 10% on the Subcontractors' total price to cover their Administrative Fee and profit.
 - .3 For work performed by Sub-subcontractors:
 - .1 Each Sub-subcontractor shall be entitled to a mark-up of 15% on actual Direct Costs related to the change in the work for overhead and profit.
 - .2 Subcontractor shall be entitled to 10 % on the Sub-subcontractors' total price to cover their Administrative Fee and profit.
 - .3 The Contractor shall be entitled to 10 % on the Subcontractor's above total price to cover their Administrative Fee and profit.
 - .4 If a change results in a decrease in cost, amount of credit to be given to Province shall be amount of actual decrease, without overhead and profit.
 - .5 If a change involves both extras and credits and results in an increase in cost, overhead and profit shall be allowed on increase only.

27. VALUATION OF CHANGES ON UNIT PRICE WORK

- .1 On unit price work, a change shall mean work authorized by Province in writing which is not required by the Contract Documents and which cannot be classified as coming under any of the contract units and for which no unit price, lump sum or other basis of payment has been agreed to.

- .2 Changes shall be performed on the basis of unit prices agreed to by both Province and the Contractor, or if such agreement cannot be reached, or if deemed more appropriate by both parties, on the basis of actual costs, plus a percentage for overhead and profit, such percentage not to exceed that specified in 26.2.

28. PAYMENT

- .1 Province shall make one lump sum payment, with no holdback, provided that:
- .1 Work has been completed, deficiencies have been corrected, and Work has been accepted by Province,
 - .2 The Contractor has submitted one or more invoices, the total amount of which equals the Contract Price,
 - .3 The Contractor has submitted a letter of clearance from Workers' Compensation Board,
 - .4 45 days from date of Province's acceptance of Work has expired, and
 - .5 any third party claims received by Province have been resolved, or addressed and a course of action agreed to.
- .2 Alternatively, if Contract Time exceeds one month, invoices may, at the Contractor's option, be submitted monthly, subject to the following conditions:
- .1 Amount invoiced shall be for value of work performed and products delivered to site, at that date.
 - .2 Amount payable by Province shall be amount invoiced, adjusted by Province if necessary, less 10% holdback.
 - .3 The Contractor shall submit with second and any subsequent invoices, and as a condition of holdback release, Form **00 73 80B-A - Statutory Declaration of Payment Distribution**. Form is accessible from Infrastructure's Technical Resources at <https://www.alberta.ca/contractor-forms-owned-infrastructure#jumplinks-0>
 - .4 Release of holdback shall be subject to all conditions specified under 28.1.
- .3 All invoices shall exclude GST.

29. CLAIMS

- .1 If the Contractor intends to claim any additional payment, the Contractor shall give notice of its intention to Province as soon as possible and not later than 7 days after the event giving rise to the claim first arises or the Contractor first becomes aware of such event.

- .2 The parties shall make bona fide efforts to resolve a claim as soon as possible after receipt thereof. When the Province issues a final written position on the claim, or fails to do so within a reasonable period of time, and the claim is not resolved to the satisfaction of both parties, the claim shall be considered a dispute and shall be settled in accordance with Article 30 – Dispute Resolution Procedure.

30. DISPUTE RESOLUTION PROCEDURE

- .1 The following expressions have the following meanings:

“Dispute” means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the Agreement;

“Dispute Notice” means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

- .2 Any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out herein, which procedure shall be followed in the order set out below:

- .1 the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one party to the other;
- .2 the parties shall attempt to resolve the Dispute by a Settlement Meeting under section 30.3;
- .3 if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to Court.

- .3 Within 21 days of a party becoming aware of the basis for a potential Dispute, such party shall give the other party notice of the basis for a potential Dispute. Failure by such party to provide such notice in such manner shall not thereafter disqualify such party from providing a Dispute Notice, but the other party may in that event assert a claim for damages arising from such failure.

- .4 Settlement Meeting

- .1 In the event of a Dispute, which is not resolved in the normal course of business, either party may deliver a Dispute Notice to the other party. Within 30 days from the delivery of the Dispute Notice, officials designated by the Province and the Contractor will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "Settlement Meeting"). The parties through their representatives will make all reasonable efforts to resolve the Dispute. All negotiations held pursuant to Section 30.3 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding.

- .5 Court

- .1 If any Dispute is not resolved by agreement between the parties, after a Settlement Meeting either party may refer the Dispute to Court.

31. COUNTERPART SIGNATURES

- .1 This Contract may be executed by the parties in counterparts, and may be delivered by electronic transmission in Portable Document Format (PDF), each of which upon execution and delivery shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

32. SAFETY, HEALTH, AND SECURITY

- .1 At the time of using or entering any of the Province’s or third party’s buildings, premises, equipment, hardware or software, the Contractor, its employees, subcontractors and agents shall comply with all safety, health, or security policies or directives relating to those buildings, premises, equipment, hardware or software that are in effect, at their own cost.

33. VENDOR PERFORMANCE

- .1 Vendor Performance Management Program:
 - .1 “Vendor” shall be synonymous with “Contractor” and used interchangeably for the purpose of this Contract.
 - .2 This Contract is subject to the Province’s Vendor Performance Management Program (“VPMP”). The VPMP document is accessible at:
<https://open.alberta.ca/publications/vendor-performance-management-program>
 - .3 The Contractor’s performance on this Contract will be evaluated by the Province pursuant to its VPMP system based on Key Performance Indicators (“KPIs”). KPIs are used to determine Vendor Performance Evaluation Result scores. The Contractor agrees that, notwithstanding any other requirements hereunder, the Contractor will deliver and comply with the KPIs as described in Appendix A – Key Performance Indicators.
 - .1 Appendix ‘A’ Key Performance Indicators (for all construction contracts **except** Design-Build contracts) is accessible at:
https://www.alberta.ca/system/files/custom_downloaded_images/tr-00-72-00b-a.pdf
 - .2 Appendix ‘A’ Key Performance Indicators (for Design-Build contracts) is accessible at:
https://www.alberta.ca/system/files/custom_downloaded_images/tr-00-72-00b-b.pdf

- .4 The Contractor shall, within fifteen (15) Days of the commencement of Contract, submit a list of all its affiliated entities to the Province for the Province's record.

34. FORCE MAJEURE

- .1 "Force Majeure Event" means any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, pandemic including Covid- 19, or quarantine restriction that prevents, delays or interrupts the performance of any obligation under this Contract, other than any obligation to pay any money, and provided such event does not occur by reason of:
 - .1 The negligence of the party relying on the Force Majeure Event (or those for whom it is in law responsible); or
 - .2 Any act or omission of the party relying on the Force Majeure Event (or those for whom it is in law responsible) that is in breach of this Contract.
- .2 If a Force Majeure Event occurs, then notwithstanding any other provision of this Contract:
 - .1 To the extent that and for so long as either party is prevented by the Force Majeure Event from performing any obligation under this Contract, that party is relieved from liability due to its inability to perform or delay in performing that obligation; and
 - .2 If the Force Majeure Event wholly or substantially prevents the Contractor from proceeding with the Work then the date of Interim Acceptance of the Work shall be adjusted for the period of the Force Majeure Event.
- .3 Upon either party becoming aware of the occurrence of a Force Majeure Event that prevents that party from performing any obligation under this Contract, that party shall in a timely manner give the other party notice of the Force Majeure Event, including reasonable details of the anticipated effects on performance of this Contract, and thereafter the Contractor shall, on an ongoing basis, notify the Province of its plans for remedying or mitigating the effects of the Force Majeure Event.
- .4 If the Contractor anticipates that the Force Majeure Event will delay the date of Interim Acceptance of the Work, but is of the opinion the delay can be avoided or mitigated through extraordinary measures, the Contractor may propose to the Department that such extraordinary measures be taken by the Contractor at the Department's expense.

35. FUTURE CONTRACTS

- .1 The Province may consider the Contractor's performance of its existing contracts in the award of future contracts.

END OF SECTION