



GENERAL CONDITIONS FOR CONTRACT

ID#	NAS-GC-200
Effective Date	2 March, 2015

Text:

- 01 Interpretation
- 02 Status of the Contractor
- 03 Conduct of the Work
- 04 Subcontracts
- 05 Specifications
- 06 Replacement of Specific Individuals
- 07 Time of the Essence
- 08 Excusable Delay
- 09 Inspection and Acceptance of the Work
- 10 Invoice Submission
- 11 Taxes
- 12 Transportation Costs
- 13 Payment Period
- 14 Compliance with Applicable Laws

15 Ownership

1620 Copyright

17 Translation of Documentation

18 Confidentiality

19 Government Property

20 Liability

21 Intellectual Property Infringement and Royalties

22 Amendment and Waivers

23 Assignment

24 Suspension of the Work

25 Default by the Contractor

26 Termination for Convenience

27 Accounts and Audit

28 Right of Set-off

29 Notice

30 Conflict of Interest and Values and Ethics Codes for the Public Service

31 No Bribe or Conflict

32 Survival

33 Severability

34 Successors and Assigns

35 Contingency Fees

36 International Sanctions

37 Code of Conduct and Certifications - Contract

38 Harassment in the Workplace

39 Entire Agreement

40 Access to Information

41 Emergencies

42 Co-operation

01 Interpretation

In the Contract, unless the context otherwise requires:

"Applicable Taxes" means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Nasittuq such as, the Quebec Sales Tax (QST) as of April 1, 2013;

"Articles of Agreement" means the clauses and conditions incorporated in full text or incorporated by reference to form the body of the Contract; it does not include these general conditions, any supplemental general conditions, annexes, the Contractor's bid or any other document;

"Contract" means the Articles of Agreement, these general conditions, any supplemental general conditions, annexes and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated by that title in the Contract, or by notice to the Contractor, to act as Nasittuq's representative to manage the Contract;

"Contractor" means the person, entity or entities named in the Contract to supply goods, services or both to Nasittuq;

"Contract Price" means the amount stated in the Contract to be payable to the Contractor for the Work, exclusive of Applicable Taxes;

"Cost" means cost determined according to Contract Cost Principles 1031-2 as revised to the date of the bid solicitation or, if there was no bid solicitation, the date of the Contract;

"Government Property" means anything supplied to the Contractor by or on behalf of Nasittuq for the purposes of performing the Contract.

"Nasittuq" means Nasittuq Corporation acting on behalf of the Government of Canada;

“*Nasittuq Property*” means anything supplied to the Contractor by or on behalf of Nasittuq for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work, the cost of which is paid by Nasittuq under the Contract;

“*Party*” means Nasittuq, the Contractor, or any other signatory to the Contract and “*Parties*” means all of them; “*Specifications*” means the description of the essential, functional or technical requirements of the Work in the Contract, including the procedures for determining whether the requirements have been met;

;

“*Work*” means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor under the Contract.

02 Status of the Contractor

The Contractor is an independent contractor engaged by Nasittuq to perform the Work. Nothing in the Contract is intended to create a partnership, a joint venture or an agency between Nasittuq and the other Party or Parties. The Contractor must not represent itself as an agent or representative of Nasittuq to anyone. Neither the Contractor nor any of its personnel is engaged as an employee or agent of Nasittuq. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

03 Conduct of the Work

1. The Contractor represents and warrants that:
 - a. it is competent to perform the Work;
 - b. it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and
 - c. it has the necessary qualifications, including knowledge, skill, know-how and experience, and the ability to use them effectively to perform the Work.
2. The Contractor must:
 - a. perform the Work diligently and efficiently;
 - b. except for Government Property, supply everything necessary to perform the Work;
 - c. use, as a minimum, quality assurance procedures, inspections and controls generally used and recognized by the industry to ensure the degree of quality required by the Contract;

- d. select and employ a sufficient number of qualified people;
 - e. perform the Work in accordance with standards of quality acceptable to Nasittuq - and in full conformity with the Specifications and all the requirements of the Contract;
 - f. provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
3. The Work must not be performed by any person who, in the opinion of Nasittuq, is incompetent, unsuitable or has conducted himself/herself improperly.
4. All services rendered under the Contract must, at the time of acceptance, be free from defects in workmanship and conform to the requirements of the Contract. If the Contractor is required to correct or replace the Work or any part of the Work, it will be at no cost to Nasittuq.
5. Nasittuq's facilities, equipment and personnel are not available to the Contractor to perform the Work unless the Contract specifically provides for it. The Contractor is responsible for advising the Contracting Authority in advance if it requires access to Nasittuq's facilities, equipment or personnel to perform the Work. The Contractor must comply and ensure that its employees and subcontractors comply with all security measures, standing orders, policies or other rules in force at the site where the Work is performed.
6. Unless the Contracting Authority orders the Contractor to suspend the Work or part of the Work pursuant to section 24, the Contractor must not stop or suspend the Work or part of the Work pending the settlement of any dispute between the Parties about the Contract.
7. The Contractor must provide all reports that are required by the Contract and any other information that Nasittuq may reasonably require from time to time.
8. The Contractor is fully responsible for performing the Work. Nasittuq will not be responsible for any negative consequences or extra costs if the Contractor follows any advice given by Nasittuq unless the Contracting Authority provides the advice to the Contractor in writing and includes a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might result from following the advice.
9.
 - a) Despite inspection and acceptance of the Work by or on behalf of Nasittuq and without restricting any other provision of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor warrants that, for twelve (12) months (or any other period stated in the Contract), the Work will be free from all defects in design, materials or workmanship, and must conform to the requirements of the Contract. The warranty period begins on the date of delivery, or if acceptance takes place at a later date, the date of acceptance.

- b) In the event of a defect or non-conformance in any part of the Work during the warranty period, the Contractor, at the request of Nasittuq to do so, must as soon as possible repair, replace or otherwise make good at its own option and expense the part of the Work found to be defective or not in conformance with the requirements of the Contract.
- c) The Work or any part of the Work found to be defective or non-conforming will be returned to the Contractor's plant for replacement, repair or making good. However, when in the opinion of Nasittuq it is not expedient to remove the Work from its location, the Contractor must carry out any necessary repair or making good of the Work at that location. In such cases, the Contractor will be responsible for all Costs (including travel and living expenses) incurred in so doing. Nasittuq will not reimburse these Costs.
- d) The Contractor must pay the transportation cost associated with returning the Work or any part of the Work to the Contractor's plant pursuant to subsection 3. The Contractor must also pay the transportation cost associated with forwarding the replacement or returning the Work or part of the Work when rectified to the delivery point specified in the Contract, or to another location directed by Nasittuq.
- e) The Contractor must remedy all data and reports pertaining to any correction or replacement under this section, including revisions and updating of all affected data, manuals, publications, software and drawings called for under the Contract, at no cost to Nasittuq.
- f) If the Contractor fails to fulfill any obligation described in this section within a reasonable time of receiving a notice, Nasittuq will have the right to remedy or to have remedied the defective or non-conforming work at the Contractor's expense. If Nasittuq does not wish to correct or replace the defective or non-conforming work, an equitable reduction will be made in the Contract Price.
- g) The warranty period is automatically extended by the duration of any period or periods where the Work is unavailable for use or cannot be used because of a defect or non-conformance during the original warranty period. The warranty applies to any part of the Work repaired, replaced or otherwise made good pursuant to subsection b), for the greater of:
- i. the warranty period remaining, including the extension, or
 - ii. ninety (90) days or such other period as may be specified for that purpose by agreement between the Parties.

04 Subcontracts

1. Except as provided in subsection 2, the Contractor must obtain the Contracting Authority's written consent before subcontracting or permitting the subcontracting of any part of the Work. A subcontract includes a contract entered into by any subcontractor at any tier to perform any part of the Work.

2. The Contractor is not required to obtain consent for subcontracts specifically authorized in the Contract. The Contractor may also without the consent of the Contracting Authority:
 - a. purchase "off-the-shelf" items and any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business;
 - b. subcontract any portion of the Work as is customary in the carrying out of similar contracts; and;
 - c. permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a) and (b).
3. In any subcontract other than a subcontract referred to in paragraph 2.(a), the Contractor must, unless the Contracting Authority agrees in writing, ensure that the subcontractor is bound by conditions compatible with and, in the opinion of the Contracting Authority, not less favourable to Nasittuq than the conditions of the Contract. .
4. Even if Nasittuq consents to a subcontract, the Contractor is responsible for performing the Contract and Nasittuq is not responsible to any subcontractor. The Contractor is responsible for any matters or things done or provided by any subcontractor under the Contract and for paying any subcontractors for any part of the Work they perform.

05 Specifications

1. All Specifications provided by Nasittuq or on behalf of Nasittuq to the Contractor in connection with the Contract belong to Nasittuq and must be used by the Contractor only for the purpose of performing the Work.
2. If the Contract provides that Specifications furnished by the Contractor must be approved by Nasittuq, that approval will not relieve the Contractor of its responsibility to meet all requirements of the Contract.

06 Replacement of Specific Individuals

1. If specific individuals are identified in the Contract to perform the Work, the Contractor must provide the services of those individuals unless the Contractor is unable to do so for reasons beyond its control.
2. If the Contractor is unable to provide the services of any specific individual identified in the Contract, it must provide a replacement with similar qualifications and experience. The replacement must meet the criteria used in the selection of the Contractor and be acceptable to Nasittuq. The Contractor must, as soon as possible, give notice to the Contracting Authority of the reason for replacing the individual and provide:

- a. the name, qualifications and experience of the proposed replacement; and
 - b. proof that the proposed replacement has the required security clearance granted by Canada, if applicable.
3. The Contractor must not, in any event, allow performance of the Work by unauthorized replacement persons. The Contracting Authority may order that a replacement stop performing the Work. In such a case, the Contractor must immediately comply with the order and secure a further replacement in accordance with subsection 2. The fact that the Contracting Authority does not order that a replacement stop performing the Work does not relieve the Contractor from its responsibility to meet the requirements of the Contract.

07 Time of the Essence

It is essential that the Work be performed within or at the time stated in the Contract.

2035 08 Excusable Delay

1. A delay in the performance by the Contractor of any obligation under the Contract that is caused by an event that
 - a. is beyond the reasonable control of the Contractor,
 - b. could not reasonably have been foreseen
 - c. could not reasonably have been prevented by means reasonably available to the Contractor, and
 - d. occurred without the fault or neglect of the Contractor,

will be considered an “Excusable Delay” if the Contractor advises the Contracting Authority of the occurrence of the delay or of the likelihood of the delay as soon as the Contractor becomes aware of it. The Contractor must also advise the Contracting Authority, within seven (7) working days, of all the circumstances relating to the delay and provide to the Contracting Authority for approval a clear work around plan explaining in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.

2. Any delivery date or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay.
3. However, if an Excusable Delay has continued for thirty (30) days or more, the Contracting Authority may, by giving notice in writing to the Contractor, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that contributed to the Excusable Delay. The Contractor agrees to repay

immediately to Nasittuq the portion of any advance payment that is unliquidated at the date of the termination.

4. Unless Nasittuq has caused the delay by failing to meet an obligation under the Contract, Nasittuq will not be responsible for any costs incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.
5. If the Contract is terminated under this section, the Contracting Authority may require the Contractor to deliver to Nasittuq, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work not delivered and accepted before the termination and anything that the Contractor has acquired or produced specifically to perform the Contract. Nasittuq will pay the Contractor:
 - a. the value, of all completed parts of the Work delivered to and accepted by Nasittuq, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
 - b. the Cost to the Contractor that Nasittuq considers reasonable in respect of anything else delivered to and accepted by Nasittuq. .

The total amount paid by Nasittuq under the Contract to the date of termination and any amounts payable under this subsection must not exceed the Contract Price.

09 Inspection and Acceptance of the Work

1. All the Work is subject to inspection and acceptance by Nasittuq. Inspection and acceptance of the Work by Nasittuq do not relieve the Contractor of its responsibility for defects or other failures to meet the requirements of the Contract. Nasittuq will have the right to reject any Work that is not in accordance with the requirements of the Contract and require its correction or replacement at the Contractor's expense.
2. The Contractor must provide representatives of Nasittuq access to all locations where any part of the Work is being performed at any time during working hours. Representatives of Nasittuq may make examinations and such tests of the Work as they may think fit. The Contractor must provide all assistance and facilities, test pieces, samples and documentation that the representatives of Nasittuq may reasonably require for the carrying out of the inspection. The Contractor must forward such test pieces and samples to such person or location as Nasittuq specifies.
3. The Contractor must inspect and approve any part of the Work before submitting it for acceptance or delivering it to Nasittuq. The Contractor must keep accurate and complete inspection records that must be made available to Nasittuq on request. Representatives of Nasittuq may make copies and take extracts of the records during the performance of the Contract and for up to three (3) years after the end of the Contract.

10 Invoice Submission

1. Invoices must be submitted in the Contractor's name. The Contractor must submit invoices for each delivery or shipment; invoices must only apply to the Contract. Each invoice must indicate whether it covers partial or final delivery.
2. Invoices must show:
 - b. the date, the name and address of the client , item or reference numbers, deliverable/description of the Work, contract number, and Purchase Order (PO), if applicable; details of expenditures (such as item, quantity, unit of issue, unit price, fixed time labour rates and level of effort, subcontracts, as applicable) in accordance with the Basis of Payment, exclusive of Applicable Taxes;
 - c. deduction for holdback, if applicable;
 - d. the extension of the totals, if applicable; and
 - e. if applicable, the method of shipment together with date, case numbers and part or reference numbers, shipment charges and any other additional charges.
3. Applicable Taxes must be specified on all invoices as a separate item along with corresponding registration numbers from the tax authorities. All items that are zero-rated, exempt or to which Applicable Taxes do not apply, must be identified as such on all invoices.
4. By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

11 Taxes

1. .
 1. Applicable Taxes will be paid by Nasittuq as provided in the Invoice Submission section. It is the sole responsibility of the Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
 2. In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Price, the Contract Price will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Price if public notice of the change was given before bid submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change.

12 Transportation Costs

If transportation costs are payable by Nasittuq under the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The costs must be shown as a separate item on the invoice.

13 Payment Period

Nasittuq's standard payment period is thirty (30) days. The payment period is measured from the date an invoice in acceptable form and content is received in accordance with the Contract or the date the Work is delivered in acceptable condition as required in the Contract, whichever is later. If the content of the invoice and its substantiating documentation are not in accordance with the Contract or the Work is not in acceptable condition, Nasittuq will notify the Contractor within fourteen (14) days of receipt of invoice. The 30-day payment period begins upon receipt of the revised invoice or the replacement or corrected Work.

14 Compliance with Applicable Laws

1. The Contractor must comply with all laws applicable to the performance of the Contract. The Contractor must provide evidence of compliance with such laws to Nasittuq at such times as Nasittuq may reasonably request.
2. The Contractor must obtain and maintain at its own cost all permits, licenses, regulatory approvals and certificates required to perform the Work. If requested by the Contracting Authority, the Contractor must provide a copy of any required permit, license, regulatory approvals or certificate to Nasittuq.

15 Ownership

1. Unless provided otherwise in the Contract, the Work or any part of the Work belongs to Nasittuq after delivery and acceptance by or on behalf of Nasittuq.
2. However if any payment is made to the Contractor for or on account of any Work, either by way of progress or milestone payments, that work paid for by Nasittuq belongs to Nasittuq upon such payment being made. This transfer of ownership does not constitute acceptance by Nasittuq of the Work or any part of the Work and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
3. Despite any transfer of ownership, the Contractor is responsible for any loss or damage to the Work or any part of the Work until it is delivered to Nasittuq in accordance with the Contract. Even after delivery, the Contractor remains responsible for any loss or damage to any part of the Work caused by the Contractor or any subcontractor.

4. Upon transfer of ownership to the Work or any part of the Work to Nasittuq, the Contractor must, if requested by Nasittuq, establish to Nasittuq's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances. The Contractor must execute any conveyances and other instruments necessary to perfect the title that Nasittuq may require.

16 Copyright

In this section, "*Material*" means anything that is created by the Contractor as part of the Work under the Contract, that is required by the Contract to be delivered to Nasittuq and in which copyright subsists. "*Material*" does not include anything created by the Contractor before the date of the Contract.

Copyright in the Material belongs to Nasittuq and the Contractor must include the copyright symbol and either of the following notice on the Material: © Nasittuq Corporation (*year*).

The Contractor must not use, copy, divulge or publish any Material except as is necessary to perform the Contract. The Contractor must execute any conveyance and other documents relating to copyright in the Material as Nasittuq may require.

The Contractor must provide at the request of Nasittuq a written permanent waiver of moral rights, in a form acceptable to Nasittuq, from every author that contributed to the Material. If the Contractor is the author of the Material, the Contractor permanently waives its moral rights in the Material.

17 Translation of Documentation

The Contractor agrees that Nasittuq may translate in the other official language any documentation delivered to Nasittuq by the Contractor that does not belong to Nasittuq under section 16. The Contractor acknowledges that Nasittuq owns the translation and that it is under no obligation to provide any translation to the Contractor. Nasittuq agrees that any translation must include any copyright notice and any proprietary right notice that was part of the original. Nasittuq acknowledges that the Contractor is not responsible for any technical errors or other problems that may arise as a result of the translation.

18 Confidentiality

1. The Contractor must keep confidential all information provided to the Contractor by or on behalf of Nasittuq in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Nasittuq under the Contract. The Contractor must not disclose any such information without the written permission of Nasittuq. The Contractor may disclose to a subcontractor any information necessary to

perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.

2. The Contractor agrees to use any information provided to the Contractor by or on behalf of Nasittuq only for the purpose of the Contract. The Contractor acknowledges that all this information remains the property of Nasittuq or the third party, as the case may be. Unless provided otherwise in the Contract, the Contractor must deliver to Nasittuq all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as Nasittuq may require.
3. Subject to the [Access to Information Act](#), R.S., 1985, c. A-1, and to any right of Canada under the Contract to release or disclose, Canada must not release or disclose outside the Government of Canada any information delivered to Nasittuq under the Contract that is proprietary to the Contractor or a subcontractor.
4. The obligations of the Parties set out in this section do not apply to any information if the information:
 - a. is publicly available from a source other than the other Party; or
 - b. is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information; or
 - c. is developed by a Party without use of the information of the other Party.
5. Wherever possible, the Contractor must mark or identify any proprietary information delivered to Nasittuq under the Contract as "Property of (*Contractor's name*), permitted Nasittuq uses defined under Nasittuq Contract No. (*fill in Contract Number*)". Nasittuq will not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
6. If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Nasittuq, the Contractor must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the *PWGSC Industrial Security Manual* and its supplements and any other instructions issued by Nasittuq.
7. If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED, by Nasittuq, representatives of Nasittuq are entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract. The Contractor must comply with, and ensure that any subcontractor complies with, all written instructions issued by Nasittuq dealing with the material so identified, including any requirement that employees of the Contractor or of any

subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

8. The Contractor must not in any manner advertise, publish or release for publication any statement mentioning Contractor or the fact that the Contractor has furnished or contracted to furnish Nasittuq the goods or services covered by the Contract with first obtaining the Contracting Authority's written consent. The Contractor's obligations under this subsection will terminate five (5) years after the completion, cancellation or termination of the Work.

19 Government Property

1. All Government Property must be used by the Contractor solely for the purpose of the Contract and remains the property of Canada. The Contractor must maintain adequate accounting records of all Government Property and, whenever feasible, mark it as being the property of Canada.
2. The Contractor must take reasonable and proper care of all Government Property while it is in its possession or subject to its control. The Contractor is responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
3. All Government Property, unless it is installed or incorporated in the Work, must be returned to Nasittuq on demand. All scrap and all waste materials, articles or things that are Government Property must, unless provided otherwise in the Contract, remain the property of Canada and must be disposed of only as directed by Nasittuq.
4. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor must provide to Nasittuq an inventory of all Government Property relating to the Contract.

20 Liability

The Contractor is liable for any damage caused by the Contractor, its employees, subcontractors, or agents to Nasittuq or any third party. Nasittuq is liable for any damage caused by Nasittuq, its employees or agents to the Contractor or any third party. The Parties agree that no limitation of liability or indemnity provision applies to the Contract unless it is specifically incorporated in full text in the Articles of Agreement. Damage includes any injury to persons (including injury resulting in death) or loss of or damage to property (including real property) caused as a result of or during the performance of the Contract.

21 Intellectual Property Infringement and Royalties

1. The Contractor represents and warrants that, to the best of its knowledge, neither it nor Nasittuq will infringe any third party's intellectual property rights in performing or using

the Work, and that Nasittuq will have no obligation to pay royalties of any kind to anyone in connection with the Work.

2. If anyone makes a claim against Nasittuq or the Contractor concerning intellectual property infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against Nasittuq, Nasittuq may request that the Contractor defend Nasittuq against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
3. The Contractor has no obligation regarding claims that were only made because:
 - a. Nasittuq modified the Work or part of the Work without the Contractor's consent or used the Work or part of the Work without following a requirement of the Contract; or
 - b. Nasittuq used the Work or part of the Work with a product that the Contractor did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or
 - c. the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by Nasittuq (or by someone authorized by Nasittuq); or
 - d. the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software: "*[Supplier name]* acknowledges that the purchased items will be used by Nasittuq. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, *[supplier name]*, if requested to do so by either *[Contractor name]* or Nasittuq, will defend both *[Contractor name]* and Nasittuq against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to Nasittuq for the claim.
4. If anyone claims that, as a result of the Work, the Contractor or Nasittuq is infringing its intellectual property rights, the Contractor must immediately do one of the following:
 - a. take whatever steps are necessary to allow Nasittuq to continue to use the allegedly infringing part of the Work; or
 - b. modify or replace the Work to avoid intellectual property infringement, while ensuring that the Work continues to meet all the requirements of the Contract; or

- c. take back the Work and refund any part of the Contract Price that Nasittuq has already paid.

If the Contractor determines that none of these alternatives can reasonably be achieved, or if the Contractor fails to take any of these steps within a reasonable amount of time, Nasittuq may choose either to require the Contractor to do (c), or to take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Work itself, in which case the Contractor must reimburse Nasittuq for all the costs it incurs to do so.

22 Amendment and Waivers

1. To be effective, any amendment to the Contract must be done in writing by the Contracting Authority and the authorized representative of the Contractor.
2. While the Contractor may discuss any proposed modifications to the Work with other representatives of Nasittuq, Nasittuq will not be responsible for the cost of any modification unless it has been incorporated into the Contract in accordance with subsection 1.
3. A waiver will only be valid, binding or affect the rights of the Parties if it is made in writing by, in the case of a waiver by Nasittuq, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any condition of the Contract will not be treated or interpreted as a waiver of any subsequent breach and therefore will not prevent that Party from enforcing of that term or condition in the case of a subsequent breach.

23 Assignment

1. The Contractor must not assign the Contract without first obtaining the written consent of the Contracting Authority. Any assignment made without that consent is void and will have no effect. The assignment will be effective upon execution of an assignment agreement signed by the Parties and the assignee.
2. Assignment of the Contract does not relieve the Contractor from any obligation under the Contract and it does not impose any liability upon Nasittuq..

24 Suspension of the Work

1. The Contracting Authority may at any time, by written notice, order the Contractor to suspend or stop the Work or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor must immediately comply with any such order in a way that minimizes the cost of doing so. While such an order is in effect, the Contractor must not remove any part of the Work from any premises without first

obtaining the written consent of the Contracting Authority. Within these one hundred eighty (180) days, the Contracting Authority must either cancel the order or terminate the Contract, in whole or in part, under section 25---or section 26.

2. When an order is made under subsection 1, unless the Contracting Authority terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor will be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit.
3. When an order made under subsection 1 is cancelled, the Contractor must resume work in accordance with the Contract as soon as practicable. If the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for performing the part of the Work affected by the suspension will be extended for a period equal to the period of suspension plus a period, if any, that in the opinion of the Contracting Authority, following consultation with the Contractor, is necessary for the Contractor to resume the Work. Any equitable adjustments will be made as necessary to any affected conditions of the Contract.

25 Default by the Contractor

1. If the Contractor is in default in carrying out any of its obligations under the Contract, the Contracting Authority may, by giving written notice to the Contractor, terminate for default the Contract or part of the Contract. The termination will take effect immediately or at the expiration of a cure period specified in the notice, if the Contractor has not cured the default to the satisfaction of the Contracting Authority within that cure period.
2. If the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or if a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding down of the Contractor, the Contracting Authority may, to the extent permitted by the laws of Canada, by giving written notice to the Contractor, immediately terminate for default the Contract or part of the Contract.
3. If Nasittuq gives notice under subsection 1 or 2, the Contractor will have no claim for further payment except as provided in this section. The Contractor will be liable to Nasittuq for all losses and damages suffered by Nasittuq because of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Nasittuq in procuring the Work from another source. The Contractor agrees to repay immediately to Nasittuq the portion of any advance payment that is unliquidated at the date of the termination.
4. Upon termination of the Contract under this section, the Contracting Authority may require the Contractor to deliver to Nasittuq, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work, not delivered and accepted before the termination and anything the Contractor has acquired or produced specifically

to perform the Contract. In such a case, subject to the deduction of any claim that Nasittuq may have against the Contractor arising under the Contract or out of the termination, Nasittuq will pay or credit to the Contractor:

- a. the value, of all completed parts of the Work delivered to and accepted by Nasittuq, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
- b. the cost to the Contractor that Nasittuq considers reasonable in respect of anything else delivered to and accepted by Nasittuq..

The total amount paid by Nasittuq under the Contract to the date of the termination and any amount payable under this subsection must not exceed the Contract Price.

5. Title to everything for which payment is made to the Contractor will, once payment is made, pass to Nasittuq unless it already belongs to Nasittuq under any other provision of the Contract.
6. If the Contract is terminated for default under subsection 1, but it is later determined that grounds did not exist for a termination for default, the notice will be considered a notice of termination for convenience issued under subsection 1 of section 26.

26 Termination for Convenience

1. At any time before the completion of the Work, the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.
2. If a termination notice is given pursuant to subsection 1, the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred to perform the Contract to the extent that the Contractor has not already been paid or reimbursed by Nasittuq. . The Contractor will be paid:
 - a. on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after the termination in accordance with the instructions contained in the termination notice;
 - b. the Cost to the Contractor plus a fair and reasonable profit for all work terminated by the termination notice before completion; and

- c. all costs incidental to the termination of the Work incurred by the Contractor but not including the cost of severance payments or damages to employees whose services are no longer required, except wages that the Contractor is obligated by statute to pay.
3. Nasittuq may reduce the payment in respect of any part of the Work, if upon inspection, it does not meet the requirements of the Contract.
4. The total of the amounts, to which the Contractor is entitled to be paid under this section, together with any amounts paid, due or becoming due to the Contractor must not exceed the Contract Price. The Contractor will have no claim for damages, compensation, loss of profit, allowance arising out of any termination notice given by Nasittuq under this section except to the extent that this section expressly provides. The Contractor agrees to repay immediately to Nasittuq the portion of any advance payment that is unliquidated at the date of the termination.

27 Accounts and Audit

1. The Contractor must keep proper accounts and records of the cost of performing the Work and of all expenditures or commitments made by the Contractor in connection with the Work, including all invoices, receipts and vouchers. The Contractor must retain records, including bills of lading and other evidence of transportation or delivery, for all deliveries made under the Contract.
2. If the Contract includes payment for time spent by the Contractor, its employees, representatives, agents or subcontractors performing the Work, the Contractor must keep a record of the actual time spent each day by each individual performing any part of the Work.
3. Unless Nasittuq has consented in writing to its disposal, the Contractor must retain all the information described in this section for six (6) years after it receives the final payment under the Contract, or until the settlement of all outstanding claims and disputes, whichever is later. During this time, the Contractor must make this information available for audit, inspection and examination by the representatives of Nasittuq, who may make copies and take extracts. The Contractor must provide all reasonably required facilities for any audit and inspection and must furnish all the information as the representatives of Nasittuq may from time to time require to perform a complete audit of the Contract.
4. The amount claimed under the contract, calculated in accordance with the Basis of Payment provision in the Articles of Agreement, is subject to government audit both before and after payment is made. If an audit is performed after payment, the Contractor agrees to repay any overpayment immediately on demand by Nasittuq. Nasittuq may hold back, deduct and set off any credits owing and unpaid under this section from any money that Nasittuq owes to the Contractor at any time (including under other contracts). If Nasittuq does not choose to exercise this right at any given time, Nasittuq does not lose this right.

28 Right of Set-off

Without restricting any right of set-off given by law, Nasittuq may set-off against any amount payable to the Contractor under the Contract, any amount payable to Nasittuq by the Contractor under the Contract or under any other current contract. Nasittuq may, when making a payment pursuant to the Contract, deduct from the amount payable to the Contractor any such amount payable to Nasittuq by the Contractor which, by virtue of the right of set-off, may be retained by Nasittuq.

29 Notice

Any notice under the Contract must be in writing and may be delivered by hand, courier, mail, facsimile or other electronic method that provides a paper record of the text of the notice. It must be sent to the Party for whom it is intended at the address stated in the Contract. Any notice will be effective on the day it is received at that address. Any notice to Nasittuq must be delivered to the Contracting Authority.

30 No Bribe or Conflict

1. The Contractor declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Nasittuq or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.
2. The Contractor must not influence, seek to influence or otherwise take part in a decision of Nasittuq knowing that the decision might further its private interest. The Contractor must have no 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 its obligations under the Contract. If such a financial interest is acquired during the period of the Contract, the Contractor must immediately declare it to the Contracting Authority.
3. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, no conflict exists or is likely to arise in the performance of the Contract. In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict in relation to the Contractor's performance under the Contract, the Contractor must immediately disclose such matter to the Contracting Authority in writing.
4. If the Contracting Authority is of the opinion that a conflict exists as a result of the Contractor's disclosure or as a result of any other information brought to the Contracting Authority's attention, the Contracting Authority may require the Contractor to take steps to resolve or otherwise deal with the conflict or, at its entire discretion, terminate the Contract for default. Conflict means any matter, circumstance, interest, or activity affecting the Contractor, its personnel or subcontractors, which may or may appear to impair the ability of the Contractor to perform the Work diligently and independently.

31 Survival

All the Parties' obligations of confidentiality, representations and warranties set out in the Contract as well as the provisions, which by the nature of the rights or obligations might reasonably be expected to survive, will survive the expiry or termination of the Contract.

32 Severability

If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision will be removed from the Contract without affecting any other provision of the Contract.

33 Successors and Assigns

The Contract is to the benefit of and binds the successors and permitted assignees of Nasittuq and of the Contractor.

34 Contingency Fees

The Contractor certifies that it has not directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties.

35 International Sanctions

1. Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, Nasittuq cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to [economic sanctions](#).
2. The Contractor must not supply to Nasittuq any goods or services which are subject to economic sanctions.
3. The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise Nasittuq if it is unable to perform the Work as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the Parties cannot agree on a work around plan, the Contract will be terminated for the convenience of Nasittuq in accordance with section 26.

36 Code of Conduct and Certifications - Contract

1. The Contractor agrees to comply with the [*Code of Conduct for Procurement*](#) and to be bound by its terms. In addition to complying with the [*Code of Conduct for Procurement*](#), the Contractor must also comply with the terms set out in this section.
2. The Contractor further understands that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences may result in a termination for default under the Contract. If the Contractor made a false declaration in its bid, makes a false declaration under the Contract, fails to diligently maintain up to date the information herein requested, or if the Contractor or any of the Contractor's affiliates fail to remain free and clear of any acts or convictions specified herein during the period of the Contract, such false declaration or failure to comply may result in a termination for default under the Contract. The Contractor understands that a termination for default will not restrict Nasittuq's right to exercise any other remedies that may be available against the Contractor and agrees to immediately return any advance payments.
3. For the purpose of this section, everyone, including but not limited to organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies and subsidiaries, whether partly or wholly-owned, as well as individuals and directors, are Contractor's affiliates if:
 - a. directly or indirectly either one controls or has the power to control the other, or
 - b. a third party has the power to control both.

Indicia of control, include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity created following the acts or convictions specified in this section which has the same or similar management, ownership, or principal employees, as the case may be.

4. The Contractor must diligently maintain an up-to-date list of names by informing Canada in writing of any change occurring during the period of the contract. The Contractor must also, when so requested, provide Canada with the corresponding Consent Forms.
5. The Contractor certifies that it is aware, and that its affiliates are aware, that Canada may verify the information provided by the Contractor, including the information relating to the acts or convictions specified herein through independent research, use of any government resources or by contacting third parties.
6. The Contractor certifies that neither the Contractor nor any of the Contractor's affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the Contract if the payment of the fee would require the individual to file a return under section 5 of the [*Lobbying Act*](#).
7. The Contractor certifies that no one convicted under any of the provisions under a) or b) are to receive any benefit under the contract. In addition, the Contractor certifies that except for those offences where a criminal pardon or a record suspension has been obtained or capacities restored by the Governor in Council, neither the Contractor nor any of the Contractor's affiliates has ever been convicted of an offence under any of the following provisions:

- a. paragraph 80(1)(d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the [Financial Administration Act](#), or
- b. section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud*) for fraud committed against Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the [Criminal Code](#) of Canada, or
- c. section 462.31 (*Laundering proceeds of crime*) or sections 467.11 to 467.13 (*Participation in activities of criminal organization*) of the [Criminal Code](#) of Canada, or
- d. section 45 (*Conspiracies, agreements or arrangements between competitors*), 46 (*Foreign directives*) 47 (*Bid rigging*), 49 (*Agreements or arrangements of federal financial institutions*), 52 (*False or misleading representation*), 53 (*Deceptive notice of winning a prize*) under the [Competition Act](#), or
- e. section 239 (*False or deceptive statements*) of the [Income Tax Act](#), or
- f. section 327 (*False or deceptive statements*) of the [Excise Tax Act](#), or
- g. section 3 (*Bribing a foreign public official*) of the [Corruption of Foreign Public Officials Act](#), or
- h. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the [Controlled Drugs and Substance Act](#).

37 Harassment in the Workplace

1. The Contractor acknowledges the responsibility of Nasittuq to ensure, for its employees, a healthy work environment, free of harassment. A copy of the [Policy on Harassment Prevention and Resolution](#), which is also applicable to the Contractor, is available on the Treasury Board Web site.
2. The Contractor must not, either as an individual, or as a corporate or unincorporated entity, through its employees or subcontractors, harass, abuse, threaten, discriminate against or intimidate any employee, contractor or other individual employed by, or under contract with Nasittuq. The Contractor will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Contractor's response, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

38 Entire Agreement

The Contract constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

39 Access to Information

Records created by the Contractor, and under the control of Canada, are subject to the [Access to Information Act](#). The Contractor acknowledges the responsibilities of Canada under the [Access to Information Act](#) and must, to the extent possible, assist Canada in discharging these responsibilities. Furthermore, the Contractor acknowledges that section 67.1 of the [Access to Information Act](#) provides that any person, who destroys, alters, falsifies or conceals a record, or directs anyone to do so, with the intent of obstructing the right of access that is provided by the [Access to Information Act](#) is guilty of an offence and is liable to imprisonment or a fine, or both.

40 Emergencies

Nasittuq at its sole discretion, has the authority to stop the progress of the Work whenever in Nasittuq's opinion, such stoppage may be necessary to ensure the proper execution of the Work or the safety of persons or property. In any emergency affecting or threatening the safety of persons or property, Nasittuq has the authority to take steps to alleviate the emergency situation with or without Notice to the Contractor. In the event that one (1) or more of the Contractors, its Subcontractors, their employees or agents is responsible for the circumstances giving rise to the emergency situation, the costs and expenses incurred in respect of steps taken by Nasittuq to alleviate the emergency situation will be borne by the Contractor.

41 Co-operation

1. Nasittuq reserves the right to award other contracts in connection with the Project of which the Work is a part. The Contractor will not have exclusive occupation of the Site and will co-operate with Nasittuq's personnel and with the employees and agents of other subcontractors working at the Site.
2. The Contractor must connect properly, and co-ordinate the Work, with that of other Subcontractors and Nasittuq. If any part of the Work depends for its proper execution upon the Work of any other subcontractor, the Contractor will report promptly to Nasittuq any defects in the Work of such other subcontractor as may interfere with the proper execution of the Work. Should the Contractor fail to report same, the Contractor will have no claim against Nasittuq by reason of the defective Work of such other subcontractor.