"B" TERMS OF PAYMENT

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TP1 Amount Payable - General

1.1 Subject to any other provisions of the contract, the Owner shall pay the Contractor, at the times and in the manner hereinafter set out, the amount by which

1.1.1 the aggregate of the amounts described in TP2 exceeds

1.1.2 the aggregate of the amounts described in TP3

and the Contractor shall accept that amount as payment in full satisfaction for everything furnished and done by him in respect of the work to which the payment relates.

TP2 Amounts Payable to the Contractor

2.1 The amounts referred to in TP 1.1.1 are the aggregate of

2.1.1 the amounts referred to in the Articles of Agreement, and

2.1.2 the amounts, if any, that are payable to the Contractor pursuant to the General Conditions.

TP3 Amounts Payable to the Owner

3.1 The amounts referred to in TP 1.1.2 are the aggregate of the amounts, if any, that the Contractor is liable to pay the Owner pursuant to the contract.

3.2 When making any payment to the Contractor, the failure of the Owner to deduct an amount referred to in TP3.1 from an amount referred to in TP2 shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the Contractor.

TP4 Time of Payment

4.1 For the purposes of this Term of Payment, "payment period" means a period of 30 consecutive days or such other interval as is agreed between the Contractor and the Engineer.

4.2 The Contractor shall, on the expiration of a payment period, deliver to the Engineer in respect of that payment period a written progress claim that fully describes any part of the work that has been completed, and any material that was delivered to the work site but not incorporated into the work, during that payment period.

4.3 The Engineer shall, not later than ten days after receipt by the Engineer of a progress claim referred to in TP4.2

4.3.1 inspect the part of the work and the material described in the progress claim; and

4.3.2 issue a progress report, a copy of which the Engineer will give to the Contractor, that indicates the value of the part of the work and the material described in the progress claim that, in the opinion of the Engineer,

4.3.2.1 is in accordance with the contract, and

4.3.2.2 was not included in any other progress report relating to the contract.

4.4 Subject to TP1 and TP4.5, the Owner shall, not later than 30 days after the issue of a progress report referred to in TP4.3, pay the Contractor

4.4.1 an amount that is equal to 95% of the value that is indicated in that progress report if a labour and material payment bond has been furnished by the Contractor, or

4.4.2 an amount that is equal to 90% of the value that is indicated in that progress report if a labour and material payment bond has not been furnished by the Contractor.

4.5 It is a condition precedent to the Owner's obligation under TP4.4 that the Contractor has made and delivered to the Engineer a statutory declaration described in TP4.6 in respect of a progress claim referred to in TP4.2.

4.6 A statutory declaration referred to in TP4.5 shall contain a deposition by the Contractor that

4.6.1 up to the date of the Contractor's progress claim, he has complied with all his lawful obligations with respect to all applicable labour laws; and

4.6.2 up to the date of the Contractor's immediately preceding progress claim

4.6.2.1 he has paid his suppliers in full for all materials, and

4.6.2.2 he has discharged all his lawful obligations to his subcontractors.

4.7 Subject to TP1 and TP4.8, the Owner shall, not later than 60 days after the date of issue of an Interim Certificate of Completion referred to in GC44.2, pay the Contractor the amount referred to in TP1 less the aggregate of

4.7.1 the sum of all payments that were made pursuant to TP4.4;

4.7.2 an amount that is equal to the Engineer's estimate of the cost of the Owner of rectifying defects described in the interim Certificate of Completion; and

4.7.3 an amount that is equal to the Engineer's estimate of the cost to the Owner of completing the parts of the work described in the Interim Certificate of Completion other than the defects referred to in TP4.7.2.

4.8 It is a condition precedent to the Owner's obligation under TP4.7 that the Contractor has made and delivered to the Engineer a statutory declaration described in TP4.9 in respect of an Interim Certificate of Completion referred to in GC44.2.

4.9 A statutory declaration referred to in TP4.8 shall contain a deposition by the Contractor that up to the date of the Interim Certificate of Completion the Contractor has

4.9.1 complied with all of the Contractor's lawful obligations with respect to all applicable labour laws; and

4.9.2 discharged all of the Contractor's lawful obligations to the subcontractors and suppliers of material in respect of the work under the contract.

4.10 Subject to TP1 and TP4.11, the Owner shall, not later than 60 days after the date of issue of a Final Certificate of Completion referred to in GC44.1, pay the Contractor the amount referred to in TP1 less the aggregate of

4.10.1 the sum of all payments that were made pursuant to TP4.4; and

4.10.2 the sum of all payments that were made pursuant to TP4.7.

4.11 It is a condition precedent to the Owner's obligation under TP4.10 that the Contractor has made and delivered a statutory declaration described in TP4.12 to the Engineer.

4.12 A statutory declaration referred to in TP4.11 shall, in addition to the depositions described in TP4.9, contain a deposition by the Contractor that he has discharged and satisfied all his lawful obligations and any lawful claims against him that arose out of his performance of the contract.

TP5 Progress Report and Payment Thereunder Not Binding on the Owner

5.1 Neither a progress report referred to in TP4.3 nor any payment made by the Owner pursuant to these Terms of Payment shall be construed as an admission by the Owner that the work, material or any part thereof is complete, is satisfactory or is in accordance with the contract.

TP6 Delay in Making Payment

6.1 Notwithstanding GC7 any delay by the Owner in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of the contract by the Owner.

6.2 When the Owner delays in making a payment that is due pursuant to TP4.4 and TP4.7, the Contractor shall be entitled to receive simple interest on the amount that is overdue from and including the day that it became overdue up to and including the date that the payment was made, at the annual rate of interest described in TP6.3.

6.3 The rate of interest referred to in TP6.2 shall be the average accepted tender rate that was current for Government of Canada three-month Treasury bills immediately preceding the day that a payment referred to in TP6.2 became overdue.

6.4 The Contractor shall not be entitled to receive interest on any other amount that is unpaid including, without limitation, an amount that is calculated in accordance with GC50.

TP7 Right of Set-off

7.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the contract, the Owner may set off any amount payable to the Owner by the Contractor under this contract or under any current contract against any amount payable to the Contractor under this contract.

7.2 For the purposes of TP7.1, "current contract" means a contract between the Owner and the Contractor

7.2.1 under which the Contractor has an undischarged obligation to perform or supply work, labour or material, or

7.2.2 in respect of which the Owner has, since the date on which the Articles of Agreement were made, exercised any right to take the work that is the subject of the contract out of the Contractor's hands.

TP8 Payment in Event of Termination

8.1 If the contract is terminated pursuant to GC41, the Owner shall pay the Contractor any amount that is lawfully due and payable to the Contractor as soon as is practicable under the circumstances.