

Conditions of Tender

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CT1. APPLICATION AND INCORPORATION

- 1.1** All of the terms in these Conditions of Tender apply to all Bidders. If any term in the Tender Document Package, including these Conditions of Tender, is inconsistent with any term in BC Bid, the terms in these Conditions of Tender and the Tender Document Package is paramount and will prevail.
- 1.2** In these Conditions of Tender, unless otherwise expressly set out, a capitalized word shall have the meaning given to it in the Glossary of Terms set out in the Tender Document Package.
- 1.3** The Glossary of Terms is incorporated by reference into and forms a part of these Conditions of Tender.
- 1.4** The Supplemental Conditions of Tender as located in the Additional Information section in the Opportunity Details tab of BC Bid are incorporated by reference into and form part of these Conditions of Tender. The additional conditions of tender in the Additional Information section supplement rather than replace the terms in the Conditions of Tender, and in the event of any conflict between a term in the Invitation to Tender – Supplemental Conditions of Tender and a term in the Conditions of Tender then the term set out in the Conditions of Tender shall prevail.
- 1.5** The terms and conditions contained on BC Bid, where such terms and conditions are not inconsistent with the Tender Document Package, are incorporated by reference into and form part of these Conditions of Tender, and:
- (a)** these Conditions of Tender are not in any way intended to, and do not in any way, limit or narrow the application, interpretation or operation of the terms and conditions, on BC Bid; and
 - (b)** any terms and conditions on BC Bid are not in any way intended to, and do not in any way, limit or narrow the application, interpretation or operation of these Conditions of Tender.
- Notwithstanding CT1.5(a) and (b), in the event of a conflict between any term in these Conditions of Tender and a term in the BC Bid terms and conditions, the term in these Conditions of Tender shall prevail.
- 1.6** The terms in these Conditions of Tender are to be read in harmony and as supplementing rather than replacing one another, including the terms of CT14 which supplement rather than replace the application of the other terms in these Conditions of Tender to a Joint Venture Bidder.

CT2. BASIS OF TENDERS

- 2.1** The Bidder, by delivering a Tender, agrees that:
- (a)** the Bidder has received, read, examined and understood the entire Tender Document Package, including all the terms of these Conditions of Tender and any and all Amendments;
 - (b)** the Bidder is irrevocably bound by the terms set out in the Tender Document Package, including these Conditions of Tender and any and all Amendments, and in the documents comprising its Tender;
 - (c)** the Bidder waives any right to clarification of any aspect of any information in the Tender Document Package, including these Conditions of Tender and any and all Amendments;

- (d) its Tender may only be withdrawn, by delivering a Notice of Withdrawal in accordance with these Conditions of Tender before the Closing Time; and
- (e) unless withdrawn by the delivery of a Notice of Withdrawal in accordance with these Conditions of Tender before the Closing Date and Time, the Bidder's Tender is irrevocable and shall remain irrevocable as at the Closing Date and Time for sixty (60) days.

2.2 The Bidder, by delivering a Tender, represents and warrants that:

- (a) the Bidder has received, ensured the completeness of, read, understood and accepted the Tender Document Package, including for greater certainty, any documents incorporated by reference into the Tender Document Package, and any and all Amendments;
- (b) except as set out in CT2.5 and CT2.6 and only to the extent expressly set out therein, the Bidder has not relied upon any representation or warranty by the Ministry including its officers, employees, servants, agents, representatives and consultants, including any person retained by or on behalf of the Ministry to advise or assist the Ministry with respect to any matter in connection with or in any way related to the Tender Call, with respect to the completeness, reliability, sufficiency, accuracy or relevance of any information, or any interpretation derived from any such information, set out in or otherwise provided in the Tender Document Package, the General Reference Documents, the Specific Reference Documents, or any analysis or interpretation thereof, and any reliance thereon or use made thereof by the Bidder shall be at the sole risk of the Bidder;
- (c) the Bidder has had sufficient opportunity to investigate, has made all such investigations as the Bidder, in its sole discretion, has determined are necessary, and has fully investigated and satisfied itself of every condition relating to or affecting the Work, including but not limited to any design requirements, the Site conditions, or the labour, equipment, material and any other resources to be provided to perform the Work and the Contract, and the Bidder assumes any and all risks relating to or regarding all such conditions, whether or not any such conditions are revealed by any information available to, or investigations undertaken by, the Bidder;
- (d) the Bidder's investigations have been based on its independent examination, experience, knowledge, information, and judgment, and not upon any statement, representation or, save and except for the specific information provided by the Ministry referred to in CT2.5 and CT2.6, information made or given by or on behalf of the Ministry;
- (e) the Tender, including for greater certainty any part of the Tender Price, is not based upon the anticipated approval of any Value Engineering Proposal;
- (f) the Bidder has the experience, knowledge, equipment, skills and resources necessary to perform and complete the Work and the Contract; and
- (g) the Bidder meets the definition of a Bidder in the Glossary of Terms and has the requisite power, authority and capacity to execute and deliver the Tender.

2.3 Any and all investigations made by or on behalf of the Bidder in connection with its Tender, the Contract, the Work or any of them, shall be made at the Bidder's own risk and the Bidder shall indemnify and save harmless the Ministry and its officers, employees, servants, agents, representatives and consultants, including any person retained by or on behalf of the Ministry to advise or assist the Ministry with respect to any matter in connection with or in any way related to this Tender Call, and each of them, even where the Ministry and/or its officers, employees, servants, agents, representatives and consultants have been negligent, for any loss, damage, cost, expense (including without limitation, legal defence costs and expenses), claim, liability, demand, fine, penalty, assessment, or levy suffered or incurred by the Bidder, the Ministry, or any third party arising, either directly or indirectly, from such investigation, including from any acts or omissions, negligent

or otherwise, of the Ministry and/or its officers, employees, servants, agents, representatives and consultants, which indemnity shall survive the Award of the Contract, or any cancellation or termination of this Tender Call.

- 2.4** The Bidder shall be responsible for examining and inspecting the General Reference Documents and the Specific Reference Documents, and for ensuring that all documents and materials listed are complete, available and present at the location or locations specified in the Opportunity Details Tab of BC Bid.
- 2.5** Any geotechnical investigation datum and test results, but not any interpretations and analyses thereof, provided in the borehole and test pit logs contained within the Tender Document Package and the Specific Reference Documents are a reasonable representation of the conditions encountered at the specific locations investigated on the dates of the investigations, and may be relied upon by the Bidder solely to that extent and solely in that manner.
- 2.6** Any survey point datum, but not information derived or interpolated therefrom such as digital terrain models, contours and cross-sections, contained within the Tender Document Package and the Specific Reference Documents are a reasonable representation of the individual points surveyed at the time of such survey, and may be relied upon by the Bidder solely to that extent and solely in that manner.
- 2.7** Except as set out in CT2.5 and CT2.6 and only to the extent expressly set out therein, the Ministry including its officers, employees, servants, agents, representatives and consultants, including any person retained by or on behalf of the Ministry to advise or assist the Ministry with respect to any matter in connection with or in any way related to this Tender Call, makes no representation or warranty with respect to the completeness, reliability, sufficiency, accuracy or relevance of any information, or any interpretation derived from any such information, set out or otherwise provided in the Tender Document Package, the Specific Reference Documents or the General Reference Documents, including any information accessed via the URL's or web sites set out in any of those documents, or any analysis or interpretation derived from such information. Any reliance by the Bidder on such information or use made of such information by the Bidder shall be at the Bidder's own risk.
- 2.8** Unless otherwise specified in the Tender Document Package, the General Reference Documents and the Specific Reference Documents are available in the manner and at the locations described in the definitions of General Reference Documents and the Specific Reference Documents set out in the Glossary of Terms. The Ministry will not provide copies of any General Reference Documents to any Bidders. The Ministry will provide copies for viewing by Bidders, of only those Specific Reference Documents that the Tender Document Package expressly states will be provided by the Ministry.
- 2.9** Subject to the express terms of the Special Provisions, the Standard Specifications shall apply to the Contract, including to the performance of the Contract and to the performance of and the measurement of the Work.
- 2.10** The Approximate Quantities stated in the Schedule 7 "Schedule of Approximate Quantities and Unit Prices" in the Pricing Tab are estimates only and are prepared for use by the Ministry to calculate and adjust, as the case may be, the Tender Price of each Tender and for the purpose of comparing Tenders. The actual quantities and values of Tender Items may increase or decrease. The elimination of Tender Items, or an increase or decrease in quantities or values for any Tender Item, shall not invalidate the Tender, the Tender Price, any Unit Price, Lump Sum Price or Provisional Sum Item, or the Contract.

CT3. CLARIFICATION

- 3.1** Any requests by the Bidder for clarification of any part of the Tender Document Package shall be delivered in writing by courier, fax, or electronic mail, no later than the Enquiries Deadline set out in BC Bid's Overview tab, in accordance with the following:
- (a)** with respect to the Work, to the Project Contact identified in the Additional Information in the Overview section under the Opportunity Details tab; and
 - (b)** with respect to the Tender Call, to the Project Contact identified in the Additional Information section of the Opportunities Details tab
- 3.2** The Ministry may in its sole discretion respond to any such requests for clarification. If the Ministry elects to respond to any such requests for clarification, it will do so by Amendment. Any such Amendment may, at the Ministry's sole discretion, set out the request for clarification to which the Ministry is responding and the response to such request in a "Question and Answer" format without setting out the name of the person who delivered the request.
- 3.3** Responses to requests for clarification made in any manner other than as described in CT3.2, including without limitation, verbally, in person, via mail, via fax, or electronic mail, by any person including officers, employees, servants, agents, representatives or consultants of the Ministry or from any source including the Official Contact or the Project Contact shall not constitute an official response by the Ministry and shall not be relied on in any way by any person for any purpose whatsoever and shall not be binding upon the Ministry in any way whatsoever.

CT4. AMENDMENTS

- 4.1** The Ministry may, in its sole discretion, at any time and from time to time, amend any part or parts of the Tender Document Package by means of Amendments. Other than by Amendments, no part of the Tender Document Package may be revised in any other way by any other person including any officer, employee, servant, agent, representative or consultant of the Ministry.
- 4.2** Other than as set out in an Amendment, any information pertaining to the Tender Document Package or this Tender Call, including to the Work or to the Contract, that is offered or obtained from any source, including from the Contact Person or from the Administrative Contact Office, is not official and shall not be relied on or otherwise used in any way by any person including by or on behalf of the Bidder for any purpose whatsoever and shall not be binding upon the Ministry in any way whatsoever.
- 4.3** Amendments will be directed to Planholders by email, including via email notification through BC Bid, fax or courier.
- 4.4** Notwithstanding any other term of these Conditions of Tender, the Bidder shall be solely responsible to monitor BC Bid and the BC Bid email notifications for Planholders on an ongoing basis to keep itself informed of any and all Amendments.

CT5. DELIVERY AND RECEIPT OF AMENDMENTS, DOCUMENTS/FUNCTIONING OF FAX AND ELECTRONIC SYSTEMS

- 5.1** Any and all Amendments, and any other notices including BC Bid email notifications for Planholders, information or documentation to be delivered by or on behalf of the Ministry in connection with this Tender Call shall be conclusively deemed to have been validly delivered to and received by the intended recipient including any Bidder or Planholder at the time that such Amendment(s), notices, information or documentation as the case may be are issued to the fax number or email address

designated by the Bidder or Planholder as the fax number or email address for the receipt of such Amendments, notices, information or documentation.

CT6. USE OF BC BID DELIVERY METHOD AND HARD COPY DELIVERY METHOD

- 6.1** The Bidder must deliver its Tender, including for greater certainty any and all Revisions, and any Notice of Withdrawal by using one of the following two submission methods which the Bidder may, subject to CT6.2 – CT6.5, choose at its option:
- (a) the BC Bid Delivery Method; or
 - (b) the Hard Copy Delivery Method.
- 6.2** When a Bidder chooses to submit its Tender in accordance with the BC Bid Delivery Method then:
- (a) the Tender must be submitted prior to the Closing Date and Time and in accordance with these Conditions of Tender, BC Bid terms and conditions and Business BCeID requirements (found at www.bcbid.ca).
 - (b) Bidders are encouraged to become a registered e-bidding users of BC Bid. Only registered e-bidding users of BC Bid or Bidders who have purchased a copy of the Tender Call from King's Printer can become Planholders and only registered e-bidding users of BC Bid can make electronic Bids on BC Bid. BC Bid e-bidding is an annual fee-based subscription service and the duration of the registration process for e-bidding may vary from time to time. Bidders should refer to BC Bid for further information.
 - (c) Logging on to BC Bid with a Business BCeID account and the use of a Business BCeID is sufficient to constitute the signature of an authorized representative of the Bidder when submitting the Tender and is acceptable without additional signature. The Tender must be submitted using the Business BCeID of an authorized representative of the Bidder. Using the Business BCeID of a subcontractor is not acceptable.
 - (d) The Business BCeID name must match the Bidder's legal name that the Bidder enters on the Tender Form.
 - (e) The use of the Business BCeID by the Bidder confirms the Bidder's agreement to be bound by the terms and conditions of this Tender Call, including for greater certainty, these Conditions of Tender, and by the statements and representations found in the Additional Information section in the Overview tab of BC Bid;
 - (f) If a delivery method is expressly specified in RFX General Information section under the Overview tab as being the sole designated delivery method for the applicable Tender Call, then the Bidder must use such designated delivery method for the delivery of its Tender.
- 6.3** **If the Bidder chooses to deliver its Tender using the BC Bid Delivery Method, the Bidder cannot subsequently elect to use the Hard Copy Delivery Method for the delivery of any Revisions or a Notice of Withdrawal.**
- 6.4** Regardless of whether the Bidder uses the BC Bid Delivery Method or the Hardcopy Delivery Method for the delivery of its Tender, the Bidder's Bid Security, including any Revision(s) to its Bid Security, must be delivered using the Hard Copy Delivery Method, the Electronic Mail Delivery Method or the BC Bid Delivery Method in the delivery of a Bid Bond only in accordance with these Conditions of Tender, including CT13 and in accordance with Schedule T2 – Tender Securities.
- 6.5** Despite any other term of these Conditions of Tender, a Joint Venture Bidder must deliver its Tender, including any Revisions, and any Notice of Withdrawal by the Hard Copy Delivery Method.

CT7. DELIVERY OF TENDERS, CLOSING DATE AND TIME

- 7.1** The Bidder must deliver its Tender, including its Bid Security and any Revision(s), and any Notice of Withdrawal on or before the Closing Date and Time. Subject to these Conditions of Tender, Tenders and Revisions delivered on or after the Closing Date and Time shall not be evaluated or considered.
- 7.2** If the transmission of the Tender using the BC Bid Delivery Method, the Bidder's Response, any Revision or Notice of Withdrawal using the BC Bid Delivery Method in the Submission History Tab by selecting the Withdraw Submission field, or the transmission of any Revision or a Notice of Withdrawal by fax using the Hard Copy Delivery Method, begins before the Closing Date and Time but is completed on or after the Closing Date and Time then the Tender, Revision or Notice of Withdrawal, as the case may be, shall be considered to have been delivered on or after the Closing Date and Time.
- 7.3** If the Bidder delivers more than one Tender each Tender delivered in accordance with these Conditions of Tender and received at the Closing Location before the Closing Date and Time shall be deemed to have been delivered in the chronological order in which each such Tender was received and each such Tender delivered by the same Bidder shall be considered to supersede and replace in its entirety any and all prior Tenders delivered by the same Bidder.
- 7.4** The Ministry may in its sole discretion, from time to time and at any time on or before the Closing Date and Time, change, including by extending, the Closing Date and Time.
- 7.5** The clock showing on BC Bid whether accurate or not governs whether a Tender, Revision, Notice of Withdrawal, or any of them, delivered using the BC Bid Delivery Method has been delivered before the Closing Date and Time, subject to CT7.7 with respect to the delivery of Bid Security or a Revision to Bid Security by a Bidder that has used the BC Bid Delivery Method for the delivery of its Tender or any other Revision to its Tender.
- 7.6** The clock at the physical Closing Location, or the time stamp on an electronic Bid Bond's email header at the Closing Location inbox in the event of delivery of an electronic Bid Bond, whether accurate or not, govern whether a Tender, Bid Security, Revision, Notice of Withdrawal, or any of them, delivered to the Closing Location has been delivered before the Closing Date and Time.
- 7.7** The Ministry's record of the time of the delivery under CT7.7 of any documents at the Closing Location, whether accurate or not, shall be deemed to be the delivery time of such documents.

CT8. CONTENT OF TENDERS FOR THE HARD COPY DELIVERY METHOD

- 8.1** For the Hard Copy Delivery Method, the Bidder's Tender must include a Tender Envelope, the Tender Form, any and all Revisions, a Schedule of Approximate Quantities and Unit Prices, Bid Security and all other documentation that may be required by these Conditions of Tender including in respect of a Joint Venture Bidder, the Joint Venture Confirmation Agreement;
- 8.2** The Bidder must deliver its Tender on original or unaltered copies of the forms specified by the Ministry in the Tender Document Package. The Bidder must complete all such forms in full (unless otherwise instructed on the form), and enter on such forms all the information required to complete them. The forms must not be altered in any other respect, including by adding any additional information to them, by the Bidder or any other person during the completion of the forms.
- 8.3** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder should complete all forms comprising its Tender in type or in legible ink print, and any Revisions, adjustments, changes or corrections to the information provided by the Bidder on any such forms

must be initialed by the Bidder or by an Authorized Representative of the Bidder on behalf of the Bidder.

- 8.4** If the Ministry amends the Tender Document Package by replacing any form or forms including the Schedule of Approximate Quantities and Unit Prices, the Bidder must deliver the replacement form or forms, as the case may be:
- (a) as part of its Tender if the Ministry replaces the form(s) before the delivery of its Tender; or
 - (b) as a Revision if the Ministry replaces the form(s) after the delivery of the Bidder's Tender.

CT9. BC BID DELIVERY METHOD

- 9.1** If the Bidder chooses to deliver its Tender using the BC Bid Delivery Method, then the Bidder:
- (a) must deliver its Tender, which shall require the Bidder to complete all mandatory data fields, including, but not limited to, the Tender Form and the data required in Schedule 7 "Schedule of Approximate Quantities and Unit Prices" in the Pricing tab, , and any other mandatory questions, and may deliver any and all Revisions, changes and amendments to its Tender, and any Notice of Withdrawal using the BC Bid Delivery Method; and
 - (b) must arrange for Bid Security to be delivered using either the Hard Copy Delivery Method or the Electronic Mail Delivery Method together with verification instructions or upload to BC Bid together with verification instructions in the delivery of a Bid Bond only in accordance with these Conditions of Tender, including CT13 and in accordance with Schedule T2 – Tender Securities.

For clarity, there is no Tender Envelope for the BC Bid Delivery Method.

- 9.2** The Bidder is solely responsible for reviewing the BC Bid Terms and Conditions and any guidelines issued by BC Bid applying to and governing the use of BC Bid.
- 9.3** Logging on to BC Bid with a Business BCeID and its use is sufficient to constitute the signature of an authorized representative of the Bidder when submitting the Tender and is acceptable without additional signature. The use of the Business BCeID by the Bidder confirms the Bidder's agreement to be bound by the terms and conditions of this Tender Call, including for greater certainty, these Conditions of Tender, and by the statements and representations of the Bidder's Tender on the Tender.

BC Bid Delivery Method – Revisions

- 9.4** For the Bidder to deliver a Revision using the BC Bid e Delivery Method, the Bidder must complete all the steps required by the BC Bid for the submission of a Revision under that system.

BC Bid Delivery Method – Notice of Withdrawal

- 9.5** For the Bidder to deliver a Notice of Withdrawal using the BC Bid Delivery Method, the Bidder must complete all the steps required by BC Bid for the withdrawal of a Tender under that system.

CT10. HARD COPY DELIVERY METHOD

- 10.1** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder must deliver the Bidder's Tender by hand or by courier to the physical Closing Location in the Overview Tab.

Hard Copy Delivery Method – Tender Envelope (e.g., courier envelope, etc.)

- 10.2** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder must complete the outside of its Tender Envelope in accordance with the form for the Tender Envelope set out in the Tender Document Package, including:
- (a) addressing its Tender Envelope “Attn: Reception Desk – Tender Documents”; and
 - (b) setting out on the Tender Envelope:
 - (i) the full name of the Bidder; and
 - (ii) the Project Number and the Project Name as specified in the Overview Tab on BC Bid.

Without limiting any other provision of these Conditions of Tender, if the Bidder uses a Tender Envelope other than the envelope entitled “Tender Envelope” contained in the Tender Document Package to deliver its Tender to the physical Closing Location, e.g. the Bidder uses a courier envelope for this purpose, the Bidder must ensure that the outside of such envelope is addressed and completed in accordance with CT10.2(a)-(b).

- 10.3** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder’s Tender Envelope must contain the following documents completed in accordance with these Conditions of Tender including the CTs specifically referenced below as corresponding to each document:
- (a) the original or unaltered copy of Bidder’s signed Tender Form completed in accordance with CT10.4;
 - (b) the original or unaltered copy of the Bidder’s Schedule of Approximate Quantities and Unit Prices completed in accordance with CT10.5;
 - (c) the original of the Bidder’s Bid Security completed in accordance with CT13; and
 - (d) in the case of a Joint Venture Bidder, the original of the Bidder’s signed Joint Venture Confirmation Agreement completed in accordance with CT14.2.

Hard Copy Delivery Method – Tender Form

- 10.4** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then:
- (a) the Bidder must set out on the Tender Form:
 - (i) the Bidder’s Tender Price;
 - (ii) the date of the Tender Form;
 - (iii) the full name of the Bidder; and
 - (iv) the name and title of an Authorized Representative of the Bidder;
 - (b) the Bidder should include the complete mailing address, phone number, fax number and email address of the Bidder, on the Tender Form; and
 - (c) the Tender Form must be fully completed as required by these Conditions of Tender, and bear the original signature, or unaltered copy of the signature, of the Bidder or of the

Authorized Representative of the Bidder identified on the Tender Form on behalf of the Bidder.

Hard Copy Delivery Method – Schedule of Approximate Quantities and Unit Prices

- 10.5** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder on its Schedule of Approximate Quantities and Unit Prices:
- (a) must complete all blank spaces in the columns under the headings “Unit Price” and “Extended Amount” for each Unit Price Item;
 - (b) must complete all blank spaces in the column under the heading “Extended Amount” for each Lump Sum Item; and
 - (c) should include its full name as corresponding to the name of the Bidder as set out on the Tender Form, complete mailing address, phone number and fax number.

Hard Copy Delivery Method – Form and Content of Revisions

- 10.6** A Revision delivered using the Hard Copy Delivery Method:
- (a) must be in writing;
 - (b) must be clearly identified with:
 - (i) the heading “Revision to Tender”;
 - (ii) the full name of the Bidder; and
 - (iii) the Project Number and the Project Name as specified in the Overview tab.
 - (c) must clearly identify each form that the Bidder desires to amend;
 - (d) must clearly identify each Tender Item that the Bidder desires to amend;
 - (e) must:
 - (i) if the Tender Item that the Bidder desires to amend is a Unit Price Item, then describe the amendment as the amount by which the Unit Price and the corresponding Extended Amount, including as they may have been revised by a preceding Revision, are to be increased or decreased; and
 - (ii) if the Tender Item that the Bidder desires to amend is a Lump Sum Item, then describe the amendment as the amount by which the corresponding Extended Amount, including as it may have been revised by a preceding Revision, is to be increased or decreased;
 - (f) should state the total amount by which the Tender Price should be increased or decreased by the Revision;
 - (g) should be signed by the Bidder or by an Authorized Representative of the Bidder on behalf of the Bidder; and
 - (h) must satisfy the terms of CT13 in the case of a Revision to the Bidder’s Bid Security.

Hard Copy Delivery Method – Delivery of Revisions

- 10.7** A Revision, including a Revision containing a replacement Schedule of Approximate Quantities and Unit Prices, delivered using the Hard Copy Delivery Method must be delivered to the Closing Location by hand, courier or fax and:
- (a)** if delivered by hand or courier each Revision must be enclosed in an envelope, that clearly and legibly on its face:
 - (i)** is addressed “Attn: Reception Desk – Tender Documents”;
 - (ii)** has the heading “Revision to Tender”;
 - (iii)** has the full name of the Bidder; and
 - (iv)** has the Project Number and the Project Name as specified in the Overview tab of BC Bid.
 - (b)** if delivered by fax each Revision must be delivered to the fax number specified in the Additional Information section of the Overview tab as the fax number for the delivery of Revisions to the Ministry, and must have clearly and legibly on the first page of the fax:
 - (i)** the heading “Revision to Tender”;
 - (ii)** the full name of the Bidder; and
 - (iii)** the Project Number and the Project Name as specified in the Overview tab of BC Bid.
- 10.8** Notwithstanding CT28.2, the Ministry does not in any way whatsoever guarantee and makes no representation or warranty whatsoever to the Bidder as to the confidentiality of any Revision delivered by fax, including any Revision containing a replacement Schedule of Approximate Quantities and Unit Prices.

Hard Copy Delivery Method – Multiple Revisions

- 10.9** The Bidder should sequentially number each Revision delivered in accordance with these Conditions of Tender. Unless the Bidder clearly and legibly specifies to the contrary on the face of each Revision, each Revision shall be deemed to have been delivered by the Bidder in the chronological order received by the Ministry.

Hard Copy Delivery Method – Form and Content of Notices of Withdrawals

- 10.10** A Notice of Withdrawal delivered using the Hard Copy Delivery Method must:
- (a)** be in writing;
 - (b)** be clearly identified with:
 - (i)** the heading “Withdrawal of Tender”;
 - (ii)** the full name of the Bidder; and
 - (iii)** the Project Number and the Project Name as specified in the Overview tab;
 - (c)** contain a clear statement that the Tender is withdrawn; and

- (d) be signed by the Bidder or by an Authorized Representative of the Bidder on behalf of the Bidder.

Hard Copy Delivery Method – Delivery of Notices of Withdrawals

10.11 A Notice of Withdrawal delivered using the Hard Copy Delivery Method must be delivered to the Closing Location by hand, courier or fax and:

- (a) if delivered by hand or courier each Notice of Withdrawal must be enclosed in an envelope, that clearly and legibly on its face:
 - (i) is addressed “Attn: Reception Desk – Tender Documents”;
 - (ii) has the heading “Notice of Withdrawal”;
 - (iii) has the full name of the Bidder; and
 - (iv) has the Project Number and the Project Name as specified in the Overview Tab of BC Bid.
- (b) if delivered by fax each Notice of Withdrawal must be delivered to the fax number specified in the Overview tab of BC Bid as the fax number for the delivery of a Notice of Withdrawal to the Ministry, and must have clearly and legibly on the first page of the fax:
 - (i) the heading “Notice of Withdrawal”;
 - (ii) the full name of the Bidder; and
 - (iii) the Project Number and the Project Name as specified in the Overview tab of BC Bid.

10.12 Notwithstanding CT28.2, the Ministry does not in any way whatsoever guarantee and makes no representation or warranty whatsoever to the Bidder as to the confidentiality of any Notice of Withdrawal delivered by fax.

CT11. PRICES, QUANTITIES, AND MEASUREMENTS

11.1 All prices provided by the Bidder or set out in the Bidder’s Tender Form or the Pricing Tab, as the case may be, and its Schedule of Approximate Quantities and Unit Prices, including its Tender Price, Unit Prices and Lump Sums:

- (a) must be inclusive of all applicable costs, including any and all license costs, fees, duties, cash allowances, contingencies and taxes, but not including GST, in effect at the Closing Time; and
- (b) must be stated in the lawful money of Canada.

11.2 Any price provided by the Ministry on the Schedule of Approximate Quantities and Unit Prices form in the Tender Document Package for a Provisional Sum Item including as shown as an “Extended Amount” on the form for that Provisional Sum Item:

- (a) is inclusive of all applicable costs, including any and all license costs, fees, duties, cash allowances, contingencies and taxes, but not including GST, in effect at the Closing Time; and
- (b) is stated in the lawful money of Canada.

- 11.3** The Bidder must not convert the quantities or measurements listed in the Schedule of Approximate Quantities and Unit Prices included in the Tender Document Package or in any replacement Schedule of Approximate Quantities and Unit Prices including by converting a “price per litre” item to a “price per kilolitre” item or by converting metric units to imperial units or vice versa.

CT12. TREATMENT OF GST AND OTHER TAXES IN TENDER

- 12.1** The Bidder must not include GST in its Tender Price or in any of its Unit Prices or Extended Amounts in the Schedule of Approximate Quantities and Unit Prices. Any reference to GST or any other tax in the Tender Form, the Tender Price or the Schedule of Approximate Quantities and Unit Prices shall be treated as though the words or numbers that reference GST or the other tax do not appear.

CT13. BID SECURITY – VALUE AND FORM, DELIVERY AND REVISIONS

Value and Form of Bid Security

- 13.1** The Bid Security must have a value and be in a form that complies with the terms of the Schedule entitled “Tender Securities” as set out in the Tender Document Package.
- 13.2** In the event of a change in the Bidder’s Tender Price (referred to as Total Price on BC Bid if using the BC Bid Method of Delivery) including as a result of a Revision to its Tender or in the event of an Amendment to the Tender Document Package, the value and the form of the Bidder’s Bid Security, including the Bidder’s Bid Bond or any bank drafts, certified cheques or money orders delivered by the Bidder as its Bid Security, must continue to comply with the requirements of the Schedule entitled “Tender Securities” as set out in the Tender Document Package.
- 13.3** If the Bid Security delivered by the Bidder by the Hard Copy Delivery Method is a Bid Bond, the Bid Bond must bear the original signature of the Bidder or an Authorized Representative of the Bidder on behalf of the Bidder, and the original signature and original seal of the Surety or of each of the Sureties in the case of a Bid Bond issued by co-sureties. If the Bid Security is a Bid Bond, and it is delivered by the Electronic Mail Delivery Method, the Bid Bond must be delivered by the Bidder and comply with the electronic bond requirements in Schedule T2 - Tender Securities.

Delivery of Bid Security

- 13.4** The Bidder must deliver the original of its Bid Security to the Closing Location by hand or by courier by the Hard Copy Delivery Method or, where the Bid Security is a Bid Bond, the Bidder in its discretion may deliver the Bid Bond by the Electronic Mail Delivery Method or BC Bid Delivery Method and:
- (a)** if the Bidder delivers its Tender using the BC Bid Delivery Method then the original of the Bidder’s Bid Security, if delivered by the Hard Copy Delivery Method, must be delivered in a sealed envelope that clearly and legibly on its face:
 - (i)** is addressed “Attn: Reception Desk – Tender Documents”;
 - (ii)** has the heading “Bid Security”;
 - (iii)** has the full name of the Bidder; and
 - (iv)** has the Project Number and the Project Name as specified in the Opportunity Details tab;

- (b) if the Bidder delivers its Tender using the Hard Copy Delivery Method, then the original of the Bidder's Bid Security, if delivered by the Hard Copy Delivery Method, must be delivered either in the Bidder's Tender Envelope or in a separate sealed envelope that is addressed and labeled in accordance with CT13.4(a);
- (c) If the Bid Security is a Bid Bond delivered by the Electronic Mail Delivery Method, it must be delivered to the email address identified in the Additional Information in the Overview tab with a subject line that indicates:
 - (i) the title "Electronic Bid Bond;"
 - (ii) Project Name as specified in the Opportunity Details tab; and
 - (iii) full name of the Bidder

Revisions to Bid Security

13.5 If the Bidder delivers a Revision to its Bid Security, the revised Bid Security, including the Bidder's replacement Bid Bond or any replacement or additional bank drafts, certified cheques or money orders delivered by the Bidder as its revised Bid Security, must comply with these Conditions of Tender, including the requirements of the Schedule entitled "Tender Securities", and the revised Bid Security must be delivered to the Closing Location in accordance with the CT 13.4. If delivered by the Hard Copy Delivery Method, the revised Bid Security must be in an envelope that clearly and legibly on its face:

- (a) is addressed "Attn: Reception Desk – Tender Documents";
- (b) has the heading "Revised Bid Security";
- (c) has the full name of the Bidder; and
- (d) has the Project Number and the Project Name as specified in the BC Bid Overview tab

CT14. JOINT VENTURE BIDDERS

14.1 A Joint Venture Bidder must complete its Tender Form as follows:

- (a) the name of the joint venture must be inserted on the "Name of Bidder" line on the Tender Form and the names of each of the venturers in the joint venture must also be inserted on the "Name of Bidder" line if not already included in the joint venture's name;
- (b) the "Doing Business as Name" line on the Tender Form should be left blank; and
- (c) the Authorized Representative of the Authorized Venturer identified on the Tender Form must sign on the line for the "Signature of Authorized Representative of the Bidder", with the name and title of such Authorized Representative inserted on the line for the "Name and Title of Authorized Representative of the Bidder" for the Hard Copy Delivery Method.

14.2 A Joint Venture Bidder must deliver the "Joint Venture Confirmation Agreement" in the form and containing the terms set out in the form of Joint Venture Confirmation Agreement contained in the Tender Document Package and executed on behalf of each venturer in accordance with the terms of the Joint Venture Confirmation Agreement.

14.3 If the Joint Venture Bidder delivers a Bid Bond as its Bid Security, or as a Revision to its Bid Security, then the Bid Bond must:

- (a) set out on the Bid Bond's "BIDDER NAME" line the name of the joint venture in the same way that the joint venture's name is set out on the Joint Venture Bidder's Tender Form, except

that the names of each of the venturers in the joint venture may also be included in the "BIDDER NAME" line if not already included in the joint venture's name;

- (b) show the Authorized Venturer of the Joint Venture Bidder as the "Principal/Bidder" in the signature block of the Bid Bond; and
- (c) bear the original signature of an Authorized Representative of the Authorized Venturer.

- 14.4** The terms set out in the Joint Venture Confirmation Agreement shall be deemed to be incorporated into and form part of these Conditions of Tender with respect to the Tender delivered by a Joint Venture Bidder.
- 14.5** By the delivery of a Tender, including the Joint Venture Confirmation Agreement, each venturer in the Joint Venture Bidder attests and agrees that the Authorized Venturer is authorized to sign the Bid Bond on behalf of itself, the Joint Venture Bidder and each of the other venturers, jointly and severally.
- 14.6** The obligations of the Joint Venture Bidder, and the covenants, representations, warranties, debts and liabilities of the Joint Venture Bidder made, given or incurred under, in connection with or pursuant to the Joint Venture Bidder's Tender, the Conditions of Tender, the Tender Document Package, the Bid Security, or any of them shall be the joint and several obligations, covenants, representations, warranties, debts and liabilities of each of the venturers comprising the Joint Venture Bidder, notwithstanding the nature of the legal relationship between the venturers.
- 14.7** The complement of the venturers comprising the Joint Venture Bidder as set out on the "Name of Bidder" line on the Tender Form, must not change at any time between the delivery of the Bidder's Tender to the Ministry in accordance with these Conditions of Tender and in the event of an Award to the Joint Venture Bidder, the execution of the Contract with the Joint Venture Bidder.

CT15. OPENING OF TENDERS

- 15.1** At the Tender Opening, the Ministry shall read out the names of the Bidders who delivered Tenders before the Closing Time, the amount set out on each such Bidder's Tender Form, and in any and all Revisions, as the case may be, as such Bidder's Tender Price, and the names of the Bidders who submitted Notices of Withdrawal before the Closing Date and Time.
- 15.2** Following the Tender Opening, the names of the Bidders who delivered Tenders before the Closing Date and Time, each such Bidder's unverified Tender Price, and the names of the Bidders who submitted Notices of Withdrawal, shall be posted on BC Bid.
- 15.3** The amount read out at the Tender Opening and posted on BC Bid as the Bidder's unverified Tender Price is unverified and shall not constitute the Bidder's Tender Price but is subject to review, verification, calculation and adjustment by the Ministry in accordance with these Conditions of Tender.

CT16. EVALUATION OF TENDERS

- 16.1** Except as expressly set out in these Conditions of Tender, after the Closing Time the Bidder shall not be permitted to supplement or clarify any information provided in or omitted from its Tender.

Disqualification

- 16.2** Any Tender or any Revision which in the sole discretion of the Ministry:

- (a) is ambiguous or unclear as to meaning or intent;
- (b) is incomplete, conditional, or is qualified;
- (c) fails to comply with any of the mandatory requirements of the Condition of Tender;
- (d) contains any alteration to the information provided by the Ministry; or
- (e) otherwise fails to comply sufficiently with the Conditions of Tender to be considered a valid Tender,

is subject to Disqualification and may be Disqualified by the Ministry, in its sole discretion, at any time.

If a Tender or Revision is subject to Disqualification due to any one or more of the foregoing defects, including a failure to comply with a mandatory requirement of the Conditions of Tender, which, in the sole discretion of the Ministry, is not material, then the Ministry may, in its sole discretion, waive the defect or defects, as the case may be, and not Disqualify the Tender or Revision.

- 16.3** Without limiting the generality of CT16.2, if a Revision is Disqualified then the Ministry may, in its sole discretion and subject to CT16.2, either continue with the evaluation of or Disqualify the Tender or any other Revision(s) in connection with which the Disqualified Revision was delivered.

Review, Verification, Calculation and Adjustment

- 16.4** The Ministry may in its sole discretion review, verify, calculate and adjust the Bidder's Tender Price, Unit Prices, Lump Sum Prices, Extended Amounts, and Provisional Sum Items in accordance with these Conditions of Tender if the Bidder's Tender has not already been Disqualified. In carrying out such reviews, verifications, calculations and adjustments, the Ministry may apply any one, more or all of the following provisions:

- (a) If a Unit Price provided by the Bidder and its corresponding Extended Amount are at variance, the Unit Price shall be considered correct and the Ministry shall calculate the Extended Amount by multiplying the corresponding Approximate Quantity by the Unit Price provided by the Bidder and the resulting product as calculated by the Ministry shall be substituted as and be deemed to be the Extended Amount corresponding to that Unit Price Item.
- (b) If a Unit Price provided by the Bidder has been left blank and its corresponding Extended Amount has been completed by the Bidder, the Ministry shall calculate that Unit Price by dividing the Extended Amount by the corresponding Approximate Quantity and the resulting quotient as calculated by the Ministry shall be substituted as and deemed to be the Bidder's Unit Price for that Unit Price Item.
- (c) The Unit Prices, Lump Sum Prices and Extended Amounts as shown on the Bidder's Schedule of Approximate Quantities and Unit Prices shall be adjusted by the Ministry in accordance with any Revision(s) that have not been Disqualified.
- (d) If an Extended Amount for a Lump Sum Item or if the Unit Price and corresponding Extended Amount for a Unit Price Item has been left blank, the Ministry may designate a value of zero (i.e. the number "0"), to constitute that Extended Amount, or that Unit Price and corresponding Extended Amount, as the case may be, and the number "0" shall be incorporated in and deemed to be the Bidder's Extended Amount for that Lump Sum Item, or for the Bidder's Unit Price and corresponding Extended Amount for that Unit Price Item, as the case may be.

- 16.5** The Ministry shall calculate the Bidder's Tender Price based on the sum of all Extended Amounts, including such Extended Amounts, as adjusted by the Ministry in accordance with these Conditions

of Tender, on the Bidder's Schedule of Approximate Quantities and Unit Prices, and if the sum of all Extended Amounts including such Extended Amounts as adjusted by the Ministry in accordance with these Conditions of Tender and the amount stated as the Tender Price on the Tender Form are at variance, then the amount stated as the Tender Price on the Tender Form shall be adjusted to be the sum of such Extended Amounts as calculated by the Ministry.

- 16.6** The Bidder's Tender Price, Unit Prices, Lump Sum Prices, Extended Amounts, and Provisional Sum Items as set out in its Tender or any Revision shall not be changed or adjusted in any way, except as a result of any review, verification, calculations or adjustments, as the case may be, carried out by the Ministry in accordance with these Conditions of Tender.
- 16.7** The Bidder's Tender Price, Unit Prices, Lump Sum Prices, Extended Amounts, and Provisional Sum Items as reviewed, verified, calculated and adjusted, as the case may be, by the Ministry in accordance with these Conditions of Tender shall be binding on the Bidder.
- 16.8** The Tenders which have not been Disqualified by the Ministry in accordance with these Conditions of Tender shall be evaluated on the basis of their respective Tender Prices as reviewed, verified, calculated or adjusted, as the case may be, by the Ministry.
- 16.9** If the Tender Price of each of two or more Tenders, as calculated and adjusted by the Ministry, is the same figure then the Ministry may, in its sole discretion, select from among the Bidders who delivered the Tenders having the same Tender Price by applying a random method chosen in the Ministry's sole discretion, which may consist of, without limitation, a coin toss or the drawing of one of the Bidders' names out of a box, and deliver an Award letter to the selected Bidder.

CT17. BIDDER'S CAPACITY TO PERFORM, AND CLARIFICATION OF INFORMATION IN TENDER

- 17.1** The Ministry may, at any time and from time to time, after Closing Time require the Bidder to satisfy the Ministry, in its sole discretion, that the Bidder has the necessary qualifications, equipment, material, and resources available to carry out the Work in a safe, competent manner, by the required date for the completion of the Work under the Contract and by any other time limit set out in the Tender Document Package, and in compliance with any other requirements specified in the Tender Document Package, including by delivering information to the Ministry in writing which information may include any or all of the following:
 - (a)** evidence that the Bidder is financially, or otherwise capable of performing and completing the Work or the Contract, including an agreement to bond, consent of surety, or undertaking to provide requisite insurance;
 - (b)** evidence that the Bidder has successfully carried out and completed works of a similar nature or is otherwise fully capable of performing the Work;
 - (c)** a list of equipment, and its mechanical condition, that the Bidder will be using to perform the Work;
 - (d)** evidence that the personnel available to the Bidder and which the Bidder will be using to perform the Work, have the professional standing, and the technical and trade qualifications and licenses necessary to perform the Work; and
 - (e)** a detailed Project or Construction Schedule meeting all the requirements for such a schedule in the Contract.
- 17.2** The Ministry may, at any time and from time to time, after Closing Time, in its sole discretion, clarify or supplement any information entered by the Bidder on, or omitted by the Bidder from, the Bidder's Tender Form and any other forms in the Bidder's Tender by the Ministry's own investigation(s) and/or

by requesting clarification or supplementation of such information from the Bidder. The Ministry may in its sole discretion rely on, consider or disregard the results of any such clarification or supplementation in evaluating any Tender or any Revision under these Conditions of Tender.

- 17.3** If the Bidder is requested by the Ministry to provide information to the Ministry under CT17.1 or CT17.2, the Bidder shall comply with the request by not later than ten (10) days of the date on which the request was made or within such earlier or other time period as specified by the Ministry.
- 17.4** Without limiting CT16, CT17 or CT29, the Ministry may in its sole discretion Disqualify the Bidder's Tender and/or any Revision:
- (a) if the Bidder does not comply with a request from the Ministry under CT17.1 or CT17.2 within the time limit specified under CT17.3; or
 - (b) if the Bidder's response to a request from the Ministry under CT17.1 or CT17.2 is determined by the Ministry in its sole discretion to be insufficient to enable the Ministry to make an assessment under CT17.1 or to have been unsatisfactory.

CT18. RIGHT NOT TO AWARD

- 18.1** The Ministry reserves the right, in its sole discretion, to Disqualify any or all Tenders, to cancel this Tender Call, to reject any or all Tenders, and to re-tender the same or similar Work at any time either before or after Closing Time. The lowest or any Tender shall not necessarily be accepted.

CT19. ACCEPTANCE

- 19.1** An Award letter is the only form of acceptance of the Bidder's Tender under these Conditions of Tender.

CT20. AWARD OF CONTRACT

- 20.1** If the Ministry delivers an Award letter to the Bidder:

- (a) the Bidder shall on the earlier of:
 - (i) fourteen (14) days from the date of the Award letter; and
 - (ii) three (3) days before commencement of the Work on the Site,obtain and deliver to the Ministry, the Contract Security(ies), evidence of compliance with the Schedule of the Contract entitled "Insurance", a valid Worker's Compensation Board registration number for the Bidder, the Valid Tax Verification Letter(s), and if requested by the Ministry, evidence demonstrating that the Bidder has been duly registered, including extra-provincially registered, with the British Columbia Corporate Registry, and
- (b) the Bidder shall on the earlier of:
 - (i) fourteen (14) days from the date shown on the Ministry cover letter delivering the Contract to the Bidder; and
 - (ii) three (3) days before commencement of the Work on the Site,

deliver to the Ministry the Contract executed on behalf of the Bidder, and commence to diligently and promptly fulfill its obligations under the Contract.

- 20.2** The Ministry may, in its sole discretion, publish the name of the Bidder to whom an Award letter has been delivered and the Tender Price on which the Award is based.

CT21. DEFAULT

- 21.1** Without limiting any and all rights and remedies of the Ministry under or in connection with this Tender Call, including to make demand or draw on the Bid Security, or otherwise at law or in equity, if the Ministry has delivered an Award letter to the Bidder and the Bidder does not comply with any part of CT20.1 then the Ministry may make demand on the Bidder's Bid Security.
- 21.2** The rights and remedies of the Ministry under or in connection with this Tender Call, or otherwise at law or in equity, are not limited to the Ministry's right to make demand on the Bidder's Bid Security, and the right to make such demand is cumulative and in addition to every other right and remedy available to the Ministry under or in connection with this Tender Call, or otherwise at law or in equity. The exercise by the Ministry of any such right or remedy shall not preclude the simultaneous or later exercise of any other such right or remedy.

Demand on Bid Security

- 21.3** A demand on the Bid Security shall be the lesser of:
- (a) the difference between the Tender Price of the Bidder that has been awarded the Contract by the Ministry, as calculated and adjusted by the Ministry, and the amount for which the Ministry contracts with another party to perform the Work or substantially the same Work; and
 - (b) the full amount of the Bid Security.

CT22. DISPUTE RESOLUTION

- 22.1** In the event of a dispute arising under or in connection with this Tender Call:
- (a) the Bidder shall, within fourteen (14) days of any issue in such dispute first coming to the attention of the Bidder, deliver written notice to the Project Contact of such dispute; and
 - (b) all such disputes not resolved through negotiation between the parties to the dispute within thirty (30) days of the dispute being presented in writing to the Project Contact may by agreement of the Ministry and the Bidder be referred to and finally resolved by binding arbitration in accordance with the *Arbitration Act*.
- 22.2** Notwithstanding any notice delivered under CT22.1, the Ministry may, but in no event will be obligated to, proceed with this Tender Call, including an Award and the execution of a Contract, without prejudice to any ongoing dispute resolution proceedings or discussions including any negotiations or binding arbitration as contemplated in CT22.1.

CT23. TIME LIMITATION ON CLAIMS

- 23.1** Any claim or cause of action the Bidder may have against the Ministry arising under or in connection with this Tender Call shall be absolutely barred after the expiration of one (1) year commencing from the Closing Date and Time. The term "Ministry" includes for this purpose the Ministry, its officers,

employees, servants, agents, representatives and consultants, including any person retained by or on behalf of the Ministry to advise or assist the Ministry with respect to any matter in connection with or in any way related to this Tender Call, and each of them.

CT24. LIMITATION OF DAMAGES AND EXCLUSIONS OF LIABILITY

24.1 If the Ministry cancels this Tender Call, Disqualifies all Tenders, rejects all Tenders, or does not Award the Contract to any Bidder, then:

- (a) the Bidder shall not claim against the Ministry; and
- (b) the Ministry shall not be liable to the Bidder or to any person,

in contract, in tort, or otherwise at law or in equity, for any losses, costs, damages, legal fees or expenses or anything whatsoever in connection with or in any way related to this Tender Call, including without limitation, for loss of revenue, opportunity, or anticipated profit, or for the costs of the preparation of the Bidder's Tender.

24.2 In circumstances not described in CT24.1, then:

- (a) the Bidder shall not claim against the Ministry: and
- (b) the Ministry shall not be liable to the Bidder or to any person,

in contract, in tort, or otherwise at law or in equity, for any losses, costs, damages, legal fees or expenses or anything whatsoever in connection with or in any way related to this Tender Call, including without limitation, for loss of revenue, opportunity, or anticipated profit, in excess of an amount equivalent to the actual and reasonable costs directly incurred by the Bidder to prepare the Bidder's Tender.

24.3 Without limiting or otherwise restricting the application of CT24.1 or CT24.2, the Ministry shall have no responsibility to or bear any liability to the Bidder or to any person whatsoever in connection with or in any way related to the following matters or in the following circumstances:

- (a) the completeness, reliability, sufficiency, accuracy or relevance of any information, or any interpretation derived from any such information, set out or otherwise provided in the Tender Document Package, the Specific Reference Documents or the General Reference Documents, including any information accessed via the URL's or web sites set out in any of those documents, or any analysis or interpretation derived from such information;
- (b) any decision by the Ministry to respond or not to respond to requests for clarification under these Conditions of Tender, the timing of issuing any Amendments setting out the responses to any such requests or the quality or the content of any such responses;
- (c) the timely delivery or otherwise of any information or documentation, including these Conditions of Tender, or any and all Amendments, whether by BC Bid, by mail, by courier, by hand, by fax, or otherwise, in connection with this Tender Call, including any failure by or on behalf of the Ministry to deliver to the Bidder any Amendments or by the Bidder to receive or to keep itself informed of any Amendments, at all or in a timely manner;
- (d) any mistakes, errors, omissions, oversights, statements, representations, or warranties including in any notice, guideline, guidance or information, written or oral, given to the Bidder or Bidders by or on behalf of the Ministry regarding or in connection with BC Bid, including the use of the BC Bid and including where such mistakes, errors, omissions, oversights,

statements, representations, or warranties, lead or contribute, directly or indirectly, to the Bidder making mistakes, errors, omissions or oversights in the preparation, submission or transmission of its Tender, or to the Bidder's Tender or any part of its Tender not being accepted or being Disqualified or rejected;

- (e) the timely receipt by or on behalf of the Ministry of any Tenders, Notice of Withdrawal, or any other information or documentation from the Bidder, any Bidder or any person;
- (f) the working order, functioning or malfunctioning of fax equipment or electronic information systems including such equipment or systems of the Bidder or of the Ministry, or of BC Bid, or of any delay in transmission between the Bidder's computer and the Government Electronic Mail System or BC Bid; and
- (g) any decision, determination, interpretation or action including consideration, calculation, adjustment, Disqualification, rejection, acceptance or selection by or on behalf of the Ministry pursuant to or in connection with terms of these Conditions of Tender which are referenced as being "in its sole discretion", "at the discretion", "in its discretion", "at its discretion", "in the opinion", "in its opinion" and "to the satisfaction of" or similar words or phrases in relation to the Ministry.

24.4 The Bidder shall not claim or proceed with any claim(s) in connection with or in any way related to this Tender Call in contract, in tort, or otherwise at law or in equity, for any losses, costs, damages, legal fees or expenses or anything whatsoever, including without limitation, for loss of revenue, opportunity, or anticipated profit, or for the costs of the preparation of the Bidder's Tender, against any person who might claim against, or seek contribution or indemnity from, the Ministry as a result of such claim(s).

24.5 The term "Ministry" includes for the purpose of CT24.1 – 24.4, the Ministry, its officers, employees, servants, agents, representatives and consultants, including any person retained by or on behalf of the Ministry to advise or assist the Ministry with respect to any matter in connection with or in any way related to the Tender Call, and each of them.

CT25. JURISDICTION OF COURTS AND GOVERNING LAW

25.1 Subject to the potential arbitration of disputes in accordance with CT22.1, the Bidder shall be deemed to have attorned to the exclusive jurisdiction of the Courts of British Columbia with respect to any disputes and claims arising under or in connection with this Tender Call including any disputes and claims arising in any way out of the use of BC Bid. Any such disputes and claims and the terms of this Tender Document Package are to be governed by, construed and interpreted in accordance with the laws of British Columbia, without regard to choice of law principles.

CT26. NO IMPLIED DUTIES

26.1 Except to the extent identified and set out in the express terms of these Conditions of Tender, the Ministry has no legal obligations or duties whether in contract, tort, statute or common law including any actual or implied duties of fairness or good faith to the Bidder, any Bidder or Bidders or any person under or in connection with this Tender Call.

26.2 Without limiting the scope of CT26.1, the Ministry shall not be bound by industry custom or practice, if any, under or in connection with this Tender Call including the application or interpretation of these Conditions of Tender, the exercise of its discretion, or with respect to any other matter.

CT27. APPROPRIATION

- 27.1** Notwithstanding any other term of these Conditions of Tender, any Award of the Contract, and any financial obligations of the Ministry pursuant to these Conditions of Tender or the Contract shall be subject to:
- (a) there being sufficient monies available in an Appropriation to enable the Ministry in any fiscal year or part thereof when any payment of money by the Ministry would have fallen due under the Contract, if the Contract had been awarded by the Ministry, to make that payment; and
 - (b) the Treasury Board, as defined in the *Financial Administration Act*, having not controlled or limited expenditure under any Appropriation contemplated or referred to in the Contract.

CT28. USE OF INFORMATION, AND CONFIDENTIALITY

- 28.1** All documents and records in the custody or under the control of the Ministry, including the Tender, any Notice of Withdrawal, and all other information delivered by the Bidder pursuant to these Conditions of Tender shall become the property of the Ministry, and the Ministry may use any such information, including pricing information provided by the Bidder for the purpose of or in connection with preparing analyses of the Work and for the purpose of or in connection with cost estimating for other projects, and for such purposes, the Ministry may disclose such information to consultants retained by the Ministry.
- 28.2** Except as otherwise provided or otherwise contemplated in these Conditions of Tender, the Ministry shall treat as confidential and shall not, without the prior written consent of the Bidder, publish, or disclose, or permit to be published or disclosed, the Tender, any Notice of Withdrawal, and any other documents, records or other information delivered by the Bidder pursuant to these Conditions of Tender, except insofar as such publication or disclosure is required by law, including the *Freedom of Information and Protection of Privacy Act*, or is necessary to enable the Ministry to fulfill any obligations that the Ministry may have under or in connection with this Tender Call.

CT29. INDEPENDENT TENDER DECLARATION

- 29.1** By submitting a Tender, the Bidder attests that:
- (a) the contents of its Tender, its Tender Price, Unit Prices and any other figures set out in the Schedule of Approximate Quantities and Unit Prices in its Tender have been arrived at without collusion with any other Bidder or potential Bidder; and
 - (b) no attempt has been made, nor will be made, by the Bidder to induce any other person to submit, or not to submit, a Tender in response to this Tender Call for the purpose of restricting competition.
- 29.2** Without limiting any rights or remedies the Ministry may otherwise have against the Bidder as a result of non-compliance with the requirements of CT29.1 under or in connection with these Conditions of Tender or this Tender Call, or otherwise at law or in equity, such non-compliance may result in the Disqualification of the Bidder's Tender at the Ministry's sole discretion.

CT30. GENERAL

- 30.1** The headings and captions in these Conditions of Tender are inserted for convenience only and do not form part of these Conditions of Tender and in no way define, limit, alter or enlarge the scope or meaning of any term of these Conditions of Tender.

- 30.2** If any provision of these Conditions of Tender or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of these Conditions of Tender and the application of such provision to any other person or circumstance will not be affected or impaired thereby and shall be valid and enforceable to the extent permitted by law.
- 30.3** The Bidder is not permitted to assign, either directly or indirectly, in whole or in part, its Tender.
- 30.4** Nothing contained in these Conditions of Tender shall derogate from, fetter or conflict with or shall be interpreted in a manner as to result in any derogation, fetter or conflict with the rights, powers and authorities of the Ministry, the Minister of Transportation and Infrastructure or the Lieutenant Governor in Council under or pursuant to law including the *Transportation Act*.