

Conditions of Tender

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CT1. INTERPRETATION AND INVITATION TO TENDER – SUPPLEMENTAL CONDITIONS OF TENDER

- 1.1 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.
- 1.2 The Glossary of Terms is hereby incorporated by reference into and forms a part of these Conditions of Tender.
- 1.3 The Invitation to Tender - Supplemental Conditions of Tender contained in the Tender Document Package are hereby incorporated by reference into and form a part of these Conditions of Tender and where any term set out in the Invitation to Tender - Supplemental Conditions of Tender conflicts with any term set out in these Conditions of Tender, the term set out in these Conditions of Tender shall prevail.

CT2. USE OF BC BID ESERVICE

2.1 The BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions are hereby incorporated by reference into and form a 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 BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions, and
- (b) the BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions 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.

2.2 The Bidder must deliver its Tender, including for greater clarity, any and all Revisions, and any notice of withdrawal, by using one of the following two delivery methods, which the Bidder may, at its option, choose:

- (a) the BC Bid eService Delivery Method; or
- (b) the Hard Copy Delivery Method, and

except as expressly set out in these Conditions of Tender, the Bidder shall not combine aspects of the BC Bid eService Delivery Method with the Hard Copy Delivery Method.

- 2.3 (a) If the Bidder chooses the BC Bid eService Delivery Method, then the Bidder
 - (i) must deliver the Tender, including for greater clarity, and, subject to CT2.3(b), any and all Revisions, and any notice of withdrawal, using the BC Bid eService Delivery Method, and
 - (ii) must deliver the Bid Security using the Hard Copy Delivery Method.
- (b) If the Bidder chooses the BC Bid eService Delivery Method, the Bidder may elect to deliver Revisions and any notice of withdrawal using the Hard Copy Delivery Method by
 - (i) delivering a Revision using such method, and if the Bidder makes such election then
 - (i) any and all subsequent Revisions, including any replacement Schedule of Approximate Quantities and Unit Prices, must be delivered using the Hard Copy Delivery Method, and
 - (ii) any subsequent Revisions submitted using the BC Bid eService Delivery Method will not be considered or evaluated, or
 - (ii) delivering a notice of withdrawal using such method.

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- (c) Determinations as to whether any Revision or notice of withdrawal submitted using BC Bid eService Delivery Method was delivered subsequent to delivery of a Revision using the Hard Copy Delivery Method will be governed by the calendar and clock at the Closing Location whether such calendar or clock, as the case may be, is accurate or not.
 - (d) If the Bidder chooses the Hard Copy Delivery Method, then the Bidder must deliver the Tender, including for greater clarity, any and all Revisions and the Bid Security, and any notice of withdrawal using the Hard Copy Delivery Method.
- 2.4 The Bidder must not deliver the Bid Security using the BC Bid eService Delivery Method. The Bidder must deliver the Bid Security, including any part of the Bid Security, in accordance with CT6, using only the Hard Copy Delivery Method.
- 2.5 If the Bidder chooses the BC Bid eService Delivery Method, then the Bidder must have an “e-Bidding Key” as defined in the BC Bid eService Terms and Conditions.
- 2.6 Without in any way whatsoever limiting the BC Bid Supplier Terms and Conditions, including without limitation, sections 8 and 9 set out therein, or the BC Bid eService Terms and Conditions, including without limitation, sections 13, 14, and 15 set out therein,

 - (a) the Bidder is solely responsible for reviewing any guidelines, the BC Bid Supplier Terms and Conditions and the BC Bid eService Terms and Conditions applying to and governing the use of the BC Bid eService; and
 - (b) the Ministry shall in no way whatsoever be responsible or liable, including in contract or tort, for any mistakes, errors, omissions, oversights, statements, representations, or warranties in any guideline, guidance or information, written or oral, given to Bidders by or on behalf of the Ministry regarding or in connection with the BC Bid eService, including without limitation, the use of the BC Bid eService or the BC Bid eService Delivery Method, further including without limitation, where such mistakes, errors, omissions, oversights, statements, representations, or warranties, lead or contribute, directly or indirectly, to a Bidder making mistakes, errors, omissions or oversights, or the Bidder’s Tender being disqualified.
- 2.7 Without in any way whatsoever limiting the BC Bid eService Terms and Conditions or the BC Bid Supplier Terms and Conditions, or the responsibility of the Bidder to read and comply with the terms set out therein,

 - (a) the Bidder must take note of section 5 of the BC Bid eService Terms and Conditions that reads as follows:

 - “5. The Bidder agrees that if its e-Bidding Key is entered incorrectly, or is invalid at any applicable closing times or dates regardless of when received by Us, then any bids, proposals or other communications that the e-Bidding Key is associated with will not be considered or evaluated.”, and
 - (b) the Bidder must take note of section 6 of the BC Bid Supplier Terms and Conditions that reads as follows:

 - “6. If you have a valid BC Bid® electronic signature key (“e-Bidding Key”) and you are creating an electronic response to a posted opportunity, you will be given three attempts to enter the correct e-Bidding Key sequence. You agree that, if, on the third attempt, the e-Bidding Key is incorrectly entered, the BC Bid system will prohibit you from electronic bidding until such time that your account has been re-activated by the Service. You agree that your organization’s primary contact will be

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responsible for contacting the Service to reinstate a user account that has been suspended for whatever reason.”.

CT3. BASIS OF TENDERS

3.1 The Bidder, by delivering a Tender, irrevocably agrees that,

- (a) the Bidder has received, read, examined and understood the entire Tender Document Package, including without limitation, all the terms of these Conditions of Tender and any and all Addenda,
- (b) the Unit Prices, Lump Sum Prices and Extended Amounts for each Tender Item, and the Tendered Site Occupancy Days and the Tendered Site Occupancy Cost if any, stated on the Bidder's Schedule of Approximate Quantities and Unit Prices, as may be adjusted by Revision, and as calculated by the Ministry, in accordance with these Conditions of Tender, shall be binding on the Bidder,
- (c) the Bidder is bound by the terms of these Conditions of Tender and any and all Addenda, and
- (d) the Bidder waives any right to clarification of any aspect of any information in the Tender Document Package, including without limitation, these Conditions of Tender and any and all Addenda.

3.2 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 clarity, any documents incorporated by reference into the Tender Document Package, and any and all Addenda;
- (b) except as set out in CT3.5 and CT3.6 and only to the extent expressly set out therein, the Bidder has not relied upon any representation or warranty by the Ministry 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, or the General 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) save and except for the specific information provided by the Ministry as set out in CT3.5 and CT3.6, the Bidder's investigations have been based on its independent examination, experience, knowledge, information, and judgment, and not upon any statement, representation, or information made or given by or on behalf of the Ministry;
- (e) the Tender, including for greater clarity, any part of the Tender Price, the Tendered Site Occupancy Cost, and the Total Tender Cost, is not based upon the anticipated approval of any Value Engineering Proposal; and
- (f) the Bidder has the experience, knowledge, equipment, skills and resources necessary to perform and complete the Work and the Contract.

3.3 Any and all investigations shall be made at the Bidder's own risk and the Bidder shall indemnify

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and save harmless the Ministry, its officers, employees and agents, even where the Ministry or its officers, employees and agents are 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 the Bidder's investigation, including from any acts or omissions, negligent or otherwise, of the Ministry, its officers, employees and agents, which indemnity shall survive subsequent to any Award of the Contract, or any cancellation or termination of this Tender Call.

- 3.4** The Bidder shall be responsible for examining and inspecting the General Reference Documents and the Contract 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 Invitation to Tender - Supplemental Conditions of Tender.
- 3.5** Any geotechnical investigation datum and test results provided in the borehole and test pit logs contained within the Tender Document Package and the Contract 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.
- 3.6** Any survey point datum, but not interpolated digital terrain models, contours and cross-sections derived therefrom, contained within the Tender Document Package and the Contract 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.
- 3.7** Except as set out in CT3.5 and CT3.6 and only to the extent expressly set out therein, the Ministry makes no representation or warranty and has no responsibility or liability, 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, including by accessing the URL's or the Web sites set out in, the Tender Document Package, the Contract Specific Reference Documents or the General 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.
- 3.8** Unless otherwise specified in the Tender Document Package, the General Reference Documents and the Contract Specific Reference Documents are available in the manner and at the locations described in the definitions of General Reference Documents and the Contract Specific Reference Documents set out in the Glossary of Terms. The Ministry will not provide copies of any General Reference Documents. The Ministry will provide copies for viewing by Bidders, of only those Contract Specific Reference Documents that the Tender Document Package expressly states will be provided by the Ministry.
- 3.9** Subject to the express terms of the Special Provisions, the Standard Specifications shall apply to the performance of the Contract, including without limitation, to the performance of and the measurement of the Work.
- 3.10** The Contract shall include the General Conditions set out in the Tender Document Package.
- 3.11** The Approximate Quantities stated in the Schedule of Approximate Quantities and Unit Prices, save and except for the Tendered Site Occupancy Days and the Daily Site Occupancy Cost if any, are estimates only and are prepared exclusively for use by the Ministry to establish the Tender Price for the purpose of comparing Tenders. The actual quantities may increase or decrease. The elimination of Tender Items, or an increase or decrease in quantities shall not invalidate the Tender, the Contract, or any Unit Price.

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- 3.12 (a)** If specified in the Invitation to Tender - Supplemental Conditions of Tender, a pre-Tender meeting shall be held.
- (b)** If the pre-Tender meeting is specified to be mandatory,
- (i)** a representative of the Bidder must attend the pre-Tender meeting and the Bidder must ensure that its full legal name, as it will appear on the face of the Tender Envelope, is listed on the Ministry pre-Tender meeting attendance record, and
 - (ii)** any Tender, including any Revision, delivered by a Bidder whose name, as it appears on the face of the Tender Envelope, is not listed on the Ministry pre-Tender meeting attendance record, shall not be opened and shall be returned, or if opened, shall not be considered or evaluated but shall be disqualified.
- (c)** Any information, statements, representations, data or conclusions, verbal or otherwise, obtained from the Ministry or any other party, or made available, at any pre-Tender meeting is not stated, represented or warranted to be accurate, complete, relevant, or reliable by the Ministry and shall not be considered or treated as such, or relied upon by the Bidder. The Ministry may take notes at any such pre-Tender meeting for its sole use, and the Ministry shall be under no obligation whatsoever to make minutes or copies of such notes available to any Bidder and, may, in its sole discretion refuse to make minutes or copies of such notes available to any Bidder.

CT4. CLARIFICATION

- 4.1** Requests for clarification of any part of the Tender Document Package by the Bidder shall be delivered in writing by courier, fax, or electronic mail, not less than seven (7) days before the Closing Time, in accordance with the following:
- (a)** with respect to the Work, to the Contact Person identified in the Invitation to Tender - Supplemental Conditions of Tender; and
 - (b)** with respect to the Tender Call, to the Administrative Contact Person identified in the Invitation to Tender - Supplemental Conditions of Tender.
- 4.2** 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 in accordance with CT5.3, by Addenda which set out the request for clarification and the response to such requests in a "Question and Answer" format without setting out the name of the person who delivered the request.
- 4.3** Responses to requests for clarification made in any manner other than as described in CT4.2, including without limitation, verbal, in person, via mail, via fax, or electronic mail, by any employees, agents or representatives of the Ministry including without limitation, the Contact Person or the Administrative Contact Person, 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.
- 4.4** It is the sole responsibility of the Bidder to monitor the BC Bid eService email notifications referenced in CT5.3(b), the BC Bid eService, and the BC Bid Website on an ongoing basis to keep itself informed of any such clarifications.
- 4.5** The Ministry shall have no responsibility or liability whatsoever, including in contract or in tort, in regard to or in connection with any decision to respond or not to respond to requests for

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clarification, the timing of issuing any Addenda setting out the responses to any such requests, the quality or content of any such responses or the failure of a Bidder to keep itself informed of any such responses.

CT5 ADDENDA

- 5.1** 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 Addenda. If issued through the BC Bid eService, Addenda shall be identified as "Amendments". Other than by Addenda, including for greater clarity, BC Bid eService Amendments, no part of the Tender Document Package may be amended in any other way by any person.
- 5.2** Other than as set out in an Addendum, any information pertaining to the Tender Document Package, or this Tender Call, including without limitation, 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 Person, is not official 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.
- 5.3** Subject to these Conditions of Tender,
- (a)** any and all Addenda shall be delivered to each Planholder, and
 - (b)** if the Bidder has registered with the BC Bid eService to receive email notifications in accordance with the BC Bid eService requirements, or if the Bidder has confirmed that it wishes to be notified of Addenda by clicking on the "Send Me Amendments" option in the Invitation to Tender – Supplemental Conditions of Tender, then the BC Bid eService shall send the Bidder notifications of such Addenda, via e-mail containing a referring web-link to such Addenda.
- 5.4** Notwithstanding any other term of these Conditions of Tender, the Bidder shall be solely responsible to continually monitor the BC Bid eService email notifications referenced in CT5.3(b), the BC Bid eService, and the BC Bid Website on an ongoing basis to keep itself informed of any and all Addenda, and the Ministry shall be neither responsible nor liable in any way whatsoever, including in contract or in tort, for the failure of the Bidder to receive or to keep itself informed of any such Addenda, at all or in a timely manner.

CT6 BID SECURITY

- 6.1** The Bidder must deliver, as part of its Tender, Bid Security having a value and in a form that complies with the terms of the Schedule entitled "Tender Securities" as set out in the Tender Document Package.
- 6.2** If the Bidder delivers its Tender using, either, the BC Bid eService Delivery Method or the Hard Copy Delivery Method, the originals of the Bid Security must be delivered to the Closing Location before the Closing Time by hand or by courier, and
- (a)** if the Bidder delivers its Tender using the BC Bid eService Delivery Method, the Bid Security must be delivered in a sealed envelope that clearly and legibly has identified on its face:
 - (i)** the heading "Tender Bid Security";
 - (ii)** the full legal name of the Bidder; and
 - (iii)** the Project Name and, or the Project Number, as specified in SCT2, and
 - (b)** if the Bidder delivers its Tender using the Hard Copy Delivery Method, the Bid Security must be delivered in the sealed Tender Envelope.

CT7 COMPLETION OF TENDERS

Use of Forms Provided by the Ministry

7.1 The Bidder must deliver its Tender on original or unaltered copies of the forms specified by the Ministry. Any information provided by the Ministry on any form must not be altered by the Bidder, or any person, except the Ministry. If the Ministry amends the Tender Document Package by replacing any form or forms, the Bidder must deliver the replacement form or forms, as the case may be, as part of its Tender.

7.2 Unless otherwise expressly set out, the Bidder must complete all forms in full and,

- (a)** if the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder must complete all forms in full by typing or printing legibly in ink on all such forms, and any adjustments, changes, or corrections to information provided by the Bidder on any such form must be initialed by an Authorized Representative of the Bidder; or
- (b)** if the Bidder delivers its Tender using the BC Bid eService Delivery Method, then the Bidder must complete all forms in full by entering the required information.

Tender Form

7.3 If the Bidder delivers its Tender using the Hard Copy Delivery Method, then

- (a)** the Bidder must set out on the Tender Form,
 - (i)** its full legal name,
 - (ii)** the date of the Tender Form
 - (iii)** the name of the Authorized Representative of the Bidder, and
 - (iv)** the Total Tender Cost, andthe Tender Form must be signed by an Authorized Representative of the Bidder, and
- (b)** the Bidder should include the complete mailing address, phone number and fax number of the Bidder, on the Tender Form.

7.4 If the Bidder delivers its Tender using the BC Bid eService Delivery Method, then the use of the e-Bidding Key is the legal equivalent to its authorized signature and constitutes the Bidder's authorized signature confirming the Bidder's agreement to be bound by the terms and conditions of this Tender Call, including for greater clarity, these Conditions of Tender, and by the statements and representations to which the e-Bidding Key is affixed, including for greater clarity, the Bidder's Tender.

Schedule of Approximate Quantities and Unit Prices

7.5 All prices, including Unit Prices, Provisional Sums, and Lump Sum Prices shall be deemed to be inclusive of all applicable costs, including any and all license costs, fees, taxes or duties in effect at the Closing Time, cash allowances, and contingencies. All prices, including Unit Prices, Provisional Sums, and Lump Sum Prices must be stated in the lawful money of Canada. Conversion of Quantities is not permitted (e.g., conversion of "price per litre" to "price per kilolitre" is not permitted). Conversion of metric units to imperial units or vice versa is not permitted.

7.6 In the Schedule of Approximate Quantities and Unit Prices,

- (a)** the Bidder must complete,
 - (i)** all blank spaces in the column under the heading "Unit Price" and all blank spaces in the column under the heading "Extended Amount" for each Unit Price Item; and

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- (ii) all blank spaces in the column under the heading "Extended Amount" for each Lump Sum Item; and
 - (iii) in a Tender Call in which the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy and the Ministry requires the submission of Tendered Site Occupancy Days and has provided a Daily Site Occupancy Cost, all blank spaces in the column entitled "Approximate Quantities" in Part B for the Tendered Site Occupancy Days and all blank spaces in the column entitled "Extended Amount" for the Tendered Site Occupancy Cost, and
 - (b) the Bidder should include the full legal name and complete mailing address, phone number and fax number of the Bidder, on the Schedule of Approximate Quantities and Unit Prices.
- 7.7**
- (a) If the Ministry amends the Tender Document Package by replacing the Schedule of Approximate Quantities and Unit Prices, the Bidder must deliver the replacement Schedule of Approximate Quantities and Unit Prices completed in accordance with these Conditions of Tender.
 - (b) If the Bidder delivers its Tender using the Hard Copy Delivery Method, the Bidder shall not deliver any replacement Schedule of Approximate Quantities and Unit Prices by facsimile transmission but may deliver the replacement Schedule of Approximate Quantities and Unit Prices, by hand or courier,
 - (i) enclosed in an envelope, that clearly and legibly has identified on its face,
 - (A) the heading "Schedule of Approximate Quantities and Unit Prices",
 - (B) the full legal name of the Bidder, and
 - (C) the Project Name and, or the Project Number, as specified in SCT2, andthat must be delivered to and received at the Closing Location before the Closing Time, or
 - (ii) as part of a replacement Tender in accordance with CT8.6,

Tender Envelope

- 7.8** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder must clearly and legibly print or type on the face of the Tender Envelope
- (a) the full legal name of the Bidder; and
 - (b) the Project Name and, or the Project Number, as specified in SCT2, and
- the Bidder must deliver its Tender in the Tender Envelope provided in the Tender Document Package.
- 7.9** If the Bidder delivers its Tender using the BC Bid eService Delivery Method, then the Bidder must ensure that the Tender Envelope contains a fully completed Schedule of Approximate Quantities and Unit Prices.

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CT8 DELIVERY OF TENDERS

- 8.1** The Ministry may in its sole discretion, from time to time and at any time on or before the Closing Date and before the Closing Time, extend the Closing Date and Closing Time.
- 8.2**
- (a)** Unless the Bidder has elected pursuant to CT2.3(b) to submit Revisions or any notice of withdrawal using the Hard Copy Delivery Method, the calendar and clock showing on the BC Bid Website whether accurate or not, shall govern the delivery of Tenders using the BC Bid eService Delivery Method with respect to whether the Bidder's Tender, including for greater clarity, any and all Revisions, has been delivered and received on or before the Closing Date and before the Closing Time, and the BC Bid Website clock shall be set as specified in the Invitation to Tender – Supplemental Conditions of Tender.
 - (b)** The calendar and clock at the Closing Location whether accurate or not, shall govern the delivery of Tenders using the Hard Copy Delivery Method, and the delivery of the Bid Security in connection with a Tender that has been delivered using the BC Bid eService Delivery Method, with respect to whether the Bidder's Tender, including for greater clarity, any and all Revisions, or the Bidder's Bid Security in the case of a Tender delivered using the BC Bid eService Delivery Method, has been delivered and received before the Closing Time.
 - (c)** If the Bidder has elected pursuant to CT2.3(b) to submit Revisions or any notice of withdrawal using the Hard Copy Delivery Method, then the calendar and clock at the Closing Location whether accurate or not, shall govern the delivery of any and all Revisions or any notice of withdrawal using the Hard Copy Delivery Method and relating to a Tender or to any previous Revisions submitted using BC Bid eService Delivery Method, with respect to whether the Bidder's Revisions or notice of withdrawal, as the case may be, were delivered and received before the Closing Time.
- 8.3** If the Bidder delivers its Tender using the Hard Copy Delivery Method, then the Bidder must ensure that,
- (a)** the Tender Form with the original execution by an Authorized Representative on behalf of the Bidder, and fully completed as required by these Conditions of Tender,
 - (b)** the original of the Schedule of Approximate Quantities and Unit Prices, or, if the Ministry has amended the Tender Document Package by replacing the Schedule of Approximate Quantities and Unit Prices, the original of the replacement Schedule of Approximate Quantities and Unit Prices, completed as required on the form and by these Conditions of Tender, and
 - (c)** the original of the Bid Security, and if the Bid Security is a Bid Bond, then the original of the Bid Bond duly executed on behalf of the Surety,
- are included in the Tender Envelope prior to sealing and are delivered to and received at the Closing Location before the Closing Time.
- 8.4** If the Bidder delivers its Tender using the BC Bid eService Delivery Method, then the Bidder must ensure that,
- (a)** the Tender Form is fully completed as required on the form and by these Conditions of Tender,
 - (b)** the Tender Envelope is fully completed as required on the form and by these Conditions of Tender,
 - (c)** the Schedule of Approximate Quantities and Unit Prices, or if the Ministry has amended the Tender Document Package by replacing the Schedule of Approximate Quantities and Unit Prices, then the replacement Schedule of Approximate Quantities and Unit Prices, is fully

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completed as required on the form and by these Conditions of Tender, unless the Bidder elects or has, prior to such Ministry amendment, elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method, and if the Bidder so elects or has made such election, then the original of the replacement Schedule of Approximate Quantities and Unit Prices is completed and delivered as required on the form and by these Conditions of Tender, including without limitation, CT7.7(b),

- (c) such Tender Form and Tender Envelope are delivered to and received by the BC Bid eService in accordance with these Conditions of Tender, including for greater clarity, the BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions, before the Closing Time, and
- (d) the original Bid Security duly executed on behalf of the Surety, is enclosed in a sealed envelope that clearly and legibly has identified on its face:
 - (i) the heading "Tender Bid Security";
 - (ii) the full legal name of the Bidder; and
 - (iii) the Project Name and, or the Project Number, as specified in SCT2 andsuch sealed envelope containing the original Bid Security is delivered to and received at the Closing Location before the Closing Time.

8.5 The Bidder's Tender shall be considered to have been delivered on or after the Closing Time and shall not be considered or evaluated but shall be disqualified, if the transmission of the Tender using the BC Bid eService Delivery Method begins before the Closing Time and is completed on or after the Closing Time.

8.6 If the Bidder delivers more than one Tender, each Tender delivered in accordance with these Conditions of Tender and received by the BC Bid eService or at the Closing Location, as the case may be, before the Closing Time shall be deemed to have been delivered in the chronological order received, and each such Tender delivered by the same Bidder shall be considered to supercede and replace in its entirety any and all prior Tenders delivered by the same Bidder.

CT9 REVISION TO TENDER

9.1 The Bidder shall only amend its Tender by delivering a Revision in compliance with these Conditions of Tender.

Form and Content (Hard Copy Delivery Method)

9.2 If the Bidder delivers its Tender using the Hard Copy Delivery Method or if the Bidder elects pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method, then Revisions must:

- (a) be in writing;
- (b) be clearly identified with,
 - (i) the heading "Revision to Tender",
 - (ii) the Bidder's full legal name, and
 - (iii) the Project Name and, or Project Number specified in SCT2;
- (c) clearly identify each form that the Bidder desires to amend,
- (d) clearly identify each Tender Item that the Bidder desires to amend, and

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- (i) if the Tender Item is a Unit Price Item, then describe the amendment as the amount by which the Unit Price, as it may have been revised by a preceding Revision, should be increased or decreased,
 - (ii) if the Tender Item is a Lump Sum Item, then describe the amendment as the amount by which the corresponding Extended Amount, as it may have been revised by a preceding Revision, should be increased or decreased, and
 - (iii) if the amendment is to the Tendered Site Occupancy Days, then describe the amendment as the number of days by which the Tendered Site Occupancy Days, as it may have been revised by a preceding Revision, should be increased or decreased;
- (e) be signed by an Authorized Representative on behalf of the Bidder, and
 - (f) be delivered to and received at the Closing Location before the Closing Time using the Hard Copy Delivery Method, and

Revisions should also state the total amount by which the Tender Price, the Tendered Site Occupancy Cost if any, or the Total Tender Cost, as the case may be, should be increased or decreased by each Revision, but the Ministry shall determine the actual increase or decrease to the Tender Price, the Tendered Site Occupancy Cost, if any, and the Total Tender Cost, in accordance with these Conditions of Tender, including by applying the information provided by the Bidder pursuant to CT9.2(c) and (d).

Revisions by Letter (Hard Copy Delivery Method)

9.3 If the Bidder delivers its Tender using the Hard Copy Delivery Method, or if the Bidder elects pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method, then Revisions may be delivered by hand or courier, in which case, each such Revision must be in the form set out in CT 9.2 and must be delivered to and received at the Closing Location before the Closing Time enclosed in an envelope, that clearly and legibly has identified on its face,

- (a) the heading "Revision to Tender",
- (b) the full legal name of the Bidder, and
- (c) the Project Name and, or the Project Number, as specified in SCT2.

Revisions by Facsimile (Hard Copy Delivery Method)

9.4 If the Bidder delivers its Tender using the Hard Copy Delivery Method, or if the Bidder elects pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method, then Revisions may be delivered by facsimile, in which case, each such Revision must be in the form set out in CT 9.2 and must be delivered to the facsimile number specified in the Invitation to Tender - Supplemental Conditions of Tender as the facsimile number for Revisions, before the Closing Time, and each such Revision must have clearly and legibly identified on the first page of the facsimile,

- (a) the heading "Revision to Tender",
- (b) the full legal name of the Bidder, and
- (c) the Project Name and, or the Project Number, as specified in SCT2.

- 9.5** (a) The Bidder's Revision shall be considered to have been delivered on or after the Closing Time, and shall not be considered or evaluated, but shall be disqualified, if the transmission of the Revision by facsimile begins before the Closing Time and is completed on or after the Closing Time.
- (b) The Ministry does not in any way whatsoever guarantee, and makes no representation or warranty whatsoever, as to the confidentiality of any Revision delivered by facsimile.

Form and Content (BC Bid eService Delivery Method)

- 9.6** If the Bidder delivers its Tender using the BC Bid eService Delivery Method then, unless the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method,
- (a) any and all Revisions must be in writing, in the form of replacement amended Tender Forms and replacement amended Tender Envelopes provided for by clicking on the "Amendments" option in the Tender Envelope; and
- (b) the Bidder must ensure that
- (i) each such replacement amended Tender Form is fully completed, and
 - (ii) each such replacement amended Tender Envelope, including the Schedule of Approximate Quantities and Unit Prices, is fully completed, and
- are delivered to and received by the BC Bid eService in accordance with these Conditions of Tender, including for greater clarity, the BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions, before the Closing Time.
- (c) If the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method then CT9.6(a) and CT9.6(b) do not apply and CT9.2 to and including CT9.5 will apply to any and all Revisions delivered subsequent to such election and to the Tender, and the Bidder must ensure that the requirements set out in CT9.2 to and including CT9.5 are satisfied.
- 9.7** The Bidder's Revision shall be considered to have been delivered on or after the Closing Time and shall not be considered or evaluated but shall be disqualified, if the transmission of the Revision using the BC Bid eService Delivery Method begins before the Closing Time and is completed on or after the Closing Time.

Multiple Revisions

- 9.8** (a) Each Revision delivered using the Hard Copy Delivery Method, should be numbered sequentially.
- (b) 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.

Amount of Bid Security

- 9.9** The Bidder must ensure that the total value of the Bid Security complies with the requirements of the Schedule entitled "Tender Securities" as set out in the Tender Document Package, and that the total value of the Bid Security reflects any change to the Tender Price as a result of any and all Revisions, including as a result of the delivery of any and all replacement forms, including any replacement Schedule of Approximate Quantities and Unit Prices.

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- 9.10** If the terms of the Schedule entitled "Tender Securities" as set out in the Tender Document Package, permit the delivery of a bank draft, certified cheque or money order in connection with this Tender Call, then the Bidder may deliver additional bank drafts, certified cheques or money orders, as the case may be, in accordance with these Conditions of Tender, including for greater clarity CT6, to ensure that the total value of the Bid Security reflects any change to the Tender Price as a result of any and all Revisions, including any and all replacement Schedules of Approximate Quantities and Unit Prices.
- 9.11** If as a result of any Revisions, including any and all replacement Schedules of Approximate Quantities and Unit Prices, the total value of the Bid Security delivered by the Bidder exceeds the value required in the Schedule entitled "Tender Securities" as set out in the Tender Document Package, the Bidder shall not be permitted to withdraw any part of the Bid Security delivered.

CT10 WITHDRAWAL OF TENDERS

- 10.1** The Bidder shall only withdraw its Tender by delivering a notice of withdrawal in compliance with these Conditions of Tender on or before the Closing Date and before the Closing Time, and in such case, the Ministry shall return the withdrawn Tender, including any Bid Security, to the Bidder after the Closing Time.
- 10.2** Any Tender not withdrawn by the Bidder in accordance with these Conditions of Tender before the Closing Time, shall become irrevocable at the Closing Time, and shall remain irrevocable for the period of time specified on the Tender Form.

Form and Content (Hard Copy Delivery Method)

- 10.3** If the Bidder has delivered its Tender using the Hard Copy Delivery Method or if the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method or elects pursuant to CT2.3(b) to submit the notice of withdrawal using the Hard Copy Delivery Method, then any notice of withdrawal must:
- (a)** be in writing;
 - (b)** be clearly identified with
 - (i)** the heading "Withdrawal of Tender",
 - (ii)** the full legal name of the Bidder,
 - (iii)** and the Project Name and, or Project Number as specified in SCT2;
 - (c)** contain a clear statement that the Tender is withdrawn, and
 - (d)** be signed by an Authorized Representative on behalf of the Bidder, and delivered to and received at the Closing Location before the Closing Time using the Hard Copy Delivery Method.

Withdrawals by Letter (Hard Copy Delivery Method)

- 10.4** If the Bidder has delivered its Tender using the Hard Copy Delivery Method or if the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method or elects pursuant to CT2.3(b) to submit the notice of withdrawal using the Hard Copy Delivery Method, then the notice of withdrawal may be delivered by hand or courier, in which case, such notice of withdrawal must be delivered to and received at the Closing Location before Closing Time enclosed in an envelope, that has clearly and legibly identified on its face,
- (a) the heading "Withdrawal of Tender",
 - (b) the full legal name of the Bidder, and
 - (c) the Project Name and, or the Project Number, as specified in SCT2.

Withdrawals by Facsimile (Hard Copy Delivery Method)

- 10.5** If the Bidder has delivered its Tender using the Hard Copy Delivery Method or if the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method or elects pursuant to CT2.3(b) to submit the notice of withdrawal using the Hard Copy Delivery Method, then the notice of withdrawal may be delivered by facsimile, in which case, such notice of withdrawal must be delivered to the facsimile number specified in the Invitation to Tender - Supplemental Conditions of Tender as the facsimile number for withdrawals, on or before the Closing Date and before Closing Time, and must have clearly and legibly identified on the first page of the facsimile,
- (a) the heading "Withdrawal of Tender",
 - (b) the full legal name of the Bidder, and
 - (c) the Project Name and, or the Project Number, as specified in SCT2.
- 10.6** (a) The Bidder's notice of withdrawal shall be considered to have been delivered on or after the Closing Time, and shall not be considered in any way whatsoever, if the transmission of the notice of withdrawal by facsimile begins before the Closing Time and is completed on or after the Closing Time.
- (b) The Ministry does not in any way whatsoever guarantee, and makes no representation or warranty whatsoever, as to the confidentiality of any notice of withdrawal delivered by facsimile.

Form and Content (BC Bid eService Delivery Method)

- 10.7** If the Bidder delivers its Tender using the BC Bid eService Delivery Method then unless the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method or elects pursuant to CT2.3(b) to submit the notice of withdrawal using the Hard Copy Delivery Method, any notice of withdrawal must be,
- (a) in writing, in accordance with the withdraw option provided by the BC Bid eService, and
 - (b) delivered to and received by the BC Bid eService in accordance with these Conditions of Tender, including for greater clarity, the BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions, on or before the Closing Date and before the Closing Time.
 - (c) If the Bidder has elected pursuant to CT2.3(b) to submit Revisions using the Hard Copy Delivery Method or elects pursuant to CT2.3(b) to submit the notice of withdrawal using the Hard Copy Delivery Method, then CT10.7(a) and CT10.7(b) do not apply and CT10.3 to and including CT10.6 will apply to the notice of withdrawal delivered subsequent to such

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election and to the Tender and the Bidder must ensure that the requirements set out in CT10.3 to and including CT10.6 are satisfied.

- 10.8** Any notice of withdrawal shall be considered to have been delivered on or after the Closing Time and shall not be considered, if the transmission of such notice using the BC Bid eService Delivery Method begins before the Closing Time and is completed on or after the Closing Time.

CT11 DELIVERY AND RECEIPT

11.1 The Ministry assumes no risk, makes no guarantee, warranty or representation whatsoever, and shall have no responsibility or liability, including in contract or in tort, whatsoever, for or in connection with,

- (a) the timely delivery of any information or documentation, including without limitation, these Conditions of Tender, or any and all Addenda, whether by BC Bid eService, by mail, by courier, by hand, by facsimile, or otherwise, in connection with this Tender Call,
- (b) the timely receipt of any Tenders, Revisions, notice of withdrawals, or any other information or documentation from any Bidder or any person, or
- (c) the working order, functioning or malfunctioning, of facsimile transmission equipment or electronic information system, including without limitation, BC Bid eService.

11.2 Any and all Addenda, and any other documentation delivered by or on behalf of the Ministry shall be conclusively deemed validly delivered to and received by the intended recipient, including any Bidder, at the time that such Addendum or documentation as the case may be, is issued

- (a) by facsimile transmission to the facsimile number designated by the Bidder as the sole facsimile number for receipt of information in connection with this Tender Call, or
- (b) in electronic form to the email address designated by the Bidder as the sole email address for receipt of information in connection with this Tender Call.

CT12 OPENING OF TENDERS

12.1 At the Tender Opening, subject to CT3.12,

- (a) the Tender Envelopes and the Revisions delivered at the Closing Location before Closing Time using the Hard Copy Delivery Method shall be opened, and
- (b) the Tender Forms and Tender Envelopes, or, if the Bidder has delivered replacement amended Tender Forms and replacement amended Tender Envelopes for the purpose of Revision of its Tender, then only such replacement amended Tender Forms and replacement amended Tender Envelopes, delivered to and received by the BC Bid eService before the Closing Time using the BC Bid eService Delivery Method, in accordance with these Conditions of Tender, including for greater clarity, the BC Bid eService Terms and Conditions and the BC Bid Supplier Terms and Conditions, shall be announced, and

the amounts stated on each such Tender Form, or replacement amended Tender Form, and in any and all Revisions delivered using the Hard Copy Delivery Method, as the Total Tender Cost, shall be read out.

12.2 The amount stated in connection with each Tender as the Total Tender Cost and read out at the

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Tender Opening is unverified and shall not constitute the Total Tender Cost, but is subject to review, calculation, verification and adjustment, by the Ministry in accordance with these Conditions of Tender.

CT13 EVALUATION OF TENDERS

13.1 Except as expressly set out in these Conditions of Tender, after the Closing Time, no Bidder shall be permitted to supplement or clarify any information provided in or omitted from any Tender.

Disqualification

13.2 Any Tender, including for greater clarity, any and all Revisions, which, in the sole discretion, of the Ministry:

- (a)** is ambiguous or unclear as to meaning or intent;
- (b)** is incomplete, conditional, or contains a qualifier;
- (c)** fails to comply with any of the mandatory requirements of the Conditions 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.

If a Tender is subject to Disqualification due to any one or more of the foregoing defects, 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.

13.3 Without limiting the generality of CT13.2, any Revision which, in the sole discretion, of the Ministry contains one or more of the defects set out in CT13.2, is subject to Disqualification and may be disqualified by the Ministry, in its sole discretion. If such Revision is disqualified, then the Ministry may, subject to CT 13.2, continue with evaluation of the Tender and any other Revisions, in connection with which the disqualified Revision was delivered.

13.4 If a Revision is subject to Disqualification due to any one or more of the defects referenced in CT13.3, 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 Revision, but include the Revision in connection with the evaluation of the Tender of which such Revision forms a part.

Bid Security

- 13.5** If a Tender is subject to Disqualification due to the Bid Security containing any one or more of the defects listed in CT13.2, which in the sole discretion of the Ministry, is not material, then the Ministry may, in its sole discretion, deliver written notice to the Bidder requiring the Bidder that delivered the subject Bid Security to remedy the defect or defects, as the case may be, and to deliver to the Closing Location by not later than 2 business days after the date of the Ministry's notification replacement Bid Security with the subject defect or defects remedied. If the Bidder fails to so deliver originals of the replacement Bid Security, the Ministry may, in its sole discretion, disqualify the Bidder's Tender.

Determination of Tender Price

- 13.6** The Tenders that, in the sole discretion of the Ministry, comply with the Conditions of Tender shall be evaluated on the basis of the Total Tender Costs calculated by the Ministry in accordance with the following:
- (a) adjustments to the Unit Prices, if the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy, the Tendered Site Occupancy Days, and the Extended Amounts, including Tendered Site Occupancy Cost, if any, shown on the Bidder's Schedule of Approximate Quantities and Unit Prices shall be made by the Ministry in accordance with the Revision(s) that have not been disqualified;
 - (b) if any 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 recalculate the Extended Amount by multiplying the Approximate Quantity by the Unit Price provided by the Bidder;
 - (c) if the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy, and any Tendered Site Occupancy Days provided by the Bidder and its corresponding Tendered Site Occupancy Cost are at variance, the Tendered Site Occupancy Days shall be considered correct and the Ministry shall recalculate the Tendered Site Occupancy Cost by multiplying the Tendered Site Occupancy Days by the Daily Site Occupancy Cost;
 - (d) if the sum of all Extended Amounts, including if the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy, the Tendered Site Occupancy Cost, and the amount stated as the Total Tender Cost on the Tender Form are at variance, then the amount stated as the Total Tender Cost on the Tender Form shall be deemed to be adjusted to be the sum of the Extended Amounts, including the Tendered Site Occupancy Cost, if any, as calculated by the Ministry; and
 - (e) if the sum of all Extended Amounts, including if the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy, the Tendered Site Occupancy Cost, as calculated by the Ministry, is at variance with the amount stated as the Total Tender Cost on the Tender Form, then the sum of the Extended Amounts, including the Tendered Site Occupancy Cost, if any, as calculated by the Ministry, shall be deemed to be the Total Tender Cost and the amount stated as the Total Tender Cost on the Tender Form shall be deemed to be adjusted to be the sum of the Extended Amounts, including the Tendered Site Occupancy Cost, if any, as calculated by the Ministry;
 - (f) the sum of all Extended Amounts, including if the Schedule of Approximate Quantities and Unit Prices contains a Part B for Site Occupancy, the Tendered Site Occupancy Cost, as calculated by the Ministry, shall be deemed to be the Bidder's Total Tender Cost.
- 13.7** If the Total Tender Cost of each of two or more Tenders, as calculated by the Ministry, is the same figure and if the Ministry decides to accept any Tender and award the Contract, then the Ministry shall determine the Bidder to which an Award letter will be delivered by applying a random method

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chosen in the Ministry's sole discretion, which may consist of, without limitation, a coin toss or the drawing of one of the Bidder's names out of a box.

CT14 BIDDER'S CAPACITY TO PERFORM

14.1 The Ministry may, at any time and from time to time, after Closing Time, require any 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, within the time limits, and 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 without limitation, 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 is prepared to use on the Work;
- (d) evidence that the personnel available to the Bidder have professional standing, technical and trade qualifications and licenses necessary to perform the Work;
- (e) a detailed Project or Construction Schedule meeting all requirements of the Contract.

14.2 Any Bidder requested to provide such information 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 time period, as specified by the Ministry. The Ministry reserves the right to reject the Tender of any Bidder that does not provide information to the satisfaction of the Ministry, in its sole and absolute discretion, in response to any such request.

CT15 RIGHT NOT TO AWARD

15.1 The Ministry reserves the right, in its sole and absolute 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. The lowest or any Tender shall not necessarily be accepted.

CT16 ACCEPTANCE

16.1 An Award letter is the only form of acceptance that shall be binding on the Ministry.

CT17 PRIOR TO COMMENCEMENT OF WORK

17.1 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 shown of the Award letter; and
 - (ii) three (3) days before commencement of the Work on the Site,obtain and deliver to the Ministry, the Performance Security, evidence of compliance with the Schedule of the Contract entitled the "Schedule of Insurance", and the Bidder's valid Workers' Compensation Board registration number, 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 duly executed by an Authorized Representative, and commence to diligently and promptly fulfill its obligations under the Contract.

CT18 DEFAULT

Event of Default

- 18.1** Without limiting any and all rights of the Ministry to make demand on the Bid Security, if the Bidder does not comply with the requirements of CT17, then the Ministry may make demand on the Bid Security.
- 18.2** The rights and remedies of the Ministry under and in connection with this Tender Call are not limited to the Ministry's right to make demand on the 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 and in connection with this Tender Call, at law, and 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

- 18.3** 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 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.

CT19 DISPUTE RESOLUTION

- 19.1** In the event of a dispute arising out of this Tender Call:
 - (a) the Bidder shall, within fourteen (14) days of any issue in dispute first coming to the attention of the Bidder, deliver written notice to the Contact Person of such dispute arising out of this Tender Call; and
 - (b) all such disputes not resolved through negotiation between the parties within thirty (30) days of the dispute being presented in writing to the Contact Person may by agreement of the Ministry and the Bidder be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act*.
- 19.2** Notwithstanding any notice delivered under CT19.1, the Ministry may, but in no event will be obligated to, proceed with this Tender Call without prejudice to any ongoing dispute resolution proceedings or discussions, including any negotiations or binding arbitration as contemplated in CT19.1

CT20 TIME LIMITATION ON CLAIMS

- 20.1** Any claim or cause of action a Bidder may have against the Ministry arising out of or in connection with:
 - (a) the Tender;
 - (b) the Award; or
 - (c) this Tender Call

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shall be absolutely barred after the expiration of one (1) year commencing from the Closing Time.

CT21 LIMITATION OF DAMAGES

21.1 The Bidder agrees that 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, for any losses, costs, damages or expenses or anything whatsoever, including without limitation, for loss of revenue, opportunity, or anticipated profit, or for costs of preparation of the Bidder's Tender.

21.2 The Bidder agrees that in circumstances not described in CT21.1,

- (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, for any losses, costs, damages or expenses or anything whatsoever, 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.

CT22 INTERPRETATION AND DISCRETION

22.1 The Ministry shall not be bound by industry custom and practice in the application or interpretation of these Conditions of Tender, the exercise of its discretion, or in the determination of materiality or compliance.

CT23 APPROPRIATION

23.1 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 to the Bidder falls due under the Contract, 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 to or referred to in the Contract.

CT24 CONFIDENTIALITY

24.1 All documents and records in the custody or under the control of the Ministry, including, without limitation, the Tender, any Revision, 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.

24.2 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 Revision, any documents, records or other information delivered by the Bidder pursuant to these Conditions of

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Tender, except insofar as such publication or disclosure is required by law, including without limitation 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.

CT25 GENERAL

- 25.1** The headings and captions in these Conditions of Tender are inserted for convenience only and do not form a 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.
- 25.2** 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.
- 25.3** In these Conditions of Tender, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.