



The St. Lawrence  
Seaway Management  
Corporation

Corporation de Gestion  
de la Voie Maritime  
du Saint-Laurent

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# **GENERAL CONDITIONS**

## **Consulting and Professional Services**

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Consulting and Professional Services

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#### **GC1 INTERPRETATION**

1.1 The following definitions of terms used in the Contract shall apply:

- 1.1.1 "**Applicable Laws**" means any federal, provincial, local and municipal statutes, laws, by-laws, rules, codes, ordinances, and regulations in effect from time to time and made or issued by a governmental authority having jurisdiction over a party to this Contract, which shall include a judgment of a relevant court of law, board, arbitrator or administrative agency.
- 1.1.2 "**Contract**" covers any document mentioned in the document entitled Articles of Agreement;
- 1.1.3 "**Consultant**" means the legal entity that has entered into the Contract with SLSMC;
- 1.1.4 "**Consultant Services**" include, unless otherwise noted in the Contract, everything that the Consultant must do, supply or deliver to comply with his obligations under the Contract;
- 1.1.5 "**Invention**" means any undertaking, any process, any machine, fabrication or composition of materials or any improvement thereof;
- 1.1.6 "**President**" means the person holding the position of President of The St. Lawrence Seaway Management Corporation, and includes a person acting for, or if the office is vacant, in the place of such President, and his successors in the office, and his or their lawful deputy and any of his or their representatives appointed for the purpose of the Contract;
- 1.1.7 "**Prototype**" means a model, a scale model, a sample or a first specimen;
- 1.1.8 "**SLSMC**" means the St. Lawrence Seaway Management Corporation (SLSMC);
- 1.1.9 "**SLSMC Representative**" means the officer or employee of the SLSMC designated pursuant to the A-1 Specifications and a person specially authorised by the SLSMC Representative to perform, on his behalf, any of his functions under the Contract;
- 1.1.10 "**Technical documentation**" includes drawings, reports, photographs, specifications, software elements, surveys, calculations and other data, information and documents collected, compiled, drafted or produced, including computer outputs;
- 1.1.11 "**Work Order**" has the meaning assigned in Section 9.1 (Work Orders).

#### **GC2 SUCCESSORS AND ASSIGNS**

2.1 The Contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns who are bound by its dispositions.

#### **GC3 ASSIGNMENT OF CONTRACT**

3.1 The Contract may not be assigned by the Consultant, either in whole or in part, without the written consent of the President. Any assignment done without this consent is void.

3.2 The assignment in whole or in part of the Contract does not free the Consultant of any of the obligations imposed on him by the Contract; it does not impose any obligation to the SLSMC or the President.

#### **GC4 TIME IS OF THE ESSENCE**

4.1 Time is of the essence in the performance of the Consultant Services.

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- 4.2 Any delay in the execution of the obligations imposed on the Consultant by the Contract which is attributable to an event which is out of his control and which he cannot prevent without supporting exorbitant expenditures by using, for example, other work plans including other resources, or other means, constitutes an excusable delay. The following is a non-limitative list of such events; act of God, acts of His Majesty, of the local or provincial governments, fires, flooding, epidemics, quarantines, strikes or labour unrest, embargos and exceptionally inclement temperature.
- 4.3 The Consultant should warn the President as soon as an event occurs that causes an excusable delay. He shall describe, in his notice, the cause and the circumstances of the delay and mention the part of the Consultant Services which is affected. Upon request from the SLSMC Representative, the Consultant shall supply a description, in a form judged acceptable by the President, other work plans in which he mentions other resources and other means which he could use to avoid the delay in question and prevent the occurrence or others. Upon receiving the written approval of the work plan from the President, the Consultant shall implement his plans and take all reasonable measures to eliminate the excusable delay.
- 4.4 If the Consultant fails to respect the requirements specified in the Contract regarding this notice, any delay which could be excusable will not be considered as such.
- 4.5 Whether the Consultant conforms or not to the requirements of Section 4.3, the SLSMC may exercise the right to terminate the Consultant Services as allowed under Article GC11 (Termination or Suspension of the Consultant Services).

#### **GC5 INDEMNIFICATION**

- 5.1 The text of Article GIC 1 of the document titled Insurance Conditions applies to this part.

#### **GC6 NOTICES**

- 6.1 When the Contract requires that one of the parties give a notice, directive or any other indication, or present a request, the communication shall be done in writing and is valid if it is given in person or transmitted by registered mail or facsimile sent to the recipient, at the address mentioned in the Contract; moreover, the communication is deemed completed if the recipient acknowledges receipt of the registered mail and by facsimile when transmitted. The address of one of the contracting parties may be modified by means of a notice given in the manner specified in this Article.
- 6.2 If the Consultant neglects to inform the SLSMC in writing and obtain directives, as specified in Section 6.1, and executes the Consultant Services knowing he is in contravention to a law, an order, a rule, a regulation or any code, the Consultant will be responsible for the infractions there from and shall correct them. The Consultant shall also bear all the costs, expenditures and damages attributable to non-compliance with the requirements of these laws, orders, rules, regulations or codes.

When the Consultant represents the SLSMC in a Contract with a sub-consultant, the sub-consultant is then responsible for informing the Consultant, in the manner described in the above Article, and the Consultant is responsible for informing the sub-consultant.

#### **GC7 INDEMNIFICATION OF WORKERS – WSIB AND CNESST**

- 7.1 Before starting the Consultant Services, the Consultant shall supply proof of conformance to the Workplace Safety and Insurance Board (WSIB) in the province of Ontario or to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) in the province of Quebec, including proof of payments established under their regime.

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- 7.1.1 An individual Consultant (self-employed person who does not have any employee, as defined in Part 1 of the Act) shall, jointly with the SLSMC, fill WSIB form n° 1158 upon determination of the self-employed person status, as well as any other form which replaces it or other applicable document required by the same Act. If the Consultant has the self-employed person status, as defined by the WSIB, then the Consultant has the choice to insure himself or not through the WSIB. The Consultant shall supply to the SLSMC proof of his choice and, if he has elected to insure himself, the Consultant shall provide proof thereof (attestation of payment) at the beginning of the Consultant Services and every 60 days thereafter.

#### **GC8 CANADIAN LABOUR AND MATERIALS**

- 8.1 The Consultant shall use Canadian labour and materials in the performance of the Consultant Services to the full extent to which they are available, consistent with proper economy and the expeditious carrying out of the Consultant Services.

#### **GC9 CHANGES IN THE CONSULTANT SERVICES**

##### **9.1 Work Orders**

- 9.1.1 The SLSMC may, at any time, through a written Order given to the Consultant, make changes by modification, addition or reduction of the Consultant Services within the general scope of the Contract without invalidating the Agreement.
- 9.1.2 After receiving a Work Order, the Consultant shall quickly advise the SLSMC:
- 9.1.2.1 Of the feasibility of the modifications to the Consultant Services as prescribed in the Work Order;
  - 9.1.2.2 Of the cost of these modifications.
  - 9.1.2.3 Whether the Consultant considers that the modifications will have an impact on the amount or the schedule of the Contract, and
  - 9.1.2.4 Of the effect, if any, that these modifications will have on the Agreement.
- 9.1.3 The Consultant will be entitled to appropriate and equitable adjustments to the amount of the Contract and to the time allocated to execute the Consultant Services for such modifications.
- 9.1.3.1 The parties will negotiate and agree in writing on these adjustments before the beginning or implementation of the appropriate modifications.
  - 9.1.3.2 Except as prescribed in Section 9.1.4 hereunder, if the Consultant makes any modification before agreement between the parties on the cost of such modifications, the Consultant will have no right to claim any fees, costs, expenditures or disbursements from the SLSMC for such modification and related to any period prior to the date when such an agreement has been concluded.
- 9.1.4 If the parties cannot rapidly agree whether an element constitutes a modification to the schedule or on the amount, if any, by which the Contract must be decreased or increased, this question will be solved according to the disagreement resolution procedures established in Article GC10 (Arbitration), of these General Conditions provided that:
- 9.1.4.1 If, in the opinion of the SLSMC, the modification must be made, then the SLSMC, as a first step, will determine the cost or the delay attributable to the modification, subject to final resolution according to Article GC10 (Arbitration).
  - 9.1.4.2 The Consultant shall, until such resolution, nonetheless undertake to execute the services required due to such modifications.

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#### 9.2 Request for Modification

- 9.2.1 The Consultant shall submit all requests for modification to the SLSMC for approval complete with all the appropriate justification documents.
- 9.2.2 No Request for modification shall be implemented or incorporated in the Consultant Services unless and until such request for modification has been accepted by the SLSMC.
- 9.2.3 The SLSMC will bring the adjustments to the schedule and to the amount of the Contract following a request for modification, upon occurrence of circumstances which are out of the reasonable control of the Consultant and which have an impact on the Consultant costs or on the execution time of the Consultant Services.
- 9.2.4 If the parties cannot rapidly agree whether an element constitutes a modification to the schedule or on the amount, if any, by which the Contract must be decreased or increased, this question will be solved according to the disagreement resolution procedures established in Article GC10 (Arbitration).

#### GC10 ARBITRATION

- 10.1 Any dispute or disagreement between the SLSMC and the Consultant regarding anything under the Contract will be solved according to the process established by the Contract. This Article GC10 does not modify any other article of this Contract.
- 10.2 If the process established by the Contract does not solve the dispute or disagreement or if the Contract does not include a process to solve a dispute or disagreement, the SLSMC and the Consultant may submit the dispute or disagreement to an arbitration tribunal for examination and decision.
- 10.3 The decision of the arbitration tribunal shall be final and without appeal and will be binding for the SLSMC and the Consultant.
- 10.4 The arbitration tribunal shall conform to the Commercial Arbitration Code referred to in the *Commercial Arbitration Act* (R.S.C., 1985, c. 17, (2nd Supp.)).
- 10.5 The arbitration will be held in the province in which the majority of the Consultant Services are performed.
- 10.6 The language of the arbitration procedures will be the language in which the Contract is written.
- 10.7 All the written communications shall be provided to the SLSMC at his head office and to the Consultant at his address specified in the Contract unless a party provides a change of address to the other party.
- 10.8 The SLSMC and the Consultant will name a sole arbitrator who will constitute the arbitration tribunal. If the SLSMC and the Consultant cannot agree on the nomination of a sole arbitrator and if a party requests the nomination an arbitration tribunal composed of three (3) arbitrators, such a tripartite tribunal will be named according to the Commercial Arbitration Code referred to in the *Commercial Arbitration Act* (R.S.C., 1985, c. 17, (2nd Supp.)).
- 10.9 The arbitration tribunal will solve the dispute according to the law applicable in the province in which the majority of the Consultant Services are performed. The arbitration tribunal will not be authorised to solve ex aequo and bono or as amiable composer.
- 10.10 During the arbitration, the Consultant shall continue the Consultant Services under the Contract. The arbitrator will not dispense the Consultant from conforming to the decision or directive in question. The fact that the Consultant conforms to the decision or to the directive which he contests will not be construed as an admission by the Consultant of the correctness of this decision or directive.

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**GC11 TERMINATION OR SUSPENSION OF THE CONSULTANT SERVICES**

- 11.1 The President may, by written notice to the Consultant, terminate or suspend the execution of the totality or of any part or parts of the Consultant Services.
- 11.2 All Consultant Services completed by the Consultant and judged satisfactory by the SLSMC before the notice is sent will be paid by the SLSMC according to the Contract articles; for all Consultant Services non completed at the time when this notice is given, the SLSMC will pay to the Consultant the pertinent costs, accurately determined in the Contract; and pay, in addition, a sum representing a reasonable indemnity with respect to the Consultant Services performed.
- 11.3 To the sum which is paid to the Consultant pursuant to Section 11.2, is added the reimbursement of fees due to the termination, following this notice, of commitments he has made and related fees, as well as commitments he has made or obligations pursuant to the Consultant Services.
- 11.4 The payment or the reimbursement required pursuant to Article GC11 will only be made provided that it has been proven to the satisfaction of the President, that the costs and expenses have actually been incurred by the Consultant and that they are fair and reasonable and really attributable to the termination or the suspension of part or of the totality of the Consultant Services.
- 11.5 The Consultant is not entitled to any adjustment which would add up, with the sums which have been paid or which are due to him, to a total superior to the price included in the Contract for the complete or a part of the Consultant Services.
- 11.6 The Consultant cannot claim any sum as compensation or indemnity or with respect to damages or profit losses or for any reason directly or indirectly linked to a measure taken by the President or to a notice given by him pursuant to Article GC11, except in the manner and in the amount which are explicitly indicated.

**GC12 TERMINATION OF THE CONSULTANT SERVICES DUE TO THE CONSULTANT FAILING TO HIS OBLIGATIONS**

- 12.1 The SLSMC may, by written notice to the Consultant, terminate part or the totality of the Consultant Services:
- 12.1.1 If the consultant is bankrupt or becomes insolvent, is subject to a receiving order in favour of his creditors, if an order has been issued or a resolution adopted for the liquidation of his business, or if the Consultant relies on any legislation with respect to bankrupt or insolvent debtors, or
- 12.1.2 If the Consultant does not fulfill one of the obligations imposed on him by the Contract or if the President feels that the slowness of the progress compromises the execution of the Contract within the time planned therefore.
- 12.2 If the SLSMC terminates part or the totality of the Consultant Services pursuant to Section 12.1, the SLSMC may take the measures judged appropriate by him for the Consultant Services which have been stopped to be completed. The Consultant shall then pay to the SLSMC any additional cost required for completion of the Consultant Services.
- 12.3 At the time of terminating the Consultant Services pursuant to Section 12.1, the President may order the Consultant to provide the SLSMC in the manner and to the extent that he specifies, the property title of all Consultant Services executed which have not been delivered and accepted before this stoppage as well as the materials and the Consultant Services underway which the Consultant has acquired or produced specifically for the execution of the Contract. The SLSMC will pay the Consultant for all Consultant Services delivered following this order and that he has accepted, the amount that these Consultant Services have cost to the Consultant plus a sum proportional to the part of the fees determined in the Contract; he will also pay the fair and reasonable costs which he has incurred with respect to materials or Consultant Services underway which have been handed over following the order in question. The SLSMC may retain, on the sum due to the Consultant, the sum that the President estimates necessary to protect the

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SLSMC against additional costs that may be required to complete the Consultant Services.

- 12.4 The Consultant is not entitled to any adjustment which would form, together with the sums which have been paid to him or which are due to him, a total superior to the price included in the Contract for the complete or part of the Consultant Services.
- 12.5 If, after having given the notice of Consultant Services termination pursuant to Section 12.1, the President discovers that causes independent from the Consultant have prevented him from fulfilling his obligations, the notice will be considered as having been issued pursuant to Section 11.1, and the rights and the obligations of the parties to the Contract will be governed by Article GC11 (Termination or suspension of the Consultant Services).

#### **GC13 RECORDS TO BE KEPT BY THE CONSULTANT**

- 13.1 The Consultant shall keep records and appropriate accounts of what the Consultant Services cost him and of all expenses and of all commitments he makes with respect to this Consultant Services, including bills, receipts and justification documents, which may, at any reasonable time, be verified and inspected by the authorised representatives of the President, who may make copies or take excerpts thereof.
- 13.2 The Consultant shall also make available the office space required by the verifiers and inspectors and provide them with all the information which the President or they may need regarding these documents.
- 13.3 The Consultant shall not dispose of the documents mentioned here above without the written consent of the President; to the contrary, he shall keep them and make them available to the verifiers and inspectors as long as may be specified elsewhere in the Contract or, in the absence of such specification, for two (2) years following the completion of the Consultant Services.

#### **GC14 INTELLECTUAL AND OTHER OWNERSHIP, INCLUDING COPYRIGHT:**

- 14.1 The technical documents and the Prototypes produced by the Consultant for the execution of the Consultant Services included in the Contract are and remain the property of the SLSMC; the Consultant shall fully account for these documents and Prototypes to the President, in the manner prescribed by him.
- 14.2 The technical documents shall bear the following note relative to Copyright.  
©ST. LAWRENCE SEAWAY MANAGEMENT CORPORATION (SLSMC)
- 14.3 The technical information or Invention designed, tune-up or in application for the first time during the execution of the Consultant Services under the Contract is the property of the SLSMC. The Consultant has no right on them or with respect to them. He shall neither disclose, nor use them other than in the execution of the Consultant Services included in the Contract, nor sell to others than the SLSMC any part in which this information or this Invention has been used.

#### **GC15 CONFIDENTIALITY AND SECURITY OF INFORMATION**

- 15.1 The Consultant shall only use Confidential Information for purposes of fulfilling the Consultant's obligations pursuant to the Contract and for no other purpose; shall hold Confidential Information in confidence; take all reasonable measures to prevent disclosure and unauthorized access; and shall not disclose Confidential Information, without the prior written consent of SLSMC, to any third party other than the Consultant's employees, Subcontractors, contractors or other third parties under similar obligations of confidence who have a need to know such information. The Consultant will return (or, with SLSMC's consent, destroy, and certify such information as destroyed) SLSMC's Confidential Information promptly following SLSMC's request.
- 15.2 Subject to Applicable Laws, the Consultant's obligations of confidence do not apply to information that:
- 15.2.1 is or becomes publicly available through no fault of the Consultant; or



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- 15.2.2 is lawfully disclosed to the Consultant by a third party who is not under any obligations of confidence; or
- 15.2.3 the Consultant can establish to SLSMC's satisfaction was known to the Consultant prior to the date of disclosure by SLSMC; or
- 15.2.4 is required by law to be disclosed; or
- 15.2.5 the Consultant can establish was developed by the Consultant independently of this Contract.

In the event the Consultant is required to disclose Confidential Information by law, the Consultant shall promptly notify SLSMC so that SLSMC has a reasonable opportunity to prevent the disclosure.

- 15.3 When the Contract, the Consultant Services, or any information is identified as RESTRICTED R2 by SLSMC, the Consultant shall, at all times, take all measures reasonably necessary for the safeguarding of the information so identified, including such measures as may be further specified elsewhere in the Contract or provided, in writing, from time to time by the SLSMC Representative. Without limiting the generality of any other provision in the Contract, when the Contract, the Consultant Services, or any information is identified as RESTRICTED R2, SLSMC shall be entitled to inspect the Consultant's premises and the premises of its Subcontractors or suppliers and any other Person at any tier, for security purposes at any time during the term of the Contract. The Consultant shall comply with, and ensure that any such Subcontractors or suppliers comply with all written instructions issued by the SLSMC Representative dealing with the information so identified, including any requirements that employees of the Consultant, Subcontractors, suppliers and any other Person at any tier submit applications for, or execute and provide declarations in relation to reliability screenings, security clearances and other procedures.
- 15.4 The Consultant shall use reasonable measures to guard or otherwise protect the Consultant Services and its site, and protect the Contract, Specifications and Drawings, plans, information, material, construction equipment and real property, whether or not they are supplied by SLSMC to the Consultant, against unauthorized access, loss or damage from any cause.
- 15.5 With respect to any personal information provided by a party to the other party, the party in possession of the personal information shall comply with the federal Personal Information Protection and Electronic Documents Act, (PIPEDA) and any other Applicable Laws concerning the protection of privacy.

#### **GC16 CONFLICTS OF INTEREST**

- 16.1 The Consultant declares that he has, in the business of a third party, no financial interest which could produce or seem to produce a conflict of interest relative to the execution of the Consultant Services. Should he acquire such interests before the expiration of the Contract, he will declare it immediately to the representative of the President.

#### **GC17 CONSULTANT STATUS**

- 17.1 The Contract is for the supply of a service and commits the Consultant, as an independent contractor, only to provide a service. Neither he nor any member of his personnel is committed by the Contract as an employee, a public servant, or an agent of the SLSMC. Moreover, the Consultant agrees that he is solely responsible for all the payments or deductions which must be made, including for the Canada Pension Plan, the Régime des rentes du Québec, the unemployment insurance, the occupational accident indemnification regime or income tax.

#### **GC18 GUARANTEE GIVEN BY THE CONSULTANT**

- 18.1 The Consultant guarantees he has the knowledge and the aptitudes required to execute the Consultant Services included in the Contract.

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18.2 The Consultant guarantees that he will supply services of a quality at least equal to what clients normally expect, in a similar situation, from a qualified consultant.

**GC19 NO PUBLICITY OR COMMUNICATION WITH MEDIA**

19.1 The Consultant may not, without SLSMC's prior written authorization: (a) use or publish, for any purpose whatsoever, the name, image, logo or trademark of SLSMC; (b) advertise the Consultant's involvement in this Contract or (c) post in or around the workplace, any signs other than those required by Applicable Laws. Any third-party, including media, request for information concerning the Contract must promptly be forwarded to SLSMC for handling. The Consultant, his personnel and sub-contractors are strictly prohibited, under any circumstance, to speak to and address the media for any reason in connection with their contractual duties. The foregoing shall be subject only to Applicable Laws, including ongoing disclosure requirements under securities law. The Consultant shall ensure his personnel and sub-contractors are aware of the requirements of this Section, including the following: if the Consultant personnel and sub-contractors are approached by members of the media, they shall decline comment and refer the media to SLSMC.

**GC20 AMENDMENTS**

20.1 No amendment, addition and suppression to the Contract, and no dispensation relative to the modalities therein shall be valid unless it has been added to the Contract and signed by both contracting parties.

**GC21 TOTALITY OF CONTRACT**

21.1 The Contract represents everything that has been agreed upon between the parties on a given subject and cancels any negotiation, communication or prior agreement on the same topic, whether verbal or in writing, unless it is incorporated in the Contract itself.

**GC22 TERMINATION UPON EXPIRATION OF CMA AGREEMENT**

22.1 The SLSMC is a party to an agreement with Canada pursuant to Section 80(5) of the Canada Marine Act (the "CMA Agreement") for the operation of the Seaway. The CMA Agreement is set to expire on March 31, 2023. SLSMC's authority to assume contractual obligations beyond March 31, 2023 is subject to the renewal of the CMA Agreement.

22.2 For more information on the CMA Agreement, please refer to [https://www.canada.ca/en/transport-canada/news/2017/07/minister\\_garneauannouncesextensionofthelawrenceseawayagreement.html](https://www.canada.ca/en/transport-canada/news/2017/07/minister_garneauannouncesextensionofthelawrenceseawayagreement.html).

22.3 If the CMA Agreement is not renewed, this Contract may be assigned to a SLSMC successor where agreed by the Consultant and successor. In the absence of an assignment, this Contract shall automatically terminate upon expiration of the CMA Agreement. SLSMC shall pay for any Consultant Services performed up to the effective date of termination or assignment. Notwithstanding anything to the contrary in the Contract, the Consultant shall not be entitled to any payment for costs not incurred or for Consultant Services not performed, including, without limitation, any lost profits relating to Consultant Services not performed.