



The St. Lawrence  
Seaway Management  
Corporation

Corporation de Gestion  
de la Voie Maritime  
du Saint-Laurent

# **GENERAL CONDITIONS (Services)**

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GENERAL CONDITIONS (SERVICES)

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**TABLE OF CONTENTS**

|      |  |   |
|------|--|---|
| GC1  | DEFINITIONS.....   | 1 |
| GC2  | PRIORITY OF DOCUMENTS.....                               | 1 |
| GC3  | CONTRACTOR TO FURNISH ALL PERSONNEL AND MATERIALS.....   | 1 |
| GC4  | SUBCONTRACTING .....                                     | 1 |
| GC5  | INSPECTION AND ACCEPTANCE OF SERVICES.....               | 2 |
| GC6  | PRICING FIXED FOR TERM.....                              | 2 |
| GC7  | INVOICING AND PAYMENT .....                              | 2 |
| GC8  | REPRESENTATIONS AND WARRANTIES .....                     | 2 |
| GC9  | INTELLECTUAL PROPERTY .....                              | 3 |
| GC10 | CONFIDENTIALITY .....                                    | 3 |
| GC11 | TERMINATION OF CONTRACT – FOR CONVENIENCE .....          | 4 |
| GC12 | TERMINATION OF CONTRACT – DEFAULT .....                  | 4 |
| GC13 | CONTRACTOR OBLIGATIONS ON TERMINATION OR EXPIRATION..... | 5 |
| GC14 | LIMITATION OF LIABILITY.....                             | 5 |
| GC15 | RECORDS TO BE KEPT BY CONTRACTOR, AUDITS .....           | 5 |
| GC16 | CONTRACT AMENDMENTS.....                                 | 5 |
| GC17 | CONTRACTOR STATUS, NO OTHER BENEFITS.....                | 5 |
| GC18 | ASSIGNMENT.....  | 6 |
| GC19 | COMPLIANCE WITH APPLICABLE LAWS.....                     | 6 |
| GC20 | NO PUBLICITY OR COMMUNICATION WITH MEDIA.....            | 6 |
| GC21 | NOTICES .....  | 6 |
| GC22 | FURTHER ASSURANCES .....                                 | 6 |
| GC23 | SURVIVAL.....  | 7 |
| GC24 | ENTIRE AGREEMENT .....                                   | 7 |
| GC25 | GOVERNING LAW .....                                      | 7 |
| GC26 | DISPUTE ESCALATION AND RESOLUTION.....                   | 7 |

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## GENERAL CONDITIONS (SERVICES)

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### GC1 DEFINITIONS

- 1.1 Terms appearing with the first letter capitalized in these General Conditions shall have the meaning assigned below.
- a) **"Confidential Information"** means any operational, financial, technical, or other information, specifications, designs, plans, data, results, or drawings which at the time of disclosure, is reasonably understood to be confidential in nature.
  - b) **"Contract"** means the documents referenced in SLSMC Purchase Order or the Articles of Agreement, as applicable, including these General Conditions.
  - c) **"Contractor"** means any person, firm or corporation entering into a contract with or agreeing with or being requested by the Corporation to provide, supply or lease Services, services, materials or equipment or any combination thereof, in connection with the project.
  - d) **"Intellectual Property"** means any invention or discovery, whether patentable or not; any design capable of being protected as an industrial design, design patent or other design protection; any Services in which copyright may exist; any Confidential Information which may be capable of being protected as a trade secret, and any other intellectual property right.
  - e) **"Personnel"** means any director, officer, employee, consultant, subcontractor or other person or entity engaged by the Contractor to perform Services or act on behalf of the Contractor pursuant to this Contract.
  - f) **"Services"** include, unless otherwise noted in the Contract, everything that the Contractor must do, supply or deliver to comply with his obligations under the Contract
  - g) **"SLSMC"** means The St. Lawrence Seaway Management Corporation.
  - h) **"SLSMC Representative"** means the officer or employee of the SLSMC designated pursuant to the A-1 Specifications or the Request for Proposals and a person specially authorised by the SLSMC Representative to perform, on his behalf, any of his functions under the Contract;

### GC2 PRIORITY OF DOCUMENTS

- 2.1 In the event of discrepancies or conflicts between these General Conditions and anything in the other documents making up the Contract, the General Conditions shall prevail unless expressly superseded.

### GC3 CONTRACTOR TO FURNISH ALL PERSONNEL AND MATERIALS

- 3.1 Unless otherwise expressly specified in the Contract, the Contractor shall provide its own Personnel, tools, equipment, technology, materials, and office space equipped with such furniture and equipment, and other services, as may be necessary for carrying out of the Services. The Contractor is liable for its Personnel's compliance with the Contract whether or not they are employees or subcontractors.

### GC4 SUBCONTRACTING

- 4.1 Unless the Contract or SLSMC directs otherwise, the Contractor may subcontract such portions of the Services as is customary in the carrying out of similar contracts. No subcontracting shall relieve the Contractor from any of its obligations under the Contract or impose any liability upon SLSMC to a subcontractor. The Contractor shall be liable for its subcontractors' breach of the Contract.

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## GENERAL CONDITIONS (SERVICES)

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### **GC5 INSPECTION AND ACCEPTANCE OF SERVICES**

- 5.1 SLSMC shall have 30 days to inspect and accept delivered or completed Services prior to having any obligation to pay for such Services. SLSMC shall have no obligation to pay for Services rejected within such 30-day period until deficiencies are corrected, notwithstanding the issuance of an invoice. If Services is rejected, SLSMC shall notify the Contractor and provide reasons for the rejection and a reasonable opportunity for the Contractor to correct the deficiency, which correction shall be at no additional charge to SLSMC.

### **GC6 PRICING FIXED FOR TERM**

- 6.1 Except as expressly set out in this Contract or otherwise agreed in writing by SLSMC, the Contract prices represent the all-inclusive prices and fees to be charged for Services. Contract prices are fixed for the term of the Contract and shall not be modified for any reason including without limitation, in connection with changes in the cost of labour, cost of materials, or changes to the wage or other rates payable to the Personnel, regardless of the reason for such changes.

### **GC7 INVOICING AND PAYMENT**

- 7.1 Unless the Services is rejected pursuant to GC5 (Inspection and Acceptance of Services), any payments by SLSMC to the Contractor for the Services shall be made within 30 days following SLSMC's receipt of a proper invoice.
- 7.2 SLSMC may withhold or deduct, reduce or set-off against any amount otherwise due to the Contractor by SLSMC under this Contract such sums as SLSMC is legally required to withhold or deduct or that SLSMC reasonably determines to be necessary to cover any non-performance, indemnity or liability of the Contractor in relation to this Contract.

### **GC8 REPRESENTATIONS AND WARRANTIES**

- 8.1 The Contractor represents, warrants, and covenants that:
- a) Personnel assigned to perform Services have the necessary qualifications including the knowledge, skill, and ability to perform the Services;
  - b) the Services shall be of a quality at least equal to that generally accepted in the industry for similar Services;
  - c) the Contractor shall comply, and ensure that its Personnel and other representatives comply, at the Contractor's sole expense, with (i) all applicable laws; and (ii) SLSMC workplace rules as advised from time to time by SLSMC, including without limitation, rules related to environmental protection, occupational health and safety, and security rules and regulations; and
  - d) the Contractor has all the rights necessary to perform and deliver the Services pursuant to this Contract and to fulfil its obligations to SLSMC, including without limitation, those respecting Intellectual Property.
- 8.2 In the event of a defect, fault or non-compliance with the warranties listed in this Section or any other warranty implied by applicable law (collectively, a "Defect") arising within 1 year from the date the Services was accepted by SLSMC, in addition to other rights and remedies available at law and in this Contract, the Contractor must, at SLSMC's election and the Contractor's expense: (a) remedy, correct or reperform deficient Services to SLSMC's satisfaction (using alternate Personnel if SLSMC so requests);

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## GENERAL CONDITIONS (SERVICES)

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(b) issue a refund or credit in the amount of any Services that is or was deficient as a result of the breach.

### **GC9 INTELLECTUAL PROPERTY**

- 9.1 SLSMC shall own all Services, including the Intellectual Property in such Services, except as set out in paragraph 9.2. The Contractor hereby irrevocably and unconditionally assigns, and agrees it will assign, to SLSMC all right, title and interest to such Services without any additional consideration payable by SLSMC.
- 9.2 Any Intellectual Property in existence prior to the Effective Date of this Contract or created by Personnel independent of the Services ("Background Intellectual Property") is not assigned to SLSMC. To the extent any Background Intellectual Property is incorporated in Services, the Contractor must use reasonable efforts to identify such Background Intellectual Property to SLSMC and, for no additional consideration payable by SLSMC, the Contractor grants or will grant, or represents and warrants that SLSMC is granted, a perpetual, non-exclusive, fully paid up license to such Background Intellectual Property as necessary to allow SLSMC to fully exploit such Services for SLSMC's internal business purposes (which includes any purpose associated with operating the Seaway), including without limitation a license to, in whole or in part, modify, translate, distribute, transmit, perform, reproduce, in any format and otherwise make use of the applicable Services, and sublicense others to exercise these rights on behalf of SLSMC, during the term of this Contract and following expiration or termination for any reason.

### **GC10 CONFIDENTIALITY**

- 10.1 A party to this Contract (the "Recipient") may only use the other party's (the "Discloser") Confidential Information for purposes of fulfilling its obligations pursuant to the Contract. The Recipient shall protect the Discloser's Confidential Information to the same extent it protects its own information of a similar nature, at minimum using reasonable care to prevent unauthorized disclosure or release. The Recipient shall not disclose the Discloser's Confidential Information, without the prior written consent of the Discloser to any third party other than Personnel who are under similar obligations of confidence who have a need to know such information for purposes of the Contract. The Recipient will return and/or destroy the Discloser's Confidential Information promptly following the Discloser's request or upon termination or expiration of this Contract. There shall be no obligation to destroy copies of Confidential Information stored on the Recipient's archived backups provided that such archived information: (a) is not readily accessible by Personnel in the normal course of their duties; (b) continues to be treated as Confidential Information subject to the terms of this Contract; and (c) is destroyed in the normal course of business in accordance with the Recipient's document retention and destruction procedures.
- 10.2 Subject to applicable laws, the Recipient's obligations of confidence do not apply to information that (a) is or becomes publicly available through no fault of the Recipient; or (b) is lawfully disclosed to the Recipient by a third party who is not under any obligations of confidence; or (c) the Recipient can establish to SLSMC's satisfaction was known to the Recipient prior to the date of disclosure by the Discloser; or (d) is required by law to be disclosed; or (e) the Recipient can establish was developed by Personnel independently of this Contract. In the event the Recipient is required to disclose Confidential Information by law, the Recipient shall promptly notify the Discloser so that the Discloser has a reasonable opportunity to prevent the disclosure.
- 10.3 Any information identified as RESTRICTED R2 by SLSMC is deemed SLSMC Confidential Information. When the Contract, the Services, or any information is identified as RESTRICTED R2 by SLSMC, the Contractor 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 SLSMC Representative. Without limiting the generality of any

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## GENERAL CONDITIONS (SERVICES)

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other provision in the Contract, when the Contract, the Services, or any information is identified as RESTRICTED R2, SLSMC shall be entitled to inspect the Contractor's premises and the premises of its Personnel at any tier, for security purposes at any time during the term of the Contract. The Contractor shall comply with, and ensure that any such Personnel comply with, all written instructions issued by SLSMC dealing with the information so identified, including any requirements that Personnel submit applications for, or execute and provide declarations in relation to reliability screenings, security clearances and other procedures.

### **GC11 TERMINATION OF CONTRACT – FOR CONVENIENCE**

11.1 SLSMC may, upon 10 days prior notice to the Contractor, terminate the Contract or suspend the Services for up to 30 days with respect to all or any part of the Services not completed. Any suspension exceeding 30 days may, upon notice to SLSMC, be treated by the Contractor as a termination for convenience pursuant to this Section.

11.2 In the event of a termination by SLSMC for convenience, the following provisions apply.

- a) All authorized Services completed by the Contractor to the satisfaction of SLSMC before the termination date shall be paid for by SLSMC in accordance with the provisions of the Contract. Authorized Services in progress shall be paid on the basis of the Contractor's direct provable costs and expenses arising from the termination, exclusive of profit, and an amount representing a fair and reasonable fee in respect of such Services in progress to account for administrative overhead not to exceed 10% of the direct costs.
- b) The Contractor shall not be entitled to be paid any amount which, taken together with any amounts paid or becoming due to the Contractor under the Contract, exceeds the Contract price applicable to the affected Services.
- c) The Contractor shall have no claim for damages, compensation, loss of profit associated with Services not performed, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by SLSMC under the provisions of the paragraph except as expressly provided.
- d) Where the Contractor wishes to submit a claim for compensation under this paragraph, the Contractor shall do so within no later than 60 days following the specified termination date failing which, the Contractor will be deemed to have accepted the termination and fully, finally, and irrevocably released SLSMC from any liability in connection with the termination.

### **GC12 TERMINATION OF CONTRACT – DEFAULT**

12.1 A party may terminate the Services or the Contract, in whole or in part, by providing written notice to the other party (the "Defaulting Party") in the following circumstances:

- a) The Defaulting Party has defaulted in the performance of any material obligation of the Contract and has failed to remedy any of the foregoing default within 30 days of receiving notice of such breach pursuant to this Section; or
- b) The Defaulting Party has committed an act of bankruptcy; has made a general assignment for the benefit of creditors because of insolvency; or if a receiver is appointed because of insolvency.

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## GENERAL CONDITIONS (SERVICES)

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### **GC13 CONTRACTOR OBLIGATIONS ON TERMINATION OR EXPIRATION**

- 13.1 Upon termination for any reason or expiration, the Contractor shall immediately cease all performance of the affected Services; demobilize all related Personnel and, unless otherwise directed by SLSMC, demobilize all the Contractor equipment and materials on SLSMC premises related to the terminated or finished Services, all in accordance with the Contract.
- 13.2 Termination of part of the Services by SLSMC for any reason does not relieve or discharge the Contractor from completing the part of the Services that is not terminated, nor does it relieve the Contractor from any other obligation under the Contract.
- 13.3 If the Contract is terminated for SLSMC's convenience, all completed Services and all pre-authorized Services in progress as of the termination date in connection with the terminated Services must be promptly delivered to SLSMC and invoiced in accordance with the provisions of the Contract. Services in progress shall be invoiced on the basis of the Contractor's hourly rates based on time actually spent in the preparation of such Services in progress to the date of termination, subject to the Contractor providing supporting evidence of such time spent acceptable to SLSMC. SLSMC shall in no event be liable to pay an amount exceeding the Contract price for any unfinished Deliverable. SLSMC will have no further liability or obligation whatsoever to the Contractor for such termination. SLSMC accepts that if Services in progress is delivered to SLSMC in connection with a termination, it is delivered on an "as is" basis, and without any warranties from the Contractor. SLSMC's subsequent use of such materials is at SLSMC's sole and exclusive risk.

### **GC14 LIMITATION OF LIABILITY**

- 14.1 To the fullest extent permitted by law, in no event shall a party be liable to the other for lost profit, special, consequential, incidental, exemplary, punitive, or indirect costs, expenses or damages, even if notified of the potential for such costs, expenses or damages.

### **GC15 RECORDS TO BE KEPT BY CONTRACTOR, AUDITS**

- 15.1 The Contractor shall, for a period not less than 3 years from the date of creation, keep proper accounts and records of the Services, the cost of the Services and of all expenditures or commitments made by the Contractor, including invoices, receipts and vouchers issued to SLSMC, and including third party contracts and related invoices, receipts and vouchers, which shall at reasonable times be open to audit and inspection by the SLSMC Representatives who may make copies and take extracts.

### **GC16 CONTRACT AMENDMENTS**

- 16.1 No amendment of the Contract nor waiver of any of the terms and provisions shall be deemed valid unless effected by an express written amendment or waiver signed by a SLSMC Representative.
- 16.2 No increase in the total liability of SLSMC for the Services or in the price of the Services resulting from any change, modification or interpretation of the documents will be authorized or paid to the Contractor unless such change, modification or interpretation has received the prior approval in writing of a SLSMC Representative.

### **GC17 CONTRACTOR STATUS, NO OTHER BENEFITS**

- 17.1 The Contractor is an independent contractor and neither the Contractor or its Personnel are entitled to benefits or payments other than those specified in the Contract. Neither the Contractor nor any of the Personnel is engaged by the Contract as an officer, clerk, employee, servant, or agent of SLSMC.

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## GENERAL CONDITIONS (SERVICES)

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17.2 The Contractor has the sole responsibility for making deductions and submitting any applications, reports, payments, or contributions with respect to Income Tax, Canada or Quebec Pension Plans, Employment Insurance, Workers' Compensation, or any other similar matter which may be required by law (whether federal, provincial, or foreign) to be made by the Contractor, as a self-employed person or otherwise, in connection with the services to be performed under the Contract.

### **GC18 ASSIGNMENT**

18.1 The Contractor must not assign the Contract in whole or in part without the prior written consent of SLSMC. Any assignment made without SLSMC's consent shall be deemed a default of the Contractor's obligations under the Contract and be void and of no effect for purposes of the Contract.

### **GC19 COMPLIANCE WITH APPLICABLE LAWS**

19.1 Each party shall, at all times, comply with laws, regulations and orders issued by a governmental authority applicable to the Services.

### **GC20 NO PUBLICITY**

20.1 Neither party shall without the other party's prior written authorization: (a) use or publish, for any purpose whatsoever, the name, image, logo, or trademark of the other party; or (b) advertise a party's involvement in this Contract.

### **GC21 NOTICES**

21.1 Any notice, consent, order, decision, directive or other communication (for purposes of this Section, each is a "Notice") required to be given in writing shall be deemed to have been effectively given to the Contractor, if delivered in a form set out in this Section to the Contractor's head office or to the Contractor's Representative, at the address set out in the Purchase Order, Articles of Agreement, or to SLSMC, if delivered to SLSMC's head office or personally to the main SLSMC Contract contact at the address in the Articles of Agreement or Purchase Order (as applicable). To be valid, Notices must be delivered or communicated using one of the following means: (a) by hand, to the individual; (b) by mail, (c) commercial courier service, (d) by email. Any such Notice shall be deemed to have been received by the recipient: (a) if delivered personally, on the day that it was delivered, (b) if sent by mail, on the earlier of the day it was received and the sixth day after it was mailed; (c) if couriered, on the date of delivery as evidenced by the courier's delivery records; (d) if by email, upon express confirmation of receipt of the email notice by the intended recipient.

### **GC22 FURTHER ASSURANCES**

22.1 Each party must do such acts and execute such further documents and cause the doing of such acts and cause the execution of such further documents as are within its power, as the other party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of the Contract, including without limitation, the assignment of Intellectual Property, waiver of moral rights by authors, and grant of licenses, such acts and executions of documents not to be unreasonably delayed or withheld.



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## GENERAL CONDITIONS (SERVICES)

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### **GC23 SURVIVAL**

23.1 The Contractor's obligations under the Contract as to quality, correction and warranty of the Services performed by the Contractor up to the time of termination or expiration shall continue after any termination, whatever the cause, or expiration of the Contract. In addition, this Section and each party's rights and obligations hereunder which by their nature are intended to survive the expiration or termination of the Contract, shall survive expiration or termination of the Contract for any reason.

### **GC24 ENTIRE AGREEMENT**

24.1 The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the Contract.

### **GC25 GOVERNING LAW**

25.1 The construction, interpretation and performance of the Contract are governed by the applicable laws of the province in which the majority of the Services is performed and Canada, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

### **GC26 DISPUTE ESCALATION AND RESOLUTION**

26.1 The parties shall work in good faith to resolve all disputes or differences of interpretation arising under this Contract. In the event of a dispute that cannot be resolved at the working level, either party may send the other a formal notice of dispute describing the issue in detail, the requested resolution and requesting escalation to the next level of management for resolution. The receiving party shall respond to such notice within not longer than 2 business days with a view to scheduling a meeting to discuss and resolve the issue and the parties shall seek to resolve the matter within not longer than 10 business days, or such other longer period of time as may be mutually agreed, from the issuance of the notice of dispute. Where the dispute is not resolved at this level, the parties may agree to further escalate the discussion to the next highest level of management, or a party may elect to initiate arbitration. Except as otherwise provided, formal disputes shall be referred to confidential arbitration under the Arbitration Act, 1991 S.O. 1991 c.17 or Quebec equivalent if the dispute is in Quebec, and not to a court. Arbitrations shall be conducted by a single arbitrator mutually acceptable by the parties. If the parties are unable to agree to the arbitrator, then the arbitrator shall be presided by 3 arbitrators, with each party appointing its preferred arbitrator and the third arbitrator will be chosen by the other named arbitrators. The award and determination of such arbitrator(s) shall be final and binding. The parties shall cooperate in completing any arbitration as expeditiously as possible. Nothing in this Contract shall preclude a party from applying to a court for equitable relief.