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1. Interpretation

In the Contract, unless the context otherwise requires:

"Applicable Taxes" means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by NPP such as, the Quebec Sales Tax (QST).

"Articles of Agreement" means the clauses and conditions incorporated in full text or incorporated by reference to form the body of the Contract; it does not include these general conditions, any supplemental general conditions, annexes, the Contractor's bid or any other document;

"Background Information" means all Intellectual Property that is not Foreground Information that is incorporated into the Work or necessary for the performance of the Work and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other third party;

"NPP" means His Majesty the King in right of Canada as represented by the [Chief of Defence Staff or Base/Wing/Unit Commander] in [his/her/their] Non-Public Property capacity through [Canadian Forces Morale and Welfare Services or Canadian Forces Base/Wing/Unit name as appropriate];

"Contract" means the Articles of Agreement, these general conditions, any supplemental general conditions, annexes and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated by that title in the Contract, or by notice to the Contractor, to act as NPP's representative to manage the Contract;

"Contractor" means the person, entity or entities named in the Contract to supply goods, services or both to NPP;

"Contract Price" means the amount stated in the Contract to be payable to the Contractor for the Work, exclusive of Goods and Services Tax and Harmonized Sales Tax;

"Foreground Information" means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Work under the Contract;

"Intellectual Property" means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Work;

"NPP Property" means anything supplied to the Contractor by or on behalf of NPP for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work, the cost of which is paid by NPP under the Contract;

"Party" means NPP, the Contractor, or any other signatory to the Contract and "Parties" means all of them;

"Preliminary Works" means all creative content including, but not limited to, concepts, sketches, visual presentations, or the alternate or preliminary designs and documents developed by the Contractor which may or may not be shown or delivered to NPP for consideration but do not form part of the final Work;

"Work" means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor under the Contract.

2. Powers of NPP

All rights, remedies, powers and discretions granted or acquired by NPP under the Contract or by law are cumulative, not exclusive.

3. Status of the Contractor

The Contractor is an independent contractor engaged by NPP to perform the Work. Nothing in the Contract is intended to create a partnership, a joint venture or an agency between NPP and the other Party or Parties. The Contractor must not represent itself as an agent or representative of NPP to anyone. Neither the Contractor nor any of its personnel is engaged as an employee or agent of NPP. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

4. Conduct of the Work

4.1 The Contractor represents and warrants that:

- a. it is competent to perform the Work;
- b. it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and
- c. it has the necessary qualifications, including knowledge, skill, know-how and experience, and the ability to use them effectively to perform the Work.

4.2 The Contractor must:

- a. except for NPP Property, supply everything necessary to perform the Work;
- b. use, as a minimum, quality assurance procedures, inspections and controls generally used and recognized by the industry to ensure the degree of quality required by the Contract;
- c. select and employ a sufficient number of qualified people;
- d. perform the Work in accordance with standards of quality acceptable to NPP and in full conformity with the specifications and all the requirements of the Contract; and,
- e. provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.

5. Subcontracts

The Contractor may subcontract the supply of goods or services that are customarily subcontracted by the Contractor. Subcontracting does not relieve the Contractor from any of its obligations under the Contract or impose any liability upon NPP to a subcontractor. In any subcontract, the Contractor agrees to bind the subcontractor by the same conditions by which the Contractor is bound under the Contract, unless the Contracting Authority agrees otherwise.

6. Excusable Delay

- 6.1 A delay in the performance by the Contractor of any obligation under the Contract that is caused by an event that:
- a. is beyond the reasonable control of the Contractor;
 - b. could not reasonably have been foreseen;
 - c. could not reasonably have been prevented by means reasonably available to the Contractor; and
 - d. occurred without the fault or neglect of the Contractor,
- will be considered an "Excusable Delay" if the Contractor advises the Contracting Authority of the occurrence of the delay or of the likelihood of the delay as soon as the Contractor becomes aware of it. The Contractor must also advise the Contracting Authority, within fifteen (15) working days, of all the circumstances relating to the delay and provide to the Contracting Authority for approval a clear work around plan explaining in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.
- 6.2 Any delivery date or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay.
- 6.3 However, if an Excusable Delay has continued for thirty (30) days or more, the Contracting Authority may, by giving notice in writing to the Contractor, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that contributed to the Excusable Delay. The Contractor agrees to repay immediately to NPP the portion of any advance payment that is unliquidated at the date of the termination.
- 6.4 Unless NPP has caused the delay by failing to meet an obligation under the Contract, NPP will not be responsible for any costs incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

7. Inspection and Acceptance of the Work

All the Work is subject to inspection and acceptance by NPP. Inspection and acceptance of the Work by NPP do not relieve the Contractor of its responsibility for defects or other failures to meet the requirements of the Contract. NPP will have the right to reject any work that is not in accordance with the requirements of the Contract and require its correction or replacement at the Contractor's expense.

8. Invoice Submission

- 8.1 Invoices must be submitted in the Contractor's name. The Contractor must submit invoices for each delivery or shipment; invoices must only apply to the Contract. Each invoice must indicate whether it covers partial or final delivery.
- 8.2 Invoices must show:
- a. the date, the name and address of the organization, item or reference numbers, deliverable and/or description of the Work, contract number,
 - b. details of expenditures in accordance with the method of payment, exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST) (such as item, quantity, unit of issue, unit price, fixed time labour rates and level of effort,

subcontracts, as applicable);

- c. deduction for holdback, if applicable;
- d. the extension of the totals, if applicable; and
- e. if applicable, the method of shipment together with date, case numbers and part or reference numbers, shipment charges and any other additional charges.

8.3 If applicable, the GST or HST must be specified on all invoices as a separate item. All items that are zero-rated, exempt or to which the GST or HST does not apply, must be identified as such on all invoices.

8.4 By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

9. Taxes

9.1 Taxes

- a. Federal government departments and agencies are required to pay Applicable Taxes.
- b. Applicable Taxes will be paid by NPP as provided in the Invoice Submission section. It is the sole responsibility of the Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
- c. The Contractor is not entitled to use NPP's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The Contractor must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Contract (in accordance with applicable legislation), including for material incorporated into real property.
- d. In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Price, the Contract Price will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Price if public notice of the change was given before bid submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change.
- e. Tax Withholding of 15 Percent – Canada Revenue Agency
Pursuant to the *Income Tax Act*, 1985, c. 1 (5th Supp.) and the Income Tax Regulations, NPP must withhold 15 percent of the amount to be paid to the Contractor in respect of services provided in Canada if the Contractor is not a resident of Canada, unless the Contractor obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to NPP.

9.2 Changes to Taxes and Duties

If there is any change to any tax or duty payable to any level of government in Canada after the bid submission date that affects the costs of the Work to the Contractor, the Contract Price will be adjusted to reflect the increase or decrease in the cost to the Contractor. However, there will be no adjustment for any change that increases the cost of the Work to the Contractor if public notice of the change was given before bid

submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change on its cost. There will be no adjustment if the change takes effect after the date required by the Contract for delivery of the Work.

10. Payment Period

- 10.1 NPP's standard payment period is thirty (30) days. The payment period is measured from the date an invoice in acceptable form and content is received in accordance with the Contract or the date the Work is delivered in acceptable condition as required in the Contract, whichever is later. A payment is considered overdue on the 31st day following that date and interest will be paid automatically in accordance with the section 10.
- 10.2 If the content of the invoice or its substantiating documentation are not in accordance with the Contract or the Work is not in acceptable condition, NPP will notify the Contractor within fifteen (15) days of receipt. The 30-day payment period begins upon receipt of the revised invoice or the replacement or corrected Work. Failure by NPP to notify the Contractor within fifteen (15) days will only result in the date specified in subsection 1 to apply for the sole purpose of calculating interest on overdue accounts.

11. Interest on Overdue Accounts

- 11.1 For the purpose of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Time each day during the calendar month immediately before the calendar month in which payment is made;

"Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association;

"date of payment" means the date of the negotiable instrument drawn by NPP to pay any amount under the Contract;

an amount becomes "overdue" when it is unpaid on the first day following the day on which it is due and payable according to the Contract.

- 11.2 NPP will pay to the Contractor simple interest at the Average Rate plus 3 percent per year on any amount that is overdue, from the date that amount becomes overdue until the day before the date of payment, inclusive. The Contractor is not required to provide notice to NPP for interest to be payable.
- 11.3 NPP will pay interest in accordance with this section only if NPP is responsible for the delay in paying the Contractor. NPP will not pay interest on overdue advance payments.

12. Audit

The amount claimed under the Contract is subject to government audit both before and after payment is made. The Contractor must keep proper accounts and records of the cost of performing the Work and keep all documents relating to such cost for six (6) years after it receives the final payment under the Contract.

13. Compliance with Applicable Laws

- 13.1 Contractor must comply with all laws applicable to the performance of the Contract. The Contractor must provide evidence of compliance with such laws to NPP at such times as NPP may reasonably request.

- 13.2 The Contractor must obtain and maintain at its own cost all permits, licences, regulatory approvals and certificates required to perform the Work. If requested by the Contracting Authority, the Contractor must provide a copy of any required permit, licence, regulatory approvals or certificate to NPP.

14. Classification

- 14.1 The Contractor must keep confidential all information provided to the Contractor by or on behalf of NPP in connection with the Work and all information conceived, developed or produced by the Contractor as part of the Work. Information provided to the Contractor by or on behalf of NPP must be used solely for the purpose of the Contract and remains the property of NPP.
- 14.2 Subject to the [Access to Information Act](#), R.S.C. 1985, c. A-1, and to any right of NPP under the Contract to release or disclose, NPP agrees not to release or disclose outside the Government of Canada any information delivered to NPP under the Contract that is proprietary to the Contractor or a subcontractor.
- 14.3 The obligations of the Parties set out in this section do not apply to any information where the same information:
- a. is publicly available from a source other than the other Party; or
 - b. is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information, or
 - c. is developed by a Party without use of the information of the other Party.
- 14.4 The Contractor acknowledges that NPP is bound by the [Privacy Act](#), R.S.C. 1985, c. P-21, with respect to the protection of personal information as defined in that Act. The Contractor shall keep private and confidential any such personal information collected, created or handled by the Contractor under the Contract, and shall not use, copy, disclose, dispose of or destroy such personal information except in accordance with this clause and the delivery provisions of the Contract. All such personal information is the property of NPP, and the Contractor shall have no right in or to that information. The Contractor shall deliver to NPP all such personal information in whatever form, including all working papers, notes, memoranda, reports, data in machine-readable format or otherwise, and documentation which have been made or obtained in relation to this Contract, upon the completion or termination of the Contract, or at such earlier time as the NPP may request. Upon delivery of the personal information to NPP, the Contractor shall have no right to retain that information in any form and shall ensure that no record of the personal information remains in the Contractor's possession.
- 14.5 The contractor shall ensure that all the Contractor Personnel having a need to access Classified Information identified by NPP as a "Protected", "Confidential" or "Secret" (including summaries of or reports based on such information) obtain security clearance at the appropriate level prior to receiving access to such information, and maintain such security clearance for the duration of the Contract. Contractor shall not take any documents containing Classified Information identified by NPP as "Secret" off-site from NPP premises, unless expressly permitted by NPP in writing. All documents containing any Classified Information identified by NPP as "Protected", "Confidential" or "Secret" which are taken off-site from NPP's premises must be protected in a manner consistent with Government Security Policy ("GSP"), and must be stored and otherwise protected as set out in the NPP "Document Protection Procedures". NPP shall identify all such

Classified Information as “Protected”, “Confidential” or “Secret”, as applicable. In the event that Classified Information is identified as “Protected” but not as “Protected A” or “Protected B”, such Classified Information shall be deemed to be “Protected B”. In the event of a conflict between the NPP policies on the one hand, and a GSP classification on the other (including related disclosure, storage or handling requirements), the latter shall govern. The Contractor shall immediately notify NPP of any suspected or actual breach of security/privacy.

- 14.6 The Contractor shall assume full responsibility and shall indemnify and hold NPP harmless for the unauthorized disclosure or use of any Classified Information by its employees, contractors or any other party to whom the Contractor is authorized to disclose Classified Information pursuant to this article.
- 14.7 The Contractor must obtain from its employee(s), subcontractor(s) or agents completed and signed non-disclosure agreements (NDA) and provide those NDA to the Contracting Authority before they are given access to information by or on behalf of NPP in connection with the Work.

15. Liability and Indemnification

The Contractor is liable for any damage caused by the Contractor, its employees, subcontractors, or agents to NPP or any third party. NPP is liable for any damage caused by NPP, its employees or agents to the Contractor or any third party. The Parties agree that no limitation of liability or indemnity provision applies to the Contract unless it is specifically incorporated in full text in the Articles of Agreement. Damage includes any injury to persons (including injury resulting in death) or loss of or damage to property (including real property) caused as a result of or during the performance of the Contract.

16. Amendment

To be effective, any amendment to the Contract must be done in writing by the Contracting Authority and the authorized representative of the Contractor. The Contractor must not perform work in excess of or outside the scope of the Contract based on verbal or written requests or instructions from anybody other than the Contracting Authority.

17. Suspension of the Work

The Contracting Authority may at any time, by written notice, order the Contractor to suspend or stop the Work or part of the Work under the Contract. The Contractor must immediately comply with any such order in a way that minimizes the cost of doing so.

18. Default by the Contractor

- 18.1 If the Contractor is in default in carrying out any of its obligations under the Contract, the Contracting Authority may, by giving written notice to the Contractor, terminate for default the Contract or part of the Contract. The termination will take effect immediately or at the expiration of a cure period specified in the notice, if the Contractor has not cured the default to the satisfaction of the Contracting Authority within that cure period.
- 18.2 If the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or if a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding down of the Contractor, the Contracting Authority may, to the extent permitted by the laws of NPP, by giving written notice to the Contractor, immediately terminate for default the Contract or part of the Contract.

- 18.3 If NPP gives notice under subsection 1 or 2, the Contractor will have no claim for further payment except as provided in this section. The Contractor will be liable to NPP for all losses and damages suffered by NPP because of the default or occurrence upon which the notice was based, including any increase in the cost incurred by NPP in procuring the Work from another source. The Contractor agrees to repay immediately to NPP the portion of any advance payment that is unliquidated at the date of the termination.

19. Termination for Convenience

- 19.1 At any time before the completion of the Work, the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.
- 19.2 If a termination notice is given pursuant to subsection 1, the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred to perform the Contract to the extent that the Contractor has not already been paid or reimbursed by NPP. The Contractor will be paid:
- a. on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after the termination in accordance with the instructions contained in the termination notice;
 - b. the Cost to the Contractor plus a fair and reasonable profit for all work terminated by the termination notice before completion; and
 - c. all costs incidental to the termination of the Work incurred by the Contractor but not including the cost of severance payments or damages to employees whose services are no longer required, except wages that the Contractor is obligated by statute to pay.
- 19.3 NPP may reduce the payment in respect of any part of the Work, if upon inspection; it does not meet the requirements of the Contract.
- 19.4 The total of the amounts, to which the Contractor is entitled to be paid under this section, together with any amounts paid, due or becoming due to the Contractor must not exceed the Contract Price. The Contractor will have no claim for damages, compensation, loss of profit, allowance arising out of any termination notice given by NPP under this section except to the extent that this section expressly provides. The Contractor agrees to repay immediately to NPP the portion of any advance payment that is unliquidated at the date of the termination.

20. Right of Set-off

Without restricting any right of set-off given by law, NPP may set-off against any amount payable to the Contractor under the Contract, any amount payable to NPP by the Contractor under the Contract or under any other current contract. NPP may, when making a payment pursuant to the Contract, deduct from the amount payable to the Contractor any such amount payable to NPP by the Contractor, which, by virtue of the right of set-off, may be retained by NPP.

21. Conflict of Interest and Values and Ethics Codes for the Public Service, NPF Values and Ethics Policy

The Contractor acknowledges that individuals who are subject to the provisions of the *Conflict of Interest Act*, 2006, c. 9, s. 2, the Conflict of Interest Code for Members of the House of Commons, the Values and Ethics Code for the Public Service, NPP Conflict of Interest Policy and Values and Ethics Policy, or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Contract.

22. Integrity

- 22.1 The Contractor understands and confirms not having been convicted of an offence under any of the provisions referred to in subsection 750(3) of the *Criminal Code of Canada* or that if the contractor has been convicted of any of those offences, it is one for which:
- a. a pardon was granted under the *Criminal Records Act* — as it read immediately before the coming into force of section 109 of the *Safe Streets and Communities Act* — that has not been revoked or ceased to have effect,
 - b. a record suspension has been ordered under the *Criminal Records Act* and that has not been revoked or ceased to have effect,
 - c. an order of restoration was made under subsection 750(5) of the *Criminal Code of Canada* that restores the contractor's capacity to enter into the contract or to receive any benefit under the contract as the case may be, or
 - d. the conviction was set aside by a competent authority.
- 22.2 The Contractor and Contractor Personnel assigned to the performance of the Contract shall be in compliance with Subsection 750(3) of the *Criminal Code of Canada* which prohibits anyone who has been convicted of an offence under Section 121, frauds on the government; Section 124, selling or purchasing office; or Section 418, selling defective stores to NPP, from contracting with the government or receiving a benefit from a government contract, unless the Governor in Council has restored (in whole or in part) these capacities to the individual or the individual has received a pardon.

23. No Bribe or Conflict of Interest

- 23.1 The Contractor declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of NPP or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.
- 23.2 The Contractor must not influence, seek to influence or otherwise take part in a decision of NPP knowing that the decision might further its private interest. The Contractor must have no financial interest in the business of a third party that causes or would appear to cause a conflict of interest in connection with the performance of its obligations under the Contract. If such a financial interest is acquired during the period of the Contract, the Contractor must immediately declare it to the Contracting Authority.
- 23.3 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists or is likely to arise in the performance of the Contract. In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the Contractor's performance under the Contract, the Contractor must immediately disclose such matter to the Contracting Authority in writing.
- 23.4 If the Contracting Authority is of the opinion that a conflict of interest exists as a result of the Contractor's disclosure or as a result of any other information brought to the Contracting Authority's attention, the Contracting Authority may require the Contractor to

take steps to resolve or otherwise deal with the conflict of interest or, at its entire discretion, terminate the Contract for default. Conflict of interest means any matter, circumstance, interest, or activity affecting the Contractor, its personnel or subcontractors, which may or may appear to impair the ability of the Contractor to perform the Work diligently and independently.

- 23.5 It is a term of this contract that any persons engaged in the course of this contract and subsequent to it shall conduct themselves in manner such that there is not and will not be any conflict of interest arising from competing or opposing interest of other clients of the contractor. Should an interest be acquired during the life of the contract that would cause a conflict of interest, the Contractor shall declare it immediately to NPP.

24. Contingency Fees

The Contractor certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the Contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbying Act*, 1985, c. 44 (4th Supplement).

25. International Sanctions

- 25.1 Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the NPP cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.
- 25.2 The Contractor must not supply to the NPP any goods or services which are subject to economic sanctions.
- 25.3 The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise NPP if it is unable to perform the Work as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the Parties cannot agree on a work around plan, the Contract will be terminated for the convenience of NPP in accordance with the "Termination for Convenience" section of these General Conditions.

26. Harassment in the Workplace

- 26.1 The Contractor acknowledges the responsibility of NPP to ensure, for its employees, a healthy work environment, free of harassment. A copy of the Policy on Harassment Prevention and Resolution which is also applicable to the Contractor, is available on the Canadian Forces Morale and Welfare Services website.
- 26.2 The Contractor must not, either as an individual, or as a corporate or unincorporated entity, through its employees or subcontractors, harass, abuse, threaten, discriminate against or intimidate any employee, contractor or other individual employed by, or under contract with NPP. The Contractor will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Contractor's response, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

27. Entire Agreement

The Contract constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.