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PROVISIONS FOR LIQUIDATED DAMAGES

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PROVISIONS FOR LIQUIDATED DAMAGES

130. 1 SCOPE

These provisions are intended to outline the assessment of Liquidated Damages for contract completion specified by calendar date, working days or site occupancy.

130. 2 DEFINITIONS

2.1 Charged Days

Means the unit of measurement for Site Occupancy as a Liquidated Damage.

2.2 Initial Span

Means the number of Charged Days Bid by the Contractor for Site Occupancy on the Tender Price Form.

2.3 Final Span

Means the number of Charged Days assessed for Site Occupancy as calculated pursuant to these Provisions.

2.4 Spring Road Restrictions

Means that period of time pursuant to subsection 86(1) of Manitoba's Highway Traffic Act, used to restrict vehicle weights.

2.5 Twenty-Eight Day Period

Means a period of twenty-eight (28) days as shown on a calendar including weekends and holidays applicable to a Site Occupancy contract. The first period will commence on the first Charged Day assessed to the Contract. All subsequent periods will commence on the first day following the previous 28 day period.

2.6 Equipment

On grading and surfacing projects equipment will be interpreted to mean equipment and trucks normally working and travelling on the highway embankment. On depositing and stockpiling aggregate projects equipment will be interpreted to mean the crusher, screener or hauling vehicles.

2.7 Seasonal Shutdown Date

The date identified in the Contract as the Seasonal Shutdown Date.

130. 3 LIQUIDATED DAMAGES

In the event that all of the work on a project is not completed within the specified time limit damages will be sustained by the Department. It will be impractical and extremely difficult to ascertain the actual damage which the Department will suffer by reason of such delay. The sum set forth as Liquidated Damages or a Charged Day Rate is not a penalty but is an estimate of the cost to the Department and the Public for engineering, inspection, supervision, administration,

continuing maintenance costs, road user costs, delay costs, safety costs, budget delay costs and other costs which will accrue after the specified time limit.

The Department will deduct, from the Contract payments, the sum set forth as daily Liquidated Damages, lump sum Liquidated Damages and/or Charged Days required to complete the work after the specified time limits.

The Engineer's certification as to the number of days for which Liquidated Damages will be charged will be final and binding on all parties.

130. 4 COMPLETION SPECIFIED BY COMPLETION DATE

4.1 General

A Completion Date is specified in the Contract by when the Contractor must complete the Work.

4.2 Assessment of Liquidated Damages

When Work has not been completed by the specified Completion Date, the Engineer will charge liquidated damages, at the rate stated in the Contract, for every calendar day that the Work remains incomplete after the specified Completion Date, except:

- On days where the Contract special provisions require the Contractor to cease construction operations at 4:00 p.m. or earlier, only ½ day will be charged.
- If the Contractor elects not to work on any one of the following days:
 - A Saturday; or
 - A Sunday; or
 - A Statutory Holiday,

Liquidated Damages will be assessed on a Saturday, Sunday or Statutory Holiday if the Contractor chooses to work on that day.

130. 5 COMPLETION SPECIFIED BY WORKING DAYS

5.1 General

A Working Day allotment is identified in the Contract and represents the maximum time available to the Contractor in which to complete the Work. As the Work progresses, Working Days are assessed in accordance with the 'Assessment of Working Days' section below and are deducted from the allotment of Working Days. When the allotment of Working Days have been exhausted, Liquidated Damages are assessed in accordance the 'Assessment of Liquidated Damages' section below.

5.2 Assessment of Working Days

A Working Day will be any day, when in the opinion of the Engineer, atmospheric and highway conditions are such that 70% of the Contractor's equipment normally expected to work on the highway is able to work at least seven hours between 7:00 a.m. and 6:00 p.m. with the following exceptions;

- On days where the Contract special provisions require the Contractor to cease construction operations at 4:00 p.m. or earlier, only ½ day will be charged.
- If the Contractor elects not to work on any one of the following days:

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- A Saturday; or
- A Sunday; or
- A Statutory Holiday,

then that day will not be assessed as a Working Day.

A Saturday, a Sunday or a Statutory Holiday will however be considered a Working Day if the Contractor elects to perform work requiring more than one Department employee's presence, providing the Contractor is able to work at least 7 hours between 7:00 A.M. and 6:00 P.M.

The Engineer will commence assessing Working Days on whichever of the following dates is earlier:

- a) the date specified by the Department on the Work Schedule, or in the Special Provisions; or
- b) the date on which the Contractor commences work on any Item of Work listed by the Department on the Work Schedule.

Work not listed on the Work Schedule may be undertaken without Working Days being assessed provided that the work occurs prior to the start of the assessment of Working Days and prior to the Contractor commencing work on an Item of Work listed on the Work Schedule.

Notwithstanding the above, Working Days will not be assessed for the first seven calendar days after the award date regardless of the start date in the contract, provided that the Contractor has not started operations on an Item of Work identified on the Work Schedule.

If the Contractor starts work on an item listed in the Work Schedule on or before the award date, the assessment of Working Days will commence on the award date.

Working Days, once commenced, will continue to be assessed until all Work has been completed.

The assessment of Working Days will normally cease when all major items listed in the Work Schedule have been completed. If the remaining work consists solely of final trimming of shoulders on base and paving projects, or final trimming of slopes and roadways on grading jobs, then those items will be considered complete for the purpose of assessment of Working Days. If the Contractor is not making a reasonable effort to complete the trimming, then Working Days will continue to be assessed.

5.3 Periodical Leave

The Contractor may request, in writing, to accumulate periodical leave days. If approved, Working Days will be assessed seven days a week during the accumulation of periodical leave days. The Contractor will be allowed to accumulate periodical leave days at the rate of two days per week to a maximum of six consecutive days. When approved, the Contractor may use the accumulated periodical leave days and will not be assessed Working Days during this time. No work will be permitted during periodical leave days.

5.4 Assessment of Liquidated Damages

When the allotment of Working Days has been exhausted, the Engineer will charge liquidated damages at the rate stated in the Contract, for each subsequent calendar day that qualifies as a Working Day as described in Section 5.2.

130. 6 COMPLETION SPECIFIED BY SITE OCCUPANCY

6.1 General

Site Occupancy is a system for monitoring and administering progress of the Work. The Site Occupancy completion model has two components; Charged Days and Liquidated Damages associated with a Completion Date(s).

6.2 Bidding Charged Days

The Bidder shall provide a bid for Charged Days under the "Charged Days Bid" column on the Price Form. This is the Bidder's estimated days to complete the Work. A failure to provide a bid for Charged Days will result in rejection of the Bid.

The number indicated by the Bidder for the quantity of Charged Days Bid shall be a whole number. If a part of a day is indicated, that quantity will be rounded up to the nearest whole number and the Site Occupancy Price will be recalculated.

The Contractor shall also provide a Site Occupancy Price by multiplying the "Charged Days Bid" by the "Charged Day Rate" (set by the Department). The Site Occupancy Price on the Price Form will only be used for the purpose of comparing bids and will not form part of the Contract Price as defined in General Conditions Clause 100.1.2. Additionally, contrary to specification 100.9.2, Site Occupancy will not be considered a Major Contract Item.

6.3 Assessment of Charged Days

The total amount of Charged Days assessed will be measured in whole numbers.

Charged Days will be assessed for every day except for the following:

- Days prior to the Contractor starting work on the Contract. The Contractor shall provide a minimum of 14 days notice to the Department for commencement of the work. Failure of the Contractor to commence work as indicated, in the opinion of the Engineer, may result in the assessment of Charged Days;
- Days the Contractor is prohibited from working due to restrictions outside the Contractor's control that are imposed by Public Authorities that come into effect after the Contract is awarded;
- Days the Contractor schedules employee time off subject to the following conditions:
The Contractor will be granted a maximum of eight (8) Non-Charged Days per Twenty-Eight Day Period (including holidays) for the purpose of allowing employee time off providing:
 - a) The Engineer is given at least 3 days notice;
 - b) There is no ongoing work that requires the presence of Department personnel, as determined by the Engineer;
 - c) Any of the days allowed for employee time off not used in the specified Twenty-Eight Day Period may not be carried over to subsequent Twenty-Eight Day Periods;
 - d) The 8 days allowed for employee time off will be pro-rated for periods shorter than twenty-eight days;
- Days the Contract is delayed due to inclement weather subject to the following conditions:
 - a) The Contractor is prevented from utilizing at least 70% of the total labour and equipment engaged on the controlling operation for at least 7 hours, as determined by the Engineer; or

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b) The Contractor is ripping, drying, re-laying material or performing other measures to restore the material to its pre-existing condition, as determined by the Engineer.

- Days on which work has been suspended by the Engineer because of an action or omission by the Province;
- Days not worked due to Acts of God or the Public Enemy, Acts of the Province or any foreign state, floods, epidemics, quarantine restrictions, strikes, embargoes, or delays due to such causes, alterations or changes in Plans, or any other reason not originally contemplated by the Contract;
- Days not worked because of Spring Road Restrictions in the Final Span;
- Days for clearing and grubbing provided that charge days have not commenced;
- Days for aggregate production;
- Beginning one day after the final acceptance of the road surface approaches and side slopes excluding the installation of rumble strips, trimming, and seeding. Charged Days may continue to be assessed, if in the opinion of the Engineer, the Contractor is not making a reasonable effort to complete the rumble strips, trimming, and seeding;
- Any other conditions specified in the Contract.

6.4 Calculation of Site Occupancy Final Span

Extensions to the Initial Span will determine the Final Span and will be calculated as follows:

$$\text{Final Span} = \frac{F \times I}{A}$$

Where:

Final Span = adjusted number of Charged Days allowed (a fraction of a day will be rounded up to a full day);

*F = Final Contract Amount (excluding Mobilization of Equipment, Traffic Control, Extra Work, Fuel Cost Adjustment, Liquidated Damages, Riding Bonus and Site Occupancy);

I = Initial Span of the Contract

*A = Total Amount at Award (excluding Mobilization of Equipment, Traffic Control, Extra Work, Riding Bonus and Site Occupancy).

6.5 Payment for Site Occupancy Charged Days

Payment for Site Occupancy will be made as follows:

- If the number of assessed Charged Days equals the Final Span, no payment will be made;
- If the number of assessed Charged Days is less than the Final Span, a payment equal to the Contract Unit Price per Charged Day multiplied by the difference between the Final Span and the actual number of assessed Charged Days will be made;
- If the number of assessed Charged Days exceeds the Final Span, a deduction equal to the Contract Unit Price per Charged Day multiplied by the difference between the actual number of assessed Charged Days and the Final Span will be made.

130. 6.6 Assessment of Liquidated Damages

When Work has not been completed by the specified Completion Date, the Engineer will charge liquidated damages at the rate stated in the Contract, for each calendar day (with no exceptions) that the Work remains incomplete after the specified Completion Date.

130. 7 Seasonal Shutdown Conditions

7.1 Seasonal Shutdown Date

The Seasonal Shutdown Date, if required, is identified in the Contract and is set based on the seasonal conditions that are expected to interrupt the Work. The Contractor is expected to occupy the Site and attempt the Work until the Seasonal Shutdown Date. At the Contractor's option, the Contractor may remain on Site and continue to attempt the Work beyond the Seasonal Shutdown Date. Whether or not a specific year is stated in the contract, the Seasonal Shutdown Date will apply to each subsequent year on a recurring annual basis while the Work remains incomplete.

7.2 Completion Specified by Completion Date

Where a Seasonal Shutdown Date is identified in the Contract, the assessment of daily Liquidated Damages will cease between the latter of the Seasonal Shutdown Date or the actual day the Contractor ceases operations. The assessment of daily Liquidated Damages will recommence the earlier of 7 calendar days after the lifting of Spring Road Restrictions or the actual day the Contractor recommences operations the following year.

Where a Seasonal Shutdown Date is not identified in the Contract, the assessment of daily Liquidated Damages will continue until the Work is complete.

7.3 Completion Specified by Working Days

Where a Seasonal Shutdown Date is identified in the Contract the assessment of Working Days or daily Liquidated Damages will cease between the latter of the Seasonal Shutdown Date or the actual day the Contractor ceases operations. The assessment of Working Days or daily Liquidated Damages will recommence the earlier of 7 calendar days after the lifting of Spring Road Restrictions or the actual day the Contractor recommences operations the following year.

Where a Seasonal Shutdown Date is not identified in the Contract, the assessment of Working Days or daily Liquidated Damages will continue until the Work is complete.

7.4 Completion Specified by Site Occupancy

Where a Seasonal Shutdown Date is identified in the Contract, the assessment of Charged Days and/or daily Liquidated Damages will cease between the latter of the Seasonal Shutdown Date or the actual day the Contractor ceases operations. The assessment of Charged Days and/or daily Liquidated Damages will recommence the earlier of 7 calendar days after the lifting of Spring Road Restrictions or the actual day the Contractor recommences operations the following year.

Where a Seasonal Shutdown Date is not identified in the Contract, the assessment of Charged Days and/or daily Liquidated Damages will continue until the Work is complete.

130. 8 EXTENSIONS OF TIME

The time set forth in the Contract for its completion may be extended:

- a) When the Contract is not completed within the required time because the Contractor was ordered to perform unspecified Extra Work which interrupted major contract activities or operations, the Engineer may extend the number of days allowed for completion by the number of days required to perform the Extra Work. The time extension will be at the discretion of the Engineer.
- b) Where completion is specified by Working Days, when the Contract is not completed within the required time because of increases to the original contract quantities, the Engineer will extend the number of Working Days allotted for completion based on the following formula:

$$E = \frac{F \times D}{O} - D$$

E = Extension of time in Days. (Rounded off to nearest day)

F = Finished Contract Value

D = Number of Working Days allotted in the Contract,

O = Original Contract Value.

- c) By the Director, in the form of a written approval, when:
 - I. The Contractor is able to prove conclusively that conditions encountered during the work were much more difficult than could reasonably have been anticipated; and,
 - II. The Contractor submits a request for an extension of time accompanied by evidence of the difficult conditions and forwards it to the Director prior to completion of the Contract.

When the Contract is not completed within the time limit due to Acts of God or the Public Enemy, Acts of the Province or any foreign state, Floods, Epidemics, Quarantine Restrictions, Strikes, Embargoes, or delays due to such causes, alterations or changes in Plans, or any other reason not originally contemplated by the Contract, the Director, on written request, may extend the time limit.

Delays incurred as a result of seasonal changes and adverse weather should be anticipated by the Contractor and are not compensatory but may be eligible for extensions of time in extraordinary circumstances.

In the event an extension of time is granted, time shall continue to be the essence of the Contract.

No claims for damages shall be made against the Department on account of delays on the part of the Department in the delivery of materials or in the performance of work; but should there be unduly prolonged delays upon the part of the Department in the delivery of any materials required for the work or in the performance of the work, the Contractor shall be entitled to a corresponding extension of time to complete the work.

130. 9 **CONSIDERATIONS DURING SPRING ROAD RESTRICTIONS IN SEASONAL SHUTDOWN**

The Contractor may elect to haul restricted loads during Spring Road Restrictions and will not be assessed Liquidated Damages, Working Days or Charged Days only when a Seasonal Shutdown is in effect.

- 130. 9 Where overweight permits affecting required movement of equipment to the project are denied for a further period of time after Spring Road Restrictions have been lifted, assessment of Liquidated Damages, Working Days or Charged Days will commence the earlier of 7 calendar

days after the date overweight permits are approved or on the date the Contractor starts work on an item listed in the Work Schedule.

130. 10 CONSIDERATIONS DURING FISH SPAWNING RESTRICTIONS

Where the Contract restricts Work in or around a fish bearing water body during a fish spawning period, the Contractor will not be assessed Liquidated Damages, Working Days or Charged Days where the restriction interrupts a major contract activity.

130. 11 EQUIPMENT SUMMARY AND DAILY ASSESSMENT RECORD

The Engineer will maintain an Equipment Summary and Daily Assessment Record. This record is necessary to document the assessment of Working Days, Charged Days and Liquidated Damages.

The Contractor shall initial the Record to certify that the information is correct. One week will be allowed for the Contractor to file a written protest setting forth in what respect the Record is considered incorrect; otherwise the Record for that week will be deemed to have been accepted by the Contractor.

Copies of the Record will be provided to the Contractor on a weekly basis.