

**CHAPTER 4 INNU BUSINESS OPPORTUNITIES****4.1 Objectives**

- 4.1.1** To assist **Innu** and **Innu Communities** to benefit from business opportunities associated with the **Project**.
- 4.1.2** To implement and evaluate the effectiveness of measures intended to enhance opportunities for **Innu Businesses** to benefit from business opportunities associated with the **Project**.
- 4.1.3** To promote and assist in the development of business skills among **Innu** and **Innu Businesses**.
- 4.1.4** To promote and assist in the creation and growth of viable, self-sustaining and successful **Innu Businesses** capable of taking advantage of business opportunities related to the **Project**.
- 4.1.5** To identify and provide specific business opportunities related to the **Project** to qualified **Innu Businesses**.

**4.2 Procurement of Works, Goods and Services**

- 4.2.1** The **Parties** agree that the economic viability of the **Project** requires that the contracting and provision of works, goods and services for the **Project** be accomplished within **Company's** and **Contractor's** schedule and budget. **Company** agrees that its schedule and budget will include its obligations under this **Agreement** inclusive of necessary measures to enable **Company** to meet those obligations, unless otherwise expressly stated herein.
- 4.2.2** The **Parties** hereby establish an **Innu Business** participation target for the provision of works, goods and services by **Innu Businesses** to the **Project**. The **Innu Business** participation target under Section 4.2 shall be calculated in accordance with the following:
- (a) throughout the **Planning** and **Construction Phases** of the Gull Island generation **Component**, the participation target for the provision of works, goods and services by **Innu Businesses** to the **Project** shall be two hundred sixty-six million dollars (\$266,000,000), except as otherwise provided in Section 4.2; and
  - (b) throughout the **Planning** and **Construction Phases** of the Muskrat Falls generation **Component**, the participation target for the provision of works, goods and services by **Innu Businesses** to the **Project** shall be one hundred

thirty four million dollars (\$134,000,000), except as otherwise provided under Section 4.2.

For greater certainty, the reference to "works, goods and services" throughout Section 4.2 includes, in addition to works, goods and services associated with the generation **Components**, those works, goods and services supplied by **Innu Businesses** to the planning and construction of any transmission **Component** that is undertaken during the **Planning** or **Construction Phases** of the Gull Island or Muskrat Falls generation **Component**.

**4.2.3** **Company** shall maintain a record of, and determine the cumulative value of, the works, goods and services provided by **Innu Businesses** throughout the **Planning** and **Construction Phases** of the **Project** taking into account:

- (a) the value of all contracts awarded to **Innu Businesses** throughout the **Planning** and **Construction Phases** of each generation **Component**; and
- (b) the value of **Innu Business** sub-contracts included in contracts awarded to non-**Innu Businesses** throughout the **Planning** and **Construction Phases** of each generation **Component**.

For the purposes of Section 4.2, the value of works, goods and services provided to the **Project** by **Innu Businesses** prior to the **Effective Date** shall be attributed to the first generation **Component** to be sanctioned and, after the **Effective Date**, the value of works, goods and services provided to the **Project** by **Innu Businesses** shall continue to be attributed to that generation **Component** until its construction has been completed and the calculation under Section 4.2.7 or 4.2.11, as applicable, has been made.

**4.2.4** At the conclusion of each of the **Construction Phases** of the Gull Island generation **Component** and the Muskrat Falls generation **Component**, for purposes of Sections 4.2.7 and 4.2.11, as applicable, **Company** shall provide notice to **Innu Nation** of its determination under section 4.2.3, including the details of its calculation. **Innu Nation** shall have, for a period of sixty (60) days following receipt of such notice, the right to file a notice of objection disputing **Company's** determination under Section 4.2.3 and shall have, for an additional two hundred forty (240) days, the right, at its sole cost, to have the records of **Company** maintained under Section 4.2.3 audited by an **Independent Auditor**, selected by **Innu Nation**. **Company** shall provide the **Independent Auditor** with timely access to those records provided that the **Independent Auditor** has entered into a confidentiality agreement acceptable to **Company**. This confidentiality agreement shall not restrict the **Independent Auditor** from providing an opinion that the calculation of the cumulative value of the works, goods and services provided to the **Project** by **Innu Businesses** presents fairly in all material respects the cumulative value of the works, goods and services provided to the **Project** by **Innu Businesses**, or from expressing any reservations with respect to that opinion. The audit shall be conducted in accordance with **Generally Accepted Auditing Standards** and in conducting the audit the **Independent Auditor** shall be

bound by the designation or determination of the **Innu Business Registrar** as to which businesses are **Innu Businesses**.

**4.2.5** The cumulative value of the works, goods and services provided by **Innu Businesses** to the Gull Island generation **Component** as determined by **Company** under Section 4.2.3, or as adjusted by **Company** as a result of its agreement with the findings of the **Independent Auditor** under an audit conducted under Section 4.2.4, shall be first applied to the target set out in Section 4.2.2(a). Any amount in excess of this target shall then be deemed to be works, goods and services provided by **Innu Businesses** to or for the Muskrat Falls generation **Component** subject to Section 4.2.8 or 4.2.9 or both, as applicable.

**4.2.6** If construction has commenced with respect to the Gull Island generation **Component** and **Company** thereafter suspends construction prior to its completion, the amount by which:

(a) the value as determined under Section 4.2.3 of the works, goods and services provided by **Innu Businesses** to the Gull Island generation **Component** as of the date of suspension

is less than

(b) the **Innu Business** participation target referred to in Section 4.2.2(a),

shall, for a period of suspension greater than one year, be indexed annually at the lesser of the actual rate of **CPI** or two and one-half percent (2.5%) for each year or part of a year commencing one year after the commencement of the suspension and continuing until the recommencement of construction, and that indexed amount shall become the applicable **Innu Business** participation target with respect to the provision of works, goods and services by **Innu Businesses** to the Gull Island generation **Component** for the remainder of its **Construction Phase**. For greater certainty, if the value referred to in Section 4.2.6(a) is equal to or greater than the **Innu Business** participation target referred to in Section 4.2.2(a), the **Innu Business** participation target shall be considered to have been met.

**4.2.7** Where, at the conclusion of the **Construction Phase** of the Gull Island generation **Component**, **Company** determines that the **Innu Business** participation target referred to in Section 4.2.2(a) or 4.2.6 as applicable has not been met, **Company** shall provide notice to **Innu Nation** of its determination, including details of its calculation, and pay to **Innu Nation** five percent (5%) of the amount by which the total value of all works, goods and services provided by **Innu Businesses** up to the date of conclusion of the **Construction Phase** of the Gull Island generation **Component** is less than the **Innu Business** participation target referred to in Section 4.2.2(a) or 4.2.6 as applicable. A **Dispute** as to whether **Company** is required to make a payment to **Innu Nation** under this Section or a **Dispute** as to the amount of such payment may be referred to **Dispute Resolution** under Section 4.2.19. For greater certainty, where a penalty has

been assessed and paid under this Section, including any award of damages in respect of such **Dispute** that has been made in favour of **Innu Nation** under Section 4.2.19, the target referenced in Section 4.2.2(a) or 4.2.6, as applicable, shall be considered to have been met.

**4.2.8** Where construction of the Muskrat Falls generation **Component** has not commenced by January 1, 2020, the **Innu Business** participation target referred to in Section 4.2.2 (b) shall be indexed annually at the lesser of the actual rate of **CPI** or two and one-half percent (2.5%) for each year or part of a year commencing January 1, 2020 and ending on the earlier of

- (a) the date on which the **Construction Phase** of the Muskrat Falls generation **Component** commences; or
- (b) the date on which the target referred to in Section 4.2.2(b) as indexed under this Section reaches one hundred seventy million dollars (\$170,000,000).

The actual value of the works, goods and services supplied by **Innu Businesses** to the Muskrat Falls generation **Component** prior to the commencement of construction and amounts attributed under Section 4.2.5 shall be indexed at the same rate and for the same period as the **Innu Business** participation target under this Section.

**4.2.9** At the commencement of the **Construction Phase** of the Muskrat Falls generation **Component**, the **Innu Business** participation target for that **Component** shall be adjusted to be the amount by which:

- (a) the total of the actual value of the works, goods and services supplied by **Innu Businesses** to the Muskrat Falls generation **Component** prior to the commencement of construction and amounts attributed to the Muskrat Falls generation **Component** under Section 4.2.5, each as indexed under Section 4.2.8 where applicable

is less than

- (b) the **Innu Business** participation target referred to in Section 4.2.2(b) or as indexed under Section 4.2.8 where applicable,

and such amount shall become the **Innu Business** participation target with respect to the provision of works, goods and services by **Innu Businesses** to the **Construction Phase** of the Muskrat Falls generation **Component**.

**4.2.10** If construction has commenced with respect to the Muskrat Falls generation **Component** and **Company** thereafter suspends construction prior to its completion, the amount by which:

- (a) the actual value of works, goods and services provided by **Innu Businesses** to the Muskrat Falls generation **Component** from the commencement of the **Construction Phase** of that **Component** until its suspension

is less than

- (b) the **Innu Business** participation target under Section 4.2.9 ,

shall, for a period of suspension greater than one year, be indexed annually at the lesser of the actual rate of **CPI** or 2.5% for each year or part of a year commencing one year after the commencement of the suspension and continuing until construction is resumed, and that indexed amount shall become the applicable **Innu Business** participation target with respect to the provision of works, goods and services by **Innu Businesses** during the remainder of the **Construction Phase** of the Muskrat Falls generation **Component**. For greater certainty, if the amount referred to in Section 4.2.10(a) is equal to or greater than the **Innu Business** participation target referred to in Section 4.2.10(b), the applicable target shall be considered to have been met.

**4.2.11** At the conclusion of the **Construction Phase** of the Muskrat Falls generation **Component**, **Company** shall determine whether the **Innu Business** participation target under Section 4.2.9 or 4.2.10 as applicable has been met and where **Company** determines that the applicable participation target has not been met, **Company** shall provide notice to **Innu Nation** of its determination, including details of its calculation, and pay to **Innu Nation** five percent (5%) of the difference between:

- (a) the **Innu Business** participation target under Section 4.2.9 or 4.2.10, as applicable; and
- (b) the total value of all works, goods and services provided to the **Project** by **Innu Businesses**
- (i) during the **Construction Phase** of the Muskrat Falls generation **Component**, where the applicable participation target is that referred to in Section 4.2.9; and
- (ii) from the resumption of construction until the conclusion of the **Construction Phase**, where the applicable participation target is that referred to in Section 4.2.10.

A **Dispute** as to whether **Company** is required to make a payment to **Innu Nation** under this Section or a **Dispute** as to the amount of such payment may be referred to **Dispute Resolution** under Section 4.2.19. For greater certainty, where a penalty has been assessed and paid under Section 4.2.11, including any award of damages in respect of such **Dispute** that has been made in favour of **Innu Nation** under Section 4.2.19, the applicable **Innu Business** participation target shall be considered to have been met.

- 4.2.12** Where payment is to be made by **Company** to **Innu Nation** under either Section 4.2.7 or 4.2.11, it shall be made within sixty (60) days of the determination referred to above. Where **Company** defaults in its obligation under this Section, Section 7.26 shall apply.
- 4.2.13** **Company** shall only be liable to pay a penalty under Section 4.2.11, including any damages in respect of an award made in favour of **Innu Nation** under Section 4.2.19, if the Muskrat Falls generation **Component** has been constructed and it is determined by **Company** under Section 4.2.11 that the **Innu Business** participation target applicable to that **Component** under Section 4.2 has not been met.
- 4.2.14** Where **Company** proceeds with the construction of the Muskrat Falls generation **Component** prior to the construction of the Gull Island generation **Component**, Sections 4.2.3 to 4.2.13 shall apply, with the necessary modifications, to the calculation, including any indexing, of the **Innu Business** participation target and any associated penalty, as if the references in those sections to the Gull Island generation **Component** were to Muskrat Falls generation **Component** and the references to the Muskrat Falls generation **Component** were to the Gull Island generation **Component** and for greater certainty, in such a case, for purposes of the application of Section 4.2.8(b), the maximum amount of the target referred to in Section 4.2.2(a) as indexed under section 4.2.8(b) shall be three hundred forty million dollars (\$340,000,000).
- 4.2.15** **Company**, either directly or through **Contractor**, as a means of supporting **Innu** participation in the **Project**, will inform businesses seeking to provide works, goods and services to the **Project** of:
- (a) its commitment to assist qualified **Innu** and **Innu Businesses** to participate in and benefit from business opportunities associated with the **Project**;
  - (b) the relevant provisions of this Chapter; and
  - (c) the existence of the **IBDC** and the **Innu Business Registry**.
- 4.2.16** **Company**, either directly or through **Contractor**, in preparing documents for the procurement of works, goods and services for the **Planning** and **Construction Phases**, shall request that bidders outline any proposed **Innu Content**, and shall specify in such procurement documents that **Innu Content** will be a consideration in the evaluation process. For greater clarity, procurement documents for works, goods and services will include that the weight or other consideration given any proposed **Innu Content** in the evaluation process will be determined in accordance with the potential for **Innu Content** in the specific contract. **Company** will determine the significance of **Innu Content** in a specific contract and indicate the significance in the relevant procurement documents.

**4.2.17** Nothing contained in this Chapter shall be interpreted as preventing qualified **Innu Businesses** from competing for contracts for works, goods or services for the **Project** that fall outside the scope of Sections 4.5 and 4.6, in accordance with **Company's** or **Contractor's Project** procurement procedures.

**4.2.18** Except as otherwise provided in Section 4.2.19, a decision by **Company**, either directly or through **Contractor**, in relation to the qualification of businesses, or the invitation, evaluation, acceptance or rejection of bids or proposals for all contracts, shall be final and binding and not subject to **Dispute Resolution** or to appeal or review by any court of competent jurisdiction.

**4.2.19** For greater certainty, **Disputes** in relation to:

- (a) **Company's** or **Contractor's** adherence to the contracting process as set out in Schedule "4-A";
- (b) **Company's** requirement to make a payment under Section 4.2.7 or 4.2.11, including the value of any such payment; or
- (c) **Company's** determination of exceptional circumstances in Section 4.6.6

shall be subject to **Dispute Resolution**. Where any such **Dispute** has been referred to **Arbitration**, the sole remedy shall be an award of damages unless the **Parties** to the **Dispute** have agreed in writing that the **Arbitrator** or **Arbitration Panel** may grant another remedy.

**4.2.20** **Company**, either directly or through **Contractor**, shall specify in its procurement documents and contracts that it reserves the right, at any time during performance of a contract, to take action to remedy non-compliance with the terms and conditions set out in the contract, including non-compliance with commitments to **Innu Content** made by **Contractor** or **Subcontractor**, as applicable.

**4.2.21** Where **Company** or **Contractor** determines that there is material non-compliance by a **Contractor** or **Subcontractor**, as applicable, with the terms and conditions set out in a contract with respect to **Innu Content**, **Company** or **Contractor**, as appropriate, shall, in **Consultation** with **Innu Nation**, take appropriate corrective action to remedy such non-compliance.

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### 4.3 Qualification of Businesses

**4.3.1** All businesses, including **Innu Businesses**, interested in providing works, goods or services to the **Project** must demonstrate that they are qualified based upon the criteria set out in Section 4.3.2 before they may be considered by **Company** or **Contractor**. A decision as to whether or not a business is qualified under Section 4.3.2 may be made by **Company** or **Contractor** in the manner to be determined by **Company** or **Contractor** during the contract bid or contract negotiation process.

**4.3.2** **Company** or **Contractor**, in deciding whether a business is qualified for a specific contract or type of contract to provide works, goods or services to the **Project**, shall consider, where relevant to a specific contract or type of contract, the following criteria:


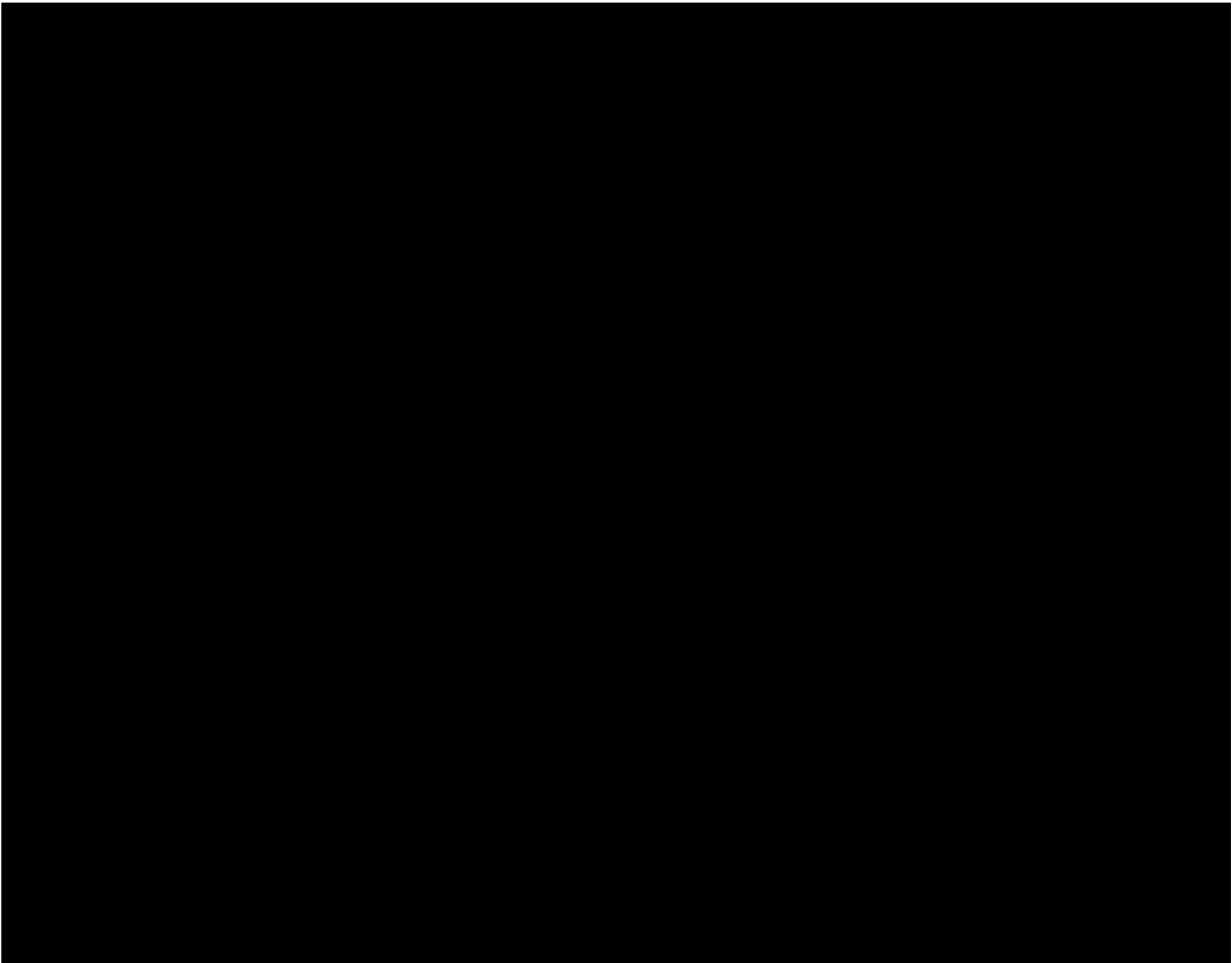
- (a) previous experience in performing contracts of a similar nature, including quality of work and adherence to schedule and budget;
- (b) continuity of supply;
- (c) timely performance;
- (d) ability to provide the required goods or services, including the ability to supply and deliver the goods or services and provide any required follow-up services;
- (e) previous experience working with **Innu** or other aboriginal people or businesses;
- (f) qualifications, experience and capabilities of personnel;
- (g) management structure;
- (h) operational integration of the business partners;
- (i) financial capacity;
- (j) insurance and bonding;
- (k) health, safety, and environmental procedures and record; and
- (l) quality management systems.

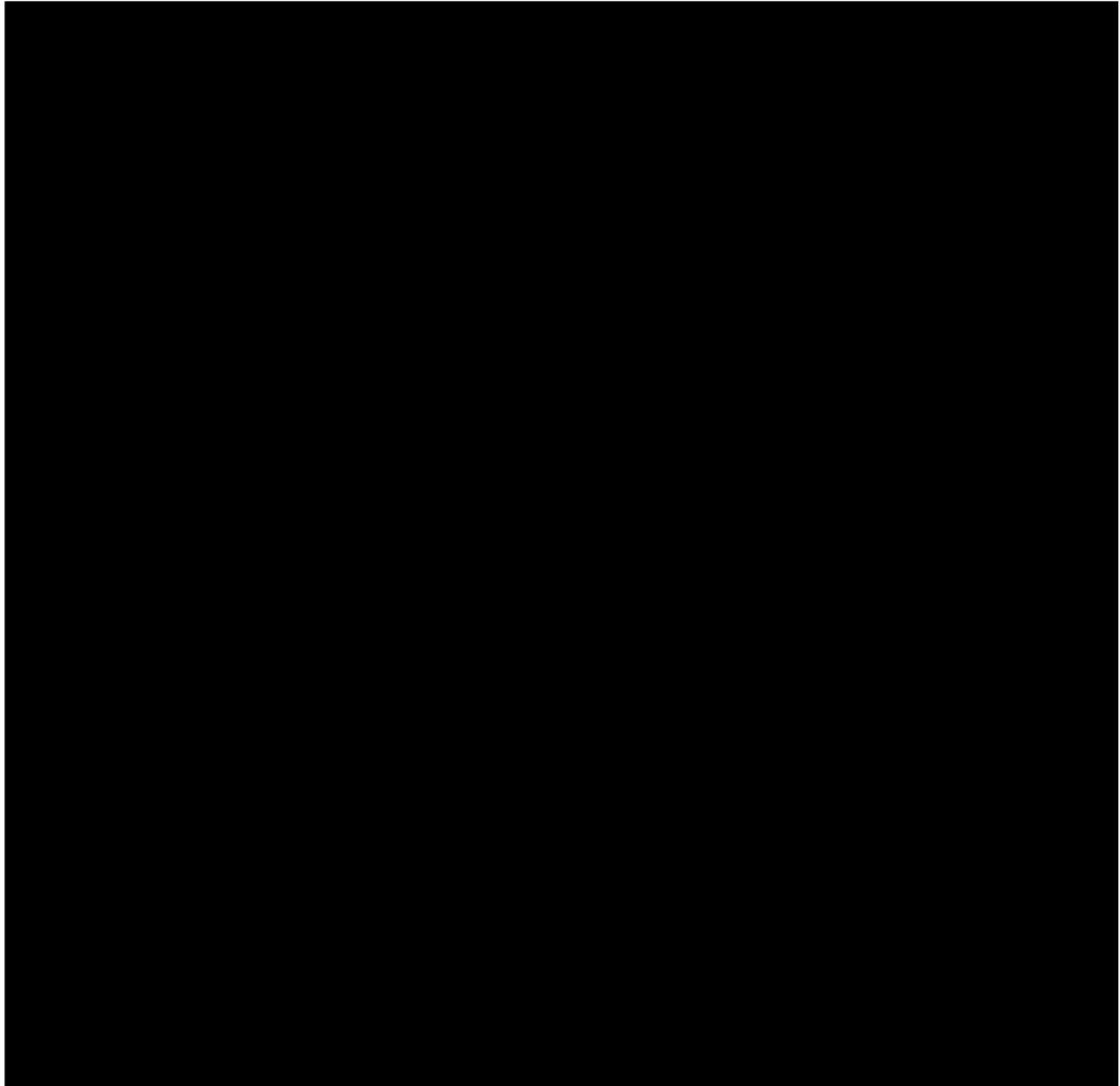


#### **4.4 Evaluation Criteria**

**4.4.1** The criteria for the evaluation and award of all contracts by **Company** and **Contractor** for the **Planning** and **Construction Phases**, including those contracts for the works, goods and services specified in Sections 4.5.1 and 4.6.1, will include, where relevant to a specific contract, the following considerations:

- (a) ability to supply and deliver the specified works, goods or services;
- (b) cost and schedule;
- (c) qualification, experience and capabilities of personnel;
- (d) quality of work and experience in similar contracts;
- (e) timely performance and completion;

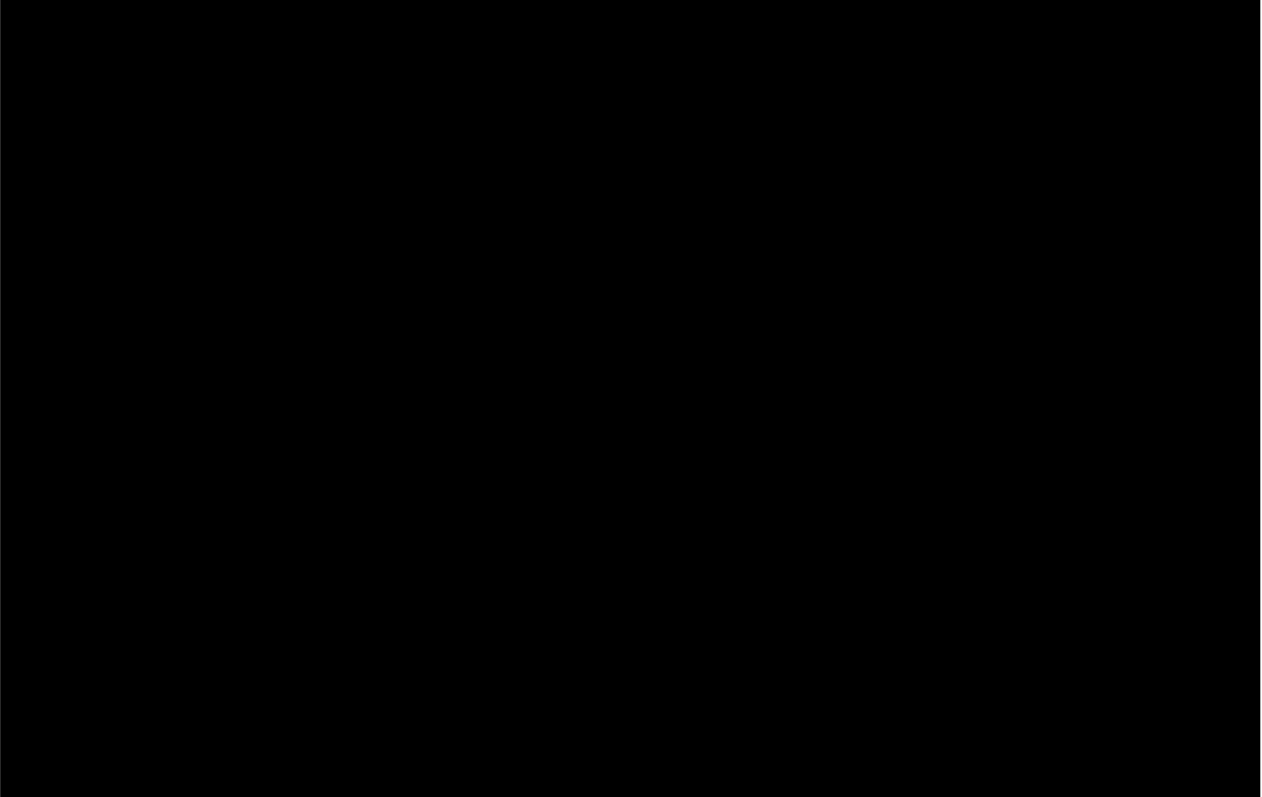
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- (g) commitment to provide local and provincial benefits;
  - (h) financial capacity;
  - (i) insurance and bonding;
  - (j) any proposed sub-contractors;
  - (k) health, safety and environmental record and requirements;
  - (l) quality management systems;
  - (m) management structure; and
  - (n) operational integration of the business partners.
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**4.6 First Bidding Opportunities for Innu Businesses**

**4.6.1 Company**, either directly or through **Contractor**, shall give qualified **Innu Businesses** the first opportunity to bid for the provision of the following works, goods and services to the **Project** for the **Planning and Construction Phases**:

- (a) supply of camp accommodations;
- (b) catering, housekeeping and maintenance of camp accommodations;
- (c) ground transportation of construction personnel;

- (d) security services;
  - (e) supply of temporary on-site communications hardware;
  - (f) on-site medical services;
  - (g) air support services;
  - (h) **General Industrial Supplies;**
  - (i) safety supplies;
  - (j) office supplies;
  - (k) janitorial supplies;
  - (l) access road construction and maintenance;
  - (m) brush clearing for roads, campsites and laydown areas;
  - (n) waste management;
  - (o) hazardous waste storage and disposal; and
  - (p) environmental monitoring.
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**4.6.4** The **Parties** acknowledge that the number of **Innu Businesses** and their capabilities will likely evolve as the **Project** proceeds, as will the ability of **Innu Businesses** to provide works, goods and services to the **Project**. In recognition of this, the **Parties** will meet annually during the **Planning** and **Construction Phases**, or as otherwise agreed, to review the list of works, goods and services set out in Section 4.6.1 and consider whether to amend that list to:

- (a) include additional types of works, goods or services; or
- (b) withdraw types of works, goods or services if such works, goods or services are no longer required for the **Project** or where there is no qualified **Innu Business** capable of providing the required works, goods or services.

Any decision to amend the list of types of works, goods and services set out in Section 4.6.1 will be made jointly and in writing by the **Parties**.

**4.6.5** Subject to Section 4.6.4, **Company**, either directly or through **Contractor**, will follow the procurement process as set out in Schedule "4-A" of this Chapter, for the procurement of the works, goods and services set out in Section 4.6.1.

**4.6.6** In the event that there are exceptional circumstances which require that works, goods or services set out in Section 4.6.1 be provided on a basis other than that set out in **Project** scheduling, **Company**, either directly or through **Contractor**, will not be required to follow the procurement process set out in Schedule "4-A" but shall be required to first invite bids from or enter into direct, good faith negotiations with qualified **Innu Businesses** to provide such works, goods or services within a time frame that is consistent with the conditions dictated by the exceptional circumstances.

**4.6.7** In the event that **Company**, either directly or through **Contractor**, is unable to successfully negotiate a satisfactory contract with an **Innu Business** under Section 4.6.5 or 4.6.6, **Company**, either directly or through **Contractor**, may initiate a competitive bid process or other procurement process. **Company**, either directly or through **Contractor**, shall evaluate any bids received from **Innu Businesses** under Section 4.6.5 or 4.6.6 and non-**Innu Businesses** on the basis of the same evaluation criteria.

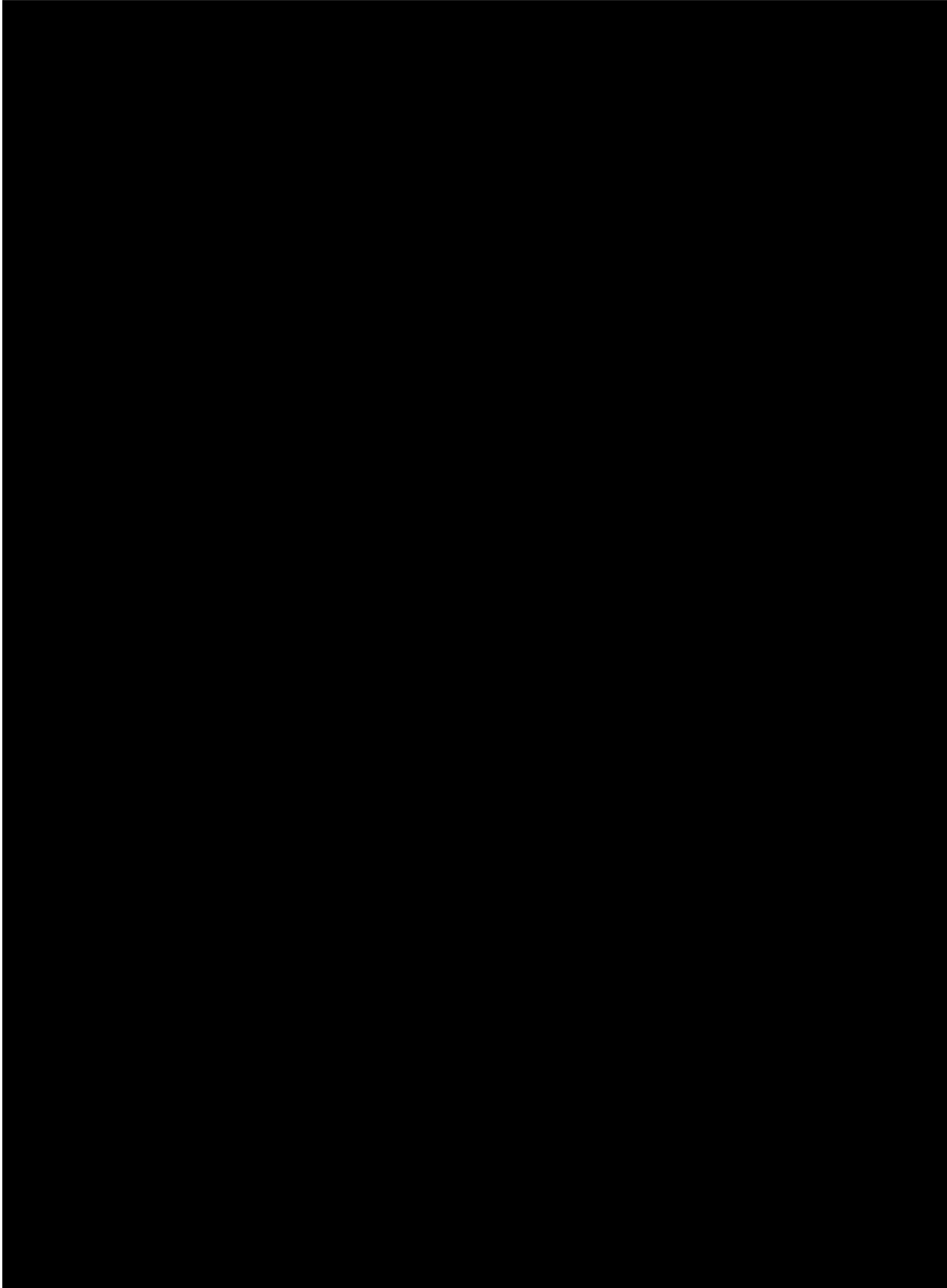
**4.6.8** In the event that **Company**, either directly or through **Contractor**, proceeds to a competitive bid process or other procurement process under Section 4.6.7, **Company**, either directly or through **Contractor**, shall, upon request, meet with an unsuccessful **Innu Business** that was involved in negotiations under Section 4.6.5 or 4.6.6 and provide a verbal explanation of the reasons why its bid was unsuccessful.

**4.6.9** In the event of an emergency which requires immediate action by **Company**, either directly or through **Contractor**, and which requirement for immediate action precludes the time to comply with Section 4.6.5 or 4.6.6, **Company**, either directly or through **Contractor**, may set aside the provisions of Sections 4.6.5 and 4.6.6 in order to respond appropriately to the emergency. **Company**, either directly or through **Contractor**, will inform **Innu Nation**, in a timely manner, with respect to any emergency contracts issued.

#### **4.7 Innu Business Registry**

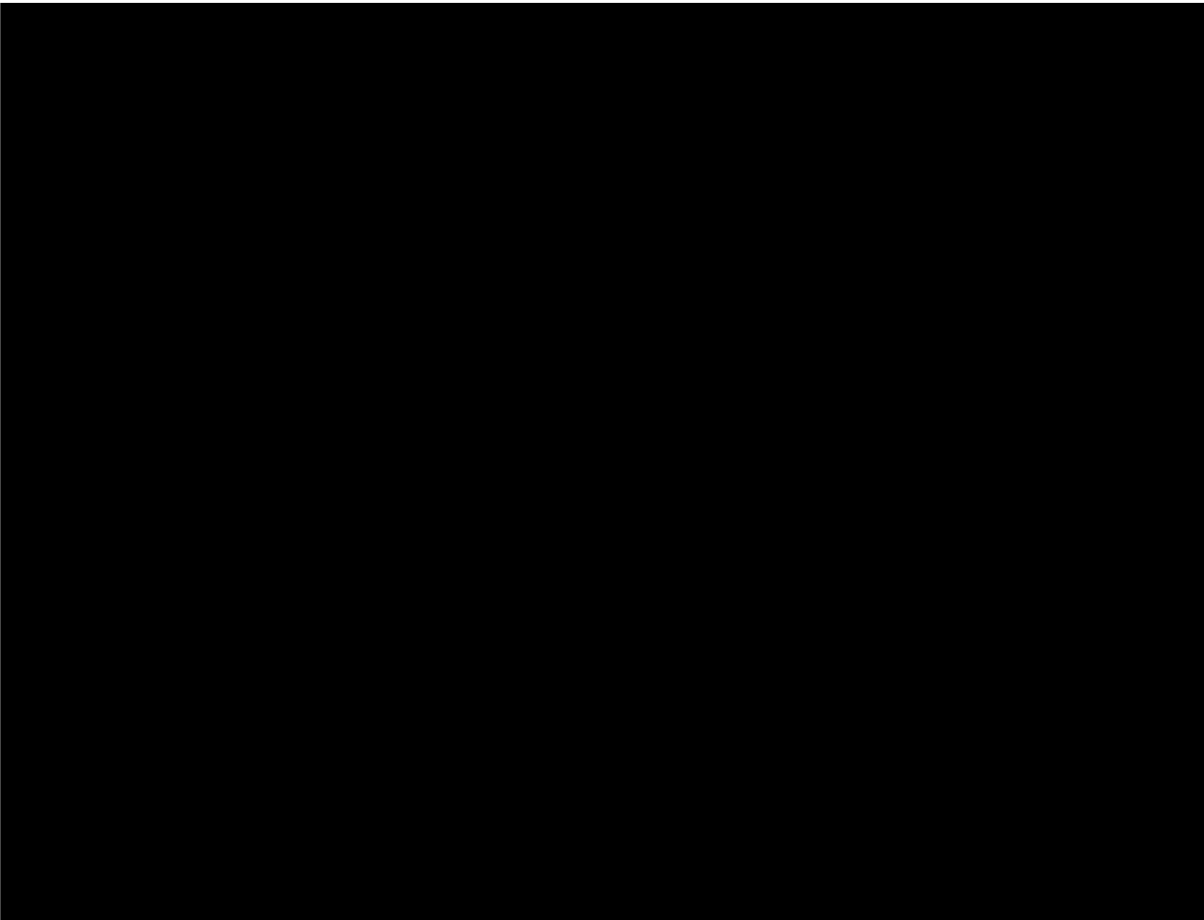
**4.7.1** **Innu Nation** shall appoint an **Innu Business Registrar** who shall establish and maintain an **Innu Business Registry** that shall contain all relevant documentation required by the **Innu Nation** to make a determination of the eligibility of an **Innu** business to be placed on the **Innu Business Registry** as an **Innu Business**. Such documentation shall include the following:

- (a) ownership, corporate structure and governance, including voting rights, list of directors, articles of incorporation, management structure, and management and supervisory positions;
- (b) a written commitment respecting employment of **Innu** in accordance with Section 4.7.2(a)(ii) or 4.7.2(b)(i);
- (c) the number of full-time and part-time **Innu** employees, if any;
- (d) the number of full-time and part-time non-**Innu** employees, if any;
- (e) information on any joint ventures or other business partnerships or arrangements including any management, partnership, joint venture, shareholder agreements or other similar agreements;
- (f) business profile including the nature of the works, goods or services provided by the business; and
- (g) quantification of business profits that will accrue to **Innu**.

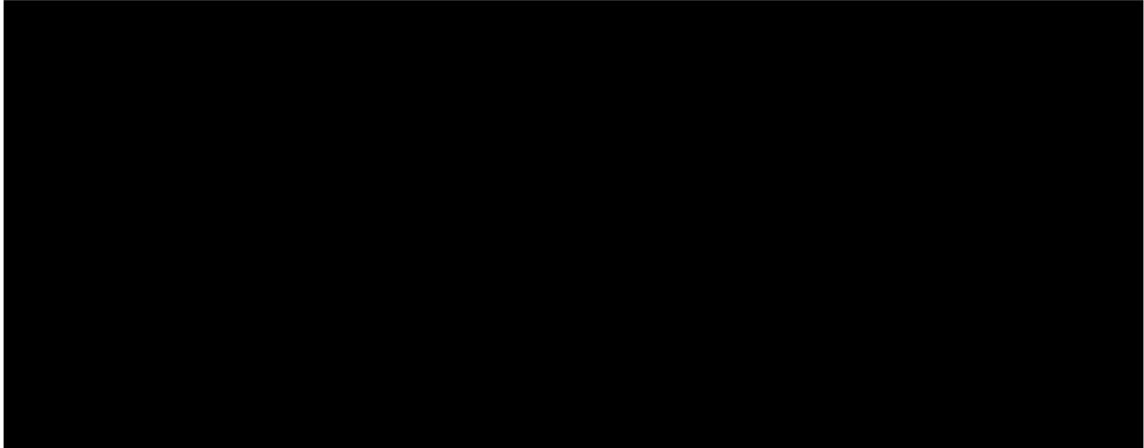




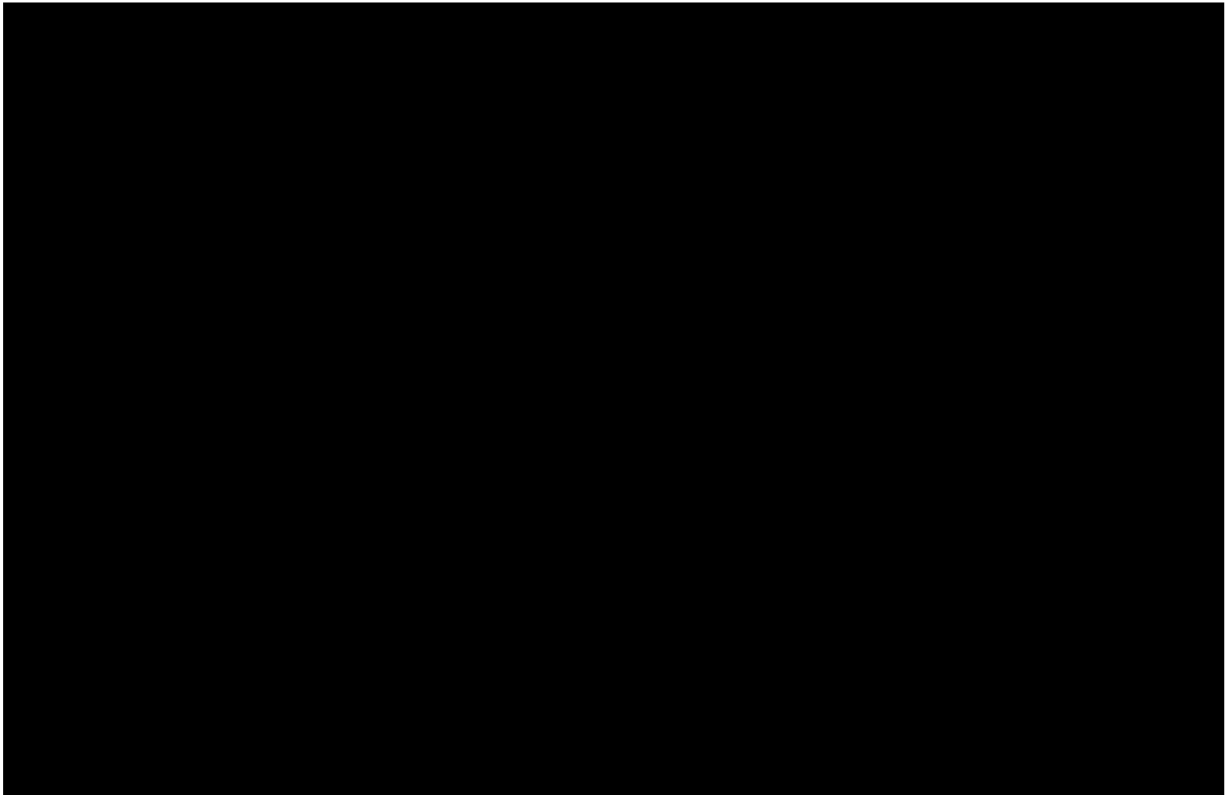
- 4.7.3** Businesses seeking to be registered in the **Innu Business Registry** shall apply to the **Innu Business Registrar** and provide the documentation set out in Section 4.7.1 and any other such documentation or information required by **Innu Nation** to determine if a business meets the requirements to be declared an **Innu Business**.
- 4.7.4** It is the sole responsibility of **Innu Nation** to determine whether a business meets the requirements to be declared an **Innu Business**, and if so, to place such business on the **Innu Business Registry**. In accordance with this responsibility, **Innu Nation**, either directly or through the **Innu Business Registrar**, shall evaluate all documentation and information received under Sections 4.7.1 and 4.7.3 and determine whether a business meets the requirements to be declared an **Innu Business**. **Innu Nation's** determination regarding whether a given business meets the requirements to be declared an **Innu Business** shall be binding on **Company**, **Contractor**, and **Subcontractor**.



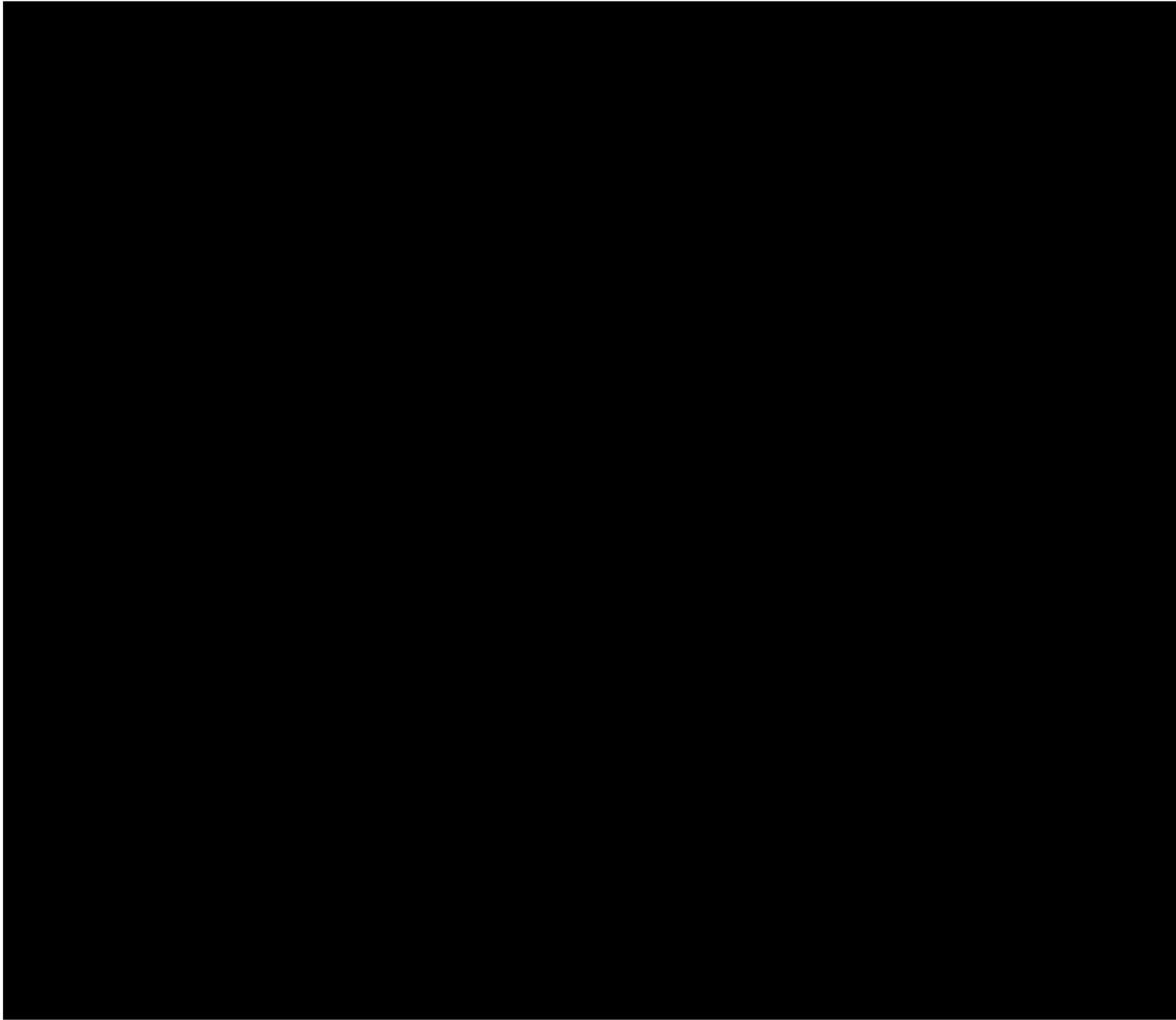




**4.7.7** **Innu Nation**, either directly or through the **Innu Business Registrar**, shall provide to the **IBDC** and **Company**, either directly or through **Contractor**, with complete and ongoing access to the current **Innu Business Registry** including all documentation as set out in Section 4.7.1 that has been provided to the **Innu Business Registrar** by **Innu Businesses**. The **IBDC** shall make publicly available current listings of **Innu Businesses** which shall include, at a minimum, the names of and contact information for these **Innu Businesses** and a summary of the works, goods or services provided by those **Innu Businesses**.



**4.7.9** **Innu Nation** shall be responsible for the cost of establishing and maintaining the **Innu Business Registry**.



**4.9 Implementation**

**4.9.1** The **Parties** shall meet annually during the **Planning** and **Construction Phases** to discuss progress and performance towards achieving the **Innu Business** participation target set out in Section 4.2.2 and

