

Appendix 2 – Supplementary Conditions to CCDC 2-2020 Stipulated Price Contract

The Standard Construction Document CCDC 2-2020 Stipulated Price Contract (Appendix 1), English version, consisting of the Agreement between *Owner* and *Contractor*, Definitions, and General Conditions of the CCDC 2 - 2020 Stipulated Price Contract, Parts 1 to 13 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 – CONTRACT DOCUMENTS

<u>Include</u> in the list of <i>Contract Documents</i> at paragraph 3.1:

RFP-2024-086 issued by the *Owner* including the following appendices and schedules and as further listed in Part IV of the RFP-2024-086:

- Appendix 1 CCDC 2 - 2020 Stipulated Price Contract
- Appendix 2 Supplementary Conditions to CCDC 2 - 2020 Stipulated Price Contract
- Appendix 3 Special Provisions
- Appendix 3b Mulock Park and Housing Staging Plans ((Figures 4-5 – *Designated Separate Work Zones and Buffer Zones*)
- Appendix 3c Access Permission to Contract Area – Contractor Form
- *Specifications and Drawings*
- Schedule 1 *Owner's* Standard Terms and Conditions
- Schedule 2 *Owner's* Bidding System Terms of Service
- Schedule 3 *Owner's* Purchase Order Terms and Conditions
- Schedule 4 *Owner's* Insurance Form
- Schedule 5 Contract Change Order Form
- Schedule 11 *Owner's* Purchase Order Set-Up Form
- Schedule 12 *Owner's* Application for Direct Deposit
- Schedule 13 *Selected Respondent's* Health and Safety Attestation
- Addenda, as issued

the documentation submitted by the successful respondent in response to the RFP, that has been approved and accepted by the *Owner*, which may include:

- Mandatory Submission Requirements (as stated in the RFP - section 2.7.1)
 - Online Declarations;
 - Schedule of Prices (all tables included in Schedule of Prices section);
 - List of Subcontractors (if applicable); and
 - Statement – Verification of Phase I Project Team Members (if applicable).
- Pre-Conditions of Award (as stated in the RFP - section 2.8):
 - Insurance;
 - *WSIB*;
 - Performance Bond (if applicable);
 - Labour and Material Payment Bond (if applicable);
 - Health and Safety Policy;
 - Preliminary *Work* Schedule;
 - Executed CCDC Agreement;
 - Purchase Order Set up Form

- Direct Deposit Form, and
- Schedule 13 – Selected Respondent’s Health and Safety Attestation.

ARTICLE A-2 – AGREEMENTS AND AMENDMENTS

Add new paragraph 2.3 as follows:

- 2.3 Where a General Condition or paragraph of the General Conditions of the CCDC 2 - 2020 Stipulated Price Contract is deleted by Supplementary Conditions or Special Provisions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

ARTICLE A-5 – PAYMENT

Delete paragraph 5.2.1 in its entirety and substitute new paragraph 5.2.1 as follows:

- 5.2 Interest
- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by adjudication, arbitration or court, interest on such unpaid amounts shall also become due and payable from the date that is 30 calendar days after the date when the payment became due until payment, at the rate established from time to time by the Bank of Canada.

Add new paragraph 5.3 as follows:

- 5.3 Notwithstanding any other provision of the *Contract Documents*, the *Consultant* may, in its sole discretion, decline to approve an application for payment and may withhold a certificate of payment, in whole or in part, to such extent as may be necessary to protect the *Owner* from losses arising out of:
- .1 non-conforming *Work*, which is not rectified in accordance with the *Contract*;
 - .2 failure of the *Contractor* to fulfil its obligations in respect of claims for lien, which is not addressed or rectified in accordance with GC 14.2 – CONSTRUCTION LIENS;
 - .3 failure of the *Contractor* to make any payment promptly when due to third parties;
 - .4 damage to the *Work*, *Place of the Work*, property of the *Owner*, adverse impacts on *Other Contractors*, or others for which the *Contractor* is responsible under the *Contract*, which is not addressed or rectified in accordance with GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .5 material errors, discrepancies, inconsistencies or irregularities in any application for payment;
 - .6 unauthorized deviations by the *Contractor* from the *Contract Documents*;
 - .7 unsatisfactory prosecution of the *Work*, due to factors within the control of the *Contractor* which is not rectified in accordance with paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE; and/or
 - .8 failure by the *Contractor* to provide any document deliverable in accordance with the *Contract Documents*, where such failure has a material adverse effect on the *Work* or the *Owner*’s use of the *Work*.

When the *Contractor* has remedied the cause of the withholding and has furnished evidence satisfactory to the *Consultant* of such remedy, the amount of the withholding will, subject to paragraph 5.4, be paid without interest.

Add new paragraph 5.4 as follows:

- 5.4 Notwithstanding anything to the contrary in the *Contract* and without prejudice to any other right or remedy of the *Owner*, any payments to the *Contractor* made under or on connection with the *Contract* is subject to the *Owner*'s right to deduct or set-off against any such payment any sum which may be due to the *Owner*, or to which the *Owner* has a claim under the *Contract*. Without limitation, if the *Contractor* is in breach or default of any provision of the *Contract*, and, after receiving notice thereof, the *Contractor* does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default in accordance with the terms of this *Contract*, the *Owner* may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any sums incurred by the *Owner* in respect thereof may be deducted from or set-off against any amount owing to the *Contractor* under the *Contract*.

<u>Add</u> new Article A-9 as follows:
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ARTICLE A-9 – CONFLICT OF INTEREST

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest includes the use of *Confidential Information* where the *Owner* has not specifically authorized such use.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing and without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the previous employer's conflict of interest policy, as it may be amended from time to time.
- 9.4 A breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law or in equity.

<u>Add</u> new Article A-10 as follows:

ARTICLE A-10 – CONFIDENTIALITY

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*.
- 10.2 The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any *Subcontractor*, *Other Contractor* or *Supplier* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with the *Subcontractor* and/or *Supplier*.

- 10.3 The *Contractor* acknowledges and agrees that it will comply with all requirements of *PIPEDA* and that the *Owner* is bound by the provisions of the *MFIPPA*. The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information* and *Personal Information* in the event that it is compelled to do so by law, through a request under *MFIPPA*, or by the rules of any applicable regulatory authority.

Add new Article A-11 as follows:

ARTICLE A-11 – WARRANTY PERIOD

- 11.1 For the purposes of GC 12.3 - WARRANTY, the warranty period for *Work* completed under this *Contract* shall be as follows:
- .1 24 months from the date of *Ready-for-Takeover* for all *Work* completed on or before the date of *Ready-for-Takeover*; and
 - .2 in addition to the warranty periods specified above, the *Work* may be subject to extended warranties pursuant to paragraph 12.3.6 of GC 12.3 – WARRANTY.

DEFINITIONS

Other Contractor

Delete the definition of *Other Contractor* as follows:

Other Contractor means a contractor, other than the *Contractor* or a *Subcontractor*, engaged by the *Owner* for the *Project*.

Substitute new definition of *Other Contractor* as follows:

Other Contractor or *Other Contractors* means any person, firm or corporation having a separate contract with the *Owner* that are deemed, construed, and designated as the “constructor” under the *OHSA* for *Other Work* within their respective *Designated Separate Work Zone*.

Add the following definitions:

As-Built Drawings

As-Built Drawings means *Drawings* prepared by the *Contractor* by marking on a copy of the *Drawings* the changes from the *Drawings* which occur during construction including but not limited to the exact location of major building components that were shown generally on the *Drawings*.

Confidential Information

Confidential Information means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary, confidential or not, including but not limited to information and material of every kind and description (such as *Drawings* and move-list) which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* shall not include information that:

- .1 is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including, without limitation, breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;

- .2 the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- .3 the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- .4 is independently developed by the *Contractor* without the use of any *Confidential Information*.

Construction Act

Construction Act means the *Construction Act*, R.S.O. 1990, c. C.30, as amended.

Draft Proper Invoice

Draft Proper Invoice has the meaning set out in subparagraph 5.2.1.3 of GC 5.2 - APPLICATIONS FOR PAYMENT.

MFIPPA

MFIPPA means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, CHAPTER M.56, as amended.

OHSA

OHSA means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended.

Other Work

Other Work means the any construction and related services performed by an *Other Contractor* respecting the *Project*, but does not include the *Work*.

Payment Period

Payment Period means the period of time from the 1st day of the month to the last day of that same month.

Personal Information

Personal Information has the same definition as in subsection 2(1) of *MFIPPA* and includes an individual's name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Contractor*.

PIPEDA

PIPEDA means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended.

Project

The *Project* is comprised of *Designated Separate Work Zones* which the *Owner* has awarded to the *Contractor* under the *Contract* and which also consists of *Other Work* awarded to *Other Contractors* under separate contracts, the totality of which is comprised of the following:

- RFP-2023-010 – General Contractor for Slate and Flat Roof at the Mulock House. This *Other Work* has been completed by the *Other Contractor*.
- RFP-2023-117 – Prequalified General Contractors for Mulock Park and Buildings
- RFP-2024-086 – Mulock House Adaptive Re-use

Each of the separate contracts with the *Contractor* and the *Other Contractors* will be performed under different but overlapping *Phases*.

Proper Invoice

Proper Invoice has the meaning set out in subparagraph 5.2.1.7 of GC 5.2 – APPLICATIONS FOR PAYMENT.

RFP

RFP or requests for proposal refers to the document issued by the *Owner* to solicit submissions for the *Work*.

Target Ready Date

Target Ready Date is the date that the *Contractor* considers that the *Work* is *Ready-for-Takeover* as specified in the approved construction schedule.

Turnover Date

Turnover Date means the date upon which *Ready-for-Takeover* has been achieved as certified by the *Consultant* and confirmed by the *Owner* in writing.

WSIB

WSIB means the Workplace Safety and Insurance Board operating under the Ministry of Labour.

GC 1.1 – CONTRACT DOCUMENTS

Delete subparagraph 1.1.5.1 in its entirety and substitute new subparagraph 1.1.5.1 as follows:

- .1 the order of priority of documents, from highest to lowest, shall be
- Change Orders and/or Change Directives
 - Appendix 3 – Special Provisions
 - Appendix 3b – Mulock Park and House Staging Plans (Figures 4-5 – *Designated Separate Work Zones and Buffer Zones*)
 - Appendix 3c – Access Permission to Contract Area – Contractor Form
 - Appendix 2 – Supplementary Conditions to CCDC 2 - 2020 Stipulated Price Contract
 - Appendix 1 – CCDC 2 - 2020 Stipulated Price Contract
 - Addenda, as issued
 - the executed Agreement between the *Owner* and the *Contractor*
 - Schedule of Prices (breakdown or lump sum schedule breakdown of *Contract* amount), as approved and accepted by the *Owner*
 - *Specifications*
 - *Drawings*
 - Schedule 1 - *Owner's* Standard Terms and Conditions
 - Schedule 3 - *Owner's* Purchase Order Terms and Conditions
 - Schedule 5 - Contract Change Order Form
 - RFP issued by the *Owner*
 - the documentation as stated in the Mandatory Submission Requirements (excluding the Schedule of Prices) and Pre-Conditions of Award sections of the RFP, as submitted by the successful respondent, in response to the RFP, that have been approved and accepted by the *Owner*.

Add subparagraphs 1.1.5.6 and 1.1.5.7 as follows:

- .6 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.
- .7 In general, where discrepancies occur amongst the various parts of the *Drawings* or *Specifications*, the *Contractor* shall provide the greatest amount of labour and highest quality of materials referred to as determined by the *Consultant*. In the event that a relevant dimension is not shown upon a *Drawing* or a

discrepancy exists between *Drawings* and the conditions of the *Place of Work*, the *Contractor* shall promptly advise the *Consultant* in writing and request a clarification from the *Consultant*.

Add to the end of paragraph 1.1.9 the following:

The *Specifications* are divided into divisions and sections for convenience only and shall be read as a whole. Neither such division, section, nor anything else contained in the *Contract Documents* shall be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* or as between them and the *Contractor* with respect to such divisions or sections.

Add a new paragraph 1.1.10 as follows:

1.1.10 The *Contractor* shall not avail itself of any obvious error or any error of which it becomes aware. The *Contractor* shall comply with the true intent and meaning of the combined *Drawings* and *Specifications*.

GC 1.3 – RIGHTS AND REMEDIES

Add the following text, prior to the word “no” in paragraph 1.1.10:

Except with respect to the notice requirements set out in paragraph 6.4.1 of GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS and paragraph 6.6.1 of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE,

GC 1.4 – ASSIGNMENT

Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1 as follows:

1.4.1 The *Owner* may assign the *Contract* or a portion thereof without the consent of the *Contractor*, where such assignment is to an entity undertaking the *Project* for the use of the *Owner*. The *Contractor* may not assign the *Contract* or a portion thereof without the consent of the *Owner*, and the granting of such consent shall be in the *Owner's* discretion, not to be unreasonably withheld.

GC 2.3 – REVIEW AND INSPECTION OF THE WORK

Add to the end of paragraph 2.3.5 the following:

The cost of examination and correction shall include, but not be limited to, the *Consultant's* fees for field review and contract administration performed by the *Consultant* for examination of corrections to the *Work*.

GC 2.4 – DEFECTIVE WORK

Add new paragraphs 2.4.4 and 2.4.5 as follows:

2.4.4 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Owner* or the *Consultant*.

2.4.5 When applicable, the *Contractor* shall give priority to the correction of any defective work or deficiencies which the *Owner* determines adversely affect its day-to-day operations.

GC 3.1 – CONTROL OF THE WORK

Add new paragraphs 3.1.3, 3.1.4, and 3.1.5 as follows:

- 3.1.3 Prior to commencing the *Work*, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper completion of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and obtain supplemental instructions from the *Consultant* before proceeding with any part of the affected *Work*.
- 3.1.4 If the *Contractor* becomes aware of any cause, event, occurrence, circumstance, matter, omission, error or anything else of any nature whatsoever that it reasonably believes will, or is likely to significantly or materially delay or restrict the performance of the *Work* or any part thereof, or necessitate any significant or material change to the anticipated date of *Substantial Performance of the Work*, the *Contractor* shall give *Notice in Writing* to the *Owner* within 5 *Working Days* after the *Contractor* first becomes aware of same.
- 3.1.5 The *Contractor* will have care, custody, and control of the *Work*. The *Contractor* shall maintain and protect the *Work* and carry the risk of loss for damage to or destruction of the *Work* until the date that:
- .1 the achievement of *Ready-for-Takeover* has been certified by the *Consultant* and confirmed by the *Owner* in writing;
 - .2 the *Owner* has occupied the *Work* for the purposes intended by the *Owner*;
 - .3 the *Owner* is satisfied that the *Work* is suitable for occupancy and all requirements of the *Owner* related to occupancy of the *Project* have been satisfied; and
 - .4 all other requirements for *Ready-for-Takeover* referred to in the *Contract Documents* have been fulfilled to the satisfaction of the *Owner* and certified complete by the *Consultant*.

Ready-for-Takeover shall not have occurred until the *Consultant* has certified that all requirements under the *Contract* have been fulfilled. Upon the date that *Ready-for-Takeover* has been achieved and has been certified by the *Consultant* and confirmed by the *Owner* in writing, these obligations, responsibilities and liabilities for the care, custody and control of the *Project* shall immediately and automatically transfer to the *Owner*.

GC 3.2 – CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS

Add to the end of paragraph 3.2.1 the following:

The *Contractor* acknowledges that the *Owner* has or may award separate contracts in connection with other parts of the *Project* and agrees to cooperate with those *Other Contractors* and to coordinate its *Work* with the *Other Work* of *Other Contractors* as may be required, including providing *Notice in Writing* to the *Owner*, in the event that the *Other Work* of *Other Contractors* impedes or is adversely impacting the *Work* or the ability of the *Contractor* to achieve *Substantial Performance of the Work* and the scheduled date for *Substantial Performance of the Work*.

Delete subparagraph 3.2.2.1 in its entirety.

Add new subparagraphs 3.2.3.5, 3.2.3.6, and 3.2.3.7 as follows:

- .5 Subject to GC 9.4 – CONSTRUCTION SAFETY, where paragraph 3.2.4 of GC 3.2 – CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS applies, for the *Owner's* own forces and for *Other Contractors* performing work identified in the *Contract Documents*, assume overall responsibility for compliance with all aspects of the applicable health and safety

legislation in the *Place of the Work*, including all of the responsibilities of the “constructor” as that term is defined in the *OHSA*.

- .6 *Contractor* represents that it and all *Subcontractors* have and will maintain, a health and safety policy and programs to protect the safety of workers and public in similar work, meeting or exceeding all requirements of *OHSA* and all other relevant legislation.
- .7 Any inspection by *Owner Staff* or *Consultant* is provided solely for the purpose of quality assurance.

<u>Add</u> new paragraphs 3.2.7, 3.2.8, and 3.2.9 as follows:

- 3.2.7 Entry by the *Owner’s* forces and by *Other Contractors* does not indicate acceptance of the *Work* and does not relieve the *Contractor* of any responsibility under the *Contract* including the responsibility to complete the *Work*.
- 3.2.8 Placing, installing, application, and connection of work by the *Owner’s* own forces or by *Other Contractors*, on and to the *Work* will not relieve the *Contractor’s* responsibility to provide and maintain the specified warranties, unless a defect has been created by the *Owner’s* own forces or the *Other Contractors*.
- 3.2.9 Notwithstanding anything to the contrary contained in any *Contract Documents*, the *Contractor* shall at all times assume overall responsibility for compliance with the applicable health and safety legislation at the *Place of Work*. Without limitation, the *Contractor* agrees to assume the title, role, duties and obligations of a “constructor” as that term or any similar term is used and/or defined in the relevant law in effect at the *Place of Work* and its related regulations, as amended from time to time within the meaning of the law of the *Place of Work*. Without limitation, the *Contractor* shall:
 - .1 file and post a “Notice of Project” and any other notices or documents required by health and safety legislation;
 - .2 ensure that anyone employed or engaged by the *Contractor* directly or indirectly complies with applicable health and safety legislation at the *Place of Work*;
 - .3 be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*;
 - .4 obtain evidence from all *Subcontractors* of compliance with worker’s compensation legislation;
 - .5 hire or recommend for hire only sufficiently skilled trades; and
 - .6 have adequate resources and experienced competent supervisors to oversee and ensure compliance with all health and safety requirements.

GC 3.4 – CONSTRUCTION SCHEDULE

<u>Delete</u> paragraph 3.4.1 in its entirety and <u>substitute</u> new paragraph 3.4.1 as follows:

- 3.4.1 The *Contractor* shall,
 - .1 within 15 calendar days following the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Unless otherwise agreed to in writing, in advance by the *Owner* and the *Contractor*, when required by the *Specifications* to employ construction scheduling software, the *Contractor* shall employ the software Microsoft Project in generating the construction schedule, which permits the progress of the *Work* to be monitored in relation to the

critical path established in the schedule. The *Contractor* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the construction schedule to the *Owner* in editable format, together with a record version in Portable Document Format. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule;

- .2 provide the expertise and resources, such resources including manpower and equipment, as necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE;
- .4 update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .5 if, after applying the expertise and resources required under subparagraph 3.4.1.2, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.4.1.4 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

Add new paragraph 3.4.2 as follows:

- 3.4.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.4.1.4, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with GC 6.5 – DELAYS.

GC 3.5 – SUPERVISION

Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1 as follows:

- 3.5.1 The *Contractor* shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the *Place of the Work* while *Work* is being performed. The appointed representatives shall not be changed except for valid reasons, and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld.

Add new paragraph 3.5.3 as follows:

- 3.5.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s), where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

GC 3.7 – LABOUR AND PRODUCTS

Delete paragraph 3.7.3 in its entirety and substitute new paragraph 3.7.3 as follows:

- 3.7.3 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new and as specified. The *Contractor* shall not provide substitutions for specified *Products* without the express written consent of the *Consultant* and the *Owner*.

Add new GC 3.9 as follows:

GC 3.9 – PERFORMANCE BY CONTRACTOR

- 3.9.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill, and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor's* obligations, duties, and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care, skill, and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.
- 3.9.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:
- .1 the personnel it assigns to the *Project* are appropriately experienced;
 - .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
 - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

Add new GC 3.10 as follows:

GC 3.10 – RIGHT OF ENTRY

- 3.10.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant* and *Contractor*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*.

GC 4.1 – CASH ALLOWANCES

Add new paragraph 4.1.8 as follows:

- 4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work*, to be paid for from cash allowances.

GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER

Revise the heading to the following:

GC 5.1 – FINANCING INFORMATION REQUIRED

Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1 as follows:

- 5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

Delete paragraph 5.1.2 in its entirety.

GC 5.2 – APPLICATIONS FOR PAYMENT

Delete paragraphs 5.2.1, 5.2.2, 5.2.3, and 5.2.4 in their entirety and substitute new paragraphs 5.2.1, 5.2.2, 5.2.3, and 5.2.4 as follows:

5.2.1 The *Owner* shall pay the *Contractor* only in accordance with the procedure set out below:

- .1 Subject to subparagraph 5.2.1.2, no earlier than five *Working Days* prior to the end of each *Payment Period*, the *Contractor* shall submit a *Draft Proper Invoice* to the *Owner* and *Consultant*, for an amount proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of Work* as of the last day of the *Payment Period*.
- .2 The *Contractor* shall not submit a *Draft Proper Invoice* between December 24 and January 2.
- .3 A *Draft Proper Invoice* means a preliminary invoice submitted by the *Contractor* to the *Owner* that includes:
 - (i) the *Owner's* invoice cover sheet;
 - (ii) purchase order number;
 - (iii) invoice number;
 - (iv) the *Contractor's* name and address;
 - (v) the date on which the *Draft Proper Invoice* is being submitted to the *Owner* and the *Consultant*, and the period during which the labour, *Products*, and services for the performance of the *Work* for which payment is being applied for were supplied;
 - (vi) information identifying the authority, whether in contract or otherwise, under which the labour, *Products*, and services for the performance of the *Work* were supplied;
 - (vii) a description, including quantity where appropriate, of the labour, *Products*, and services for the performance of the *Work* that were supplied during the *Payment Period*;
 - (viii) the amount payable for the labour, *Products*, and services for the performance of the *Work* that were supplied during the *Payment Period*, and the payment terms;
 - (ix) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - (x) the *Contractor's* HST number; and
 - (xi) evidence reasonably required by the *Owner* to establish the value and delivery of *Products* for which payment is claimed in the *Draft Proper Invoice*, and which have been delivered to the *Place of the Work*, but have not yet been incorporated into the *Work*.
- .4 The *Owner* and *Consultant* will evaluate the *Draft Proper Invoice* and may, in their sole discretion, provide comments to the *Contractor* in relation to the *Draft Proper Invoice*.
- .5 Subject to subparagraph 5.2.1.6, on or after the 10th calendar day (if that calendar day is not a *Working Day*, the next *Working Day*) following submission of a *Draft Proper Invoice*, the *Contractor* shall submit a *Proper Invoice* to the *Owner* for approval.
- .6 The *Contractor* shall not submit a *Proper Invoice* to the *Owner* between December 22 and January 2.
- .7 A *Proper Invoice* means an invoice submitted by the *Contractor* to the *Owner* on or after the 10th calendar day following submission by the *Contractor* of a *Draft Proper Invoice*, and includes:
 - (i) a fully and properly completed *Owner's* invoice cover sheet;
 - (ii) purchase number;
 - (iii) invoice number;
 - (iv) the *Contractor's* name and address;

- (v) the date on which the *Proper Invoice* is being submitted to the *Owner* and the *Consultant*, and the period during which the labour, *Products*, and services for the performance of the *Work* for which payment is being applied for were supplied;
 - (vi) information identifying the authority, whether in contract or otherwise, under which the labour, *Products*, and services for the performance of the *Work* were supplied;
 - (vii) a description, including quantity where appropriate, of the labour, *Products*, and services for the performance of the *Work* that were supplied during the *Payment Period*;
 - (viii) the amount payable for the labour, *Products*, and services for the performance of the *Work* that were supplied during the *Payment Period*, and the payment terms;
 - (ix) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - (x) the *Contractor's* HST number;
 - (xi) evidence reasonably required by the *Owner* to establish the value and delivery of *Products* for which payment is claimed in the *Proper Invoice*, and which have been delivered to the *Place of the Work*, but have not yet been incorporated into the *Work*;
 - (xii) a declaration by the *Contractor* using document CCDC 9A 'Statutory Declaration' attesting to the truth of the statements made therein, and, if requested by the *Owner*, a statutory declaration from any *Subcontractor*, as may be identified by the *Owner*, and
 - (xiii) a copy of the *Draft Proper Invoice* submitted for the relevant *Payment Period*.
- .8 Any invoice submitted by the *Contractor* before the 10th calendar day following the *Owner's* receipt of a *Draft Proper Invoice* shall not constitute a *Proper Invoice* within the meaning of the *Construction Act*.
- .9 A *Proper Invoice* may be revised by the *Contractor* after it has been given to the *Owner*, provided that the *Owner* agrees in advance to the revision and the *Proper Invoice* continues to meet the definition of a *Proper Invoice* after it has been revised.
- .10 Subject to the giving of a notice of non-payment under subparagraph 5.2.1.11, the *Owner* shall make payment to the *Contractor* in accordance with the provisions of GC 5.2 – APPLICATIONS FOR PAYMENT no later than 28 calendar days after receiving the *Proper Invoice*. The *Contractor* shall be deemed to have been paid on the day that the *Contractor* is advised by the *Owner*, or its representative, in writing, that payment is available to be picked up by or delivered to the *Contractor*.
- .11 In the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Proper Invoice*, the *Owner* shall, no later than 14 calendar days after receiving the *Proper Invoice* from the *Contractor*, give to the *Contractor* a notice of non-payment, in the form and manner prescribed in the *Construction Act*, specifying the amount of the *Proper Invoice* that is not being paid and detailing the reasons for non-payment.
- .12 Ten percent (10%) holdback on each progress payment will be retained in accordance with the *Construction Act*. The *Owner* shall retain holdback in the form of funds and will not accept any of the permissible forms of holdback listed in section 22(4) of the *Construction Act*.
- .13 Three percent (3%) warranty holdback on each progress payment will be retained in accordance with GC 12.3.14.
- 5.2.2 The *Contractor* shall submit to the *Consultant* and to the *Owner*, at least 15 calendar days prior to the first draft application for payment for the *Work*, a schedule of values for parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of the applications for payment for the *Work*. The schedule of values shall be supported by such evidence as the *Consultant* may reasonably direct and shall reflect the breakdown of the *Work* in accordance with the divisions set out in the *Specifications*, together with other supporting documents reasonably required by the *Owner* or the *Consultant*.
- 5.2.3 The *Contractor* will submit its applications for payment monthly to the *Consultant* with a copy to the *Owner* as the *Work* progresses. The copy to the *Owner* shall be by electronic mail to the *Owner's* designated

Project manager and to accountspayable@newmarket.ca. All invoices and subject line of said emails shall begin with the complete purchase order or RFP number related to the application for payment. Applications for payment sent on evenings, weekends or statutory holidays shall be deemed to be received by the *Owner* on the next day the *Owner* is open for business provided there is no indication of failure to transmit the email. The *Owner* is not liable for payment of any applications for payment or invoices received more than 180 calendar days after the end of the month to which the application for payment relates.

- 5.2.4 Nothing in paragraphs 5.2.1, 5.2.2, and 5.2.3 is intended to condition, pre-condition, prevent or delay the *Contractor's* right to submit its applications for payment in accordance with the *Contract* and the *Payment Legislation*.

Add to the end of paragraph 5.2.8 the following:

Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* until *Substantial Performance of the Work*, notwithstanding that title has passed to the *Owner* pursuant to GC 14.1 – OWNERSHIP OF MATERIALS.

Add paragraphs 5.2.9, 5.2.10, 5.2.11, 5.2.12, 5.2.13, and 5.2.14 as follows:

- 5.2.9 No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties.
- 5.2.10 If requested by the *Owner* or *Consultant*, the *Contractor* will provide all applications for payment in an electronic format, either scanned or in a data file suitable for the *Owner* and *Consultant's* use.
- 5.2.11 The *Contractor* shall ensure that each application for payment for *Work* complies with the requirements set out in the *Contract*, and will include as part of its application for payment all of the documents and information required in this Part 5 of the General Conditions – PAYMENT and required for a *Proper Invoice* as set out in the *Contract*. The *Owner* may, in its discretion, reject any application for payment that does not comply with Part 5 – PAYMENT and the requirements set out in the *Contract*.
- 5.2.12 As a condition of receiving each progress payment after the first, the *Contractor* shall submit a Statutory Declaration on an original form CCDC Document 9A-2018, attesting to the truth of the statements made therein.
- 5.2.13 The *Contractor* shall submit a *WSIB* Clearance Certificate with each application for progress payment.
- 5.2.14 The *Contractor* shall prepare current *As-Built Drawings* during the course of the *Work*, which current *As-Built Drawings* shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* may retain a reasonable amount, from any progress payment for the value of the *As-Built Drawings* not presented for review until the *As-Built Drawings* are presented for review.

GC 5.3 – PAYMENT

Amend paragraph 5.3.1.1 by deleting “10 calendar days” and substituting the following:

5 calendar days

Delete subparagraph 5.3.1.2 in its entirety and substitute new subparagraph 5.3.1.2 as follows:

- .2 Subject to paragraphs 5.2.1 and 5.2.2 and the *Owner's* rights pursuant to *Payment Legislation*, the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 28 calendar days, or otherwise in accordance with the prompt payment provisions in the *Payment Legislation*, whichever is earlier, after its receipt from the *Contractor* of a *Proper Invoice*.

GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

Add new subparagraph 5.4.1.3 as follows:

- .3 establish reasonable dates for finishing the *Work* and correcting deficiencies immediately prior to the issuance of the certificate of *Substantial Performance of the Work* in consultation with the *Contractor*.

Delete paragraph 5.4.2 in its entirety and substitute paragraph 5.4.2 as follows:

5.4.2 No later than the 20th calendar day following the *Substantial Performance of the Work*, the *Contractor* shall:

- .1 submit an application for payment of the holdback amount;
- .2 submit a declaration using document CCDC 9A 'Statutory Declaration' that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* in the performance of the *Work*, and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as holdback or as an identified amount in dispute and, if requested by the *Owner*, a declaration from any *Subcontractor*, as may be identified by the *Owner*, using document CCDC 9B 'Statutory Declaration of Progress Payment Distribution by Subcontractor';
- .3 submit a statement that the *Contractor* has not received any demands for payment, written notices of lien, or claims for lien; and
- .4 submit a *WSIB* Clearance Certificate that provides proof that the *Contractor* is registered with the *WSIB* and its account is in good standing.
- .5 Subject to the publication by the *Owner* of a notice of non-payment under subparagraph 5.4.2.6, the *Owner* shall make payment to the *Contractor* of the holdback amount following the expiration of the holdback period stipulated in the *Construction Act*.
- .6 In the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Contractor's* application for payment of the holdback, the *Owner* shall, no later than 20 calendar days before the expiration of the holdback period stipulated in the *Construction Act*, publish a notice in the form prescribed in the *Construction Act*, specifying the amount of the holdback that the *Owner* refuses to pay and notify the *Contractor* of the publication of the notice.
- .7 The submission of a *Proper Invoice* is hereby made a condition precedent to the right of the *Contractor* to be paid or to maintain any action for such money or for any part thereof.
- .8 The *Contractor* shall provide invoices and timesheets from all *Subcontractors* whose work is included in the *Proper Invoice* when requested by the *Owner*.
- .9 The *Owner* shall not be liable or compelled to pay for any extras or additional work not included in the *Contract*, except only in the manner and as provided for herein.
- .10 The *Owner* shall not be liable or compelled to grant or issue any certificate or approve any invoice or estimate for *Work* rejected or condemned by the *Owner* or to pay any money therefore until the *Work* so rejected or condemned has been replaced by new material and workmanship to the written satisfaction of the *Owner*. It is hereby expressly provided that the granting of any certificate or approval of any estimate or invoice, or the payment of any monies thereunder shall not be construed as an acceptance of any bad or defective work or material, to which the same relates or as an admission of liability to pay any money in respect thereof and shall not in any manner lessen the liability of the *Contractor* to replace

such work or material, although the condition of the same may not have been known to or discovered by the *Owner* at the time such certificate was granted, invoice or estimate was approved, or monies were paid thereon.

Add new paragraphs 5.4.7, 5.4.8, 5.4.9, 5.4.10, 5.4.11, and 5.4.12 as follows:

- 5.4.7 The *Contractor* shall submit a statement that no written notices of lien have been received by it.
- 5.4.8 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Payment Legislation*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.
- 5.4.9 Within 30 calendar days of submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all:
- .1 guarantees;
 - .2 warranties;
 - .3 certificates;
 - .4 testing and balancing reports;
 - .5 distribution system diagrams;
 - .6 spare parts and materials;
 - .7 maintenance manuals;
 - .8 samples;
 - .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
 - .10 *As-Built Drawings*;
- and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*. The *Contractor* shall review all operating manuals with the *Owner* or its representatives and provide at least one session for each trade of “hands on” training to ensure that the *Owner* and its representatives are familiar with the operating systems of the *Project*.
- 5.4.10 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.9, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. If the *Contractor* fails to deliver any of the materials required in paragraph 5.4.9, the *Consultant* shall retain from the payment of holdback under GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK, a reasonable amount, until the materials required pursuant to paragraph 5.4.9 are delivered.
- 5.4.11 Should the *As-Built Drawings*, any documents and/or materials not be delivered in accordance with paragraph 5.4.9 by the earlier of 50 calendar days following publication of the certificate of *Substantial Performance of the Work* and the submission of the *Contractor*’s application for final payment under paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.13 shall be forfeited to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents and/or materials, and the *Contract Price* shall be reduced accordingly.

5.4.12 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:

- .1 identify the parties involved;
- .2 identify the amount in dispute;
- .3 provide a brief statement summarizing the position of each party;
- .4 include copies of any correspondence or documents in support of either party's position;
- .5 include copies of any documents of any court or arbitration process related to the matter;
- .6 identify the dispute or claim between the *Contractor* and the *Owner* to which the matter relates;
and
- .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Contractor* shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Contractor* and the *Owner*.

GC 5.5 – FINAL PAYMENT

Delete paragraph 5.5.1 in its entirety and substitute new paragraph 5.5.1:

5.5.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment containing all of the documents and information required of a *Proper Invoice*. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.10. Should the *Contractor* fail to deliver any of the said documents, or other documents required to be delivered pursuant to the *Contract Documents*, the *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Contractor*, an amount, in the discretion of the *Owner*, up to the full amount otherwise payable to the *Contractor* as security for the obligation of the *Contractor* to deliver the undelivered documents.

Delete paragraph 5.5.4 in its entirety and substitute new paragraph 5.5.4 as follows:

5.5.4 Subject to the other requirements of the *Contract*, including paragraph 5.5.5 and the *Owner's* right to withhold payment from the unpaid balance of the *Contract Price* for any amounts required pursuant to GC 5.6 – WITHHOLDING OF PAYMENT and to satisfy any claims for lien or trust claims arising from the *Work*, the unpaid balance of the *Contract Price* shall become payable to the *Contractor* within 28 calendar days following the issuance of a *Proper Invoice* and in any event, in compliance with *Payment Legislation*.

Add new paragraph 5.5.5 as follows:

5.5.5 Prior to the release of the holdback for finishing work provided for under the *Payment Legislation*, the *Contractor* shall submit:

- .1 the *Contractor*'s written request for release of the holdback for finishing work, including a statement that no written notices of lien have been received by it;
- .2 CCDC 9A 'Statutory Declaration'; and
- .3 a final *WSIB* Clearance Certificate.

GC 5.6 – DEFERRED WORK

Revise the heading to the following:

GC 5.6 – WITHHOLDING OF PAYMENT

Add new paragraphs 5.6.2, 5.6.3, and 5.6.4 as follows:

- 5.6.2 Notwithstanding the provisions of GC 5.3 – PAYMENT, GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK, and GC 5.5 – FINAL PAYMENT, and in addition to any right of the *Owner* to withhold payment of any amounts otherwise due under the *Contract* on account of any costs or damages the *Owner* has incurred or, is likely to incur, by reason of:
- .1 defective or incomplete portions of the *Work* or damage to the other work of *Other Contractors* not rectified in accordance with the *Contract*;
 - .2 failure of the *Contractor* to indemnify the *Owner* in accordance with the terms of the *Contract*;
 - .3 failure of the *Contractor* to fulfil its obligations in respect of construction liens in accordance with GC 14.2 – CONSTRUCTION LIENS;
 - .4 the *Contractor*'s failure to make payments to *Subcontractors* and/or *Suppliers*;
 - .5 unsatisfactory prosecution of the *Work* by the *Contractor* or any *Subcontractor*; and
 - .6 failure to attain *Ready-for-Takeover* within the *Contract Time* specified in the *Contract*.
- 5.6.3 Where the *Owner* has withheld payment of any portion of the *Contract Price* pursuant to paragraph 5.6.2 or otherwise as permitted under the *Contract* or the *Payment Legislation*, the *Owner* shall be entitled to apply such withheld portion towards any costs or damages suffered by the *Owner*.
- 5.6.4 The *Owner*'s rights of set-off continue during the term of the *Contract* and survive following the termination, abandonment or completion of the *Contract* in full force, notwithstanding the failure by the *Owner* to provide notice of amounts withheld pursuant to the *Contract* or the *Payment Legislation*.

GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES

Add to the end of paragraph 6.1.2 the following:

This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or the *Contract Time* shall be barred unless there has been strict compliance with PART 6 of the General Conditions– CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, may be the basis for a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.

GC 6.2 – CHANGE ORDER

Add new paragraph 6.2.3 as follows:

6.2.3 The *Contractor* may apply mark-ups for overhead and profit to approved changes to the *Contract Price* as follows:

- .1 where the approved change in the *Contract Price* is less than \$200,000.00, compensation for overhead shall be determined by multiplying the approved change in *Contract Price* by 0.10; and
- .2 where the approved change in the *Contract Price* is less than \$200,000.00, compensation for profit shall be determined by multiplying the approved change in *Contract Price* by 0.10; or
- .3 where the approved change in the *Contract Price* is equal to or greater than \$200,000.00, compensation for overhead shall be determined by multiplying the approved change in *Contract Price* by 0.10; and
- .4 where the approved change in the *Contract Price* is equal to or greater than \$200,000.00, compensation for profit shall be determined by multiplying the approved change in *Contract Price* by 0.05.

6.2.4 The amounts set out in paragraph 6.2.3 are inclusive of all mark-ups of any *Subcontractor* of the *Contractor*.

GC 6.3 – CHANGE DIRECTIVE

Delete subparagraph 6.3.7.1(2) in its entirety and substitute new subparagraph 6.3.7.1(2) as follows:

- (2) carrying out the *Work*, including necessary supervisory services;

Delete subparagraph 6.3.7.1(3) in its entirety.

Delete subparagraph 6.3.7.1(4) in its entirety and substitute new subparagraph 6.3.7.1(4) as follows:

- (4) the *Contractor*'s office personnel engaged in a technical capacity, including clerical staff engaged in processing changes in the *Work*, or other personnel identified in Article A-3 of the Agreement – CONTRACT DOCUMENTS for the time spent in the performance of the *Work*.

GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS

Add new paragraph 6.4.5 as follows:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.9.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.2, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.

GC 6.5 – DELAYS

Delete paragraph 6.5.1 in its entirety, and substitute new paragraph 6.5.1 as follows:

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay, but excluding any special, indirect or consequential losses or damages, including but not limited to, loss of use, loss of productivity, loss of revenue, overhead and/or profit. For greater certainty, the *Contractor* agrees that the giving of a notice suspending the *Work* by the *Owner* or the refusal or delay by the *Owner* to recommence the *Work* following the suspension does not amount to a delay by reason of an action or omission of the *Owner* for the purposes of this paragraph.

Delete “.” at the end of paragraph 6.5.2 and substitute the following:

, but excluding any special, indirect or consequential losses or damages, including but not limited to, loss of use, loss of productivity, loss of revenue, overhead and/or profit.

Add new paragraphs 6.5.6, 6.5.7, 6.5.8, 6.5.9, 6.5.10, and 6.5.11 as follows:

- 6.5.6 The *Contractor* shall at all times perform the services required to perform the *Work* in accordance with the *Contract Documents* as diligently and expeditiously and to maintain an orderly progress of the *Work*, and in accordance with the *Contract Time* and any revisions thereto. The *Contractor* confirms that prior to the submission of a bid for the *Project*, it has investigated and was fully familiar with the intricacy of the *Work* and the site conditions at the *Place of the Work* and that the *Contractor* shall not be entitled to an increase in the *Contract Price* or of the *Contract Time* arising from such conditions as a *Contractor* exercising due diligence and with the skills and experience described in the *Contract* would have discovered. The *Contractor* shall at all times provide sufficient personnel to accomplish its services within the *Contract Time*.
- 6.5.7 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contractor* shall take appropriate steps, in accordance with paragraph 3.4.2, to recover any lost time, and the costs of such recovery efforts shall be to the *Contractor's* account. To the extent that the *Contractor*-caused delay results in the *Owner* incurring additional costs and expenses and/or a change in the *Contract Time*, the *Contractor* shall be liable to the *Owner* for the *Owner's* cost and damages arising therefrom, including but not limited to, all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the date of *Ready-for-Takeover* as the same may be extended through the provision of GC 6.5 – DELAYS and any later, actual date of *Ready-for-Takeover* achieved by the *Contractor*.
- 6.5.8 In the event of any delay arising for any reason as contemplated under GC 6.5 – DELAYS, then the *Contractor* shall actively take all reasonable steps to mitigate the impact of such delay in accordance with the standard of care as described in paragraph 3.9.1, including preparing and implementing a recovery plan in order to mitigate the impact and reduce the length and consequences of such delay.
- 6.5.9 Preventions or delays of performance related to weather conditions shall constitute a delay event only if the *Contractor* demonstrates that such conditions were abnormally inclement and could not have been reasonably anticipated from past history as recorded in local meteorological records for the 10 calendar years prior to the date of execution of the *Contract*. The *Contractor* must exercise reasonable efforts in mitigating the effects of inclement weather (whether or not anticipated) at its sole risk and expense.

- 6.5.10 The provision of an updated construction schedule does not constitute, expressly or implicitly, notice of delay or acceptance by the *Owner* of the dates for performance of the *Work* shown thereon or waiver of the obligation of the *Contractor* to perform the *Work* in accordance with the *Contract Time*.
- 6.5.11 Where the updated construction schedule indicates any delay in the performance of the *Work*, the *Contractor* shall provide to the *Owner* and the *Consultant*, in addition to the updated *Construction Schedule*, a detailed explanation of the reasons for any delay, the effect of the delay on the intended date of *Substantial Performance of the Work* and actions being taken by the *Contractor* to ensure that the date of *Substantial Performance of the Work* will be met.
- 6.5.12 A *Notice in Writing* shall be given to the *Owner* within 5 *Working Days* after the commencement of any delay in the performance of the *Work*.

GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

Revise the heading to the following:

GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT.

Delete paragraphs 7.1.6 and substitute new paragraph 7.1.6 as follows:

- 7.1.6 In addition to its right to terminate the *Contract* set out herein, the *Owner* may terminate the *Contract* at any time for any reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination and for direct costs sustained with respect to the *Products* that are supplied and installed, the demobilization of *Construction Equipment*, if applicable, and other direct costs sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.

Add new paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10, and 7.1.11 as follows:

- 7.1.7 The *Owner* may suspend *Work* under this *Contract* at any time for any reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and for direct costs sustained with respect to the *Products* that are supplied and installed, the demobilization of *Construction Equipment*, if applicable, and other direct costs sustained as a result of the suspension of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than 180 calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.
- 7.1.8 In the case of either a termination of the *Contract* or a suspension of the *Work* under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.9 Upon the resumption of the *Work* following a suspension under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE

WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavor to minimize the delay and financial consequences arising out of the suspension.

- 7.1.10 The *Contractor*’s obligation under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.
- 7.1.11 If any security check performed discloses a security problem that is not resolved by *Contractor* to the satisfaction of the *Owner* within 10 *Working Days* following receipt of written notice of such problem from the *Owner*, the *Owner* may terminate this *Contract* by giving *Contractor Notice in Writing* to that effect.

GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

Delete paragraph 7.2.2 in its entirety.

Delete subparagraph 7.2.3.1 in its entirety.

Delete subparagraphs 7.2.3.3 and 7.2.3.4 in its entirety and substitute new subparagraphs 7.2.3.3 and 7.2.3.4 as follows:

- .3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or
- .4 the *Owner* fails to comply with the requirements of the *Contract* to a substantial degree and the *Consultant* gives a written statement to the *Owner* and the *Contractor* that provides detail of such failure to comply with the requirements of the *Contract* to a substantial degree.

Delete the words “or terminate the *Contract*” from the end of paragraph 7.2.4 and substitute the following:

until the default is corrected, provided, however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the *Contractor*’s *Notice in Writing* to the *Owner* was given pursuant to subparagraph 7.2.3, then, 180 days after the delivery of the *Notice in Writing*, the *Contractor* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply.

GC 8.1 – AUTHORITY OF THE CONSULTANT

Delete the last sentence of paragraph 8.1.3 and substitute the following:

If it is subsequently determined that such instructions were at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.

GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION

Delete paragraph 8.3.6 in its entirety and substitute new paragraph 8.3.6 as follows:

- 8.3.6 When a dispute has not been resolved through negotiation or mediation within 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.3.5, either party may give a *Notice in*

Writing to the other party and to the *Consultant* inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the *Arbitration Act 1991*, S.O. 1991, c. 17, as amended. If the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding *Notice in Writing* within 10 *Working Days* of receipt of the invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

Delete paragraphs 8.3.7 and 8.3.8 in its entirety.

GC 9.1 – PROTECTION OF WORK AND PROPERTY

Delete subparagraphs 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1 as follows:

- .1 errors or omissions in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.9.1;

Delete paragraph 9.1.2 in its entirety and substitute new paragraph 9.1.2 as follows:

- 9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in or inferable from the *Contract Documents*, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.9.1.

Add new paragraphs 9.1.5 and 9.1.6 as follows:

- 9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the other work of *Other Contractors*, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.
- 9.1.6 The *Contractor* shall be responsible for securing the *Place of Work* at all times and shall take all reasonable precautions necessary to protect the *Place of Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours. Where the *Consultant* or the *Owner* deems the provision of security guard services to be necessary, the *Contractor* shall provide those services at the *Owner*'s expense.

GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES

Delete the words “, and” at the end of subparagraph 9.2.5.3 and substitute the following:

;

Delete “.” at the end of subparagraph 9.2.5.4 and substitute the following:

; and

Add new subparagraph 9.2.5.5 as follows:

- .5 Take all reasonably steps to mitigate the impact on *Contract Time* and *Contract Price*.

Add at the end of subparagraph 9.2.7.2 the following:

and

Delete the words “; and” at the end of subparagraph 9.2.7.3 and substitute the following:

.

Delete subparagraph 9.2.7.4 in its entirety.

Delete the word “and” at the end of subparagraph 9.2.8.3.

Delete “.” at the end of subparagraph 9.2.8.4 and substitute the following words:

;

Add new subparagraph 9.2.8.5 as follows:

.3 reimburse the *Owner* for costs of arising out of any delay.

GC 9.4 – CONSTRUCTION SAFETY

Add new paragraphs 9.4.6 and 9.4.7 as follows:

9.4.6 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current *WSIB* Clearance Certificate;
- .2 copies of the *Contractor*’s insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation setting out the *Contractor*’s in-house safety programs; and
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the *OHSA*.

9.4.7 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, elected officials, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *OHSA*, including the payment of legal fees and disbursements on a substantial indemnity basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

GC 9.5 – MOULD

Add subparagraph 9.5.3.5 as follows:

.5 reimburse the *Owner* for costs arising out of any delay.

GC 10.1 – TAXES AND DUTIES

Add new paragraphs 10.1.3 and 10.1.4 as follows:

- 10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.
- 10.1.4 In the event that new or additional taxes in respect of the *Work* are required by federal, provincial, territorial, regional or municipal legislation after the *Contract* is executed, the amount payable under this *Contract* shall be adjusted to include such taxes.

GC 10.2 – LAWS, NOTICES, PERMITS AND FEES

Delete the word “The” from the beginning of paragraph 10.2.4 and substitute following:

Subject to paragraph 3.4.1, the

Add to the end of paragraph 10.2.4 the following:

The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern.

GC 10.3 – PATENT FEES

Delete paragraph 10.3.2 in its entirety.

GC 10.4 – WORKERS’ COMPENSATION

Add new paragraph 10.4.2 as follows:

- 10.4.2 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers’ compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor*’s admission to the *Place of Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers’ compensation legislation.

GC 12.1 – READY FOR TAKEOVER

Delete paragraph 12.1.1 in its entirety and substitute with new paragraph 12.1.1 as follows:

- 12.1.1 The prerequisites to attaining *Ready-for-Takeover* of the *Work* include, without limitation, the following:

- .1 The *Consultant* has certified or verified the *Substantial Performance of the Work*.

- .2 Evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction.
- .3 Final cleaning and waste removal at the time of applying for *Ready-for-Takeover*, as required by the *Contract Documents*.
- .4 The delivery to the *Owner* of such operations and maintenance documents as are appropriate for the immediate operation and maintenance of the *Project*, as required by the *Contract Documents*.
- .5 The delivery of a copy of the *As-Built Drawings* completed to date.
- .6 Startup, the completion of commissioning and testing appropriate for immediate occupancy.
- .7 Ability to secure access to the *Work* has been provided to the *Owner*.
- .8 Demonstration and training, as required by the *Owner*, is scheduled by the *Contractor* to the satisfaction of the *Owner*.
- .9 The *Owner* has received *Notice in Writing* from the *Contractor* at least 90 calendar days prior to the date that the *Contractor* considers that the *Work* is *Ready-for-Takeover*.

For greater certainty, *Ready-for-Takeover* will not be achieved until the *Consultant* has certified and the *Owner* has confirmed, in writing, that it is satisfied that:

- .1 the *Owner* and *Consultant* have received clear inspection reports, together with all clearances and approvals required in order to use, operate and occupy the *Project* for its intended purposes, so that it is “ready for use” without reservation or condition, from all authorities having jurisdiction, as applicable with the *Project*;
- .2 the *Work* has been inspected and tested and it has been certified to the *Owner* that all mechanical, electrical, plumbing, heating, life and safety and all other building operating systems are in proper working order in accordance with the *Contract Documents* and, without limiting the generality of the foregoing, all building systems shall have been air and fluid balanced, and the *Owner* and the *Consultant* shall have received, reviewed and confirmed their acceptance of reports with respect to such testing and balancing; and
- .3 the *Owner* and the *Consultant* will have received and reviewed a “punch list” describing all items of the *Work* which are incomplete, outstanding, deficient or defective, and which remain to be completed or rectified with projected completion dates for each item specified.

<u>Add</u> new paragraphs 12.1.7, 12.1.8, 12.1.9, 12.1.10, 12.1.11, 12.1.12 as follows:

12.1.7 The *Contractor* shall ensure that *Ready-for-Takeover* occurs on or before the *Target Ready Date*.

12.1.8 For the purposes of the definition of *Ready-for-Takeover*, the *Contractor* acknowledges that the improvement required by this *Contract*, cannot be considered “ready for use” or otherwise satisfy the requirements for *Ready-for-Takeover* until *Substantial Performance of the Work* and the other requirements of this *Contract* have been fulfilled (as certified by the *Consultant* and as the *Owner* has confirmed, in writing) and all items listed below have been completed and/or provided in full:

- .1 submission of warranties, data manuals, *As-Built Drawings*, and *Specifications* in acceptable manner;
- .2 instruction of *Owner* in the operation of systems;
- .3 approval to occupy the completed work, from authorities having jurisdiction, including the issuance of an occupancy permit;
- .4 insurance advisory organization approval of sprinkler system received by *Consultant*;
- .5 submission to and acceptance by the *Consultant* of interim accounts of the *Work* showing all additions and deletions;
- .6 all systems and equipment started up and tested including final balancing;

- .7 all life safety systems verified by *Contractor* and *Consultant* as complying with the requirements of the *Contract Documents*;
- .8 local fire authority has inspected and confirmed that life safety systems are acceptable;
- .9 all spare parts and maintenance materials; and
- .10 all requirements of commissioning have been fulfilled.

and any other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* is substantially performed in accordance with the requirements of the *Contract Documents* and the municipal government, utilities and other authorities having jurisdiction, all of which must be completed before *Ready-for-Takeover*. The *Contractor* agrees that its failure to submit all of the listed materials and documentation in conformance with the *Contract Documents* shall constitute proper grounds for the *Consultant* to reject the *Contractor's* application that the *Project* is *Ready-for-Takeover*.

12.1.10 The *Contractor* agrees to provide written notice to the *Consultant* and the *Owner* no later than 90 calendar days before the date on which the *Project* will be *Ready-for-Takeover*, without limiting the obligation of the *Contractor* to adhere to the approved construction schedule. The *Owner* shall be reimbursed by the *Contractor* for all costs incurred by the *Owner* as a result of any delay in the date of *Ready-for-Takeover* beyond the *Target Ready Date*. The *Contractor* shall participate in full deficiency inspections with the *Owner* and/or its representatives no fewer than 7 *Working Days* prior to the date on which the *Project* will be *Ready-for-Takeover* and shall correct all deficiencies identified in these inspections at the cost of the *Contractor*, within a timeframe agreed upon by the *Owner* and *Contractor* in accordance with the *Contract*.

12.1.11 The *Contractor* agrees that *Ready-for-Takeover* shall not occur prior to that date which is 90 calendar days after the *Contractor* has delivered written notice that the *Project* will be *Ready-for-Takeover* and no later than the earlier of:

- .1 the *Target Ready Date*, or
- .2 the date on which the *Project* will be *Ready-for-Takeover*.

12.1.12 The *Contractor* will not make any public announcements or advertise respecting the *Project* (including the *Turnover Date*), without the prior written authorization from the *Owner*.

GC 12.3 – WARRANTY

Delete paragraph 12.3.1 and substitute with new paragraph 12.3.1 as follows:

12.3.1 The *Contractor* agrees to remedy, at its costs, any defects in materials and workmanship which are identified by the *Owner* within the warranty period specified in Article A-11 of the Agreement – WARRANTY PERIOD, or such longer periods as may be specified for certain *Products* or *Work*. This warranty shall cover labour and materials, including, without limitation, the costs of removal and replacement of covering materials. This warranty shall not limit extended warranties on any items of equipment or material called for elsewhere in the *Specifications* or otherwise provided by any manufacturer of such equipment or material.

Amend paragraph 12.3.2 by deleting the word “The” from the beginning of the first sentence and substituting it with the following words:

Subject to paragraph 3.4.1

Amend paragraph 12.3.3 by deleting the words “one year”.

Amend paragraph 12.3.6 by deleting the words “one year”.

Add new paragraphs 12.3.7, 12.3.8, 12.3.9, 12.3.10, 12.3.11, and 12.3.12 as follows:

- 12.3.7 The *Contractor* shall commence to correct any deficiency within 5 *Working Days* after receiving a *Notice in Writing* from the *Owner* or the *Consultant*, and shall complete the correction as expeditiously as possible, except that in case the deficiency would prevent maintaining security or keeping basic systems essential to the ongoing business of the *Owner* and/or the *Owner's* tenants, operational as designed, all necessary corrections and/or installation of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to attend to the service request on site within 4 hours and provide this emergency service within 24 hours of a request made in writing during the normal business hours of the *Contractor*, the *Owner* is authorized to carry out all necessary repairs or replacements at the *Contractor's* expense.
- 12.3.8 The carrying out of replacement work and making good of defects shall be executed at times convenient to the *Owner* and this may require *Work* outside of normal working hours at the *Contractor's* expense.
- 12.3.9 Any material or equipment requiring excessive servicing during the warranty period (or free maintenance period, if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.
- 12.3.10 The *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work*, services or materials performed or supplied by any *Subcontractor*, *Supplier* or other person in or about the *Work*, with the consent of the other party thereto where required by law or by the terms of the *Contract* or engagement. Such assignment shall be an addition to, and without detracting from, the warranty rights of the *Owner* under the provisions of the *Contract Documents* for the duration of the warranty period, with the exception of any extended warranties beyond the periods specified in Article A-11 of the Agreement – WARRANTY PERIOD which are subject to GC 12.3 – WARRANTY.
- 12.3.11 Specified warranty periods shall not be construed as limiting the provisions of GC 13.1 – INDEMNIFICATION.
- 12.3.12 The remedies of the *Owner* set forth above shall not deprive the *Owner* of any action, right or remedy otherwise available to it for breach of any provisions of the *Contract Documents* and the periods referred to above, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the *Owner* may pursue such other action or remedy.

GC 13.1 – INDEMNIFICATION

Delete paragraphs 13.1.1, 13.1.2, 13.1.3, 13.1.4, 13.1.5, and 13.1.6 in their entirety and substitute new paragraph 13.1.1 as follows:

- 13.1.1 The *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant*, and their respective agents, appointees, directors, elected officials, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the *Contractor's* performance of the *Contract*. Nothing in this paragraph shall limit any claim that the *Owner* may have under the insurance coverage to be provided under GC 11.1 – INSURANCE.

GC 13.2 – WAIVER OF CLAIMS

Delete the words “395 calendar days” at subparagraph 13.2.2.2 and substitute the following:

120 calendar days

Delete the last sentence of subparagraph 13.2.3.4 and substitute the following:

“Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:

- .1 if the *Contract Price* is \$2 million or less, the sum of \$50,000.00, before *Value Added Taxes*;
- .2 if the *Contract Price* exceeds \$2 million, the sum of \$100,000.00, before *Value Added Taxes*;

but, in any event, a defect or deficiency in the *Work* which affects the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents* shall be deemed to be a “substantial defects or deficiencies” regardless of the cost of repair.

Delete at the end of subparagraph 13.2.5.2 the words “paragraph 13.2.3.3;” and substitute the following:

paragraphs 13.2.3.3 and 13.2.3.4;

Add new PART 14 as follows:

PART 14 OTHER PROVISIONS

Add new GC 14.1 as follows:

GC 14.1 OWNERSHIP OF MATERIALS

- 14.1.1 All *Work* and *Products* supplied and delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*.

Add new GC 14.2 as follows:

GC 14.2 CONSTRUCTION LIENS

- 14.2.1 In the event that a claim for lien against the *Project* by a *Subcontractor* or *Supplier* is (a) registered against the *Project* despite the prohibition against registration of a claim for lien against the *Owner* under the *Payment Legislation* or (b) is given to the *Owner*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then the *Contractor* shall, at its own expense:

- .1 within 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, withdrawn or vacated by the posting of security or otherwise; and
- .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

- 14.2.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 14.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor*. The *Owner* may set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting

security and all legal fees and disbursements associated with discharging or vacating an improperly registered claim for lien or certificate of action or obtaining the release or withdrawal of a notice of lien or a claim for lien given to the *Owner*. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses. The entirety of GC 14.2 – CONSTRUCTION LIENS shall survive the termination or the completion of the *Contract* between the *Owner* and the *Contractor*.

Add new GC 14.3 as follows:

GC 14.3 CONTRACTOR DISCHARGE OF LIABILITIES

- 14.3.1 In addition to the obligations assumed by the *Contractor* pursuant to GC 3.6 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

Add new GC 14.4 as follows:

GC 14.4 RECORDS, DAILY REPORTS, AND DAILY LOGS

- 14.4.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in the Province of Ontario in accordance with requirements of law, but in any event for not less than 6 years from *Substantial Performance of the Work* and until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

Add new GC 14.5 as follows:

GC 14.5 CONTRACTOR EVALUATION

- 14.5.1 The *Contractor* may be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

Add new GC 14.6 as follows:

GC 14.6 EARLY OCCUPANCY BY THE OWNER

- 14.6.1 The *Owner* may take occupancy of a part or the entirety of the *Work* before *Substantial Performance of the Work* has been attained, in accordance with GC 14.6 – EARLY OCCUPANCY BY THE OWNER.
- 14.6.2 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the opinion of the *Consultant* and *Owner*, such entry or occupation does not prevent or substantially interfere with the *Contractor* in completion of the *Contract* in accordance with the approved construction schedule. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieves the *Contractor* from responsibility to complete the *Contract* or its obligations under the *Contract* (including the

responsibility of the *Contractor* for construction safety and the obligations as “constructor” under the health and safety legislation).

- 14.6.3 The use or occupancy of the *Work* or any part thereof by the *Owner* shall not be taken in any manner as an acceptance by the *Owner* of any work or any other part or parts of the *Work* or *Products* not in accordance with the *Contract Documents* or to relieve the *Contractor* or its surety from liability in respect of the observance or performance of the *Contract* save to the extent that loss or damage is caused during such use or occupancy by the *Owner* or by persons for whom the *Owner* is responsible. In particular, without limiting the generality of the foregoing, the use or occupancy of the *Work* or any part thereof by the *Owner* shall not release the *Contractor* from liability (including the responsibility of the *Contractor* for construction safety and the obligations as “constructors” under the health and safety legislation), or waive or impair any rights of the *Owner*.
- 14.6.4 Nothing in GC 14.6 – EARLY OCCUPANCY BY THE OWNER shall relieve the *Contractor* of the responsibility to complete the *Work* in a timely manner.

<u>Add</u> new GC 14.7 as follows:

GC 14.7 WINTER CONSTRUCTION METHODS

- 14.7.1 Winter construction may be required to achieve specified timelines for conformity with the *Contract Time*.
- 14.7.2 Measures required to permit winter construction shall be included in the *Contractor*’s means, methods, and the *Contract Price*. This may include but is not limited to winter concrete placement, excavation, soil compaction, snow clearing, ice removal, and all other required work to advance *Work*.