

**THE REGIONAL MUNICIPALITY OF YORK  
CORPORATE SERVICES DEPARTMENT  
PROPERTY SERVICES BRANCH**

**CONTRACT NO. RFTC-709-23-22021**

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**AMENDMENTS TO CCDC 2 STIPULATED PRICE CONTRACT 2020**

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

In the event that a paragraph is deleted, the numbering of the remaining paragraphs shall remain unchanged, and the numbering of the deleted paragraph will be retained, unused.

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

The Agreement Between Owner and Contractor of the Stipulated Price Contract, CCDC-2 2020 is hereby amended as follows:

### **ARTICLE A-1 THE WORK**

#### **Article 1.1**

Add the word “diligently” to the beginning of Article 1.1.

#### **Article 1.3**

Delete Article 1.3 in its entirety and replace it with the following:

1.3 attain:

.1 *Substantial Performance of the Contract* within 290 Working Days; and

.2 *Total Performance of the Contract* within 310 Working Days,

from the commencement date specified in the Owner’s written notice to commence the Work, (the “Commencement Date”) subject to potential adjustment pursuant to PART 6 – CHANGES IN THE WORK; and

1.3.3 notwithstanding the *Contract Time* stipulated above, the Contractor shall comply with, and meet the requirements of, the following *Interim Milestone(s)* subject to potential adjustment pursuant to PART 6 – CHANGE IN THE WORK:

- (a) complete Phase 1 within 130 Working Days from the Commencement Date. As further described in Drawing A011, Phase 1 includes completion of all work associated with the relocation, demolition, construction and installations, as identified on the phasing plan and described in the Specifications, including, but not limited to mobilization, Shop Drawings review, and delivery lead time; and
- (b) complete Phase 2 within 230 Working Days from the Commencement Date. As further described in Drawing A011, Phase 2 includes completion of all work associated with the relocation, demolition, construction, and installations, as identified on the phasing plan and described in the Specifications; and

- (c) complete Phase 3 within 290 Working Days from the Commencement Date. As further described in Drawings A011, Phase 3 includes completion of all work associated with the relocation, demolition, construction, and installations, as identified on the phasing plan and described in the Specifications.

The Contractor shall coordinate with the Owner to complete each phase before the next, in a manner that does not impact the warehouse operation and the phase completion timelines described above.

#### **New Article 1.4**

Add new Article 1.4 as follows:

- 1.4 provide all labour, materials, *Construction Equipment*, machinery, Products and work including, without limitation, all *Commissioning* services required by the *Contract Documents* to fully complete and construct the Work in accordance with, and to the satisfaction of, all applicable federal, provincial, municipal and local laws, regulations, rules, bylaws, guidelines, standards, permits, statutes, ordinances, codes, approvals, directions, instructions, authorizations, applicable to the *Place of the Work* (collectively the “**Laws and Regulations**”) including, without limitation, those relating to occupational health and safety and any and all obligations, responsibilities and duties required by or set out in any site plan agreement or approval, attributable to the Place of the Work or the proposed development therein, and furnish efficient business and construction administration and superintendence consistent with the interests of the Owner.

#### **ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

##### **Article 2.1**

Delete Article 2.1 in its entirety and replace it with the following:

- 2.1 The *Contract* represents the entire agreement between the *Contractor* and the *Owner* and supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bid documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS AND REFERENCE DOCUMENTS. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject matter of this agreement except as expressed in this *Contract*.

#### **ARTICLE A-3 CONTRACT DOCUMENTS**

Delete Article A-3 in its entirety and replace it with the following:

## **ARTICLE A-3 CONTRACT DOCUMENTS AND REFERENCE DOCUMENTS**

3.1 The following is a list of the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK and as defined in the DEFINITIONS. This list is subject to subsequent amendments in accordance with the provisions of the *Contract*. Unless otherwise indicated, terms used in the *Contract Documents* which are defined in the DEFINITIONS shall have the meanings designated in the DEFINITIONS.

- *Bid*
- CCDC 2 STIPULATED PRICE CONTRACT – 2020
  - Agreement between the Owner and Contractor
  - Definitions
  - The General Conditions of the Stipulated Price Contract (CCDC2- 2020)
- Amendments to CCDC 2 STIPULATED PRICE CONTRACT – 2020
  - Amendments to Agreement Between Owner and Contractor
  - Amendments to Definitions
  - Amendments to the General Conditions of the Stipulated Price Contract
- Supplementary Conditions
- Forms
- Permits
- Specifications
- Drawings
- Appendices
  - Appendix D to RFT – Insurance Requirements
  - Health and Safety Guide for Construction Contractors
  - Cabling and Wiring for Voice and Data Communications Standard
  - Security System Specifications - Honeywell
- Addenda

3.2 The following documents are provided for information purposes only and do not form part of the Contract Documents:

- Reports
  - Designated Substances Survey dated July 9, 2024 prepared by Leap Management Inc.

## **ARTICLE A-4 CONTRACT PRICE**

Add the following to the end of Article 4.1:

Notwithstanding the foregoing, the *Contractor* shall not be entitled to any increases in the *Contract Price*, or to the prices for any individual items, for any reason whatsoever

including, but not limited to, increases in prices due to inflation or the escalation of labour or material costs.

## **ARTICLE A-5 PAYMENT**

Delete Article A-5 in its entirety and replace it with the following:

### **ARTICLE A-5 PAYMENT**

- 5.1 Provided the *Contractor* is not in default under the *Contract*, and subject to the provisions of the *Contract*, the *Owner* shall pay the *Contractor* the undisputed amounts payable under *Proper Invoices* given to the *Owner* in accordance with the *Contract*, on account of the *Contract Price*.
- 5.2 Payment shall be made in Canadian funds.
- 5.3 Subject to the provisions of the *Contract*, and in accordance with the *Construction Act* the *Owner* will:
  - .1 pay to the *Contractor* the undisputed amounts payable under the *Proper Invoices* given by the *Contractor* to the *Owner* in accordance with the *Contract*, subject to the 10% statutory holdback and a 3% maintenance security;
  - .2 pay the 10% basic holdback, together with such *Value Added Taxes* as may be applicable, to the *Contractor* in accordance with the *Construction Act*;
  - .3 pay the 10% holdback for finishing work, together with such *Value Added Taxes* as may be applicable, to the *Contractor* in accordance with the *Construction Act*; and
  - .4 subject to any deductions made by the *Owner* in accordance with GC 5.11 – MAINTENANCE SECURITY, pay the 3% maintenance security, together with such *Value Added Taxes* as may be applicable, to the *Contractor* upon the expiration of the *Warranty Period* and the correction of all deficiencies and warranty issues to the satisfaction of the *Consultant* (whether they have occurred during the *Warranty Period* or thereafter).
- 5.4 If the *Contractor* is a non-resident of Canada, the applicable provisions of the *Income Tax Act*, RSC 1985, c 1 shall apply.
- 5.5 As such payments become due, the *Contractor* shall, in accordance with the terms of its agreements with any *Subcontractors*, *Suppliers* and workers, pay all of its *Subcontractors*, *Suppliers* and workers in full on account of work properly performed or *Products* properly supplied, as applicable, less any holdback monies retained in compliance with the *Construction Act*. If requested, the *Contractor* shall promptly provide evidence of all such payments to the *Owner* and the *Consultant*.

- 5.6 In the event of loss or damage occurring where payment becomes due under the property and other required insurance policies, payments shall be made to the *Contractor* or the *Owner*, as the case may be, in accordance with the provisions of GC 11.2 - INSURANCE.
- 5.7 The *Contractor* agrees to substantiate to the *Owner* and the *Consultant*, if requested, the amounts of all accounts representing any portion of the *Contract Price*, including without limitation, providing back up documents evidencing accounts or payments due to employees, *Subcontractors* and *Suppliers*.
- 5.8 The *Contractor* shall not be entitled to claim, demand or receive any interest as a result of delays in approval or payment by the *Owner* except as expressly permitted under the *Construction Act*.

#### **ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

##### **Article 6.2**

Add the words “by email” after the words “by prepaid first class mail”.

Add the following to the end of Article 6.2:

*Notices in Writing* and instructions given to the *Contractor’s Project Manager* or the *Site Supervisor* shall be deemed to have been received by the *Contractor*.

##### **Article 6.3**

Add the words “prepaid first class” before the word “mail”.

Delete the words “Working Day” and replace them with “Business Day”.

##### **Article 6.4**

Delete the words “the end of normal business hours” and replace them with “4:30 p.m. (Eastern Time)”.

**Delete the words “Working Day” and replace them with “Business Day”. New Article 6.6**

Add new Article 6.6 as follows:

- 6.6 Any notices required to be given under the *Construction Act*, including without limitation notices of non-payment, shall be given in accordance with the requirements for Notices in Writing prescribed by this Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING. *Proper Invoices* shall be given in accordance with the requirements of GC 5.2 – APPLICATIONS FOR PAYMENT.

#### **NEW ARTICLES**

Add the following new Articles to the Agreement Between Owner and Contractor:

## **ARTICLE A-9 TIME OF THE ESSENCE**

9.1 Time shall be of the essence in this Agreement.

## **ARTICLE A-10 CONFLICT OF INTEREST**

- 10.1 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*.
- 10.2 The *Contractor* shall disclose to the *Owner*, in writing, 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*.
- 10.3 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 accordance with the provisions of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

## **ARTICLE A-11 SEVERABILITY**

- 11.1 Each provision of the *Contract* shall be valid and enforceable to the fullest extent permitted by law. If any provision of the *Contract* or the application thereof to any person or circumstance is determined to be invalid or unenforceable to any extent:
- .1 the remainder of the *Contract* or the application of such provision to any other person or circumstance shall not be affected thereby; and
  - .2 the parties shall negotiate in good faith to amend the *Contract* to eliminate such invalidity, unenforceability and to restore this Agreement as near as possible to its original intent and effect.

## **ARTICLE A-12 LIQUIDATED DAMAGES**

- 12.1 For the purposes of GC 5.9 – LIQUIDATED DAMAGES, liquidated damages will be assessed in accordance with the following:
- .1 \$900 for each Day that the *Contractor* fails to achieve *Substantial Performance of the Contract* beyond the 290 *Working Days* specified in Article A-1 of the Agreement – THE WORK, paragraph 1.3.1; and

- .2 \$450 for each Day that the *Contractor* fails to achieve *Total Performance of the Contract* beyond the 310 *Working Days* specified in Article A-1 of the Agreement – THE WORK, paragraph 1.3.2.

12.2 The liquidated damages referred to above shall accrue concurrently in the event that the *work* required under the *Interim Milestone(s)* is not completed before the *Contract Time* has expired, but in no event shall the amount of liquidated damages assessed per Day exceed \$900 per Day.

#### **ARTICLE A-13 WARRANTY PERIOD**

13.1 For the purpose 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 *Substantial Performance of the Contract* for all *Work* completed on, or before, the date of *Substantial Performance of the Contract*; and
- .2 24 months from the date of *Total Performance of the Contract* for all *Work* completed after the date of *Substantial Performance of the Contract*.

13.2 In addition to the *Warranty Periods* specified above, the *Work* may be subject to extended warranties pursuant to GC 12.3 – WARRANTY, paragraph 12.3.6.

#### **ARTICLE A-14 COUNTERPARTS**

14.1 This *Contract* may be executed in counterparts, each of which shall be deemed to be an original, and all of which such counterparts, together, shall constitute one and the same *Contract*. Counterparts may be executed in original or electronic form, and the parties shall accept any signatures received in electronic form as if they were original signatures of the parties.



## **DEFINITIONS**

The Definitions of the Stipulated Price Contract CCDC – 2020 are hereby amended as follows:

### **Change Directive**

Delete the words “within the general scope of the *Contract Documents*”.

### **Consultant**

Add the following sentence after the last sentence:

Wherever used in the *Contract Documents*, the words “Engineer”, “Architect” and “*Consultant*” shall be regarded as synonymous.

### **Contract Documents**

Delete in its entirety and replace with the following:

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS AND REFERENCE DOCUMENTS and amendments agreed upon in writing between the parties.

### **Contract Time**

Delete in its entirety and replace with the following:

The *Contract Time* is the timeframe stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK for completion of the *Work*.

### **Contractor**

Add the following sentence after the last sentence:

Wherever used in the *Contract Documents*, the words “*Contractor*” and “*General Contractor*” shall be regarded as synonymous.

### **Drawings**

Delete in its entirety and replace with the following:

*Drawings* means all plans, profiles, drawings, sketches or copies thereof, used or prepared for, or in connection with, the *Work* and are included in the *Contract Documents*.

Wherever used in the *Contract Documents*, the words “*Drawings*” and “*Contract Drawings*” shall be regarded as synonymous.

### **Other Contractor**

Delete in its entirety and replace with the following:

*Other Contractor* means a person, firm or corporation or entity, not employed by or having a contract with the *Contractor*, and who is performing work at or near the *Site* directly or

indirectly on behalf of the *Owner*, the *Municipalities* or any other governmental agencies, property owners, developers or utility companies and their respective contractors.

#### **Owner**

Add the words “or its authorized agent or representative as designated to the *Contractor* but does not include the *Consultant*” after the word “Agreement”.

#### **Payment Legislation**

Delete in its entirety.

#### **Place of the Work**

Add the following sentence after the last sentence:

Wherever used in the *Contract Documents*, the terms “*Place of the Work*” and “*Site*” shall be regarded as synonymous.

#### **Ready for Takeover**

Delete in its entirety.

#### **Shop Drawings**

Delete “which the *Contractor* provides” and replace with “to be provided by the *Contractor*”.

#### **Subcontractor**

Delete in its entirety and replace with the following:

*Subcontractor* means a person, firm or corporation not contracting with or employed directly by the *Owner*, but who performs a part or parts of the *Work* or supplies *Products* under an agreement with the *Contractor* or under an agreement with another subcontractor.

#### **Substantial Performance of the Work**

Delete in its entirety

#### **Working Day**

Delete in its entirety and replace with the following:

*Working Day* means any Day when the Contractor is allowed to perform Work as specified in the Contract Documents.

Add the following new 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*.

**Authorities Having Jurisdiction**

The phrase *Authorities Having Jurisdiction* or the term *Authorities* means those authorities having jurisdiction under law over the *Work* or parts thereof.

**Bid**

*Bid* means the *Contractor's* response to the Request for Tender for this *Contract*.

**Business Day**

*Business Day* means any Day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

**Cash Allowance Disbursement Authorization**

A *Cash Allowance Disbursement Authorization* is an authorization to the *Contractor* to expend monies from cash allowances included in the Contract Price.

**Changes in the Work**

*Changes in the Work* means means additions, deletions, extensions, increases , decreases or other revisions to the work within the general scope of the Contract.

**Commission**

*Commission* means, and *Commissioning* refers to, the procedure which includes checking, testing, adjusting and measuring *Work* performed by the *Contractor* to demonstrate and verify the installation, operation and performance of all components and the entire system.

**Construction Act**

*Construction Act* means Ontario's *Construction Act*, RSO 1990, c. C.30 as amended or replaced from time to time.

**Constructor**

*Constructor* is as defined pursuant to the *Occupational Health and Safety Act*, RSO 1990, c O.1. as amended or replaced from time to time.

**Contemplated Change Order**

*Contemplated Change Order* or *CCO* means a document prepared by the *Owner* describing a proposed *Change in the Work* that is issued to the *Contractor*.

**Contract Schedule**

*Contract Schedule* means the schedule indicating the timing of major activities of the *Work* submitted by the *Contractor* and approved in writing by the *Owner* including attaining *Substantial Performance of the Contract* by the Substantial Performance of the Contract date.

**Day**

Day means a calendar day.

**Equivalent**

*Equivalent* means an alternative *Product*, material or manufacturer proposed by the *Contractor* during the course of the *Contract* and demonstrated to the *Owner's* and the *Consultant's* satisfaction as being equivalent to the particular *Product*, material or manufacturer prescribed by the *Contract Documents* taking into consideration factors which include suitability with operational requirements and compatibility, interchangeability or interoperability with existing equipment.

**Install**

*Install* means completion of the following activities, including the associated labour, services, plant, construction machinery and equipment required to:

- .1 Remove *Products* from storage and locate for placement,
- .2 Position and adjust *Products* for final placement,
- .3 Affix and anchor *Products* in final placement, in accordance with manufacturers' instructions and *Contract Documents*,
- .4 *Commission* and adjust *Products* for proper operation.

**Interim Milestone**

*Interim Milestone* means a scheduled event signifying the completion of a major deliverable or a set of related deliverables.

**Make Good**

*Make Good* means repairing, restoring, refurbishing, rehabilitating, or performing filling operation on any existing components disturbed due to *Work* of this *Contract*, to at least the condition existing at the commencement of the *Work*, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound

attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.

### **Municipalities**

*Municipalities* means the lower-tier municipality or municipalities and upper-tier municipality or municipalities, as defined in the *Municipal Act, 2001*, SO 2001, c 25, in which the *Work* will be undertaken.

### **Payment Period**

*Payment Period* means a one-month period during which work was performed. The start and end dates of the *Payment Period* will be determined by the *Owner* and the *Contractor* at the pre-construction meeting. In the event the *Owner* and the *Contractor* do not determine the start and end dates of the *Payment Period*, the start and end dates of the *Payment Period* are deemed to be the first Day of the month and the last Day of the month, respectively.

### **Pre-Invoice Submission Meeting**

*Pre-Invoice Submission Meeting* shall have the meaning prescribed in GC 5.2 – APPLICATIONS FOR PAYMENT, paragraph 5.2.5.

### **Preliminary Estimate for Payment (PEP)**

*Preliminary Estimate for Payment (PEP)* means the document that contains a description of the *Work* performed during a *Payment Period* (or such other period as may be expressly stipulated in the *Contract*) in the form attached as Form 1.

### **Professional Engineer**

*Professional Engineer* means a person, firm or corporation legally qualified to practice professional engineering in the Province of Ontario.

### **Project Manager**

*Project Manager* shall have the meaning prescribed in GC 3.5 – Contractor's Personnel Commitment, paragraph 3.5.2.

### **Proper Invoice**

*Proper Invoice* shall have the meaning given to it in the *Construction Act*.

### **Proper Invoice Submission Date**

*Proper Invoice Submission Date* shall have the meaning prescribed in GC 5.2 – APPLICATIONS FOR PAYMENT, paragraph 5.2.7.

### **Provide**

Provide means to *Supply* and *Install*.

**Region**

*Region* means The Regional Municipality of York or its authorized agent or representative as designated to the *Contractor* but does not include the *Consultant*.

**Reports**

*Reports* means the *Reports* set out in Article A-3 of the Agreement – CONTRACT DOCUMENTS AND REFERENCE DOCUMENTS.

**Site**

*Site* shall have the same meaning as the *Place of the Work* as defined in the Definitions.

**Site Supervisor**

*Site Supervisor* shall have the meaning prescribed in GC 3.5 – Contractor’s Personnel Commitment, paragraph 3.5.2.

**Submittals**

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as:

1. *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and
2. *As-Built Drawings* and manuals that provide instructions for the operation and maintenance of the *Work*.

**Substantial Performance of the Contract**

*Substantial Performance of the Contract* means when the *Contract* is substantially performed pursuant to the *Construction Act*. The *Contract* may specify additional requirements which must be met in order to obtain *Substantial Performance of the Contract*.

**Supply**

*Supply* means completion of the following activities, including the associated labour, services, plant, construction machinery and equipment required to:

- .1 Fabricate or purchase *Products*;
- .2 Deliver *Products* to the Place of the Work;
- .3 Unload *Products*; and
- .4 Store *Products* in accordance with manufacturers’ instructions.

Wherever used in the *Contract Documents*, the words “*Supply*” and “*Furnish*” shall be regarded as synonymous.

**Total Performance of the Contract**

*Total Performance of the Contract* means when the *Contract* is deemed to be completed pursuant to the *Construction Act*. If such legislation is not in force or does not contain such definition, *Total Performance of the Contract* shall have been reached when the entire *Work*, except those items arising from the provisions of GC 12.3 - WARRANTY, has been performed to the requirements of the *Contract* as certified by the *Owner*. The *Contract* may specify additional requirements which must be met in order to obtain *Total Performance of the Contract*.

**Warranty Period**

The *Warranty Period* shall have the meaning prescribed in GC 12.4 – Warranty, paragraph 12.3.1.

**Working Day**

*Working Day* means any Day when the Contractor is allowed to perform Work as specified in the Contract Documents.

## GENERAL CONDITIONS

The General Conditions of the Stipulated Price Contract CCDC 2 – 2020 are hereby amended as follows:

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

##### Paragraph 1.1.1

Delete in its entirety and replace it with the following:

- 1.1.1 The intent of the *Contract Documents* is to include the construction, labour, *Products, Construction Equipment* and other services necessary, complementary or ancillary, for the performance and completion of the *Work* by the *Contractor* in accordance with the *Contract Documents* or reasonably inferable from them.

##### Paragraph 1.1.4

Delete in its entirety.

##### Paragraph 1.1.5

Delete in its entirety and replace it with the following:

- 1.1.5 In the event of conflicts or inconsistencies between *Contract Documents*, the following shall apply:
  - .1 figured dimensions shown on a Drawing shall govern even though they may differ from dimensions scaled on the same Drawing;
  - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date;
  - .3 *Specifications* shall govern over *Drawings*;
  - .4 Division 1 of the *Specifications* shall govern over all other *Specifications*;
  - .5 the *Specifications* shall govern over the *Bid*;
  - .6 Definitions shall govern over the *Specifications*;
  - .7 General Conditions shall govern over Definitions;
  - .8 Supplementary Conditions shall govern over General Conditions;
  - .9 Permits shall govern over *Supplementary Conditions*;
  - .10 the Agreement between the *Owner* and the *Contractor* shall govern over all other documents;



- .11 executed amendments to specific parts of the *Contract Documents* shall govern over the executed specific parts in *Contract Documents* affected by the amendments;
- .12 later dated documents shall govern over earlier dated documents of the same type; and
- .13 in case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

**Paragraph 1.1.9**

Add the following after the word "Suppliers":

or in establishing the extent of the *Work* to be performed by a trade. The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will 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.

**Paragraph 1.1.10**

Delete in its entirety and replace it with the following:

1.1.10 *Specifications, Drawings, models, and copies thereof furnished by the Consultant are not the Contractor's property, with the exception of the signed sets of the Contract Documents, which shall belong to each party to the Contract. All Specifications, Drawings and models furnished by the Consultant are to be used only with respect to the Work and are not to be used on other work. These Specifications, Drawings and models are not to be copied or altered in any manner without the written authorization of the Consultant*

**New Paragraphs**

Add the following new paragraphs to GC 1.1:

- 1.1.12 All documents and data furnished by the *Owner* to the *Contractor* are and shall remain the property of the *Owner*, with the exception of the signed sets of the *Contract Documents* which shall belong to each party to the *Contract*. The *Contractor* may, at its cost, copy, use and communicate any such documents for the sole purposes of performing the *Work*. Such documents shall not, without the written authorization of the *Owner*, be used, copied or communicated to a third party by the *Contractor* except as necessary for the sole purposes of performing the *Work*.

- 1.1.13 All documents developed in connection with the *Work* by the *Contractor* shall become the sole property of the *Owner* with full and absolute title thereto. The *Contractor* shall execute and deliver and shall cause the *Subcontractors* and *Suppliers* to execute and deliver for no additional consideration all such transfers, assignments, deeds and other conveyances as the *Owner* may require to give effect to the foregoing. The *Owner* shall provide or cause to be provided without royalty, fee or other costs to the *Contractor* all licenses necessary to enable the *Contractor* to use such documents in connection with the *Work*, including the correction of defects and deficiencies during the *Warranty Period*.
- 1.1.14 The *Contractor* declares and represents that in entering into the *Contract* with the *Owner* for the performance of the *Work*, it has reviewed the *Contract Documents* including, without limitation, the *Reports* provided by the *Owner* and has satisfied itself of the character of the *Work* to be done and all local conditions including, without limitation, the position of all pole lines, conduits, watermains, sewers and other underground and overground utilities and structures identified in or reasonably inferable from the *Contract Documents*, and the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* which are identified in, or reasonably inferred from, the *Contract Documents*, which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfill, than was contemplated or known when the *Contract* was signed.
- 1.1.15 Headings of all General Conditions of the Stipulated Price Contract and of all sections of the *Specifications* are inserted for reference convenience only and shall not affect the *Work*, nor the interpretation of the *Contract Documents*.
- 1.1.16 Syntax
- .1 Where the words “accepted”, “reviewed”, “designated” “directed”, “inspected”, “instructed”, “permitted”, “required”, and “selected” are used in standards or in the *Contract Documents*, they are deemed to be followed by the words “by the *Consultant* and the *Owner*”, unless the context provides otherwise.
  - .2 Where the words “acceptable”, “submit” and “satisfactory” are used in standards or in the *Contract Documents*, they are deemed to be followed by the words “to the *Consultant* and the *Owner*”, unless the context provides otherwise.
  - .3 Where the masculine is used in the *Contract Documents*, it shall be read and interpreted as if the feminine or neuter had been used when the context of the statement so requires, and the rest of the sentence, clause,

paragraph or item shall be interpreted as if all changes in grammar, gender or terminology thereby rendered necessary had been made.

- .4 The words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
  - .5 Wherever words "indicated", "shown", "noted", "listed", "specified" or similar words are used in the *Contract Documents* they are understood, unless otherwise defined, to mean "indicated", "shown", "noted", "listed", or "specified" on the *Contract Documents*, unless the context provides otherwise.
  - .6 Reference to the word "Section" or "Sections" in the *Contract Documents* shall mean a Section or Sections of the Divisions of the *Specifications*, if applicable.
- 1.1.17 Unless otherwise expressly provided herein, whenever in the *Contract* any matter is subject to the consent, approval, determination, authorization, consideration or authority of the *Owner* or is to be acceptable or to the satisfaction of the *Owner*, such consent, approval, determination, authorization, consideration, authority or determination of acceptability or satisfaction shall be in the sole discretion of the *Owner* acting reasonably.
- 1.1.18 No implied terms or obligations of any kind by or on behalf of the *Owner* shall arise from anything in the *Contract* and the express covenants and agreements therein contained and made by the *Owner* are the only covenants and agreements upon which any rights against the *Owner* are to be founded.
- 1.1.19 Any *Notice in Writing*, including requests, demands, instructions, consents, authorizations, approvals, certificates, determinations or other communications, with the exception of *Proper Invoices* under PART 5 - PAYMENT shall be in writing and shall be given in the manner set forth in Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING, and unless a specific time period for the giving of such notice is specified in the *Contract Documents*, such notice shall not be unreasonably delayed.
- 1.1.20 The *Contract Documents* may contain references to requirements, practices, codes, regulations, manuals, standards, specifications and drawings of associations, societies, councils, boards, foundations and other government bodies, including Ontario Provincial Standards ("OPS") specifications and drawings, which are incorporated into the *Contract* by reference, and have the same force and effect as if printed in full.

- 1.1.21 Where reference is made to a requirement, practice, code, regulation, manual, standard, specification or drawings of an association, society, council, board, foundation or other government body, including OPS specifications and drawings, it is understood that the latest revision shall apply, unless indicated otherwise in the *Contract Documents*.
- 1.1.22 Where applicable, OPS specifications and drawings shall be amended as follows:  
“Engineer”, “Ministry” and “Authority” shall mean the *Owner*.
- 1.1.23 Any reference in the *Contract Documents* to a statute shall be deemed to mean the statute which is, or becomes, in force during the performance of the Work, as amended or replaced from time to time, and also mean all regulations enacted under such statute.
- 1.1.24 It is the parties’ mutual intention that the *Contract Documents* comply with section 4 of the Canada-European Union Comprehensive Economic and Trade Agreement and section 3 of the Canadian Free Trade Agreement. Any reference in the *Contract Documents* to a particular *Product*, material or manufacturer shall be deemed to include the words “or *Equivalent*” immediately following such reference (unless the words “or *Equivalent*” already follow the *Product*, material or manufacturer reference). Where the words “No *Equivalent*”, “No *Equivalents*” or “No Other *Equivalents*” follow the *Product*, material or manufacturer reference, the *Owner* may deny or refuse to consider a proposal for an *Equivalent* for reasons which include suitability with operational requirements and compatibility, interchangeability or interoperability with existing equipment.
- 1.1.25 At the request of the *Contractor*, the *Owner* may provide printed copies of the *Contract Documents* at the *Contractor's* expense.

## **GC 1.2 LAW OF THE CONTRACT**

### **New Paragraph**

Add new paragraph 1.2.2 as follows:

- 1.2.2 The Contractor covenants and agrees to abide by and comply with all *Laws and Regulations* applicable or related to this Agreement.

## **GC 1.3 RIGHTS AND REMEDIES**

### **Paragraph 1.3.2**

Delete the word “No” from the beginning of the first sentence and replace it with the words “Except with respect to the notice requirements set out in GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, paragraph 6.4.1, GC 6.5 – DELAYS, paragraph 6.5.4, and GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE, paragraph 6.6.1, no”.

### **New Paragraph**

Add the following new paragraph to GC 1.3:

- 1.3.3 Notwithstanding paragraph 1.3.1, the *Owner* shall not be liable, whether in contract, tort, or any other theory of law or statute, for any claim arising from any prior negotiation, representation, or agreement, whether written or oral, which is superseded by the *Contract* under Article A-2 of the Agreement - AGREEMENTS AND AMENDMENTS.

### **GC 1.4 ASSIGNMENT**

#### **Paragraph 1.4.1**

Delete in its entirety and replace it with the following:

- 1.4.1 The *Contract*, or any part thereof, including, the *Work* to be performed thereunder or any monies payable thereunder shall not be transferred, assigned (including an assignment by way of security) or otherwise disposed of by the *Contractor* without the written consent of the *Owner*. It is further agreed that the said written consent shall not, under any circumstances, relieve the *Contractor* of its liabilities and obligations under the *Contract*.

### **New Paragraph**

Add the following new paragraphs to GC 1.4:

- 1.4.2 If the *Owner* terminates the *Contractor's* right to continue with the *Work* or terminates the *Contract* pursuant to GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT, the *Owner* shall have the right to require the *Contractor* to provide an assignment or transfer forthwith of any contract between the *Contractor* and a *Subcontractor* or a *Supplier* for the performance of the *Work*.
- 1.4.3 The *Contractor* shall include in its contacts with *Subcontractors* and *Suppliers* a requirement to assign their contract with the *Contractor* to the *Owner* in instances where the *Owner* terminates the *Contract* in accordance with GC 7.1.7, if required by the *Owner*.

### **NEW GENERAL CONDITIONS**

Add the following new General Conditions to PART 1 – GENERAL PROVISIONS

#### **GC 1.5 CO-OPERATION, CONSULTATION AND CO-ORDINATION**

- 1.5.1 The *Contractor* shall, at all times and as part of the *Work*, fully assist, co-operate, consult and co-ordinate with the *Consultant* and any other consultants or other entities retained or identified by the *Owner* which are related to the *Project* (collectively, the “**Other Entities**”). The objective of such assistance, co-operation,

consultation and co-ordination is to make certain the *Work* is properly coordinated with and integrated with the work and services of the *Other Entities*.

- 1.5.2 Without limiting the generality of any other provision in the *Contract*, the *Contractor* shall attend all design, construction, general co-ordination and progress meetings relating to the *Work* between the *Consultant*, the *Owner* and *Other Entities* and any other meeting relating to the *Project* as requested by the *Owner* to discuss and resolve all matters and issues relating to the *Project*. The *Contractor* shall, on a timely basis, prepare and distribute detailed minutes to the *Owner* of the construction and progress meetings which it attends, if requested by the *Owner*.

#### **GC 1.6 NON-RESIDENT**

- 1.6.1 If the *Contractor* is non-resident in Ontario or Canada it shall obtain a GST/HST Registration Number prior to commencement of the *Work*.
- 1.6.2 The *Contractor* shall ensure that all *Subcontractors* whom it proposes to use for carrying out any of the *Work* and who are non-resident in Ontario or Canada have obtained a GST/HST Registration Number before they commence any *Work* under the *Contract*.

#### **GC 1.7 REVIEW BY OWNER AND REVIEW BY CONSULTANT**

- 1.7.1 Neither the *Owner's* or *Consultant's* receipt, review or approval of any documents or the *Work* nor the failure of the *Owner* or *Consultant* to provide comment shall limit, waive or diminish the *Contractor's* obligations, responsibilities, duties or liabilities under the *Contract*. The review or approval by the *Owner* or *Consultant* is intended only to ascertain that the document or the performance of the *Contractor's* duties, liabilities, responsibilities or obligations under the *Contract* including, without limitation, the *Work* generally meets the intention of the *Contract* and is not an assurance or confirmation of the adequacy, quality, fitness, suitability or correctness of the *Contractor's* obligations, responsibilities, duties and liabilities under the *Contract* including, without limitation, the *Work*, for which the *Contractor* is solely responsible in accordance with the *Contract*.

#### **GC 1.8 DOCUMENT REVIEW BY THE CONTRACTOR**

- 1.8.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in GC 3.9 – PERFORMANCE BY CONTRACTOR, paragraph 3.9.1. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs

resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care.

- 1.8.2 If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the Work affected until the *Contractor* has received corrected or missing information from the *Consultant* or until the error, inconsistency or omission has been otherwise addressed. In dealing with such error, inconsistency or omission the *Contractor* shall co-operate with the *Owner* in good faith to resolve such errors, inconsistency or omission so as to avoid any increase in the *Contract Price* or delay in the progress of the *Work*.
- 1.8.3 The lack of reference on a Drawing or in a Specification to labour or *Products* that are required or normally recognized within the applicable trade practice as being necessary for the complete execution of the Work shall not constitute an error, inconsistency or omission.
- 1.8.4 The issuance of requests for information by the *Contractor* shall not entitle the *Contractor* to any increases to the *Contract Price* or *Contract Time*.
- 1.8.5 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, and request a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

## **PART 2 ADMINISTRATION OF THE CONTRACT**

### **GC 2.2 ROLE OF THE CONSULTANT**

#### **Paragraph 2.2.3**

Add the following sentence after the last sentence:

The presence of such *Project* representatives at the *Place of the Work* will not abrogate any of the *Contractor's* responsibility to perform the Work as required by the *Contract Documents*.

#### **Paragraph 2.2.4**

Delete the words "and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PAYMENT and GC 5.5 – FINAL PAYMENT" and replace them with ", subject to the Owner's approval and the conditions of the Contract".

**Paragraph 2.2.5**

Add the words “to the Contractor” after the words “The *Consultant* will not be responsible” in both the first and second sentences.

Add the word “schedules” after the word “techniques” in the first sentence.

**Paragraph 2.2.6**

Delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the” and replace them with “The”.

**Paragraph 2.2.12**

Add the following after the last sentence:

If, in the opinion of the *Contractor*, performance of the *Supplemental Instruction* will result in an increase in the *Contract Price* or to the *Contract Time*, the *Contractor* shall, within 5 *Working Days* of receipt of the *Supplemental Instruction*, provide the *Consultant* with *Notice in Writing* of the cause and duration of the delay and of any increase in *Contract Price*. Failure to provide the *Notice in Writing* shall be a deemed acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*.

**Paragraph 2.2.13**

Delete in its entirety and replace with the following:

2.2.13 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Contractor’s Submittals* which are provided, in accordance with the *Contract Documents*. The *Consultant’s* review of the *Shop Drawings*, samples and *Submittals* and on-site observation of the construction work is to determine if the *Contractor’s Submittals* and *Work* appear to be in general conformance with the design set forth in the *Contract Documents* prepared by the *Consultant*.

**Paragraph 2.2.15**

Delete the words “Work and verify that Ready for Takeover has been attained” and replace them with “Contract as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE CONTRACT AND PAYMENT OF HOLDBACK”.

**Paragraph 2.2.16**

Add the words “to the Contractor” after the words “does not guarantee”.

**Paragraph 2.2.18**

Delete the words “against whom the Contractor makes no reasonable objection and”.



## New Paragraphs

Add the following new paragraphs to GC 2.2:

- 2.2.19 The *Consultant* will conduct reviews of the *Work* to determine the date of *Total Performance of the Contract* as provided in GC 5.6 – FINAL PAYMENT.
- 2.2.20 The *Consultant* shall not be required to decide on questions arising under agreements or *Contracts* between the *Contractor* and the *Contractor's Subcontractors or Suppliers*.
- 2.2.21 The *Consultant's* review under this GC 2.2 shall not be considered to be complete in every detail or exhaustive and shall also not relieve any *Contractor, Subcontractor, Supplier, manufacturer, fabricator, or other third party* of responsibility for any deficiency that may exist or for any departures or deviations from the requirements of the *Contract Documents* or of the responsibility to co-ordinate the *Work*, or portion of the *Work*, of one trade with another.
- 2.2.22 The *Consultant's* services will be performed solely for the benefit of the *Owner* and no *Contractor, Subcontractor, manufacturer, Supplier, fabricator or other third party* shall have any claim against the *Consultant* as a result of the contract between the *Consultant* and the *Owner* or the performance or non-performance of the *Consultant's* services. The *Contractor* shall bring this provision to the attention of the parties with whom it contracts and have them do the same with those with whom they contract.

## GC 2.3 REVIEW AND INSPECTION OF THE WORK

### Paragraph 2.3.1

Add the words “and Owner” after the words “the *Consultant*” in the second sentence.

### Paragraph 2.3.2

Delete the words “Laws or ordinances” and replace them with “*Laws and Regulations*”.

### Paragraph 2.3.6

Delete in its entirety and replace with the following:

- 2.3.6 The *Contractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is required, by the *Contract Documents* or the *Consultant*, to be performed by the *Contractor*, or if such test or inspection is required by the *Laws and Regulations*. The cost of the testing required by the *Consultant* will be payable by the *Contractor* only if the test results show that the specification requirements have not been met because of the *Contractor's* negligence.

### **Paragraph 2.3.7**

Delete the words “designated in” and replace them with “required by”.

### **New Paragraphs**

Add the following new paragraphs to GC 2.3:

- 2.3.8 The *Contractor* shall immediately inform the *Owner* and the *Consultant* of any notices, warnings or asserted violations issued by the *Authorities Having Jurisdiction* relating to the *Work*.
- 2.3.9 The *Consultant’s* or *Owner’s* review shall not be considered to be complete in every detail or exhaustive and shall also not relieve any *Contractor, Subcontractor, Supplier, manufacturer, fabricator, or other third party* of responsibility for any deficiency that may exist or for any departures or deviations from the requirements of the *Contract Documents* or of the responsibility to co-ordinate the *Work*, or portion of the *Work*, of one trade with another.
- 2.3.10 Where standards of performance are specified in the *Contract Documents* and the *Work* does not comply with the performance specified, such deficiency shall be corrected as directed by the *Consultant*. Any testing of work identified as defective in accordance with GC 2.4 – DEFECTIVE WORK, including retesting required by the *Owner* to verify performance, shall be done at the *Contractor’s* expense.

### **GC 2.4 DEFECTIVE WORK**

Delete in its entirety and replace with the following:

#### **GC 2.4 DEFECTIVE WORK**

- 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* or *Owner* as failing to conform to the *Contract Documents*, at the *Contractor’s* expense, whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective *Products* or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall promptly correct, at its own expense, defects or deficiencies in the *Work* which appear prior to and during the *Warranty Period(s)* specified in the *Contract Documents*. The *Contractor* shall rectify, at its own expense, in an acceptable manner all other defective work and like deficiencies throughout the *Work* whether or not they are specifically identified by the *Owner* or the *Consultant*.

- 2.4.3 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner* acting reasonably, adversely affects the day-to-day operation of the *Owner*.
- 2.4.4 The *Contractor* agrees to correct and pay for damage resulting from corrections made under the requirements of paragraphs 2.4.1 and 2.4.2.
- 2.4.5 The *Contractor* shall pay the *Owner* for costs incurred by the *Owner*, the *Owner's* own forces or the *Other Contractors*, for work destroyed or damaged or any alterations necessitated by the *Contractor's* removal, replacement or re-execution of defective work within 10 *Business Days* upon receipt of the *Owner's Notice in Writing*. The *Owner* may appoint the *Contractor* to rectify any such deficiencies at the *Contractor's* expense.
- 2.4.6 If in the opinion of the *Consultant* or *Owner* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the value of such work as is necessary to correct any non-compliance with the *Contract Documents*, the amount of which will be determined by the *Owner* acting reasonably and in accordance with GC 5.12 - WITHHOLDING OF PAYMENT.
- 2.4.7 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner* acting reasonably, adversely affects the day-to-day operations of the *Owner*.
- 2.4.8 The *Consultant* shall not have any power to waive any obligations of the *Contractor* for the furnishing by the *Contractor* of good materials and of its performing good work as herein described and in full accordance with the *Contract Documents*. No failure or omission of the *Owner* or the *Consultant* to condemn any defective work or material shall release the *Contractor* from the obligation to at once tear out, remove and properly replace the same at any time upon the discovery of said defective work or material, at the *Contractor's* expense. In case the *Contractor* should refuse or neglect to remove any rejected work or material within 48 hours after written notice from the *Owner* or, if the removal would reasonably require more than 48 hours to complete, the *Contractor* has failed to commence the removal work within 48 hours, such work or material may be removed by order of the *Owner* at the *Contractor's* expense and the *Owner* may deduct the cost of same from any monies otherwise due or that may become due to the *Contractor*.
- 2.4.9 The carrying out of replacement *Work* and *Making Good* of defects shall be executed at times convenient to the *Owner* and may require work outside of normal working hours at the *Contractor's* expense.

- 2.4.10 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*.

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

#### **New Paragraphs**

Add the following new paragraphs to GC 3.1:

- 3.1.3 Prior to commencing the *Work* and individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper fabrication, assembly, installation and 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 contradictions exist, 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 Without limiting the generality of the foregoing, the *Contractor* is responsible for the coordination of the various parts of the *Work* so that no part is left in an unfinished or incomplete condition.
- 3.1.5 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform these functions where required by law or by the *Contract Documents* and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.1.6 The *Contractor* is solely responsible for the quality of the *Work* and shall undertake any quality control activities specified in the *Contract Documents*.

### **GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS**

Delete in its entirety and replace with the following:

#### **GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS**

- 3.2.1 The *Owner* reserves the right, at any time during the *Contractor's* performance of the *Work* or the *Warranty Period*, to request that the *Contractor* grant, to the *Owner*, its agents or *Other Contractors*, access to the *Place of the Work* for the purpose of constructing or installing collateral work as the *Owner* may deem necessary.
- 3.2.2 The *Contractor* shall co-ordinate the *Work* with the work of *Other Contractors* and, where applicable, prepare all connections as specified or shown in the *Contract Documents*.
- 3.2.3 The *Contractor* agrees not to interfere with, or prevent, the performance of such collateral work by the agents or *Other Contractors* of the *Owner*. In the event that the *Contractor* is delayed in the performance of a critical path activity on the *Construction Schedule* by the construction or installation of such collateral works, this shall be considered a delay event pursuant to GC 6.5 – DELAYS, paragraph 6.5.1.
- 3.2.4 Entry by the *Owner*, its agents or *Other Contractors* to the *Place of the Work* does not constitute acceptance of the *Work* and does not relieve the *Contractor* of its responsibilities under the *Contract*.
- 3.2.5 The placement, installation and connection of collateral work by the *Owner*, its agents or *Other Contractors* on, and to, the *Contractor's Work* does not relieve the *Contractor* of its responsibilities under the *Contract* including any warranty obligations.
- 3.2.6 In the event that the *Work* coincides with the work of the *Owner*, *Other Contractors*, utility companies or *Municipalities*, the *Contractor* shall cooperate with the *Owner*, *Other Contractors*, utility companies and *Municipalities* in order to facilitate free access to their work at all times. The *Owner* reserves the right to alter the method of operations on this *Contract* to avoid interference with other work. The *Contractor* shall also provide separations in time or space (a minimum of 50 metres from the *Other Contractors' proposed work area*) in order to avoid placing the *Owner* in the position of "constructor" within the meaning prescribed in the Occupational Health and Safety Act, RSO 1990, c O.1.
- 3.2.7 The *Contractor* shall have right to remove representatives of *Other Contractors*, the *Consultant* and the *Owner* from the *Site* for failure to adhere to reasonable safety instructions.

### **GC 3.3 TEMPORARY WORK**

#### **Paragraph 3.3.3**

Delete in its entirety.

## GC 3.4 CONSTRUCTION SCHEDULE

Delete in its entirety and replace with the following:

### GC 3.4 CONSTRUCTION SCHEDULE

#### 3.4.1 The *Contractor* shall:

- .1 prior to commencement of construction, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance a construction schedule indicating the critical path for the *Project*, using “Microsoft Project” or *Equivalent*, demonstrating that the *Work* will be performed in conformity with the *Contract Time*, and shall conform to the phasing and sequencing requirements for the *Work* as set out in the *Contract Documents* or as otherwise required by the *Consultant* or the *Owner* including, without limitation, a *Products* delivery schedule with respect to the *Products* whose delivery is critical to the schedule of the *Work*. The *Contractor* shall provide the schedule information required by this paragraph 3.4.1.1 in both electronic format and hard copy. Once approved by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* under this paragraph 3.4.1.1, as updated by the *Contractor* and approved by the *Owner*, shall become the “**Construction Schedule**”;
- .2 monitor the progress of the *Work* on a weekly basis relative to the *Construction Schedule* and update and submit to the *Owner* and the *Consultant* the *Construction Schedule* on a monthly basis;
- .3 perform the *Work* in accordance with the *Construction Schedule*;
- .4 advise the *Consultant* of any revisions required to the *Construction Schedule* as a result of an extension of the *Contract Time* in accordance with PART 6 – CHANGES IN THE WORK; and
- .5 identify potential variances between scheduling and scheduled completion dates and implement necessary adjustments in the *Construction Schedule* in order to meet the Substantial Performance of the Contract date.

3.4.2 On request of the *Consultant* the *Contractor* shall provide information regarding the progress of the *Work* or any part of it, or copies, schedules and orders covering materials, components and services. The *Contractor* shall cooperate fully with the *Consultant* and shall ensure that all *Subcontractors* and *Suppliers* and anyone for whom the *Subcontractors* and *Suppliers* may be responsible also cooperate and make available on request the same documents.

3.4.3 Without limiting the other obligations of the *Contractor* under GC 3.4 – CONSTRUCTION SCHEDULE, the *Contractor* shall not amend the *Construction*

*Schedule* (including, without limitation, any changes to the critical path) without the prior written approval of the *Owner*. Without limiting the foregoing, any delivery of an updated Construction Schedule by the *Contractor* to the *Owner* from time to time shall not be deemed to amend the *Contract Time*. The *Contract Time* shall only be amended in strict accordance with the terms of the *Contract* .

- 3.4.4 If, at any time, the *Owner* or the *Consultant* advise the *Contractor* that it appears that the actual progress of the *Work* is behind the *Construction Schedule* or is likely to become behind the *Construction Schedule*, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant*, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction 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 *Construction Schedule*. If the *Contractor* intends to apply for a change in the *Contract Price* or claim compensation for delay in relation to the *Construction Schedule* recovery plan, then the *Contractor* shall proceed in accordance with GC 6.5 – DELAYS.

#### **GC 3.5 SUPERVISION**

Delete in its entirety and replace with the following:

#### **GC 3.5 CONTRACTOR'S PERSONNEL COMMITMENT**

Delete in its entirety and replace with the following:

##### **GC 3.5 CONTRACTOR'S PERSONNEL COMMITMENT**

- 3.5.1 The *Contractor* shall furnish competent and adequate staff, who shall be in attendance at the *Place of the Work* at all times, as necessary, for the proper administration, co-ordination, supervision and superintendence of the *Work*; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the *Work*; and keep an adequate force of skilled workers on the job to complete the *Work* in accordance with all requirements of the *Contract Documents*.
- 3.5.2 Prior to commencement of the *Work*, the *Contractor* shall select a competent and experienced full time project manager (the "***Project Manager***") who shall be engaged in the *Work* at all times, and a competent and experienced full time site supervisor (the "***Site Supervisor***") who shall be in attendance at the *Place of the Work* at all times. The *Project Manager* shall have full responsibility for the prosecution of the *Work*, with full authority to act in all matters as may be necessary for the proper co-ordination, supervision, direction and technical administration of the *Work*, who shall attend site meetings in order to render reports on the progress of the *Work* and who shall have authority to bind the

*Contractor* in all matters related to this *Contract*. The *Project Manager* and the *Site Supervisor* shall be satisfactory to the *Owner* and shall not be changed except for good reason and with the prior written approval of the *Owner*.

- 3.5.3 The *Project Manager* and *Site Supervisor* shall represent the *Contractor* at the *Place of the Work*.
- 3.5.4 The *Contractor* may not change its *Project Manager* or its *Site Supervisor* without the *Owner's* prior written approval which shall not be unreasonably withheld. Further, the *Contractor* shall not employ or continue to employ on the *Work* anyone to whom the *Owner* may reasonably object.
- 3.5.5 The *Contractor* shall provide the *Owner* and the *Consultant* with the names, addresses and telephone numbers of the *Project Manager*, the *Site Supervisor* and other responsible field persons who may be contacted for emergency and other reasons during non-working hours.

### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

#### **Paragraph 3.6.4**

Delete in its entirety

#### **New Paragraphs**

Add the following new paragraphs to GC 3.6:

- 3.6.7 The *Contractor* acknowledges and agrees that it shall not retain the services of any *Subcontractors* not identified in the Schedule of *Subcontractors* in its *Bid* without the prior written authorization of the *Owner* or *Consultant* which consent shall not be unreasonably withheld. In no event will the *Contract Time* be extended, or the *Contract Price* be increased in the event of such a change.
- 3.6.8 In the event that the *Contractor* requires a change of, replacement to or addition of a named *Subcontractor* or *Supplier*, the *Contractor* shall advise the *Owner* in writing, giving reasons therefore, and shall obtain the prior written approval of the *Owner* to such change, replacement or addition. In no event will the *Contract Price* be increased, or the *Contract Time* extended as a result of such change, replacement or addition.
- 3.6.9 Nothing contained in the *Contract Documents* shall create any contractual relationship between the *Owner*, a *Subcontractor*, a *Supplier* or their respective agents, employees or any other persons performing any part of the *Work*.
- 3.6.10 The *Contractor* shall, in the case of its *Subcontractors*, be responsible for ensuring that they obtain all necessary permits, fees, licences, certifications and all insurance in connection with the *Work* as may be required by *Laws and*



*Regulations* and that they comply with all *Laws and Regulations* and the *Contract Documents*.

### **GC 3.7 LABOUR AND PRODUCTS**

#### **Paragraph 3.7.1**

Delete in its entirety and replace with the following:

- 3.7.1 The *Contractor* shall maintain good order and discipline among its employees, agents, *Subcontractors* and *Suppliers* engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the task assigned. The *Contractor* shall submit site rules for the review and approval of the *Owner*. Any such site rules prepared by the *Contractor* shall be consistent with the *Contractor's* duties and obligations under all applicable *Laws and Regulations* and shall also include provisions making consumption of alcohol or non-prescription drugs at the *Place of the Work* the subject of disciplinary proceedings or termination of employment at the *Work*. Whenever the *Owner* or the *Consultant* shall inform the *Contractor* in writing that any person performing the *Work*, in its opinion:
- .1 is incompetent or disorderly;
  - .2 interferes with the ability of the *Contractor*, *Subcontractors* or *Suppliers* to perform the *Work*;
  - .3 carries on an unlawful activity;
  - .4 acts in a manner inconsistent with the timely completion of the *Work*;
  - .5 injures or attempts to injure any person or causes any damage to any property;
  - .6 is not using all reasonable efforts to work safely;
  - .7 has failed to comply with a direction from the *Owner*, the *Consultant* or the *Owner's* health and safety auditor, including a direction to stop *Work*; or
  - .8 acts in a manner that is abusive or offensive to representatives of the *Owner*, the *Consultant* or any member of the public

such person or persons shall be discharged from the *Work* and shall not again be employed on this *Contract* without the *Owner's* prior written consent.

#### **Paragraph 3.7.3**

Delete in its entirety and replace with the following:

- 3.7.3 Unless otherwise specified in the *Contract Documents*, *Products Provided* shall be new, free from defects, and as specified or *Equivalent*. The *Contractor* shall

not *provide* substitutions for specified *Products* without the express written consent of the *Consultant* and the *Owner*. *Products* which are not specified should be of a quality best suited to the purpose required and their use shall be subject to the approval of the *Consultant* or *Owner*.

### **New Paragraphs**

Add the following new paragraphs to GC 3.7:

- 3.7.4 Without limiting any other obligation of the *Contractor* under the *Contract Documents* or any rights of the *Owner*, including the rights set out in GC 5.3 - PAYMENT, the *Contractor* shall, within 10 Days of becoming aware of or receiving notice from the *Owner* or the *Consultant*, secure the discharge, release, vacating or withdrawal of any lien that has been registered or otherwise preserved or any written notice of lien that has been advanced, provided that the lien or notice of lien has been registered, preserved or given by a *Subcontractor*, *Supplier*, labourer, mechanic or any other lien claimant or person claiming under or through the *Contractor* or in respect of the *Work*.
- 3.7.5 If a lien action is commenced against the *Owner* and such action arises out of or relates to a lien that was registered or otherwise preserved by a *Subcontractor*, *Supplier*, labourer, mechanic or any other lien claimant or person claiming under or through the *Contractor* or in respect of the *Work*, the *Contractor* shall indemnify and hold the *Owner* harmless in such action and take all reasonable steps to remove the *Owner* from such action. Without limiting the foregoing, the *Owner* may, at its option, require the *Contractor* to defend the *Owner* in the action or the *Owner* may assume carriage and control of the action. Any costs the *Owner* incurs or suffers as a result of such action, including legal costs, may be deducted by the *Owner* from any monies otherwise due or that may become due to the *Contractor*.
- 3.7.6 If the *Owner* receives a written notice of a lien or claim for lien in respect of the *Work*, the *Contractor* shall pay to the *Owner* the amount of the lien plus an additional 25% of the lien amount, to be retained as a holdback until the *Owner* is satisfied that all accounts have been paid in full and any liens have been vacated, withdrawn or discharged, as applicable.
- 3.7.7 If the *Contractor* fails to secure the discharge, release, vacating or withdrawal of a lien or notice of lien in accordance with the requirements of paragraph 3.7.4, the *Owner* may at its option take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or notice of lien and may, without limiting its other rights and remedies hereunder, deduct from the monies held pursuant to paragraph 3.7.6 (or from any other monies due or that may become due to the *Contractor*), the amount

of such lien, together with all costs and expenses incurred by the *Owner* in connection therewith (including the amounts incurred by the *Owner* in taking any of the steps described above).

- 3.7.8 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work, Products* and materials delivered by the *Contractor* delivered to the *Place of the Work* shall be the property of the *Owner*. The *Contractor* shall remove all supplies or rejected materials as its property when notified in writing to do so by the *Consultant*. All materials, *Work* and *Products* delivered by the *Contractor* shall remain at the risk of the *Contractor* who shall be held responsible for the safe keeping of same.
- 3.7.9 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and *Other Contractors* to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.
- 3.7.10 The *Contractor* represents and warrants that the *Products* it *Supplied* in accordance with the *Contract* are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the *Products* to seizure or removal from the *Place of the Work*.

### **GC 3.8 SHOP DRAWINGS**

Delete in its entirety and replace with the following:

#### **GC 3.8 SHOP DRAWINGS AND OTHER SUBMITTALS**

- 3.8.1 The *Contractor* shall provide *Shop Drawings* and *Submittals* as required in the *Contract* Documents or as the *Consultant* may reasonably request.
- 3.8.2 The *Contractor* shall provide *Shop Drawings* and *Submittals* to the *Consultant* in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of *Other Contractors* or the *Owner*.
- 3.8.3 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and *Submittals*.
- 3.8.4 The *Contractor* shall provide *Shop Drawings* and *Submittals* in the forms specified, or if not specified, as directed by the *Consultant*.

- 3.8.5 *Shop Drawings* and *Submittals* provided by the *Contractor* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them.
- 3.8.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.8.7 *Shop Drawings* and *Submittals* which require approval of any *Authority Having Jurisdiction* shall be provided to such *Authority* by the *Contractor* for approval.
- 3.8.8 The *Contractor* shall review all *Shop Drawings* and *Submittals* before providing them to the *Consultant*. The *Contractor* represents by this review that:
- .1 the *Contractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
  - .2 the *Contractor* has checked and co-ordinated each *Shop Drawing* and *Submittal* with the requirements of the *Work* and of the *Contract Documents*.
- 3.8.9 At the time of providing *Shop Drawings* and *Submittals*, the *Contractor* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* and *Submittals* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.8.10 The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or *Submittals* or for meeting all requirements of the *Contract Documents*.
- 3.8.11 The *Contractor* shall provide revised *Shop Drawings* and *Submittals* to correct those which the *Consultant* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* and *Submittals* other than those requested by the *Consultant*.
- 3.8.12 The *Consultant* will review and return *Shop Drawings* and *Submittals* in accordance with the schedule agreed upon in paragraph 3.8.3, or, in the absence of such schedule, within 10 *Business Days* or such longer period as may be reasonably required by the *Consultant*. If, for any reason, the *Consultant* cannot process them within the time periods specified therein, the *Consultant* shall notify the *Contractor* and they shall meet to review and arrive at an acceptable revised schedule for processing. The *Contractor* shall update the *Shop Drawings* and *Submittals* schedule to correspond to changes in the *Construction Schedule*.

Changes in the *Contract Price* or *Contract Time* may be made only as otherwise provided in the *Contract*.

## **NEW GENERAL CONDITIONS**

Add the following new General Conditions to PART 3 – EXECUTION OF THE WORK

### **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 the Work under the *Contract*.

### **GC 3.10 INTERFERENCE**

- 3.10.1 If the Work, in whole or in part, involves the renovation of, or addition to, existing and occupied premises:
- .1 the *Contractor* shall maintain normal business operations and traffic flow, with a minimum of inconvenience to the tenants and occupants of the *Place of the Work*;
  - .2 subject to the provisions of the *Contract Documents*, the *Contractor* shall ensure that no essential services such as electric power, water supply or other public utilities are interrupted; and
  - .3 in every case where an interruption to existing services or utilities is to occur during execution of the *Work*, the *Contractor* shall give the *Owner* 5 *Business Days' prior Notice in Writing*. The *Contractor* shall reschedule any such interruption, at no additional cost to the *Owner*, if requested to do so in writing by the *Owner*.

### **GC 3.11 OPERATIONAL RISKS**

- 3.11.1 The position of all pole lines, conduits, water mains, sewers and other underground and overground utilities and structures is not necessarily shown on the *Drawings*, and, where shown, the accuracy of the position of such utilities and structures is not guaranteed. Before starting Work, the *Contractor* shall inform itself of the exact locations of such utilities and structures, and shall be liable for damages to any utilities identified or which reasonably should have been identified, as a result of any negligent act or omission of the *Contractor* or those for whom the *Contractor* is responsible. Unless otherwise specified, the *Contractor* shall temporarily support or relocate such utilities and structures, or temporarily remove them, and restore them, to the satisfaction of the owners of the utilities and structures. The *Contractor* waives any claim and releases the *Owner*, its directors, officers, council members, partners, agents and employees from all liability for damages suffered as a result of such *Drawings* or any operation required under this paragraph.
- 3.11.2 The *Consultant* will provide the *Contractor* in writing with bench marks and points of reference to be used by the *Contractor* in setting out the *Work*. From these bench marks and points of reference the *Contractor* will do its own setting out. The setting out by the *Contractor* shall include but shall not be limited to the preparation of grade sheets, the installation of centre lines stakes, grade stakes, offsets and site rails.

### **GC 3.12 DOCUMENTS AT THE SITE AND PROJECT RECORDS**

- 3.12.1 The *Contractor* shall keep one copy of current Contract Documents, Supplemental Instructions, *Contemplated Change Orders*, *Change Orders*, *Change Directives*, *Cash Allowance Disbursement Authorizations*, reviewed Shop Drawings, Submittals, reports, and records of meetings at the Place of the Work, in good order and available to the *Owner* and the *Consultant*.
- 3.12.2 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, daily reports, daily logs, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law, but in any event for not less than 6 years from the date of *Substantial Performance of the Contract* or until all claims have been settled, whichever time period is longer. The records shall include detailed records of all actions taken by the *Contractor* related to security and health and safety legislation in the *Place of the Work*. 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*.

### **GC 3.13 CONTRACTOR'S USE OF PERMANENT EQUIPMENT OR SYSTEMS**

- 3.13.1 With the prior written approval of the *Owner*, the *Contractor* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Site* during the final stages of construction. In such event, before making its written application for *Substantial Performance of the Contract*, and again, immediately prior to final takeover by the *Owner* of such systems and equipment, the *Contractor* shall clean and *Make Good*, to the satisfaction of the *Consultant*, such systems and equipment as it had been permitted to use. The *Contractor* shall pay any and all costs associated with such use, cleaning and *Making Good*.

### **GC 3.14 USE OF THE WORK**

- 3.14.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.14.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

### **GC 3.15 CUTTING AND REMEDIAL WORK**

- 3.15.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.15.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.15.3 Should the *Owner*, the *Consultant*, *Other Contractors* or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 –CHANGES IN THE WORK, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.15.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

### **GC 3.16 CLEANUP**

- 3.16.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, *Other Contractors* or their employees.
- 3.16.2 Before applying for *Substantial Performance of the Contract* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE CONTRACT AND PAYMENT OF HOLDBACK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, *Other Contractors* or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Contractor* shall remove *Products*, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.16.3 Prior to application for the final payment, the *Contractor* shall remove any remaining *Products*, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, *Other Contractors* or their employees.
- 3.16.4 The *Owner* shall have the right to back charge cleaning to the *Contractor* if it is not done within 2 *Business Days* of *Notice in Writing* to clean and the *Owner* shall have the right to back charge cost of damage to the *Place of the Work* caused by *Contractor's*, *Subcontractor's* or *Supplier's* transportation in and out of the *Place of the Work* if not repaired within 5 *Working Days* of *Notice in Writing* to repair or before final payment, whichever is earlier.

### **GC 3.17 RIGHT OF ENTRY**

- 3.16.1 The *Owner* shall have the right to enter or occupy the *Place of the Work* in whole or in part for the purpose of placing materials, fittings and equipment or for other uses at any time before *Substantial Performance of the Contract*, if, in the reasonable opinion of the *Consultant*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* or achieving *Substantial Performance of the Contract* within the timeframe specified in Article A-1 of the Agreement – THE WORK, paragraph 1.3.1. Such entry or occupation or use of equipment or systems shall not be considered as acceptance of the *Work* in whole or in part, or in any way relieve the *Contractor* from its responsibility as constructor under the *Occupational Health and Safety Act*, RSO 1990, c O.1 or to complete the *Contract*.

## **PART 4 ALLOWANCES**

Delete the heading in its entirety and replace it with the following:

### **PART 4 ALLOWANCES AND PROVISIONAL ITEMS**



## **GC 4.1 CASH ALLOWANCES**

### **Paragraph 4.1.3**

Delete in its entirety and replace with the following:

- 4.1.3 Expenditures under cash allowances must be authorized by the *Owner* in writing.

### **Paragraph 4.1.4**

Delete the word "*Consultant's*" and replace it with "*Owner's*" in the first sentence.

Delete the words "as set out in the Contract Documents" from the end of the last sentence.

### **Paragraph 4.1.5**

Add the following sentence at the beginning of the paragraph:

The *Contractor* shall have no claim on any unused portion of any cash allowance item.

### **Paragraph 4.1.6**

Add the following to the end of the paragraph:

The *Contractor* shall submit, with its *Proper Invoice*, documentation showing the date of purchase, the vendor from which the purchase was made, the date of delivery of the *Product* or service, and the price, including delivery to the *Site* and all applicable taxes. Cash allowance payments will only be made with the written authorization of the *Owner*, and shall not include any mark-ups whatsoever, unless the *Contractor* is entitled to mark-up on excess cash allowance under paragraph 4.1.4.

### **Paragraph 4.1.7**

Delete in its entirety and replace with the following:

- 4.1.7 The *Contractor* shall consult with the *Owner* or the *Consultant* in the selection of the *Products*, services and vendors required to carry out the work under the cash allowance, and shall obtain the *Owner's* approval for the selection of *Products*, services and/or vendor(s) in relation to the cash allowance.

### **New Paragraphs**

Add the following new paragraphs to GC 4.1:

- 4.1.8 The *Contractor* shall obtain competitive bids from a minimum of three vendors for portions of the *Work* to be paid for out of cash allowances unless otherwise directed by the *Owner*. The *Contractor* shall submit the bids received to the *Owner* for approval.

- 4.1.9 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule indicating the times, within the *Construction Schedule* referred to in GC 3.4 – CONSTRUCTION SCHEDULE, that items called for under cash allowances and items that are specified to be *Owner* purchased and *Contractor* installed or hooked up are required at the *Site* to avoid delaying the progress of the *Work*.

#### **GC 4.2 CONTINGENCY ALLOWANCE**

Delete in its entirety and replace with the following:

##### **GC 4.2 PROVISIONAL ITEMS**

- 4.2.1 The purpose of provisional items in the *Bid* is to cover the cost of *Work* that is anticipated but may not be required. The *Contractor* shall not be entitled to use these prices unless the *Contractor* has received prior written approval from the *Owner*. Each provisional price item may be used at the sole discretion of the *Owner*.
- 4.2.2 If the *Owner* requests that a provisional item be completed by the *Contractor*, the *Contractor* shall consult with the *Consultant* about the selection of *Products*, services, and *Subcontractors* required to carry out the *Work* under the provisional items, and shall obtain the *Consultant*'s approval for the selection of *Products*, services and *Subcontractor*(s) in relation to the selected provisional items.
- 4.2.3 The *Contractor* shall submit, as part of its *Proper Invoice* submitted in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, an invoice for the provisional *Work* showing the date of purchase/service, the *Work* included in the service, and the price, including all applicable taxes.
- 4.2.4 Provisional item payments will only be made in accordance with the previous written authorization of the *Owner*, and shall not include any mark-ups. The *Contractor* shall have no claim on any unused portion of any provisional items, including but not limited to any claims for loss of anticipated profits.
- 4.2.5 Provisional item payments will be made according to the service or *Work* invoiced and approved by the *Owner*.
- 4.2.6 The *Contractor* shall have no claim on any unused portion of any provisional item. The net amount of any unexpended provisional item shall be deducted from the *Contract Price* by *Change Order* without any adjustment for the *Contractor*'s overhead and profit on such amount.

#### **PART 5 PAYMENT**

Delete in its entirety and replace with the following:

## PART 5 PAYMENT

### GC 5.1 FINANCING INFORMATION REQUIRED

- 5.1.1 The *Contractor* shall provide the *Owner* with *Notice in Writing* of any material change in the *Contractor's* financial ability to fulfil its obligations under the *Contract* within 5 *Business Days* of such change.

### GC 5.2 APPLICATIONS FOR PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made as the *Work* progresses by the submission of a *Proper Invoice*.
- 5.2.2 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last Day of the *Payment Period*.
- 5.2.3 The *Contractor* shall submit to the *Owner* and the *Consultant*, within 15 Days of receipt of the *Owner's* notice to commence the *Work* and prior to the first *Pre-Invoice Submission Meeting*, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment. The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error. The *Contractor* shall include a statement based on the schedule of values with each application for payment.
- 5.2.4 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*. Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to GC 3.7 – LABOUR AND PRODUCTS, paragraph 3.7.8.
- 5.2.5 5 Days prior to the end of the *Payment Period*, or at such other time agreed to by the *Owner* and the *Contractor* in writing, the *Contractor*, *Owner* and *Consultant* shall attend a meeting to discuss and review the percentage of *Work* completed during the *Payment Period* for each item indicated in the schedule of values (the "***Pre-Invoice Submission Meeting***"). In the event that the scheduled date for the *Pre-Invoice Submission Meeting* is not a *Business Day*, the *Pre-Invoice Submission Meeting* shall occur on the next *Business Day*, or on another Day as may be agreed to by the *Contractor* and the *Owner* in writing.

5.2.6 The *Contractor* shall bring with it to the *Pre-Invoice Submission Meeting* the following:

- .1 its *Preliminary Estimate for Payment* for the current *Payment Period*;
- .2 any documents the *Contractor* is required to bring to the *Pre-Invoice Submission Meeting* as stipulated in the *Specifications*; and
- .3 any other documents reasonably required by the *Consultant*.

5.2.7 The *Contractor* shall give a *Proper Invoice* to the *Owner* and *Consultant*, in accordance with paragraph 5.2.8, for work performed during a *Payment Period* on the 14th Day following the conclusion of the *Payment Period* to which the *Proper Invoice* relates (the “***Proper Invoice Submission Date***”), subject to the following:

- .1 if the 14th Day following the conclusion of the *Payment Period* to which a *Proper Invoice* relates falls on a Day that is not a *Business Day*, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Business Day*; and
- .2 if the 14th Day following the conclusion of the *Payment Period* to which a *Proper Invoice* relates falls on a Day during the month of December, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Business Day* in January of the following year.

5.2.8 *Proper Invoices* shall be given in accordance with the following:

- .1 *Proper Invoices* shall be uploaded to <https://constructioninvoices.york.ca> (the “**PI Portal**”);
- .2 *Proper Invoices* shall be uploaded during the hours of 8:30 a.m. to 4:30 p.m. (ET) on the *Proper Invoice Submission Date*;
- .3 If a *Proper Invoice* is uploaded after 4:30 p.m. on the applicable *Proper Invoice Submission Date*, the *Proper Invoice* will not be considered or reviewed by the *Owner* and *Consultant* until the next *Proper Invoice Submission Date*, at which point the *Proper Invoice* will be deemed to have been given to the *Owner* and the *Consultant*. Notwithstanding the immediately preceding sentence and paragraph 5.2.7, if a *Proper Invoice* is uploaded after 4:30 p.m. (ET) on the *Proper Invoice Submission Date*, the *Owner* reserves the right, in its sole discretion, to consider the *Proper Invoice* as being given in accordance with the *Construction Act* on the date and at such time as it was uploaded. The *Owner’s* exercise of the right conferred to it in this paragraph shall not be construed as a waiver of any of its rights or waive or release the *Contractor’s* obligations to strictly comply with the requirements prescribed in paragraphs 5.2.7 to 5.2.12 inclusive.

- .4 If the *Proper Invoice* is uploaded before the *Proper Invoice Submission Date*, the *Proper Invoice* will not be considered or reviewed by the *Owner* and *Consultant* until the applicable *Proper Invoice Submission Date*, at which point the *Proper Invoice* will be deemed to have been given to the *Owner* and *Consultant*.
- 5.2.9 The parties hereby consent to the giving and receiving of *Proper Invoices* in accordance with the requirements of paragraph 5.2.8 and without limiting the generality of the foregoing, consent to the giving and receiving of *Proper Invoices* through the PI Portal and the giving and receiving of notices of non-payment by email.
- 5.2.10 The requirements of paragraph 5.2.8 are of the essence. In order for a *Proper Invoice* to be considered received by the *Owner* in accordance with the *Construction Act*, it must be given in accordance with the requirements of paragraph 5.2.8.
- 5.2.11 *Proper Invoices* shall be submitted substantially in the form attached as Form 2.
- 5.2.12 *Proper Invoices* must contain, in addition to the information prescribed by section 6.1 of the *Construction Act*, the following:
  - .1 *Proper Invoice* application number
  - .2 *Contract* number and brief description of the *Contract*
  - .3 purchase order number
  - .4 references to item number(s) and item description(s) when describing the services and materials supplied
  - .5 a breakdown of approved *Change Orders* or *Change Directives* and percentage completed of each
  - .6 a valid WSIB Certificate of Clearance
  - .7 a critical path schedule if requested by the *Owner*
  - .8 contemplation, and reflection in the amount payable, of all of the following to the extent they are applicable:
    - (1) statutory holdback
    - (2) statutory lien holdbacks
    - (3) maintenance security
    - (4) applicable taxes
  - .9 for all *Proper Invoices* except the first one, either:

- (1) a declaration, in the form contained in the form of *Proper Invoice* attached as Form 2, that all accounts for labour, subcontracts, *Products*, construction machinery and equipment and other indebtedness which may have been incurred by the *Contractor* in performing the Work, and for which the *Owner* may in any way be held responsible, have been paid in full as of the last payment made to the Contractor, except for statutory holdback monies properly retained; or
  - (2) a declaration by the *Contractor* as to the distribution made of the amounts received using document CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor
- 5.2.13 An invoice the *Contractor* submits which it purports to be a *Proper Invoice*, but which does not meet the requirements of paragraphs 5.2.11 and 5.2.12 shall not constitute a *Proper Invoice* and the *Owner* shall be under no obligation to consider or review such invoice. Invoices submitted by the *Contractor* will be considered to be a *Proper Invoice*, properly received by the *Owner* in accordance with the requirements of the *Contract* and the *Construction Act*, unless the *Owner* or the *Consultant* advises the *Contractor* otherwise.
- 5.2.14 The requirements of paragraphs 5.2.7 to 5.2.13 are of the essence.
- 5.2.15 The services or materials, including quantity(ies), supplied that are described in a *Proper Invoice* are not required to be made by strict measurement or with exactness, but may be approximate only.
- 5.2.16 The *Contractor* shall prepare current *As-Built Drawings* during the course of the Work, which shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for payment. If current *As-Built Drawings* are not available for the *Consultant's* review, the *Consultant* may retain an amount reasonably determined by the *Consultant* to be the value of the *As-Built Drawings* not available for review from the progress draw.
- 5.2.17 Payment by the *Owner* pursuant to the *Contract* shall not preclude the *Owner* from thereafter disputing any of the items involved and shall not be construed as acceptance of any part of the *Work*.

### **GC 5.3 PAYMENT**

- 5.3.1 The *Owner* and the *Consultant* shall review the *Contractor's* application for payment, including the *Proper Invoice*, and advise the *Contractor* of any disputed amounts in accordance with the *Construction Act*.
- 5.3.2 The *Owner* may retain amounts as determined by the *Consultant* to ensure correction of deficient work done or unacceptable *Products provided*.

- 5.3.3. Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act*, the *Owner* shall pay all undisputed amounts to the *Contractor* in accordance with the provisions of Article A-5 of the Agreement – PAYMENT and the *Construction Act*.
- 5.3.4 The *Owner* reserves the right, in its sole, absolute and unfettered discretion, to permit the *Contractor* to correct an error in an invoice that the *Contractor* purported to be a *Proper Invoice* and gave to the *Owner*. The *Owner* shall be under no obligation to exercise the right conferred to it under this paragraph 5.3.4.
- 5.3.5 Without limiting any other remedy available to the *Owner*, the *Owner* may withhold all, or any part, of any payment, or revise any previous payment certificate(s) made because of subsequently discovered evidence or the results of subsequent inspections or tests, but only to the extent that is necessary to protect the *Owner* from loss because:
- .1 the *Work* does not conform to the requirements of the *Contract Documents* or completed *Work* has been damaged requiring correction or replacement; or
  - .2 the *Contract Price* has been reduced by *Change Order*; or
  - .3 the *Owner* has been required to correct non-conforming *Work* or complete *Work* in accordance with GC 2.4 – DEFECTIVE WORK, or
  - .4 the *Owner* has actual knowledge of the occurrence of any of the events enumerated in GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT, justifying suspension or termination; or
  - .5 claims have been made against the *Owner* on account of the *Contractor's* performance or furnishing of the *Work*; or
  - .6 written notice of a lien or a claim for lien under the *Construction Act* has been received by the *Owner* or a lien has been registered or filed, in either case, in connection with the *Work*, except where the *Contractor* has delivered a bond, acceptable to the *Owner*, to secure the satisfaction and discharge, vacation or withdrawal of such lien; or
  - .7 there are other items entitling the *Owner* to a set-off against the amount for which application is made in accordance with the provisions of the *Contract Documents*; or
  - .8 the *Contractor* has not delivered all of the documentation required with its application for payment.

## **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE CONTRACT AND PAYMENT OF HOLDBACK**

5.4.1 When the *Contractor* considers that the *Contract* to be substantially performed, and the *Contractor* has supplied all documentation required to be provided prior to the granting of Substantial Performance as specified in the *Contract Documents*, the *Contractor* shall submit an application for *Substantial Performance of the Contract* to the *Owner* and the *Consultant*. The application shall include the following:

- .1 A comprehensive list of all items of work remaining to be completed or corrected. Failure to include an item on the list will not release the *Contractor* from its responsibility to complete all items of work in accordance with the terms of the *Contract*;
- .2 A *Preliminary Estimate for Payment* covering all work performed up to the date of *Substantial Performance of the Contract* since the last *Proper Invoice* submission;
- .3 All outstanding guarantees required pursuant to the *Specifications*;
- .4 All outstanding manufacturers' guarantees covering rated output, efficiency and performance for all operating equipment forming part of the *Work*;
- .5 All outstanding test results;
- .6 Complete operating and maintenance instructions for equipment and apparatus furnished under the *Contract*, including maintenance manuals, training manuals, operating instructions, equipment calibration sheets, maintenance and operating tools, and replacement/spare parts and materials, if not already provided;
- .7 All required *As-Built Drawings* and related data, if not already provided;
- .8 All permits, licenses, approvals, certificates and authorizations required by any *Authorities Having Jurisdiction* over the *Work* or the *Place of the Work*;
- .9 Any other documents specified in the *Specifications*; and
- .10 Any other documents reasonably required by the *Consultant*.

5.4.2 Before submitting its application for *Substantial Performance of the Contract*, the *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, *Other Contractors* or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Contractor* shall remove *Products*, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.



- 5.4.3 After submitting its application for *Substantial Performance of the Contract*, the *Contractor* shall meet with the *Owner* and the *Consultant* to review and reconcile the value of work performed, deficient work and outstanding work.
- 5.4.4 Provided the *Contractor* meets the requirements for *Substantial Performance of the Contract*, the *Owner* shall issue a certificate of *Substantial Performance of the Contract* in the prescribed form (the “**Certificate of Substantial Performance**”) to the *Contractor*, specifying the date upon which *Substantial Performance of the Contract* was attained.
- 5.4.5 The *Contractor* shall arrange, at its own expense, for the publication of the *Certificate of Substantial Performance* in the Daily Commercial News.
- 5.4.6 The publication of the *Certificate of Substantial Performance*, as arranged for by the *Contractor*, shall constitute a waiver by the *Contractor* of all claims whatsoever against the *Owner* under this *Contract* up to the date of *Substantial Performance of the Contract* whether for a change in the *Contract Price*, extension of *Contract Time*, or both, except those made in writing prior to the *Contractor’s* application for *Substantial Performance of the Contract* and still unsettled.
- 5.4.7 No later than 15 Days after the issuance of the *Certificate of Substantial Performance*, the *Contractor* shall submit the following to the *Owner* and the *Consultant* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, paragraph 5.2.8:
- .1 a *Proper Invoice* that covers the unpaid work completed up to the date of *Substantial Performance of the Contract* and which complies with the requirements for a *Proper Invoice* as specified in GC 5.2 – APPLICATIONS FOR PAYMENT, paragraphs 5.2.11 and 5.2.12;
  - .2 proof of publication of the *Certificate of Substantial Performance*;
  - .3 a release, in the form attached as Form 4, releasing the *Owner* from all further claims relating to the *Contract* except for claims for work performed after the date of *Substantial Performance of the Contract* and claims pursuant to PART 8 – DISPUTE RESOLUTION made prior to *Substantial Performance of the Contract* and still unsettled; and
  - .4 a declaration by the *Contractor* as to the status of ongoing adjudications with respect to the *Contract* using the form of declaration attached as Form 3.
- 5.4.8 The requirements of paragraph 5.4.7 are of the essence.
- 5.4.9 Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act*, the *Owner* shall pay all undisputed amounts to the

*Contractor* in accordance with the provisions of Article A-5 of the Agreement – PAYMENT and the *Construction Act*.

- 5.4.10 The *Owner* and the *Consultant* shall review the documents submitted by the *Contractor* pursuant to paragraph 5.4.7 and advise the *Contractor* of any amounts of the basic holdback that the *Owner* refuses to pay and shall, in accordance with the *Construction Act*, arrange for the publication of a notice of non-payment of holdback in the prescribed form in the Daily Commercial News.
- 5.4.11 Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act*, and provided the time period for preserving any claims for liens for materials or services supplied prior to *Substantial Performance of the Contract* have expired, the *Owner* will pay the undisputed amount of the basic holdback to the *Contractor* in accordance with the provisions of Article A-5 of the Agreement – PAYMENT and the *Construction Act*.
- 5.4.12 Release of the statutory holdback funds shall not relieve the *Contractor*, or its surety, from any obligations under this *Contract*.

#### **GC 5.5 PROGRESSIVE RELEASE OF HOLDBACK**

- 5.5.1 When the *Contractor* considers a subcontract (the “***Subcontract***”) to be complete, and all required inspection and testing of the Work covered by the Subcontract have been finished, the Contractor may submit an application for certification of completion of the Subcontract to the *Owner* and the *Consultant*.
- 5.5.2 The application for certification of completion of the *Subcontract* shall include the following information and documentation with supporting particulars, at a minimum:
  - .1 the final *Subcontract* price;
  - .2 a Declaration of Last Supply under subsection 31(5) of the *Construction Act* from the *Subcontractor*;
  - .3 valid WSIB Certificates of Clearance from the *Contractor* and the *Subcontractor*;
  - .4 a statutory declaration from the *Subcontractor*, in a form attached as Form 6, that all accounts for labour, subcontracts, *Products*, construction machinery and equipment and other indebtedness which may have been incurred by the Subcontractor in performing the work under the Subcontract, and for which the Owner might in any way be held responsible, have been paid in full except for statutory holdback monies properly retained;

- .5 a release from the *Contractor* and the *Subcontractor*, in the form attached as Form 7, releasing the Owner from all further claims relating to the Subcontract.
  - .6 a declaration by the *Contractor* as to the status of ongoing adjudications with respect to the *Contract* using the form of declaration attached as Form 3.
- 5.5.3 Upon receipt of the application for certification of completion of the *Subcontract*, the *Owner* and the *Consultant* may, at their sole discretion, review the application to determine whether the Subcontract is complete.
- 5.5.4 Provided the *Subcontract* is complete, the *Owner* may, at its sole discretion, issue a Certificate of Completion of Subcontract, in the prescribed form, to the Contractor specifying the completion date of the Subcontract.
- 5.5.5 No later than 15 Days following the issuance of the Certificate of Completion of Subcontract, the Contractor shall submit a Proper Invoice for the release of holdback with respect to the completed Subcontract (the “**Proper Invoice for Subcontract Holdback**”) to the Owner and *Consultant* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, paragraph 5.2.8. The Proper Invoice for Subcontract Holdback shall comply with the requirements of GC 5.2 – APPLICATIONS FOR PAYMENT, paragraphs 5.2.11 and 5.2.12.
- 5.5.6 The requirements of paragraph 5.5.5 are of the essence.
- 5.5.7 The *Owner* and the *Consultant* shall review the Proper Invoice for Subcontract Holdback and advise the Contractor of any disputed amounts.
- 5.5.8 Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act*, the Owner shall pay all undisputed amounts under the Proper Invoice for Subcontract Holdback to the Contractor in accordance with the provisions of Article A-5 of the Agreement - PAYMENT.
- 5.5.9 Immediately upon receipt of the statutory holdback funds the *Contractor* shall give to the *Subcontractor* the payment due under the Subcontract.
- 5.5.10 Release of the statutory holdback funds shall not relieve the *Contractor*, or its surety, from any obligations under this *Contract*.

#### **GC 5.6 FINAL PAYMENT**

- 5.6.1 When the *Contractor* considers the *Contract* to be complete, the *Contractor* shall submit an application for *Total Performance of the Contract* to the *Owner* and the *Consultant*. The application shall include:

- .1 a comprehensive list of all items of work remaining to be completed or corrected. Failure to include an item on the list shall not release the *Contractor* from its responsibility to complete all items of *Work* in accordance with the terms of the *Contract*;
  - .2 a *Preliminary Estimate for Payment* covering all *Work* performed up to the date of *Total Performance of the Contract* since the last *Proper Invoice* submission;
  - .3 all outstanding guarantees required pursuant to the *Specifications*;
  - .4 all outstanding manufacturers' guarantees covering rated output, efficiency and performance for all operating equipment forming part of the *Work*;
  - .5 complete operating and maintenance instructions for equipment and apparatus furnished under the *Contract* if not already provided;
  - .6 all *Contractor's As-Built Drawings*, records and related data;
  - .7 all permits, licenses, approvals, certificates and authorizations required by any *Authorities Having Jurisdiction* over the *Work* or the *Place of the Work*;
  - .8 any other documents specified in the *Specifications*; and
  - .9 any other documents reasonably required by the *Consultant*.
- 5.6.2 After submitting its application for *Total Performance of the Contract*, the *Contractor* shall meet with the *Owner* and the *Consultant* in order to review and reconcile the value of work performed, deficient work and outstanding work.
- 5.6.3 Provided the *Contract* meets the requirements for *Total Performance of the Contract*, the *Owner* shall issue a certificate of *Total Performance of the Contract* (the "**Certificate of Total Performance**") to the *Contractor*, specifying the date upon which *Total Performance of the Contract* was attained. Following the issuance of the *Certificate of Total Performance*, the *Contractor* shall promptly execute the *Certificate of Total Performance*.
- 5.6.4 The *Contractor's* execution of the *Certificate of Total Performance* shall constitute a waiver by the *Contractor* of all claims whatsoever against the *Owner* under this *Contract* up to the date of *Total Performance of the Contract*, whether for a change in the *Contract Price*, an extension of the *Contract Time*, or both, except those made in writing prior to the *Contractor's* application for *Total Performance of the Contract* and still unsettled.
- 5.6.5 No later than 15 Days following the issuance of the *Certificate of Total Performance*, the *Contractor* shall submit the following to the *Consultant* and the *Owner* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, paragraph 5.2.8:

- .1 a *Proper Invoice* that covers the unpaid work completed up to the date of *Total Performance of the Contract* and which complies with the requirements for a *Proper Invoice* as specified in GC 5.2 – APPLICATIONS FOR PAYMENT, paragraphs 5.2.11 and 5.2.12;
  - .2 a signed copy of the *Certificate of Total Performance*;
  - .3 a release from the *Contractor*, in the form attached as Form 5, releasing the *Owner* from all further claims relating to the *Contract* except for claims for work performed after the date of *Total Performance of the Contract* and claims pursuant to PART 8 – DISPUTE RESOLUTION made prior to *Total Performance of the Contract* which remain unresolved; and
  - .4 a declaration by the *Contractor* as to the status of ongoing adjudications with respect to the *Contract* using the form of declaration attached as Form 3.
- 5.6.6 The requirements of paragraph 5.6.5 are of the essence.
- 5.6.7. The *Owner* and the *Consultant* shall review the *Proper Invoice* and advise the *Contractor* of any disputed amounts in accordance with the *Construction Act*.
- 5.6.8 Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act*, the *Owner* shall pay all undisputed amounts to the *Contractor* in accordance with the provisions of Article A-5 of the Agreement - PAYMENT and the *Construction Act*.
- 5.6.9 The *Owner* and the *Consultant* shall review the documents submitted by the *Contractor* pursuant to paragraph 5.6.5 and advise the *Contractor* of any amounts of the holdback for finishing work that the *Owner* refuses to pay and shall, in accordance with the *Construction Act*, arrange for the publication of a notice of non-payment of holdback in the prescribed form in the Daily Commercial News.
- 5.6.10 Provided the *Owner* has not received a claim for lien or written notice of a lien under the *Construction Act* and provided the time period for preserving any claims for liens for materials or services supplied prior to *Total Performance of the Contract* have expired, the *Owner* shall pay the undisputed amount of the holdback for finishing work to the *Contractor* in accordance with the provisions of Article A-5 of the Agreement - PAYMENT and the *Construction Act*.
- 5.6.11 Release of the statutory holdback funds shall not relieve the *Contractor*, or its surety, from any obligations under this *Contract*.
- 5.6.12 Upon receipt of final payment under the *Contract*, the *Contractor* shall be deemed to have expressly waived and released the *Owner* from all claims including, without limitation, those that might have arisen from the negligence or breach of

contract by the *Owner*, except those made pursuant to PART 8 – DISPUTE RESOLUTION prior to the *Contractor's* submission of the final *Proper Invoice* which remain unresolved.

- 5.6.13 In the event of a conflict between the provisions of PART 5 - PAYMENT and GC 1.3 - RIGHTS AND REMEDIES, the provisions of PART 5 - PAYMENT shall govern.

#### **GC 5.7 DEFERRED WORK**

- 5.7.1 Subject to the *Construction Act*, if because of climatic or other conditions reasonably beyond the control of the *Contractor*, or if the *Owner* and the *Contractor* agree that, there are items of *Work* that must be deferred, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such deferred *Work*.

#### **GC 5.8 NON-CONFORMING WORK**

- 5.8.1 No payment by the *Owner* under the *Contract*, or partial or entire use or occupancy of the *Work* by the *Owner*, nor the fact that the *Owner* did not give a notice of non-payment pursuant to the *Construction Act* in respect of a *Proper Invoice*, shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

#### **GC 5.9 LIQUIDATED DAMAGES**

- 5.9.1 Without prejudice to any other remedy available to the *Owner*, if the *Contractor*:
- .1 fails to complete the *Work* within the *Contract Time*, the *Contractor* shall pay to the *Owner* the amount per Day specified in Article A-12 of the Agreement - LIQUIDATED DAMAGES until the *Work* is complete; or
  - .2 fails to meet any of the *Interim Milestone(s)* stipulated in the *Contract Documents*, the *Contractor* shall pay to the *Owner* the amount(s) per Day specified in Article A-12 of the Agreement – LIQUIDATED DAMAGES until the *Interim Milestone(s)* has been met.
- 5.9.2 The amounts payable to the *Owner* pursuant to paragraph 5.9.1 shall be payable on demand. The *Owner's* failure to demand the amounts payable under paragraph 5.9.1 shall in no way waive the *Owner's* right to such payment and the *Owner* shall have the right to refuse to pay all or any portion of amounts payable under *Proper Invoices* on account of amounts that are payable to the *Owner* under paragraph 5.9.1.

- 5.9.3 The *Contractor* acknowledges and agrees that the liquidated damages amounts specified in Article A-12 of the Agreement - LIQUIDATED DAMAGES are a genuine estimate of the actual costs/damages that will be incurred by the *Owner* as a result of the failure of the *Contractor* to complete the *Work*, including any *Interim Milestone(s)*, within the allotted time and is not a penalty.

#### **GC 5.10 SET-OFF**

- 5.10.1 Subject to the *Construction Act*, and without limiting the specific rights of set-off in favour of the *Owner* provided for in this *Contract*, the *Owner* shall have the right to set-off against any and all monies due, or which may become due, to the *Contractor* under this *Contract*, any reasonable and substantiated amounts due or to become due from the *Contractor* to the *Owner* under the *Contract* and in the event of an insolvency of the *Contractor*, in relation to any other contracts between the *Contractor* and the *Owner*. Without limiting the generality of the foregoing, any rights conferred to the *Owner* under this *Contract* or at law to set-off against or deduct from monies otherwise owing to the *Contractor* shall also constitute grounds for the *Owner* to refuse to pay all or any portion of amounts payable under *Proper Invoices*.

#### **GC 5.11 MAINTENANCE SECURITY**

- 5.11.1 The *Owner* may deduct from the maintenance security any amounts owing to the *Owner* under this *Contract*, or in the event the *Contractor* becomes insolvent, any other contract between the *Owner* and the *Contractor*, whether the amounts relate to outstanding or deficient *Work*, or any other claims which the *Owner* may have including, but not limited to, outstanding claims under GC 13 – INDEMNIFICATION, CLAIMS HANDLING AND WAIVER OF CLAIMS and GC 3.7 – LABOUR AND PRODUCTS.
- 5.11.2 The balance of the maintenance security, if any, shall be eligible for release to the *Contractor* upon the expiration of the Warranty Period and only after all deficiencies and all other warranty issues have been resolved to the satisfaction of the *Owner* (whether they have occurred during the Warranty Period or thereafter).

#### **GC 5.12 WITHHOLDING OF PAYMENT**

- 5.12.1 In the event that any portion of the *Work* is defective or is not performed in accordance with the *Contract Documents*, the *Owner* may retain an amount equal to twice the estimated cost which the *Owner* or the *Consultant* estimates will be incurred to correct the *Work* until the *Work* has been corrected to the satisfaction of the *Owner*. In the event that the *Contractor* fails to correct/complete the *Work* to the satisfaction of the *Owner* within 15 *Working Days* of receipt of written

notice of the defective work, the *Owner* may proceed to correct/complete the *Work* and shall deduct its costs from the holdback provided for in this provision without further notice to the *Contractor*.

- 5.12.2 In the event that any insurance policy required to be maintained by the *Contractor* under the *Contract* has lapsed, or the *Owner* has received notice from the insurer of cancellation of coverage thereunder, the *Owner* may withhold payment until a current certificate of insurance has been provided in a form satisfactory to the *Owner*.

## **PART 6 CHANGES IN THE WORK**

### **GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

Delete in its entirety and replace it with the following:

#### **GC 6.1 CHANGES IN THE WORK**

- 6.1.1 The *Owner*, without invalidating the *Contract*, may make *Changes in the Work* by providing the *Contractor* with a *Change Order* or *Change Directive* ("***Changes in the Work***"). The *Contractor* shall provide an updated *Construction Schedule* in the event that the *Change Order* or *Change Directive* affects the progress of the *Work*.
- 6.1.2 The *Contractor* shall not proceed with any *Changes in the Work* until it has received a *Change Order* or *Change Directive*. No claims for any compensation on account of any actual or alleged Change in the *Work* or for any changes in the *Contract Price* or *Contract Time* shall be valid unless provided for by the *Owner* in a *Change Order* or a *Change Directive*.
- 6.1.3 The *Contractor* shall not be entitled to receive any additional compensation of any kind whatsoever arising out of or in respect of Changes in the *Work* other than the amounts to which it is entitled under GC 6.2 – CHANGE ORDER, or as provided in GC 6.3 – CHANGE DIRECTIVE. Without limiting the foregoing, in no event shall the *Contractor* be entitled to claims for loss of profit, loss of productivity, loss of opportunity or any other such losses based on the quantity, scope or cumulative value or impact of Changes in the *Work* whether resulting from one or more *Change Orders* or *Change Directives*.
- 6.1.4 If any *Change in the Work* is made which results in a reduction in the amount of Work to be done, including reductions in any or all of the quantities specified in *Contract Documents* or the deletion of any items in the *Bid*, or if all or any component of the *Work* is deleted from the scope of *Work*, the *Contractor's* compensation shall be limited to the direct costs that it can demonstrate to the *Owner's* satisfaction (by way of backup documentation) had already been



incurred by the *Contractor*, acting reasonably, in connection with the reduced or deleted *Work*. Save and except for these direct costs, the *Contractor* shall not be entitled to any compensation of any kind whatsoever on account of any reduced or deleted *Work* including any amounts on account of loss of anticipated profits, loss of opportunity or any such losses. Any credits to be applied to the *Contract Price* shall be reflected in the *Change Order*..

- 6.1.5 The *Contractor* shall include the value of *Work* performed under a *Change Order* or *Change Directive* during a *Payment Period* in the *Proper Invoice* that the *Contractor* submits pursuant to GC 5.2 – APPLICATIONS FOR PAYMENT, inclusive, in respect of that *Payment Period*.
- 6.1.6 Any mark-ups payable under the *Contract* for *Changes in the Work* carried out by way of *Change Order* or *Change Directive* shall be in accordance with the following:

- .1 on work performed by the *Contractor*, the *Contractor* may charge a maximum mark-up of 5% as a combined percentage fee applied to the total actual cost of the items listed in GC 6.3 – CHANGE DIRECTIVE, paragraph 6.3.5 performed by the *Contractor*; and
- .2 on work performed by *Subcontractors*, the *Subcontractors* may charge a maximum mark-up of 5% as a combined percentage fee and the *Contractor* may charge a maximum mark-up of 5% as a combined percentage fee applied to the total actual cost of the items listed in GC 6.3 – CHANGE DIRECTIVE, paragraph 6.3.5 performed by all *Subcontractors* (but, for clarity, the *Contractor's* mark-up shall not be charged on the *Subcontractors'* mark-up or on any *Contractor* mark-up charged pursuant to paragraph 6.1.6.1):

No further mark-ups will be paid regardless of the number of times the work has been assigned or sublet and no mark-up will be paid to any associate or affiliate as defined by the *Securities Act*, RSO 1990, c S.5, or in respect of any compensation for rented equipment.

Any mark-ups payable under this paragraph 6.1.6 shall be deemed to include the cost of, and be considered full compensation for all of the following: profit, general expenses, indirect costs and overhead costs incurred by the *Contractor* in relation to the change including but not limited to head office and head office personnel costs, estimating, supervision, coordination, administration, general clean-up, small tools, *As-Built Drawings*, job safety, warranty, and additional insurance and bonding costs.

- 6.1.7 The *Contractor* shall promptly submit, at the request of the *Owner*, any information and documentation the *Owner* considers necessary to assess any amounts being claimed on account of a *Change Order* or *Change Directive*.
- 6.1.8 If the *Owner* and the *Contractor* do not agree on the proposed adjustment to the *Contract Time* attributable to a change in the *Work*, or the method of determining it, the adjustment shall be deemed a “dispute” under PART 8 – Dispute Resolution.
- 6.1.9 The *Contractor* acknowledges that the total *Contract Time* includes a built in float of approximately 10% of the *Contract Time* to account for schedule delays resulting from *Changes in the Work* which would normally be expected to arise on projects of a similar scope, size and complexity and as contemplated by GC 6.1 – CHANGES IN THE WORK. As a result, subject to paragraphs 6.1.10 and 6.1.11, no extensions of the *Contract Time* or compensation for schedule delays, shall be granted by the *Owner* to the *Contractor* for any *Changes in the Work* reflected in *Change Orders* or *Change Directives* issued under GC 6.2 – CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE respectively, until the cumulative value of all *Change Orders* and *Change Directives* under the *Contract* exceeds 10% of the original *Contract Price*. If and only once the total cumulative value of all *Change Orders* and *Change Directives* exceeds 10% of the original *Contract Price* (excluding those related to “substantial changes” as defined in paragraph 6.1.10), shall the *Contractor* be entitled to any extensions of *Contract Time* or compensation for schedule delays, in relation to any subsequent change in the *Work*, as reflected as part of any *Change Orders* or *Change Directives* issued thereafter, and provided that such change in the *Work* adversely affects the critical path schedule.
- 6.1.10 Paragraph 6.1.9 shall not apply when an extension of the *Contract Time* is made necessary due to a “*Substantial Change*” in the *Work*. A *Substantial Change* means a *Change in the Work* under GC 6.1 – CHANGES IN THE WORK which results in either:
- .1 actual direct additional costs to the *Contractor* equal to, or greater than, \$500,000; or
  - .2 a delay to the critical path of the *Construction Schedule* for the *Project* of greater than 10 *Working Days*;
- or both.
- 6.1.11 Should a *Substantial Change* arise, the *Contractor* shall be entitled to an extension of *Contract Time* in accordance with the *Contract*, and the value of any

*Change Order or Change Directive* issued in relation to the *Substantial Change* shall be excluded from the 10% calculation referred to in paragraph 6.1.9.

## **GC 6.2 CHANGE ORDER**

Delete in its entirety and replace it with the following:

### **GC 6.2 CHANGE ORDER**

- 6.2.1 When a change in the *Work* is proposed or requested, the *Consultant* will prepare a *Contemplated Change Order (CCO)* describing the proposed change(s) and submit the *CCO* to the *Contractor* for consideration.
- 6.2.2 The *Contractor* shall submit, within 5 *Business Days* of receipt of the *CCO* or such other time agreed to between the *Contractor* and the *Owner*, a detailed and itemized quotation which includes its proposed method and amount of adjustment to the *Contract Price* (in accordance with paragraph 6.2.3), if any, and the proposed adjustment to the *Contract Time*, if any, for the work included in the *CCO*, together with any supporting documentation which may be required by the *Owner*. If the change in the *Work* will require an adjustment in the *Contract Time* or otherwise affect the critical path of the current *Construction Schedule*, the *Contractor* shall also include with its quotation an updated *Construction Schedule* for the *Owner's* review.
- 6.2.3 The adjustment to the *Contract Price* for a *Change in the Work* carried out pursuant to a *Change Order* shall be determined in accordance with the following:
  - .1 If the *Change in the Work* is the type of work for which unit prices were provided in the Schedule of Prices in the *Bid* or schedule of values, then the adjustment to the *Contract Price* shall be based on those unit prices, plus the applicable mark-ups in GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6.
  - .2 If the *Change in the Work* is the type of work for which unit prices were not provided in the Schedule of Prices in the *Bid* or schedule of values, then the adjustment in the *Contract Price* shall be based on the actual costs of the change in the *Work*, determined in accordance with GC 6.3 – CHANGE DIRECTIVE, paragraph 6.3.5, plus the applicable mark-ups in GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6.

The *Owner*, in consultation with the *Consultant*, will assess the merits of the proposed adjustments to the *Contract Price* or the *Contract Time* or both. If the *Owner* and the *Contractor* agree to the adjustments in the *Contract Price* or the *Contract Time*, or the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order* which shall be issued by the *Owner* and signed by both parties.

### GC 6.3 CHANGE DIRECTIVE

Delete in its entirety and replace it with the following:

#### GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a *Change in the Work* prior to the *Owner* and the *Contractor* agreeing upon the adjustments to the *Contract Price* or the *Contract Time* or both, the *Owner* or the *Consultant* shall issue a *Change Directive*. Upon receipt of the *Change Directive*, the *Contractor* shall promptly proceed to execute the *Work* described in the *Change Directive*.
- 6.3.2 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the actual costs of expenditures and savings, in accordance with paragraph 6.3.5 to perform the *Change in the Work*, plus mark-up as specified in GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6.
- 6.3.3 The *Contractor* shall, within five (5) *Business Days* of the issuance of the *Change Directive* or such other time agreed to by the *Contractor* and the *Owner*, present to the *Owner*, for approval, a detailed itemized estimate of the actual costs of the items listed in paragraph 6.3.5 of the *Contractor* and the involved *Subcontractors*, plus the applicable mark-ups pursuant to GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6. The mark-ups pursuant to GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6, including mark-ups related to each of the involved *Subcontractors*, shall all be shown separately. If the *Change in the Work* will require an adjustment in the *Contract Time* or otherwise affect the critical path of the current *Construction Schedule*, the *Contractor* shall also include with its detailed itemized estimate of costs an updated *Construction Schedule* for the *Owner's* review.
- 6.3.4 The *Contractor* shall keep and present, in such form as the *Owner* may require, an itemized accounting of the actual cost of expenditures and savings, together with supporting data, and any other pertinent documents related to the cost of performing a change in the *Work* attributable to a *Change Directive*. The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the items contained in paragraph 6.3.5.
- 6.3.5 The cost of performing a *Change in the Work* attributable to the *Change Directive*, and the costs of performing a *Change in the Work* under a *Change Order* pursuant to GC 6.2 – CHANGE ORDER, paragraph 6.2.3.2 shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor* under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*, or in the absence of such a schedule, actual salaries, wages

and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Contractor*, for personnel:

- (1) carrying out the work, including necessary supervisory services;
  - (2) engaged in the preparation of *Shop Drawings*, fabrication *Drawings*, coordination *Drawings* and *As-Built Drawings*; or
  - (3) engaged in the processing of *Changes in the Work*.
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Contractor* and included in the cost of the *Work* as provided in paragraph 6.3.5.1;
  - .3 travel and subsistence expenses of the *Contractor's* personnel described in paragraph 6.3.5.1;
  - .4 all *Products* including cost of transportation thereof;
  - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
  - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
  - .7 all equipment and services required for the *Contractor's* field office;
  - .8 the amounts of all subcontracts;
  - .9 quality assurance such as independent inspection and testing services;
  - .10 charges levied by *Authorities Having Jurisdiction* at the *Place of the Work*;
  - .11 royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in GC 10.3 - PATENT FEES;
  - .12 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;

- .13 any adjustment in taxes, other than Harmonized Sales Taxes, and duties for which the *Contractor* is liable;
  - .14 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
  - .15 removal and disposal of waste products and debris; and
  - .16 any additional safety measures and requirements.
- 6.3.6 The cost of any item referred to in paragraph 6.3.5 shall not include any costs or liabilities attributable to any failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work*. Any such costs shall be borne by the *Contractor*.
- 6.3.7 Pending determination of the final amount of a *Change Directive*, the *Contractor* shall include the undisputed value of the work performed under a *Change Directive* during a *Payment Period* in the *Proper Invoice* that the *Contractor* submits pursuant to GC 5.2 – APPLICATIONS FOR PAYMENT in respect of that *Payment Period*, plus the applicable mark-ups described in GC 6.1 – CHANGES IN THE WORK, paragraph 6.1.6.
- 6.3.8 If the *Owner* includes in a *Change Directive* that it issues to the *Contractor* a reference to an estimated or budgeted amount for the *Change Directive* work (the "**Estimate**"), the *Contractor* shall notify the *Owner* in writing when 75% of the *Estimate* has been expended. The *Contractor* shall immediately halt performance of the *Change Directive* work once the accumulated cost of performing such work is equivalent to the *Estimate*, advise the *Owner* in writing that the *Estimate* has been reached, and not proceed with the balance of the *Change Directive* work until it receives instructions to do so from the *Owner* or *Consultant*. Failure to comply with the foregoing shall constitute a waiver of the *Contractor's* entitlement to any compensation on account of the *Change Directive* work in excess of the *Estimate*.

## **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

### **Paragraph 6.4.1**

#### **Subparagraph .1**

Add the words "or the Reports" after the words "Contract Documents".

#### **Subparagraph .2**

Add the words "or the Reports" after the words "Contract Documents".

## Paragraph 6.4.2

Delete in its entirety and replace with the following:

- 6.4.2 Having regard to and subject to the liabilities and responsibilities assumed by the *Contractor* pursuant to GC 3.11 – OPERATIONAL RISKS, the *Consultant* will promptly investigate such conditions and make a finding. Having regard to and subject to the liabilities and responsibilities assumed by the *Contractor* pursuant to GC 3.11 – OPERATIONAL RISKS, if the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a *Change in the Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.

## New Paragraphs

Add the following new paragraphs to GC 6.4:

- 6.4.5 The *Contractor* confirms that it carefully reviewed the *Contract Documents*, as well as the *Reports* and that it has satisfied itself as to the nature and extent of the *Work*, the *Contract Documents* and the *Contract* and as to the facilities and difficulties in attending and completing the execution of the *Work*. The *Contractor* confirms that it has applied to its review the degree of care and skill required by GC 3.9 – PERFORMANCE BY CONTRACTOR, 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 review, or which could have been reasonably inferred from the material provided with the *Contract Documents* or *Reports*. 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 review of the *Contract Documents* or the *Reports*.
- 6.4.6 To the extent the *Contractor* has not reviewed the *Contract Documents* or *Reports* as referenced in paragraph 6.4.5, the *Contractor* willingly assumes responsibility for all losses, damages, costs, expenses (including all legal costs on a full indemnity basis), liabilities, claims, actions, and demands, whether arising under statute, contract or at common law, which such review might have avoided or reduced and shall indemnify, save harmless and defend the *Owner* from all risk which might make it more onerous and more expensive to fulfill or perform the *Work* than was contemplated or known when the *Contract* was signed, and for any and all liability, responsibility and obligations which the *Owner* may have to any third parties resulting from any failure to review.

- 6.4.7 If the finding made pursuant to paragraph 6.4.2 is that the subsurface or otherwise concealed physical conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, and if the said conditions were otherwise discoverable by the *Contractor* in the proper performance of its duties and obligations under the *Contract*, all costs and expenses resulting from any delay (excluding, for clarity, the direct cost of remediating the said conditions) in the completion of the *Work* that is caused, or contributed to, as a result of the said conditions, will be borne by the *Contractor*.
- 6.4.8 Without limiting the generality of any other provision in the *Contract Documents*, during the performance of the *Work*, the *Contractor* shall, as a part of the *Contract Price* and *Work*, perform any additional geotechnical and subsurface and other investigations, tests and studies beyond those being provided by the *Owner*, which a reasonable and prudent contractor would conduct to ascertain the nature and extent of subsurface or otherwise concealed physical conditions at the *Place of the Work*.

#### **GC 6.5 DELAYS**

Delete in its entirety and replace with the following:

##### **GC 6.5 DELAYS**

- 6.5.1 If the *Contractor* is delayed in the performance of a critical path activity on the *Construction Schedule* by an act 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 also be reimbursed by the *Owner* for only the actual additional costs incurred as a result of the delay, excluding any mark-ups or payments to staff not employed full time at the *Site*.
- 6.5.2 If the *Contractor* is delayed in the performance of a critical path activity on the *Construction Schedule* by a stop work order issued by a court or other public authority and provided that such order was not issued as a result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly and provided that such order was issued as a result of an act or omission of the *Owner* contrary to the *Contract Documents*, resulting in the failure of the *Contractor* to attain *Substantial Performance of the Contract* or *Total Performance of the Contract* by the dates stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend. The *Contractor* shall also be reimbursed by the



*Owner* for only the actual additional costs incurred as a result of the delay, excluding any mark-ups or payments to staff not employed full time at the *Site*.

6.5.3 If the *Contractor* is delayed in the performance of a critical path activity on the *Construction Schedule* by:

- .1 any labour disputes, strikes or lock-outs affecting the *Work* or the *Project*,
- .2 fire or unusual delay by common carriers,
- .3 abnormally adverse weather conditions, or
- .4 any other cause which could not be reasonably anticipated to occur during the course of a construction project, which the *Owner* deems to be beyond the *Contractor's* (including any *Subcontractor's*) reasonable control (other than financial incapacity) other than one resulting from a default or breach of *Contract* by the *Contractor*. For the purpose of this provision, delays in the *Supply* or delivery of materials, *Products* and/or equipment, or arising from the breakdown of equipment, do not constitute causes which are beyond the *Contractor's* control.

then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays, unless such delays result from the actions of the *Owner*, *Consultant* or anyone employed or engaged by them directly. Notwithstanding the foregoing, the *Contractor* shall use its best efforts to minimize the impact of such event upon the performance of the *Work* and *Contract Time*.

For the purposes of this GC 6.5 - DELAYS, a delay caused by abnormal inclement weather occurs when, in the *Owner's* sole opinion, the *Contractor* is prevented by inclement weather or other related conditions, for a period of at least six hours in a *Working Day*, from proceeding with at least 60% of the normal labour and equipment force engaged on any component of the *Work* which, if delayed, will delay the completion of the *Work*.

6.5.4 No compensation for delay shall be paid to the *Contractor*, and no extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* and *Owner* not later than 5 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary. Without limiting the generality of the foregoing, the following shall also apply to the event of delay dealt with by paragraphs 6.5.1, 6.5.2 or 6.5.3:

- .1 the notice provided by the *Contractor* as set out in this paragraph 6.5.4 shall include, without limitation, sufficient and adequate information and documentation to allow the *Consultant* and *Owner* to properly consider the claim of the *Contractor*.
- .2 the *Contractor* shall take all reasonable steps to minimize the impact of the delay event upon the performance of the *Work*, the *Contract Time* and the *Contract Price*, resume performance of all its obligations under the *Contract* affected by the delay as soon as practicable and use all reasonable endeavours to remedy any failure to perform.

Failure to adhere strictly to these notice provisions shall constitute a waiver and release of any obligation of the *Owner* to extend the *Contract Time* as a result of such delay and of any claim by the *Contractor* for costs as a result of such delay.

- 6.5.5 If no schedule is made under paragraph 2.2.12 of GC 2.2 – ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.
- 6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor*, any *Subcontractor* or *Supplier*, or anyone employed or engaged by them, directly or indirectly, or by any cause within the *Contractor's* control, the *Contractor* shall devote such additional resources and take all steps necessary, all at the *Contractor's* own cost and expense, to ensure that the dates for attaining *Substantial Performance of the Contract* and *Total Performance of the Contract* under the *Contract* as may have been amended in accordance with the provisions of PART 6 – CHANGES IN THE WORK, are met. If the *Contractor* fails to attain *Substantial Performance of the Contract* or *Total Performance of the Contract* as aforesaid, the *Owner* shall be entitled to assess liquidated damages in accordance with Article A-12 of the Agreement – LIQUIDATED DAMAGES.
- 6.5.7 The parties acknowledge that in March 2020 the World Health Organization declared a global pandemic of the virus leading to COVID-19. The Government of Canada, the Province of Ontario, the *Region* and other municipal authorities responded to the pandemic with legislative amendments, controls, orders, requests of the public, and requests and requirements to the parties to change their activities in various ways (collectively, the “**Governmental Response**”). It is uncertain how long the pandemic, and the related *Governmental Response*, will continue, and it is unknown whether there may be a resurgence of the virus leading to COVID-19 or any mutation thereof (collectively, the “**Virus**”) and resulting or supplementary renewed Government Response. Notwithstanding any other provision in the *Contract Documents*, if the *Contractor* is delayed in the

performance of the *Work* by the continued spread of the *Virus* or the continuation of or a new *Governmental Response* to control the spread of the *Virus* (which was not reasonably foreseeable at the time of entering into the *Contract*), the parties agree it shall constitute a delay pursuant to paragraph 6.5.3. The *Contractor* shall not be entitled to any payment for costs incurred by such delays, save and except as provided for in paragraph 6.5.8. Nothing in this paragraph 6.5.7 shall excuse the *Contractor* from complying with any notification requirements in the *Contract* including, without limitation, those contained in paragraph 6.5.4.

6.5.8 In the event of a delay to the *Contractor's* performance of the *Work* pursuant to paragraph 6.5.7, the *Contractor* shall be entitled to payment of the direct costs it reasonably incurs, without any mark-up, as a result of having to comply with new legislative amendments, controls, and orders that are implemented by the Government of Canada, the Province of Ontario, the *Region* or other municipal authority after the bid submission deadline in response to the *Virus* associated with the following:

- .1 the *Contractor* being required to use additional tools or equipment, including PPE equipment, in its performance of the *Work*;
- .2 the *Contractor* being required to purchase, use or *Provide* additional safety-related supplies in connection with its performance of the *Work*; or
- .3 the *Contractor* being required to *Install* temporary facilities or structures, including hand washing stations.

6.5.9 Notwithstanding any other provision in the *Contract*, the *Owner* shall not be liable or deemed to be in breach of the *Contract* for any failure or delay in performance of its obligations under the *Contract* arising out of:

- .1 the *Virus*;
- .2 *Governmental Response*; or
- .3 any impacts to the *Owner's* operations and performance of its obligations that are beyond its reasonable control and are caused by, relate to or arise out of the *Virus* or the *Governmental Response* (including, without limitation, any delays in obtaining possession or access to the *Place of the Work*, or in obtaining permits from permitting offices or approvals from *Authorities Having Jurisdiction*).

## **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

### **Paragraph 6.6.1**

Delete the word "timely".

Add the words “within 5 *Working Days* upon commencement of the event(s) giving rise to a claim” after the word “*Consultant*”.

### **Paragraph 6.6.3**

Delete the words “within a reasonable time”.

Add the words “no later than 20 *Working Days* after completion of the work which is the subject of the claim” after the words “the claim is based”.

## **NEW GENERAL CONDITION**

Add the following new General Condition to PART 6 – CHANGES IN THE WORK

### **GC 6.7 NO CLAIMS FOR CHANGE IN SCOPE OF WORK**

6.7.1 If any change, deviation or omission from the *Work* is made by which the amount of *Work* to be done is decreased, including any of the quantities specified in *Contract Documents*, or if the whole or any portion of the *Work* is deleted from the scope of *Work* or otherwise dispensed with, no compensation shall be claimed by the *Contractor* (other than demonstrable direct costs already incurred by the *Contractor* in accordance with GC 6.1.4) or any *Subcontractors* for any such changes including any claims for loss of anticipated profits.

## **PART 7 DEFAULT NOTICE**

### **GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

Delete in its entirety and replace with the following:

### **GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT**

7.1.1 If circumstances arise such that the *Owner* considers it necessary or advisable, the *Owner* may suspend the *Contract* and the performance of the *Work*. In the event the *Owner* exercises its right of suspension pursuant to this paragraph 7.1.1, the *Contractor* shall, subject to the directions in the notice of suspension:

- .1 take all necessary steps to ensure the *Place of the Work* and all *Work* in place is left in a safe and clean state and is protected from the elements for the duration of the suspension; and
- .2 take all necessary steps to ensure the *Work* is appropriately preserved and cared for in accordance with good industry practice and any occupational, use or safety requirements or standards of the *Authorities Having Jurisdiction* or stipulated in the *Contract Documents* for the duration of the suspension.

7.1.2 If the *Contract* and the performance of the *Work* is suspended pursuant to paragraph 7.1.1, the *Contract Time* shall be extended by the length of the suspension and the *Owner* shall pay the *Contractor* the direct costs the *Contractor* reasonably incurs that are a direct result of any demobilization, remobilization and *Site* security and preservation that is required as a result of the suspension. All such costs shall be substantiated with sufficient and appropriate supporting documentation.

7.1.3 If:

- .1 the *Contractor* should become bankrupt or insolvent or make a general assignment for the benefit of creditors because of its insolvency; or
- .2 a receiver is appointed because of its insolvency; or
- .3 the *Contractor* commits a criminal act; or
- .4 the *Contractor* transfers, assigns or otherwise disposes of its interest in the *Contract* or any part thereof without the written authority of the *Owner*; or
- .5 the *Contractor* ceases the *Work* for a period of 30 Days or more (other than for delays for which an extension of *Contract Time* is granted by the *Owner* pursuant to GC 6.5 -DELAYS); or
- .6 the *Owner* deems, in its sole discretion, acting reasonably, that the progress of the *Work* has fallen behind schedule to such an extent that the *Contractor* will not be able to meet one or more of the *Interim Milestone* dates specified in the *Contract* or complete the *Work* within the *Contract Time*, provided that the *Contractor* has first been given the opportunity to rectify this breach pursuant to the process outlined in paragraphs 7.1.4 and 7.1.5; or
- .7 the *Contractor* fails to maintain adequate insurance as stipulated in GC 11.2 – INSURANCE; or
- .8 the *Contractor* fails to comply immediately with a direction of the *Owner* under the *Contract* including, but not limited to, any directions under GC 9.4 – CONSTRUCTION SAFETY; or
- .9 the *Contractor* fails to comply immediately with a stop work order issued by the *Owner* or the *Consultant* under the *Contract*; or
- .10 the *Contractor* fails to comply with a written direction from the *Owner* under PART 8 – DISPUTE RESOLUTION; or
- .11 the *Contractor* breaches the Supplier Code of Conduct included as Schedule 2 to the *Owner's* Procurement Bylaw No. 2021-103; or

- .12 the *Contractor* fails to comply with the *Owner's* policies, protocols and procedures as required in GC 9.4 – CONSTRUCTION SAFETY, paragraph 9.4.10; or
- .13 the *Contractor* fails to maintain its COR™ certification or COR™ equivalency, or have a valid Letter of Reciprocity issued by the Infrastructure Health and Safety Association (IHSA) indicating that they are in the process of obtaining COR™ equivalency, as stipulated in GC 9.8 - CERTIFICATE OF RECOGNITION (COR™) SAFETY PROGRAM; or
- .14 the *Contractor* breaches Article A-10 of the Agreement – CONFLICT OF INTEREST; or
- .15 the *Contractor* commits any other breach of *Contract* which the *Owner* deems material;

the *Owner*, without prejudice to any other right or remedy it may have, may by giving the *Contractor* or receiver or trustee in bankruptcy written notice to:

- (a) terminate the *Contract*; or
- (b) take all or any part of the *Work* out of the *Contractor's* hands and may employ such means as it may see fit to complete the *Work* and may deduct the costs thereof from any payment due to the *Contractor* and, in the event the costs thereof exceed the sum payable to the *Contractor* had the *Contractor* completed that part of the *Work*, the *Contractor* shall pay such excess amount to the *Owner* forthwith upon notice from the *Owner*; or
- (c) issue a stop work order on the *Contract*.

7.1.4 If the *Contractor* should neglect to perform the *Work* in compliance with the requirements of the *Contract Documents*, of which the *Owner* shall be the sole judge, the *Owner* may notify the *Contractor* in writing that it is in default of its contractual obligations and instruct it to correct the default in the 5 *Working Days* immediately following the receipt of such notice or, where immediate action is required, in such lesser time as specified in the notice.

7.1.5 If the correction of the default cannot be completed in the 5 *Working Days* specified, or the lesser time specified where immediate action is required, the *Contractor* shall be in compliance with the *Owner's* instructions if it:

- .1 commences the correction of the default within the specified time; and
- .2 provides the *Owner* with a schedule acceptable to the *Owner* for such correction; and
- .3 completes the correction in accordance with such schedule.

7.1.6 If the *Contractor* fails to correct the default within the time specified, the *Owner* may, without prejudice to any other right or remedy it may have:

- .1 correct such default and charge the cost thereof to the *Contractor*; or
- .2 terminate the *Contractor's* right to continue with the *Work* in whole or in part; or
- .3 terminate the *Contract*.

7.1.7 If the *Owner* terminates the *Contractor's* right to continue with the *Work* or terminates the *Contract* pursuant to paragraph 7.1.3 or paragraph 7.1.6, the *Owner* shall be entitled to:

- .1 take possession of the premises and *Products*, utilize the construction machinery and equipment and finish the *Work* by whatever method it may see fit; and
- .2 receive an assignment or transfer forthwith from the *Contractor* of any permit or approval obtained by the *Contractor* for the performance of the *Work*; and
- .3 receive an assignment or transfer forthwith from the *Contractor* of any contract between the *Contractor* and a *Subcontractor* or a *Supplier* for the performance of the *Work* if required by the *Owner*; and
- .4 withhold further payments to the *Contractor* until the *Work* is finished; and
- .5 deduct the following costs from the unpaid balance of the *Contract Price*:
  - (1) the full cost of finishing the *Work*, as certified by the *Consultant*; and
  - (2) any additional compensation payable to the *Consultant* for additional services; and
  - (3) a reasonable allowance, as determined by the *Consultant*, to cover the cost of corrections to work performed by the *Contractor* as may be required under GC 12.3 – WARRANTY; and
- .6 upon expiry of the *Warranty Period*, charge the *Contractor* the amount by which the cost of corrections to its work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections.

If the costs referred to in paragraphs 7.1.7.5 and 7.1.7.6 are less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference.

7.1.8 The *Contractor* acknowledges that the performance of the *Work* may require the following:

- .1 approval of the local conservation authority or other applicable government agencies in respect of watercourses, wetlands, floodplain, and hazard lands;
- .2 approval of the Ministry of Natural Resources and Forestry, the Department of Fisheries and Oceans or the local conservation authority in respect of its authority under the Fisheries Act, RSC 1985, c F-14;
- .3 approval of the Ministry of the Environment, Conservation and Parks, the local conservation authority or other applicable government agencies in respect of any water taking;
- .4 approval of the Ministry of the Environment, Conservation and Parks in respect of any discharge, emission, waste, waste disposal site, waste management system, water works, sewage works, storm water works or drinking water systems;
- .5 approval of the Ministry of Natural Resources and Forestry, the Department of Fisheries and Oceans or Environment Canada in respect of the protection of any species at risk or the respective habitat of any species at risk;
- .6 approval of Transport Canada in respect of navigable waterbodies;
- .7 approval of the Ministry of Labour and Ministry of the Environment, Conservation and Parks, as applicable, in respect of any new equipment specified by the *Owner*;
- .8 approval of *Regional* Committee/Council or other governmental or municipal authorities or utilities; and
- .9 land acquisitions, easements or utility relocations.

If at any time any one or more of these requirements have not been satisfied, the *Owner* may terminate the *Contract* by providing a *Notice in Writing* to the *Contractor* to such effect and the *Contractor* shall be entitled to be paid for the *Work* performed up to and including the date of service of the notice terminating the *Contract*, as determined by the *Consultant* and the *Owner*. In no event will the *Contractor* be entitled to claim any amount for profit or loss sustained or any other damages as a result of the termination of the *Contract*.

- 7.1.9 If at any time during the course of the *Contract*, the *Owner* exhausts or exceeds the allocated budget for the *Contract*, or if the allocated budget for the *Contract* is withdrawn, reduced or cancelled by Regional Council for any reason whatsoever, the *Owner* may terminate the *Contract* by providing a *Notice in Writing* to the *Contractor* to such effect and the *Contractor* shall be entitled to be paid for the *Work* performed up to and including the date of service of the notice terminating the *Contract*, as determined by the *Consultant*. In no event will the *Contractor* be



entitled to claim any amount for profit or loss sustained or any other damages as a result of the termination of the *Contract*.

7.1.10 The *Contractor's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by it up to the time of termination shall continue in force after such termination.

7.1.11 If the *Work* is suspended or otherwise delayed for a period of 60 consecutive *Working Days* or more under an order of a court or other public authority and providing that the issuance of such order was not the direct result of an act or omission of the *Owner* or *Consultant* contrary to the provisions of the *Contract Documents*, the *Owner* may, at its sole option and discretion and without penalty, terminate the *Contract* for convenience upon providing seven (7) Days' Notice in Writing to the *Contractor*. Upon receiving the notice of termination in accordance with this paragraph 7.1.11, the *Contractor* shall cease or cause the cessation of all operations except for the following:

.1 The *Contractor* shall take all steps necessary to:

- (1) ensure and preserve the safety of personnel (including, without limitation, construction personnel, building guests and building staff); and
- (2) ensure the *Work* is appropriately preserved and cared for in accordance with good industry practice and any occupational, use or safety requirements or standards of *Authorities Having Jurisdiction* or those stipulated in the *Contract Documents*.

.2 Subject to any directions in the notice of termination, the *Contractor* shall:

- (1) take all necessary steps to ensure the *Place of the Work* and all *Work* in place is left in a safe and clean state and is protected from the elements; and
- (2) discontinue or cause to be discontinued the ordering of *Products*, material, equipment and supplies and shall make reasonable efforts to cancel existing orders on the best terms available.

If the *Contract* is terminated for convenience pursuant to this paragraph 7.1.11, the *Contractor* shall not be entitled to any costs, expenses, damages, losses or reimbursement of any kind whatsoever (and the *Contractor* waives any claim against the *Owner* related to or arising from the termination), save and except for the amounts expressly contemplated in paragraph 7.1.12.

7.1.12 If the *Contract* is terminated pursuant to paragraph 7.1.11, the *Owner* shall pay the *Contractor* the cost of the *Work* incurred to the effective termination date and

the reasonable costs the *Contractor* incurs in complying with its obligations under paragraph 7.1.11.

- 7.1.13 Notwithstanding any other provision in the *Contract*, the *Owner* shall not be liable to the *Contractor* for any actual or alleged damages of any kind whatsoever (including without limitation indirect, incidental, special, consequential or other damages, including loss of profits) on account of the publication of a notice of termination pursuant to the *Construction Act* and the *Contractor* waives any and all claims against the *Owner* related to or arising from the publication. This paragraph 7.1.13 shall survive termination of the *Contract*.

## **GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

### **Paragraph 7.2.2**

Delete the words "20 Working Days" and replace them with "60 consecutive Working Days".

Delete the words "engaged by the Contractor, the Contractor may" and replace them with "engaged by the Contractor, and provided that such order was issued as a result of an act or omission of the Owner contrary to the Contract Documents, the Contractor may".

### **Paragraph 7.2.3**

Delete in its entirety and replace with the following:

- 7.2.3 The *Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations and instruct the *Owner* to correct the default in the 20 *Working Days* immediately following the receipt of such notice if 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.

### **Paragraph 7.2.4**

Delete in its entirety and replace with the following:

- 7.2.4 If the default cannot be corrected in the 20 *Working Days* specified, the *Owner* shall be in compliance with the *Contractor's* instructions if the *Owner*:
- .1 commences the correction of the default within the specified time; and
  - .2 provides the *Contractor* with an acceptable schedule for such correction; and
  - .3 corrects the default in accordance with such schedule.

### **Paragraph 7.2.5**

Delete in its entirety and replace with the following:

- 7.2.5 If the *Owner* fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the *Contractor* may have, the *Contractor* may suspend the *Work* until the default has been corrected or terminate the *Contract*.

### **New Paragraphs**

Add the following new paragraphs to GC 7.2:

- 7.2.6 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed to the date of termination. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the *Contract Documents*.
- 7.2.7 The *Owner's* withholding of a progress payment, holdback payment or final payment due to the *Contractor's* failure to pay a *Subcontractor* or *Supplier*, to protect the *Owner's* interest in the event of the preservation of a lien or receipt of notice of lien, or otherwise pursuant to the terms of the *Contract*, shall not constitute a default under paragraph 7.2.3 which would permit the *Contractor* to stop the *Work* or terminate the *Contract*. In such circumstances, the *Contractor* shall continue with the *Work*.
- 7.2.8 If the *Contractor* stops the *Work* or terminates the *Contract* as provided in this GC 7.2 – CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, it shall ensure that the *Place of the Work* is left in a secure and safe condition as required by all *Authorities Having Jurisdiction* and the *Contract Documents*.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

Delete in its entirety and replace with the following:

#### **GC 8.1 DISPUTES**

- 8.1.1 Subject to GC 8.2 – ADJUDICATION, differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or

any failure to agree where agreement between the parties is called for, other than a failure to agree on the method of valuation, measurement and change of the *Contract Price*, herein collectively called disputes, which are not resolved in the first instance by interpretation and the findings of the *Consultant* as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of PART 8 - DISPUTE RESOLUTION.

- 8.1.2 The *Contractor* shall give oral notice of any dispute to the *Owner* immediately becoming aware of the situation giving rise to such dispute.
- 8.1.3 The *Contractor* shall provide *Notice in Writing* of any dispute within 5 *Business Days* after the commencement of the work giving rise to the dispute to the *Owner*. Such *Notice in Writing* shall include particulars of the matter in dispute, the extent and value of the claim and the relevant provisions of the *Contract Documents*.
- 8.1.4 If the matter in dispute is not resolved promptly, the *Consultant* will give such instructions as, in its opinion, are necessary for the proper performance of the *Work* and to minimize delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim it may have.
- 8.1.5 As time is of the essence, if so directed by the *Owner*, the *Contractor* shall continue to perform the *Work* in accordance with the instructions of the *Owner*, notwithstanding any such dispute. Accordingly, in the event of a dispute, any work stoppage by the *Contractor* will constitute a breach of the *Contract* entitling the *Owner* to claim damages on account of any delay affecting the as-planned schedule of the *Work*.
- 8.1.6 The *Contractor* shall submit to the *Owner* a detailed statement of its claims not later than 20 *Business Days* after completion of the *Work* which is the subject of the dispute, identifying the item or items in respect of which the dispute has arisen, the grounds upon which a claim is made and all records substantiating such claim.
- 8.1.7 The *Contractor* shall promptly submit, at the request of the *Owner*, such further and other information and documentation as the *Owner* or the *Consultant* considers necessary to assess the claim.
- 8.1.8 If the *Contractor* fails to comply with the provisions for notices and claims within the times stipulated in respect of any dispute, the *Contractor* will not be entitled to proceed with any claim in respect of such dispute and this provision shall act as a bar to any such claims.

- 8.1.9 If the *Contractor* has complied with all of the provisions of this General Condition and the *Owner* and the *Contractor* cannot resolve the dispute, and if both parties do not agree to settle the dispute in accordance with GC 8.3 - NEGOTIATION, MEDIATION AND ARBITRATION, then either party may refer the dispute to a court of competent jurisdiction.
- 8.1.10 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraphs 8.1.4, 8.1.5 and 8.3.3 to 8.3.11 shall apply to that dispute with the necessary changes to detail as may be required.

## **GC 8.2 ADJUDICATION**

Delete in its entirety and replace with the following:

### **GC 8.2 ADJUDICATION**

- 8.2.1 Notwithstanding anything else in PART 8 – DISPUTE RESOLUTION, the *Owner* and the *Contractor* shall engage in adjudication as required by, and in accordance with, the *Construction Act*.
- 8.2.2 If the *Contractor* fails to comply with the time limits set out in PART 8 – DISPUTE RESOLUTION in respect of any claim or dispute, the *Contractor* shall have no entitlement whatsoever (including to an increase in the *Contract Price*, or an extension of *Contract Time*) in the context of an adjudication under the *Construction Act*, and waives the right to make any such claims or disputes in an adjudication. This paragraph 8.2.2 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an adjudication and the *Owner* may rely on this paragraph 8.2.2 as a complete defence to any such claims or disputes.
- 8.2.3 The following procedures shall apply to any adjudication the *Owner* and the *Contractor* engage in under the *Construction Act*:
- .1 any hearings shall be held at a venue within the jurisdiction of the *Place of the Work* or such other venue as the *Owner* and the *Contractor* may agree and which is acceptable to the adjudicator;
  - .2 the adjudication shall be conducted in English;
  - .3 the *Owner* and the *Contractor* may be represented by counsel throughout an adjudication;
  - .4 there shall not be any oral communications with respect to issues in dispute that are the subject of an adjudication between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and

- .5 a copy of all written communication between the adjudicator and a party shall be given to the other party at the same time.
- 8.2.4 Any documents or information disclosed by the parties during an adjudication are confidential and the parties shall not use such documents or information for any purpose other than the adjudication in which they are disclosed and shall not disclose such documents and information to any third party, unless otherwise required by law, save and except for the adjudicator.
- 8.2.5 Notwithstanding any adjudication between the parties, there shall be no interruption of the *Work* pending settlement or resolution of such dispute or disagreement.
- 8.2.6 The parties agree that any dispute with respect to or that arises after termination or abandonment of the *Contract* shall not be referred to or resolved by adjudication.

## **GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION**

### **Paragraph 8.3.1**

Add the words “(the “Rules”), subject to amendments, if any, required by virtue of the applicability of the *Municipal Arbitrations Act*, RSO 1990, c M.48,” after the words “CCDC 40”.

### **Subparagraph .2**

Delete the words “either party by Notice in Writing requests” and replace with “both parties agree”.

### **Paragraph 8.3.4**

Delete the words “CCDC 40” and replace them with “the *Rules* subject to any amendments to the Rules made as described in paragraph 8.3.1”.

### **Paragraph 8.3.6**

Delete in its entirety and replace with the following:

- 8.3.6 By giving *Notice in Writing* to the other party, not later than 20 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.3.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the *Rules*, subject to any amendments to the *Rules* made as described in paragraph 8.3.1 (the “**Notice of Arbitration**”). The arbitration shall be conducted pursuant to the *Municipal Arbitrations Act*, RSO 1990, c M.48, as amended. Unless either party gives the notice contemplated by this paragraph 8.3.6, there shall be no arbitration of any such dispute.

#### **Paragraph 8.3.7**

Delete the words “10 Working Days” and replace them with “20 Working Days”.

#### **Paragraph 8.3.8**

##### **Subparagraph .1(1)**

Delete the words “Ready for Takeover” and replace them with “Substantial Performance of the Contract”.

##### **Subparagraph .2**

Delete the words “paragraph 8.3.6” and replace them with “paragraph 8.3.1”.

#### **New Paragraphs**

Add the following new paragraphs to GC 8.3:

- 8.3.9 For purposes of the Rules for Mediation and Arbitration of Construction Disputes CCDC 40, the term “neutral appointing authority”, as used in the Rules for Mediation and Arbitration of Construction Disputes shall mean the head of the construction section of the ADR Institute of Ontario, Inc. presiding at the time notice of the dispute is given pursuant to the *Contract*.
- 8.3.10 Notwithstanding any other provision of this *Contract*, the provisions set out in paragraphs 8.3.1 and 8.3.3 to 8.3.9 shall only apply if the parties agree in writing to submit a dispute to all, or any part of, those alternate dispute resolution procedures. If the parties do not agree as aforesaid, the Courts shall have exclusive jurisdiction to determine any dispute relating to the *Work* or to the *Contract*.
- 8.3.11 The *Contractor* agrees that the *Owner* may require the *Contractor* to join into an arbitration involving a dispute between the *Owner* and a third party in which the *Owner* wishes the *Contractor* to be bound by the results of the arbitration, and the *Contractor* hereby consents to such joinder. The *Contractor* agrees that should the *Owner* wish to join a third party into an arbitration involving a dispute between the *Owner* and the *Contractor*, the *Contractor* shall and does hereby consent to such joinder.

#### **GC 8.4 RETENTION OF RIGHTS**

Delete in its entirety.

### **PART 9 PROTECTION OF PERSONS AND PROPERTY**

#### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

Delete in its entirety and replace with the following:

## **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to, in the vicinity of, or proximate to, the *Place of the Work* from damage and shall be responsible for damage which may arise as the result of its performance or failure to perform under the *Contract*.
- 9.1.2 Should the performance or non-performance by the *Contractor* under the *Contract* result in damage to the *Work*, the *Owner's* property or property adjacent to, in the vicinity of, or proximate to, the *Place of the Work*, the *Contractor* shall be responsible for the *Making Good* of such damage at its expense.
- 9.1.3 Before commencing any *Work*, the *Contractor* shall determine the location of all underground utilities and structures indicated in or reasonably inferable from the *Contract Documents* and the *Reports* by a contractor exercising the degree of care and skill described in GC 3.9 – PERFORMANCE BY CONTRACTOR, paragraph 3.9.1.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall *Make Good* such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – CHANGES IN THE WORK, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 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 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*.
- 9.1.6 The *Contractor* shall be responsible for securing the *Place of the Work* at all times and shall take all reasonable precautions necessary to protect the *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours.

## **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

### **Paragraph 9.2.4**

Delete in its entirety and replace with the following:

- 9.2.4 Unless the *Contract Documents* expressly provide otherwise, the *Contractor* shall be responsible for taking all necessary steps in accordance with legal requirements and the *Contract Documents* to dispose of, store or otherwise



render harmless, toxic or hazardous substances or materials encountered at the *Place of the Work* in the course of the execution of the Work.

**Paragraph 9.2.5**

Delete the words “or which were disclosed but have not been dealt with as required under paragraph 9.2.4”.

**New Subparagraph**

Add the following new subparagraph to paragraph 9.2.5:

- .5 take all reasonable steps to mitigate the impact on *Contract Time* and *Contract Price* and any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.

**Paragraph 9.2.7**

Delete the words “the Owner shall promptly” and replace them with “the Owner will promptly”.

**Subparagraph .1**

Delete in its entirety and replace with the following:

- .1 take all necessary steps in accordance with legal requirements and the *Contract Documents* to dispose of, store or otherwise render harmless, toxic or hazardous substances or materials encountered at the *Place of the Work* in the course of the execution of the *Work* ;

**Subparagraph .2**

Add the word “and” at the end of the subparagraph.

**Subparagraph .4**

Delete in its entirety.

**Paragraph 9.2.8**

**Subparagraph .2**

Delete the words “property adjacent to” and replace them with “property adjacent, in the vicinity of, or proximate to,”

Delete the words “paragraph 9.1.3” and replace with “paragraph 9.1.2”.

**Subparagraph .3**

Add the words “and as a result of the delay” after the words “paragraph 9.2.6”.

#### **Subparagraph .4**

Delete the words “GC 13.1 – INDEMNIFICATION” and replace them with “GC 13.1 – INDEMNIFICATION, CLAIMS HANDLING AND WAIVER OF CLAIMS”.

#### **New Paragraphs**

Add the following new paragraphs to GC 9.2:

9.2.10 If the *Contractor* causes or permits

- .1 any toxic or hazardous substances or materials to be brought by the *Contractor*, its *Subcontractors*, *Suppliers* or anyone else for whom the *Contractor* is responsible at law, to the *Place of the Work*, or
- .2 any toxic or hazardous substances or materials which were already at the *Place of the Work* (but which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements), to be dealt with in a manner which does not comply with legal and regulatory requirements or which threatens human health and safety or the environment or causes material damage to the property of the *Owner* or others,

the *Contractor* shall

- .3 take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
- .4 immediately report the circumstances to the *Consultant* and the *Owner* by telephone, confirmed in writing.

9.2.11 In the case of any circumstances contemplated in paragraph 9.2.10, the *Contractor* shall be responsible, at the *Contractor's* sole expense, for cleaning up, removing, containing, storing, or otherwise dealing with the toxic or hazardous substances or materials and any damage caused thereby in a manner which the *Authorities Having Jurisdiction* determine will:

- .1 meet all applicable legal and regulatory requirements and ensure compliance with any applicable permits or other authorizations,
- .2 remove any threat to human health and safety or the environment, and
- .3 rectify all material damage to the property of the *Owner* and others.

9.2.12 For the purposes of this GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, the term “toxic and hazardous substances” shall be taken to mean, and shall be

limited to, substances as currently defined by applicable statutory and regulatory requirements.

#### **GC 9.4 CONSTRUCTION SAFETY**

Delete in its entirety and replace with the following:

##### **GC 9.4 CONSTRUCTION SAFETY**

- 9.4.1 The *Contractor* acknowledges that it is aware of the provisions of the *Occupational Health and Safety Act*, RSO 1990, c O.1 (the "**OHSA**") and the regulations, policies and guidelines thereunder. The *Contractor* agrees to comply with, and cause to be complied with, the provisions thereof as such statutes, regulations, policies and guidelines may be amended or replaced from time to time including, without limiting the generality of the foregoing, all of the obligations of the *Constructor* and employer under the *OHSA* and regulations, as applicable, in respect of the Work.
- 9.4.2 The *Contractor* shall execute all required documents under the *Owner's Health and Safety Guide for Construction Contractors* at the pre-construction meeting.
- 9.4.3 The *Contractor* shall do, cause to be done, or refrain from doing any act or thing as directed by the *Owner* or the *Consultant*, including stopping the Work if, at any time, the *Owner* or the *Consultant* considers that any situation or condition is unsafe or contrary to the provisions of the *OHSA*, or any other applicable *Laws and Regulations*. If the *Contractor* fails to comply with such direction, the *Owner* may:
- .1 take action to remedy the situation or condition and the cost thereof shall be payable by the *Contractor* on demand and, failing payment thereof, the *Owner* may deduct the costs from monies which are due or may become due to the *Contractor*; or
  - .2 terminate the *Contract* pursuant to GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT, paragraph 7.1.3.
- 9.4.4 Notwithstanding the foregoing, any act or failure to act by the *Owner* shall not in any way derogate from the responsibility of the *Contractor* under the *Contract* including its obligations under GC 9.4 – CONSTRUCTION SAFETY.
- 9.4.5 The *Contractor* shall indemnify, hold harmless and defend the *Owner*, the *Consultant*, the *Municipalities* and their respective directors, officers, council members, partners, agents and employees from and against all claims, demands, losses, costs including legal costs, damages, actions, suits and proceedings (including by any government agency) arising as a result of any violation or

alleged violation of the *OHSA* or the regulations, policies and guidelines thereunder, as such statutes, regulations, policies and guidelines may be amended or replaced from time to time.

- 9.4.6 The *Contractor* acknowledges that the *Owner* may employ the services of an occupational health and safety auditor for the purpose of conducting inspections of the *Place of the Work*. The *Contractor* shall grant the auditor full and unimpeded access to the *Site*, at all times, and shall immediately comply with any direction issued by the auditor to stop work. The parties acknowledge that the authority of the auditor to stop work is limited to circumstances where there is an immediate threat to the health and safety of the *Owner's* staff or to members of the public.
- 9.4.7 This *Contract* is deemed to be an individual project for the purposes of the *OHSA* and the regulations made thereunder and the *Contractor* acknowledges that it is the "*Constructor*" as defined in the *OHSA* on this *Project* and that it shall carry out all of the obligations, and shall bear all of the responsibilities, of the *Constructor* as set out in the *OHSA* and regulations including, but not limited to, the following:
- .1 ensuring that the measures and procedures prescribed by the *OHSA* are carried out;
  - .2 ensuring that every employer and every worker performing work on the *Project* complies with the said *OHSA* and regulations; and
  - .3 ensuring that the health and safety of workers on the *Project* is protected.
- 9.4.8 If the *Owner* is designated as the "*Constructor*" as a result of the *Contractor's* actions, all of the increases in costs to the *Owner* to carry out the duties and obligations of the "*Constructor*" shall be borne by the *Contractor*.
- 9.4.9 All *OHSA* Regulations for construction projects shall be strictly adhered to.
- 9.4.10 Without limiting the other provisions of GC 9.4 – CONSTRUCTION SAFETY or the *Contractor's* obligations for occupational health and safety, the *Contractor* shall, at no additional cost to the *Owner*, comply with, and cause its *Subcontractors* and any other persons present at the *Place of the Work* to comply with:
- .1 all legislative amendments, controls, regulations, requirements and orders that were or are issued by the Government of Canada, the Province of Ontario, the *Region* or other municipal authority in response to the Virus, and
  - .2 the *Owner's* policies, protocols and procedures implemented for the protection of the health of its staff, its residents and the community,

including the requirement for *Contractors* to adhere to the *Region's* COVID-19 Contractor Vaccination Policy as amended from time to time. Where they are subject to change, the *Contractor* must comply with the *Owner's* new requirements.

## **GC 9.5 MOULD**

### **Paragraph 9.5.2**

#### **Subparagraph .2**

Delete the words “property adjacent to the Place of the Work” and replace them with “property adjacent to, in the vicinity of, or proximate to, the *Place of the Work*”.

Delete the words “paragraph 9.1.3” and replace them with “paragraph 9.1.2”.

#### **Subparagraph .3**

Add the words “and as a result of the delay” after the words “paragraph 9.5.1.3”.

#### **Subparagraph .4**

Delete the words “GC 13.1 – INDEMNIFICATION” and replace them with “GC 13.1 – INDEMNIFICATION AND CLAIMS HANDLING”.

### **Paragraph 9.5.3**

#### **Subparagraph .2**

Add the word “and” at the end of the paragraph.

#### **Subparagraph .4**

Delete in its entirety.

## **NEW GENERAL CONDITIONS**

Add the following new General Conditions to PART 9 – PROTECTION OF PERSONS AND PROPERTY

### **GC 9.6 COMPLIANCE WITH ENVIRONMENTAL LEGISLATION**

9.6.1 The *Contractor* acknowledges that it is aware of the provisions of federal and provincial legislation applicable to the Work and the environment including, but not limited to:

- the *Canadian Navigable Waters Act*, R.S.C., 1985, c N-22
- the *Clean Water Act*, 2006, S.O. 2006, c 22;
- the *Conservation Authorities Act*, R.S.O. 1990, c C.27;
- the *Dangerous Goods Transportation Act*, R.S.O. 1990, c D.1;

- the *Endangered Species Act, 2007*, S.O. 2007, c 6;
- the *Environmental Protection Act*, R.S.O. 1990, c E.19;
- the *Fisheries Act*, R.S.C., 1985, c F-14;
- the *Ontario Water Resources Act*, R.S.O. 1990, c O.40;
- the *Safe Drinking Water Act, 2002*, S.O. 2002, c 32;
- the *Species at Risk Act*, S.C. 2002, c 29;
- the *Technical Standards and Safety Act, 2000*, S.O. 2000, c 16; and
- the *Transportation of Dangerous Goods Act, 1992*, S.C. 1992, c 34

and the regulations, permits, approvals, orders, directions, policies and guidelines issued thereunder. The *Contractor* agrees to comply with, and cause to be complied with, the provisions thereof as such statutes, regulations, permits, approvals, orders, directions, policies and guidelines may be amended or replaced from time to time including, without limiting the generality of the foregoing, any obligation to obtain, and any terms and conditions of, any approval, permit or other instrument required under the applicable acts, regulations, policies and guidelines thereunder in respect of the *Work* and further agrees to discharge, release, handle, transport, manage, store and dispose of all materials in accordance with such legislation.

- 9.6.2 The *Contractor* shall do, cause to be done, or refrain from doing any act or thing as directed by the *Owner* or the *Consultant*, including stopping the *Work* if, at any time, the *Owner* or the *Consultant* considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of the applicable acts, regulations, policies or guidelines thereunder, or any term or condition of a permit, approval order, directive or other instrument issued thereunder. If the *Contractor* fails to comply with such direction, the *Owner* may:
- .1 take action to remedy the situation or condition and the cost thereof shall be payable by the *Contractor* on demand and, failing payment thereof, the *Owner* may deduct the costs from monies which are due or may become due to the *Contractor*; or
  - .2 terminate the *Contract* pursuant to GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMIANTE THE CONTRACT.
- 9.6.3 Notwithstanding the foregoing, any act or failure to act by the *Owner* shall not in any way derogate from the responsibility of the *Contractor* under the *Contract* including its obligations under paragraph 9.6.1.

- 9.6.4 The *Contractor* shall indemnify, hold harmless and defend the *Owner*, the *Consultant*, the *Municipalities* and their respective directors, officers, council members, partners, agents, employees and authorized representatives from and against all claims, demands, losses, expenses, costs including legal and professional costs, damages, actions, suits or proceedings (including by any government agency) arising as a result of the *Contractor's* violation of any applicable *Laws and Regulations* and the common law relating to the environment issued thereunder as such may be amended, replaced or superseded from time to time as it relates to the *Contractor's* performance of the *Work*.
- 9.6.5 The *Contractor* acknowledges that the *Owner* may employ the services of an environmental inspector for the purpose of conducting inspections of the *Place of the Work*. The *Contractor* shall grant the environmental inspector full and unimpeded access to the *Site*, at all times, and shall immediately comply with any direction issued by the Environmental Inspector, the *Consultant*, or the *Owner*, including any direction to stop Work.

#### **GC 9.7 SPILLS REPORTING**

- 9.7.1 Prior to commencing construction, the *Contractor* shall:
- .1 submit to the *Owner* and The Ministry of the Environment, Conservation and Parks - Spill Action Plan in a form acceptable to the *Owner*, which outlines procedures for the reporting, interception, rapid clean-up, restoration of the affected area, treatment and disposal of the pollutant or substance spilled or discharged and impacted materials including without limitation, soil, groundwater and vegetation; and
  - .2 post at the *Place of the Work*, in a clearly visible and accessible location, a notice containing the following information:
    - (1) the names and the telephone numbers of the representatives of the *Owner* and *Municipalities* to be notified in the event of a spill or discharge;
    - (2) the telephone number of the Spills Action Centre 1-800-268-6060;
    - (3) the names and the telephone numbers of the representatives of the fire, police and health and public works departments of the *Municipalities* to be notified in the event of a spill or discharge;
    - (4) the names and the telephone numbers of companies experienced in the control and clean-up of hazardous and non-hazardous materials and substances that would be called upon by the *Contractor* in the event of a spill or discharge; and

- (5) the name and the telephone number of the *Contractor's* representative responsible for preparing, implementing, directing and supervising the clean-up of a spill or discharge.

- 9.7.2 In the event of a spill or discharge into the natural environment, the *Contractor* must comply, at all times, with the requirements of the Classification and Exemption of Spills and Reporting of Discharges, O. Reg. 675/98, under the *Environmental Protection Act*.
- 9.7.3 In the event of a spill or other discharge of a pollutant into the natural environment, every person responsible for the emission, or who causes or permits it, must forthwith notify all relevant parties of the spill or discharge. Information reported to the Ministry of the Environment, Conservation and Parks Spills Action Centre must comply with the reporting requirements stated within Classification and Exemption of Spills and Reporting of Discharges, O. Reg. 675/98, and may include the nature of the spill or discharge, the circumstances surrounding the spill or discharge, and the action taken or intended to be taken with respect to the spill or discharge.

Relevant parties to be notified in the event of a spill or discharge may include, but are not limited to:

- the Ministry of the Environment, Conservation and Parks Spills Action Centre – tel: 1-800-268-6060;
- the *Owner* –;
- the *Municipalities*;
- the owner of the pollutant or substance, if known;
- the person having control of the pollutant or substance, if known; and
- the *Consultant*

#### **GC 9.8 CERTIFICATE OF RECOGNITION (COR™) SAFETY PROGRAM**

- 9.8.1 The Certificate of Recognition (COR™) safety program, endorsed by IHSA, has been implemented by the *Owner* as a requirement for this *Contract*.
- 9.8.2 The *Contractor* shall:
- .1 maintain its COR™ certification;
  - .2 maintain its COR™ equivalency, in the form of a Letter of COR™ Equivalency issued by the IHSA; or
  - .3 have a valid Letter of Reciprocity issued by the IHSA, indicating that they are in the process of obtaining COR™ equivalency



for the duration of the *Contract*.

- 9.8.3 If, at any time during the *Contract*, the *Contractor's* COR™ certification, Letter of COR™ Equivalency or Letter of Reciprocity expires, the *Owner* may terminate the *Contract* pursuant to GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK OR STOP THE WORK OR TERMINATE THE CONTRACT, paragraph 7.1.3.
- 9.8.4 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance with the COR™ certification requirements set out in paragraph 9.8.2.

## **PART 10 GOVERNING REGULATIONS**

### **GC 10.1 TAXES AND DUTIES**

#### **New Paragraphs**

Add the following new paragraphs to GC 10.1:

- 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 The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.
- 10.1.5 Any refund of taxes, including without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*.
- 10.1.6 The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the *Owner* in the application for any rebates, incentives or refund or exemption of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such rebates, incentives, refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications. All such rebates, incentives or refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.

- 10.1.7 Customs duties, penalties, or any other penalty, fine or assessment levied against the *Contractor* shall not be treated as a tax or customs duty for purposes of this GC 10.1 – TAXES AND DUTIES.

## **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

### **Paragraph 10.2.2**

Delete in its entirety and replace with the following:

- 10.2.2. The *Owner* shall obtain and pay for development approvals, building permit, site plan approval and environmental approvals. Without limiting the generality of any other provision in the *Contract*, the *Contractor* shall obtain and pay for, at its sole expense and cost, all other permits, approvals, licences, certificates, charges and refundable deposits, including, without limitation, water and sanitary sewer permits, water and sewer connection charges, site alteration permits, curb cut and road cut permits, sign permits, hydro approvals, and occupancy permit necessary for the performance of the *Work* and the use and occupation of the *Work* by the *Owner* in accordance with the *Contract Documents*, the cost of which shall all be included in the *Contract Price*.

### **Paragraph 10.2.3**

Delete in its entirety and replace with the following:

- 10.2.3 The *Contractor* shall comply, and shall require its employees, agents, *Subcontractors*, *Suppliers* and anyone for whom they are responsible to comply, with all *Laws and Regulations* and all of the *Owner's* policies and procedures which are or become in force and are applicable to the performance of the *Work* including, without limitation, all those relating to the preservation of the public health, occupational health and safety and to construction safety.

### **Paragraph 10.2.4**

Delete in its entirety and replace with the following:

- 10.2.4 The *Contractor* shall give the required notices and comply with the *Laws and Regulations*, and industry best practices and guidelines which are or become in force during the performance of the *Work* and which relate to the *Work*, to the environment, to the preservation of public health and to construction safety. The *Contractor* shall provide the *Owner* with copies of all such required notices and related health and safety documents. 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 Act*, 1992, S.O. 1992, c.23. 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.

**Paragraph 10.2.5**

Delete in its entirety and replace with the following:

- 10.2.5 Subject to GC 1.8 – DOCUMENT REVIEW BY THE CONTRACTOR, paragraph 1.8.1, the *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable *Laws and Regulations* relating to the Work. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable *Laws and Regulations* which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known and no further work on the affected components of the *Contract* shall proceed until these changes to the *Contract Documents* have been obtained by the *Contractor* from the *Consultant*. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – CHANGES IN THE WORK, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.

**Paragraph 10.2.6**

Delete in its entirety and replace with the following:

- 10.2.6 If the *Contractor* fails to provide the *Owner* and the *Consultant* with a *Notice in Writing*, fails to obtain direction as required in paragraph 10.2.5, or performs work that it knows or ought to have known that contravenes any *Laws and Regulations*, the *Contractor* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such *Laws and Regulations*

**Paragraph 10.2.7**

Delete in its entirety and replace with the following:

- 10.2.7 If, subsequent to the time of bid submission deadline, changes are made to applicable *Laws and Regulations* of *Authorities Having Jurisdiction* which were not anticipated at the time of bid closing and which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

**New Paragraphs**

Add the following new paragraphs to GC 10.2:

- 10.2.8 Without limiting the generality of any other provision in the Contract Documents, the Contractor shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental Authorities as evidence that the Work as installed conforms with the *Laws and Regulations of Authorities Having Jurisdiction*, including, without limitation, certificates of compliance for the Owner's occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the Work, in the event that such governmental or quasi-governmental Authorities furnish such certificates.

### **GC 10.3 PATENT FEES**

#### **Paragraph 10.3.1**

Delete the words "The Contractor shall hold the Owner harmless" and replace them with "The Contractor shall indemnify, hold harmless and defend the Owner".

Delete the words "suits, or proceedings" and replace them with "suits and proceedings".

#### **Paragraph 10.3.2**

Delete the words "The Owner shall" and replace them with "The Owner will".

Delete the words "supplied to the Contractor as part of the Contract" and replace them with "supplied to the Contractor by the Owner as part of the Contract".

### **GC 10.4 WORKERS' COMPENSATION**

#### **Paragraph 10.4.1**

Delete in its entirety and replace with the following:

- 10.4.1 Upon execution and delivery of the *Contract*, prior to commencing the *Work*, with each application for payment, at *Substantial Performance of the Contract*, and at the issuance of the final certificate for payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.

#### **New Paragraphs**

Add the following new paragraphs to GC 10.4:

- 10.4.2 The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*. At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.
- 10.4.3 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.

- 10.4.4 If the *Contractor* at any time fails to pay any assessment or compensation required to be paid with respect to workplace safety and insurance, the *Owner* may pay such assessment or compensation and deduct the cost thereof from monies due or that may become due to the *Contractor*.

## **PART 11 INSURANCE**

Delete in its entirety and replace with the following:

### **PART 11 INSURANCE AND CONTRACT SECURITY**

#### **GC 11.1 BONDS**

- 11.1.1 On or before the execution and delivery of the *Contract*, the *Contractor* shall provide to the *Owner*:
- .1 a performance bond in the amount of 100% of the *Contract Price* and conforming to Form 32 – Performance Bond under Section 85.1 of the *Construction Act*; and
  - .2 a labour and material payment bond in the amount of 50% of the *Contract Price* and conforming to Form 31 – Labour and Material Payment Bond under section 85.1 of the *Construction Act*.
- 11.1.2 Such bonds shall be issued by a surety company licensed under the *Insurance Act*, RSO 1990, c. I.8, as amended, and approved by the *Owner*, and shall be maintained in good standing until the fulfillment of the *Contract*.

#### **GC 11.2 INSURANCE**

- 11.2.1 Without restricting the generality of GC 13.1 – INDEMNIFICATION AND CLAIMS HANDLING, the *Contractor* shall obtain, maintain, pay the premium(s) and any deductibles for, and provide evidence of, insurance coverage as listed in Appendix D to the Request for Tender. The insurance shall be taken out with insurance companies licensed to transact business in the Province of Ontario and who are not otherwise excluded by the *Owner's* Risk Manager.
- 11.2.2 The forms of the insurance policies shall in all respects be satisfactory to the *Owner's* Risk Manager and shall be maintained continuously from the commencement of the *Work* until the *Work* has been completed to the satisfaction of the *Owner*.

- 11.2.3 The policies shall be endorsed to provide the *Owner* with not less than 30 Days *Notice in Writing* in advance of any cancellation, change or amendment which restricts coverage such that the *Contract* requirements are no longer met.
- 11.2.4 The *Contractor* shall provide the *Owner* with proof of insurance, by submitting an original Certificate of Insurance on the *Owner's* standard "Certificate of Insurance" form, upon execution and delivery of the *Contract*, prior to commencement of the *Work* and thereafter upon request by the *Owner*. In lieu of an original Certificate of Insurance, the *Owner* may accept an electronic copy provided it is e-mailed or faxed by the *Contractor's* insurance broker directly to the *Owner*.
- 11.2.5 If the *Contractor* fails to provide or maintain insurance as required in this General Condition or elsewhere in the *Contract*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence thereof to the *Contractor*, the *Consultant* and the *Municipalities*, as applicable, and all such costs, including administration costs, shall be payable by the *Contractor* to the *Owner* on demand.

## **PART 12 OWNER TAKEOVER**

### **GC 12.1 READY-FOR-TAKEOVER**

Delete in its entirety.

### **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

Delete in its entirety and replace with the following:

#### **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

- 12.2.1 Upon the *Owner's* request, the *Owner* shall, at any time or times, have the right of occupying or using any part or parts of the *Work* (including, without limitation, for the purposes of installing and testing fittings and equipment), whether partially performed or entirely complete, whether completed on schedule or not, before *Substantial Performance of the Contract* has been attained, or before the completion of the *Work*.
- 12.2.2 In the event the *Owner* desires to exercise the privilege of occupancy or use of the *Work* as provided above, the *Contractor* shall co-operate with the *Owner* throughout in making available for the *Owner's* use such building services as heating, ventilation, cooling, water, lighting and telephone for the space or spaces to be occupied or used, and if the equipment required to furnish such services is not entirely completed at the time the *Owner* desires to occupy or use the aforesaid space or spaces, the *Contractor* shall make every reasonable effort to complete same as soon as possible to the extent that the necessary equipment can be put into operation and use and any extra cost beyond that

originally required to complete the *Work* arising from such early occupancy or use shall be borne by the *Owner*.

- 12.2.3 In the event that the *Owner* exercises the privilege of occupancy or use of the *Work* as provided above, it agrees to do so, so as not to materially interfere with the respective work of the *Contractor*, *Subcontractors* or *Suppliers* and under the understanding that the *Owner* will be occupying premises within a construction site which will require compliance with all normal construction site requirements including, without limitation, health and safety requirements.
- 12.2.4 It shall be understood, however, that the *Owner's* occupancy or use of such space or spaces of the *Work* shall not constitute the *Owner's* acceptance of any *Work*, materials or equipment which are not in accordance with the requirements of the *Contract Documents*, nor affect the *Warranty Period* under the *Contract*, nor relieve the *Contractor* from its obligations, duties, responsibilities, and liabilities to complete the *Work*, nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, any *Work*, material or equipment, nor from any other unfulfilled duties, liabilities, obligations or responsibilities under the *Contract* nor from any other duty, liability, obligation or responsibility under the *Contract* including, without limitation, the *Contractor's* warranty obligations. If, however, damage results from any act by the *Owner*, the *Owner* shall assume its share of the responsibility for such damage.

## **GC 12.3 WARRANTY**

### **Paragraph 12.3.1**

Delete in its entirety and replace with the following:

- 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(s) specified in Article A-13 of the Agreement – WARRANTY PERIOD, or such longer periods as may be specified for certain *Products* or *Work* or as agreed to by the *Owner* and the *Contractor* (the “**Warranty Period**”). This warranty shall cover labour and material, 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.

### **Paragraph 12.3.2**

Delete the word “The” at the beginning of the sentence and replace it with “Subject to GC 1.8 – DOCUMENT REVIEW BY THE CONTRACTOR, paragraph 1.8.1, the”.

### **Paragraph 12.3.3**

Delete the words “one year Warranty Period” and replace them with “*Warranty Period*”.

### **Paragraph 12.3.4**

Delete the words “one year Warranty Period” and replace them with “*Warranty Period*”.

### **Paragraph 12.3.6**

Delete the words “one year Warranty Period” and replace them with “*Warranty Period*”.

### **New Paragraphs**

Add the following new paragraphs to GC 12.3:

- 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* or the *Owner's* tenants, operational as designed, all necessary corrections 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 four (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 in 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-



13 of the Agreement – WARRANTY PERIOD which are subject to paragraph 12.3.6.

12.3.11 Specified *Warranty Periods* shall not be construed as limiting the provisions of GC 13.1 - INDEMNIFICATION AND CLAIMS HANDLING.

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.

## **PART 13 INDEMNIFICATION AND WAIVER**

Delete in its entirety and replace with the following:

### **PART 13 INDEMNIFICATION AND WAIVER**

#### **GC 13.1 INDEMNIFICATION, CLAIMS HANDLING AND WAIVER OF CLAIMS**

13.1.1 The *Contractor* shall indemnify, hold harmless and defend the *Owner*, the *Municipalities* and the *Consultant* and their respective directors, officers, council members, partners, agents and employees from and against all claims, demands, losses, costs (including all legal costs), damages, actions, suits and proceedings that arise directly or indirectly out of, or are attributable to, the *Contractor's* performance of, or failure to perform, the *Work* or out of the condition of the *Work*, the *Place of the Work*, adjoining lands or highways used in connection with the performance of the *Work*, including any act or omission of the *Contractor* or its agents, any *Subcontractors*, employees, workers or other persons for whom the *Contractor* is in law responsible provided that such claims are caused by the negligent acts or omissions of the *Contractor* or its agents, any *Subcontractors*, employees, workers or other persons for whom the *Contractor* is in law responsible. This indemnification shall include any legal costs incurred by the *Owner* on a substantial indemnity basis, including those incurred to defend any criminal or quasi-criminal prosecutions against the *Owner* resulting from the actions of the *Contractor* or other persons for whom the *Contractor* is in law responsible.

13.1.2 The indemnification obligations in GC 13.1 – INDEMNIFICATION, CLAIMS HANDLING AND WAIVER OF CLAIMS shall apply provided that such claims are made by *Notice in Writing* within a period of two years from the date of *Total Performance of the Contract*, or within such longer period of time as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

13.1.3 The *Contractor* shall respond to, and deal with, all third-party claims in a prompt, courteous and efficient manner. The *Contractor* shall contact all third-party claimants and acknowledge receipt of all third-party claims within 1 *Business Day* and in writing within 3 *Business Days* upon being notified in writing of the third-party claim. The *Contractor* shall immediately, upon receipt of any third-party claim, provide the *Owner's* Controllershship Office with notice of the third-party claim. The *Contractor* shall also provide the *Owner's* Controllershship Office with copies of all correspondence between the *Contractor* or its agents and the third-party claimant.

13.1.4 The *Contractor* shall not advise the third-party claimant that the *Owner* is responsible for their claim.

13.1.5 If, in the sole discretion of the *Owner's* Controllershship Office, acting reasonably, a claim is not being dealt with in a manner consistent with the provisions of this *Contract*, which includes, without limiting the generality of the foregoing:

- .1 failure of the *Contractor* to acknowledge receipt of the third-party claim in the manner set out in paragraph 13.1.3; and
- .2 failure to resolve the third-party claim to the satisfaction of the *Owner* within 90 Days of the receipt of the third-party claim;

the *Owner* may appoint an insurance adjuster or other person to settle any third-party claims arising from this *Contract*. Any money paid by the *Owner* in satisfaction of any third-party claim determined to be the *Contractor's* responsibility, plus all associated costs incurred by the *Owner*, shall be deducted from monies owing to the *Contractor* by the *Owner*.

13.1.6 Notwithstanding paragraph 13.1.5 the *Owner* may withhold funds in the amount of any third-party claim received plus the greater of \$1,000.00 or 25% of the amount claimed, from monies owing to the *Contractor* by the *Owner* under this *Contract* or, in the event the *Contractor* becomes insolvent, any other contract between the *Owner* and the *Contractor*.

## **GC 13.2 WAIVER OF CLAIMS**

13.2.1 Subject to any rights or remedies provided by the *Construction Act*, as of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including, without limitation, those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing in compliance with the *Contract Documents* prior to the *Contractor's* application for final payment and still unsettled; and

- .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES or GC 10.3 PATENT FEES.

### **GC 13.3 DAMAGES AND MUTUAL RESPONSIBILITY**

- 13.3.1 If the *Owner* suffers damage in any manner because of any wrongful act or negligent act or omission of the *Contractor* or of anyone for whom the *Contractor* is responsible in law, then the *Owner* shall be reimbursed by the *Contractor* for such damage.
- 13.3.2 Claims for damage under paragraph 13.3.1 shall be made by the *Owner* by providing a Notice in Writing within reasonable time after the first observance of such damage and if undisputed shall be confirmed by *Change Order*. Disputed claims shall be resolved as set out in PART 8 – DISPUTE RESOLUTION.
- 13.3.3 If the *Contractor* has caused damage to the work of an *Other Contractor* on the *Project*, the *Contractor* agrees upon receipt of a *Notice in Writing* to settle with the *Other Contractor* by negotiation or arbitration. If the *Other Contractor* makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgement against the *Owner* and pay the costs incurred by the *Owner* arising from such action.

### **NEW PARTS**

Add the following new Parts to the General Conditions:

#### **PART 14 AUDIT**

##### **GC 14.1 AUDIT**

- 14.1.1 The *Owner* and the Ministry of Labour shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to any work performed under the *Contract* (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of the *Contractor*, including, but not limited to those kept by the *Contractor*, its employees, agents, assigns, successors and *Subcontractors*. The *Contractor* shall maintain and preserve all original books and records, together with such supporting or underlying documents and materials, for the duration of this *Contract* and for at least 2 years following the completion of this *Contract*, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the *Owner*, through its employees, agents, representatives, contractors or other designees, during normal

business hours at the *Contractor's* office or place of business, and the *Contractor* shall supply certified copies of payrolls and any other records required by the *Owner* as and when called for. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in The Regional Municipality of York, Ontario, which is convenient for the *Owner*.

- 14.1.2 Paragraph 14.1.1 shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the *Owner* may have by Federal, Provincial, or Municipal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

## **PART 15 SOFTWARE**

### **GC 15.1 SOFTWARE**

- 15.1.1 Without limiting the generality of any other provision in the *Contract*, the *Contractor*, as a part of the *Work*, shall *Supply* and *Install* all software required by the *Contract Documents* or included with any systems required by the *Contract Documents* ("**Software**"). The *Contractor* shall grant or obtain a perpetual, irrevocable non-exclusive royalty-free license to use the Software sufficient for the *Owner's* purposes.

## **FORMS**

- Form 1 Preliminary Estimate for Payment
- Form 2 Proper Invoice
- Form 3 Declaration to be provided in connection with GC 5.4.7.4, GC 5.5.2.6 and GC 5.6.5.4
- Form 4 Release to be provided in connection with GC 5.4.7.3
- Form 5 Release to be provided in connection with GC 5.6.5.3
- Form 6 Statutory Declaration to be provided in connection with GC 5.5.2.4
- Form 7 Release to be provided in connection with GC 5.5.2.5
- Form 8 AODA Training Certificate

[Department] CONTACT NO. [Contract No.] / YORK REGION PURCHASE ORDER NO. [Purchase Order #]

[Brief Description of Contract]

CONTRACTOR: [Contractor Name]

WORK PERIOD: [start date] to [end date]

[Division / Part Reference]

Item #	Spec. Reference	Item Description	Unit	Unit Price	Tender Quantity	Tender Amount	Previous Quantity	Current Quantity	Quantity to Date	Previous Amount	Current Amount	Amount to Date	% Complete	Projected Final Quantity	Projected Final Cost	Cost Over/Under
1				\$		\$				\$	\$	\$	%		\$	\$
2				\$		\$				\$	\$	\$	%		\$	\$
3				\$		\$				\$	\$	\$	%		\$	\$
4				\$		\$				\$	\$	\$	%		\$	\$
5				\$		\$				\$	\$	\$	%		\$	\$
6				\$		\$				\$	\$	\$	%		\$	\$
7				\$		\$				\$	\$	\$	%		\$	\$
8				\$		\$				\$	\$	\$	%		\$	\$
9				\$		\$				\$	\$	\$	%		\$	\$
10				\$		\$				\$	\$	\$	%		\$	\$
11				\$		\$				\$	\$	\$	%		\$	\$
12				\$		\$				\$	\$	\$	%		\$	\$
13				\$		\$				\$	\$	\$	%		\$	\$
14				\$		\$				\$	\$	\$	%		\$	\$
Total										\$	\$	\$			\$	\$

[Department] CONTACT NO. [Contract No.] / YORK REGION PURCHASE ORDER NO. [Purchase Order #]  
[Brief Description of Contract]

CONTRACTOR: [Contractor Name]  
[Contractor Address]

INVOICE NO. [Invoice Number]

INVOICE DATE: [Invoice Date]

BILLING CONTACT INFORMATION: [Name, Title]  
[Phone Number Fax Number, Email Address]  
[Mailing Address]

WORK PERIOD: [start date] to [end date]

GST/HST REGISTRATION #: [Contractor Name]

Division / Part	Tender Amount	Current Amount	Amount Paid	Amount to Date	% Complete
Division 1 – General Requirements	\$	\$	\$	\$	
Part E - Electrical	\$	\$	\$	\$	
Cash Allowances	\$	\$	\$	\$	
Change Orders	\$	\$	\$	\$	
Credits (e.g. asphalt payment adjustment)	\$	\$	\$	\$	
Deductions (e.g. asphalt payment adjustment)	\$	\$	\$	\$	
<b>SUBTOTAL</b>	\$	\$	\$	\$	
HST (13%)	\$	\$	\$	\$	
<b>TOTAL CONTRACT</b>	\$	\$	\$	\$	
Total value of work completed to end of Work Period		\$	\$	\$	
Less 10% Statutory Holdback		\$	\$	\$	
Less Maintenance Security (if applicable)		\$	\$	\$	
Less Lien Holdback		\$	\$	\$	
Subtotal		\$	\$	\$	
Plus HST		\$	\$	\$	
<b>Total Amount to be paid to Contractor</b>		\$			

By submitting this invoice, the Contractor declares that:

- all assessment and levies under the Employment Standards Act, the Workplace Safety and Insurance Act or other social or labour legislation in respect of this Contract have been duly paid and the work is free of all liens and encumbrances;
- all claims for damage to property or injury to persons in respect of this Contract for which the Contractor has received notice have been fully paid or settled; and

3. all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the performance of the work under this Contract, and for which the Region might in any way be held responsible, have been fully paid as of the last payment made to the Contractor except for statutory and contractual holdback monies properly retained, payments deferred by agreement, or payment withheld by reason of legitimate dispute which has been identified to the party or parties from whom payment has been withheld.

SAMPLE



[Department] CONTACT NO. [Contract No.] / YORK REGION PURCHASE ORDER NO. [Purchase Order #]

[Brief Description of Contract]

CONTRACTOR: [Contractor Name]

WORK PERIOD: [start date] to [end date]

[Division / Part Reference]

Item #	Spec. Reference	Item Description	Unit	Unit Price	Tender Quantity	Tender Amount	Previous Quantity	Current Quantity	Quantity to Date	Previous Amount	Current Amount	Amount to Date	% Complete	Projected Final Quantity	Projected Final Cost	Cost Over/Under
1				\$		\$				\$	\$	\$	%		\$	\$
2				\$		\$				\$	\$	\$	%		\$	\$
3				\$		\$				\$	\$	\$	%		\$	\$
4				\$		\$				\$	\$	\$	%		\$	\$
5				\$		\$				\$	\$	\$	%		\$	\$
6				\$		\$				\$	\$	\$	%		\$	\$
7				\$		\$				\$	\$	\$	%		\$	\$
8				\$		\$				\$	\$	\$	%		\$	\$
9				\$		\$				\$	\$	\$	%		\$	\$
10				\$		\$				\$	\$	\$	%		\$	\$
11				\$		\$				\$	\$	\$	%		\$	\$
12				\$		\$				\$	\$	\$	%		\$	\$
13				\$		\$				\$	\$	\$	%		\$	\$
14				\$		\$				\$	\$	\$	%		\$	\$
Total										\$	\$	\$			\$	\$

**DECLARATION OF KNOWN ADJUDICATIONS**

I, \_\_\_\_\_ of \_\_\_\_\_ declare that:  
*(name of declarant)* *(name of contractor)*

1. I am the \_\_\_\_\_ of \_\_\_\_\_  
*(title or position of declarant)* *(name of contractor)*  
and as such have knowledge of the facts herein declared.

2. That \_\_\_\_\_ entered into Contract No. \_\_\_\_\_  
*(name of contractor)* *(contract number)*  
with The Regional Municipality of York for:  
\_\_\_\_\_  
*(description of contract)*

3. That \_\_\_\_\_ is not engaged in any adjudication with  
*(name of contractor)*  
respect to Contract No. \_\_\_\_\_ except for those adjudications  
*(contract number)*  
identified in Schedule A – Known Adjudications.

4. That \_\_\_\_\_ is not aware of any adjudication in which any  
*(name of contractor)*  
subcontractors or suppliers are engaged in with respect to Contract No. \_\_\_\_\_  
*(contract number)*  
except for those adjudications identified in Schedule A – Know Adjudications, and has  
made reasonable enquiries to confirm this.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Declarant

## Schedule A - Known Adjudications

[illegible]

**RELEASE**

IN THE MATTER OF a contract for \_\_\_\_\_, known as  
York Region Contract No. \_\_\_\_\_, entered into between The Regional Municipality of York  
(the "**Region**") and \_\_\_\_\_ (the "**Contractor**").

KNOW ALL MEN BY THESE PRESENTS THAT the Contractor, on its own behalf and on behalf of its  
Subcontractors, and their respective heirs, executors, administrators, successors and assigns, as the  
case may be (the "**Releasor**"), for and in consideration of the payment or promise to pay the statutory  
holdback under the above-mentioned contract, and for other good and valuable consideration,  
hereby remises, releases and forever discharges the Region and its directors, officers, council  
members, partners, employees, agents, assigns and successors (the "**Releasee**"), of and from all  
manner of actions, causes of action, suits, debts, dues, sums of money, claims and demands  
whatsoever at law or in equity which the Releasor ever had, now has, or may have by reason of the  
above-mentioned contract, save and except any claim which the Releasor has arising out of:

1. Claims pursuant to PART 8 – DISPUTE RESOLUTION made prior to Substantial Performance of  
the Contract and still unsettled, as listed in the attached "Schedule of Outstanding Claims"
2. The retention by the Region of the maintenance security, if applicable
3. Pending/Unresolved Change Orders as listed in the attached "Schedule of Pending/Unresolved  
Change Orders"
4. Quantities which have not been finalized

With respect to item 1 above, the Contractor acknowledges and agrees that none of the claims listed  
in the attached "Schedule of Outstanding Claims" have been admitted, acknowledged or accepted by  
the Region as valid claims. The Contractor further acknowledges that nothing in this Release prevents  
or estops the Region from disputing the validity, timeliness and quantum of the claims listed therein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSED BY

SIGNED, SEALED AND DELIVERED

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

### Schedule of Outstanding Claims

Description of Dispute	Value of Dispute

### Schedule of Pending / Unresolved Change Orders

CO #	Description of Change Order	Value of Change Order

RELEASE

IN THE MATTER OF a contract for \_\_\_\_\_, known as York Region Contract No. \_\_\_\_\_, entered into between The Regional Municipality of York (the “**Region**”) and \_\_\_\_\_ (the “**Contractor**”).

KNOW ALL MEN BY THESE PRESENTS THAT the Contractor, on its own behalf and on behalf of its Subcontractors, and their respective heirs, executors, administrators, successors and assigns, as the case may be (the “**Releasor**”), for and in consideration of the payment or promise to pay the statutory holdback under the above-mentioned contract, and for other good and valuable consideration, hereby remises, releases and forever discharges the Region and its directors, officers, council members, partners, employees, agents, assigns and successors (the “**Releasee**”), of and from all manner of actions, causes of action, suits, debts, dues, sums of money, claims and demands whatsoever at law or in equity which the Releasor ever had, now has, or may have by reason of the above-mentioned contract, save and except any claim which the Releasor has arising out of:

1. Claims pursuant to PART 8 – DISPUTE RESOLUTION made prior to Total Performance of the Contract and still unsettled, as listed in the attached “Schedule of Outstanding Claims”
2. The retention by the Region of the maintenance security, if applicable
3. Pending/Unresolved Change Orders as listed in the attached “Schedule of Pending/Unresolved Change Orders”
4. Quantities which have not been finalized

With respect to item 1 above, the Contractor acknowledges and agrees that none of the claims listed in the attached “Schedule of Outstanding Claims” have been admitted, acknowledged or accepted by the Region as valid claims. The Contractor further acknowledges that nothing in this Release prevents or estops the Region from disputing the validity, timeliness and quantum of the claims listed therein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSED BY

SIGNED, SEALED AND DELIVERED

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

### Schedule of Outstanding Claims

Description of Dispute	Value of Dispute

### Schedule of Pending / Unresolved Change Orders

CO #	Description of Change Order	Value of Change Order

*A Commissioner, etc.*



**RELEASE**

IN THE MATTER OF a subcontract for .....  
 entered into between ..... (the "**Contractor**") and  
 ..... (the "**Subcontractor**") in relation to York Region  
 Contract No. ...., entered into between The Regional Municipality of York  
 (the "**Region**") and the Contractor, which subcontract has been completed for the price of  
 ..... (exclusive of tax).

KNOW ALL MEN BY THESE PRESENTS THAT the Contractor and Subcontractor, on their own behalf and on behalf of their respective Subcontractors, heirs, executors, administrators, successors and assigns, as the case may be (the "**Releasors**"), for and in consideration of the payment or promise to pay the statutory holdback under the above-mentioned subcontract, and for other good and valuable consideration, hereby remise, release and forever discharge the Region and its directors, officers, council members, partners, employees, agents, assigns and successors (the "**Releasee**"), of and from all manner of actions, causes of action, suits, debts, dues, sums of money, claims and demands whatsoever at law or in equity which the Releasors ever had, now have, or may have by reason of the above-mentioned subcontract, save and except any claim which the Releasors have arising out of:

1. Claims pursuant to PART 8 – DISPUTE RESOLUTION made prior to the date of completion of the subcontract and still unsettled, as listed in the attached "Schedule of Outstanding Claims"
2. The retention by the Region of the maintenance security, if applicable

With respect to item 1 above, the Contractor and Subcontractor acknowledge and agree that none of the claims listed in the attached "Schedule of Outstanding Claims" have been admitted, acknowledged or accepted by the Region as valid claims. The Contractor and Subcontractor further acknowledges that nothing in this Release prevents or estops the Region from disputing the validity, timeliness and quantum of the claims listed therein.

Dated this ..... day of ....., 20.....

WITNESSED BY

SIGNED, SEALED AND DELIVERED

**CONTRACTOR**

(Seal)

**SUBCONTRACTOR**

(Seal)

Schedule of Outstanding Claims

Description of Dispute	Value of Dispute

AODA TRAINING CERTIFICATE

TO: THE REGIONAL MUNICIPALITY OF YORK (the “Region”)

RE: RFT No. \_\_\_\_\_ between the Region and \_\_\_\_\_ (the “Contract”)

Pursuant to Section 7 and Section 80.49 of *Ontario Regulation 191/11, Integrated Accessibility Standards* (the “Regulations”), made under the AODA, the Contractor shall ensure that all of its employees, agents, volunteers, or others engaged by the Contractor in the delivery of goods, services and/or facilities under this Contract receive training in connection with the provision of these goods, services and/or facilities to persons with disabilities. Such training shall be provided in accordance with the Regulations and shall include, without limitation, a review of the purposes of the AODA, the requirements of the Regulations and the *Human Rights Code* as it pertains to persons with disabilities.

The Contractor represents and certifies to the Region that:

- 1 the AODA training provided by the Contractor includes the following:
  - (a) A review of the purposes of the AODA, the requirements of the Regulations and the *Human Rights Code*;
  - (b) How to interact and communicate with persons with various types of disability including persons with disabilities who use assistive devices or require the assistance of a guide animal, or a support person.
  - (c) How to use equipment or devices that are available on the premises that may assist in the provision of goods and services to a person with a disability.
  - (d) What to do if a person with a particular type of disability is having difficulty accessing the Contractor’s goods or services.
- 2 the Contractor, its employees, agents, volunteers, and other persons engaged by the Contractor in the provision of goods, services and/or facilities under this Contract have received the required AODA training;
- 3 the required AODA training is delivered on an ongoing basis, including new employees, agents, volunteers and other persons engaged by the Contractor;
- 4 the Contractor keeps a record of the training provided and the number of individuals who have received AODA training;
- 5 under this Contract the AODA training is required by the following number of individuals: \_\_\_\_\_; and
- 6 the following number of individuals have received AODA training as of the date of this Certificate: \_\_\_\_\_

The source of the AODA training provided by the Contractor is:

- ☐ York Region Accessible Customer Service Training ([www.York.ca/accessibility](http://www.York.ca/accessibility))
- ☐ Integrated Accessibility Standards Training
- ☐ Alternate training program that meets the requirements listed above

Contractor’s Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind the corporation