



COLDWATER PUBLIC SCHOOL

33 Gray St., Coldwater, Ontario

INTERIOR RENOVATIONS

#12506T

INSTRUCTIONS TO BIDDERS

Coldwater Public School

Interior Renovations

Tender No.
2024 -
12506T

1. INTRODUCTION

1.1 INVITATION

- 1.1.1 Simcoe County District School Board (the “**Owner**”) is soliciting Bids from prequalified general contractors to perform the work described in the Bid Documents (the “**Work**”) at **Coldwater Public School, 33 Grey Street, Coldwater, Ontario, L0K1E0** (the “**Place of the Work**”).

1.2 KEY INFORMATION

- 1.2.1 This Section provides a summary of some key information contained in the Bid Documents and is provided solely as a convenience. Bidders are urged to read all of the Bid Documents carefully and thoroughly to ensure they fully understand all of the terms and conditions, including all Contract requirements.
- (a) The Owner has scheduled a mandatory site meeting at the **Place of the Work** on **May 1, 2024** commencing at **4:45pm**.
 - (b) The Owner requires that all Bidders attend the mandatory site meeting.
 - (c) The deadline for submitting questions (the “**Question Deadline**”) is 10 days before the Submission Deadline.
 - (d) Questions must be submitted through the online portal www.bidsandtenders.ca
 - (e) Bids must be submitted online through the Portal **BEFORE 1:30:00PM** Local Time on **May 16, 2024** (the “**Submission Deadline**”).
 - (f) Bids must be irrevocable for a period of ninety (90) days starting from the day after the Submission Deadline (the “**Irrevocability Period**”).
 - (g) The form of bid security to be delivered as part of the Bid is a digital bond, no other form of bond is acceptable. Bids submitted without digital bond will be considered noncompliant.
 - (h) The successful Bidder is permitted to commence work on site as of **July 1, 2024**.
 - (i) The successful Bidder will be required to achieve Substantial Performance of the Work by **August 23, 2024**.
 - (j) The Bid Coordinator is Brian Torre, Purchasing Supervisor, at “btorrie@scdsb.on.ca”.

1.3 PREQUALIFICATION

- 1.3.1 The following General Contractors are prequalified to submit a Bid (each a “**Prequalified Contractor**”):
- (a) Anacond Contracting Inc.
 - (b) Area Construction Inc.
 - (c) BDA Inc.
 - (d) Bertram Construction (Ontario) Ltd.
 - (e) Les Bertram & Sons (1985) Ltd.
 - (f) Maracon Construction Ltd.
 - (g) Quinan Construction Ltd.

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- (h) Ritestart Ltd.
- (i) RJB Construction (1989) Ltd
- (j) Rutherford Contracting Ltd.
- (k) Shertine Construction Ltd.
- (l) Silver Birch Contracting Ltd.
- (m) W. E Marshall Construction (1986) Ltd.
- (n) W.S. Morgan Construction Ltd.
- (o) West Metro Contracting Inc.

1.3.2 The following Mechanical Subcontractors are prequalified for the Work:

- (a) Anvi Service Ltd.
- (b) Bruno Plumbing & Contracting Inc.
- (c) Carmicheal Engineering Ltd.
- (d) CEC Mechanical Ltd.
- (e) Division 15 Plumbing & Mechanical
- (f) H.S. St Amant & Sons Inc.
- (g) Kelson Mechanical Inc.
- (h) Litek Mechanical Services Inc.
- (i) Marnoch Electrical Services Inc.
- (j) Pipe all Plumbing & Heating Ltd.
- (k) Sexton's Mechanical Ltd.
- (l) Soan Mechanical Ltd.
- (m) Zencorp Mechanical Inc.

1.3.3 The following Electrical Subcontractors are prequalified for the Work:

- (a) Best Electric Co.
- (b) Brian's Little Electric Inc.
- (c) CEC Services Limited (Aurora)
- (d) ELECTRO-WORKS LTD.
- (e) Energy Network Services Inc.
- (f) Marnoch Electrical Services Inc.
- (g) NSE 2000 INC.
- (h) Pentor Electric Ltd.
- (i) Sutherland Schultz Ltd.

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- (j) Walker's Electric 2000 (Div. of 1350223 Ontario Inc.)
- (k) Wallwin Electric Services Ltd.
- (l) Western Mechanical, Electrical, Millwright Services Ltd.

- 1.3.4 The Owner reserves the right to issue one or more addenda naming additional Prequalified Contractors and/or additional prequalified Subcontractors.
- 1.3.5 Only Prequalified Contractors are eligible to participate in this Bid Process and to submit a Bid. Submissions received from those who are not a Prequalified Contractor will not be considered.

1.4 THE BID CONTRACT

- 1.4.1 The Bidders and the Owner acknowledge it is their intention to create a process contract, sometimes referred to as "Contract A" (the "**Bid Contract**"), between the Owner and each Bidder whose Bid meets all Mandatory Requirements. The Bidders and the Owner further acknowledge that if a Bid Contract is created between the Owner and one or more Bidders, the terms of the Bid Contract are represented by the Bid Documents and include an obligation on the successful Bidder, if any, to sign the Contract.

1.5 BIDDERS' EXPENSES

- 1.5.1 Bidders shall bear all costs and expenses incurred by them in any way related to any aspect of their participation or intended participation in this Bid Process including, without limitation, all costs and expenses related to a Bidder's involvement in:
- (a) due diligence, investigations, and information gathering processes;
 - (b) attendances and/or participation at any and all site visits and/or meetings;
 - (c) the preparation and submission of a Bid and responding to Requests for Additional Information.

2. DEFINITIONS

Capitalized terms used in the Instructions to Bidders and not otherwise defined in this Article or elsewhere in these Instructions to Bidders shall have the meanings ascribed to them in the Definitions to the Contract. All references in the Instructions to Bidders to "Article", "Section" or "paragraph" shall, unless specifically indicated otherwise, refer to an Article, Section or paragraph of these Instructions to Bidders.

- 2.1.1 "**Adjusted Bid Price**" has the meaning set out in the table in paragraph 10.4.1.
- 2.1.2 "**Bid**" means all documents and information submitted through and/or uploaded to the Portal by a Bidder in response to and in accordance with these Instructions to Bidders, together with the documents and information specified in Section 9.4 and Section 10.2, where applicable.
- 2.1.3 "**Bidder**" means a Prequalified Contractor that participates in this Bid Process, whether or not it submits a Bid. The term "**Bidder**" also includes a Prequalified Contractor prior to the submission of its Bid.
- 2.1.4 "**Bid Contract**" means the contract described in paragraph 1.4.1 for the evaluation of Bids and the execution of the Contract, if any.
- 2.1.5 "**Bid Coordinator**" is the person identified as such in paragraph 1.2.1(j).

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- 2.1.6 “**Bid Documents**” means the documents listed in paragraph 3.2.1.
- 2.1.7 “**Bid Price**” has the meaning set out in paragraph 9.2.1.
- 2.1.8 “**Bid Process**” means the procurement process described in the Bid Documents which commences with the issuance of these Instructions to Proponents and ends on the earliest of the following:
- (a) the date on which the Contract is signed;
 - (b) the date on which the Bid Process is cancelled;
 - (c) the day after the expiry of the Irrevocability Period.
- 2.1.9 “**Board**” means the Board of Trustees of the Owner.
- 2.1.10 “**Conflict of Interest**” has the meaning set out in paragraph 13.2.1.
- 2.1.11 “**Contract**” means the written agreement to be signed between the Owner and the successful Bidder, in the form of CCDC 2 – 2020 stipulated price contract, as amended by Supplementary Conditions.
- 2.1.12 Reserved.
- 2.1.13 “**Irrevocability Period**” has the meaning set out in paragraph 1.2.1(f).
- 2.1.14 “**Local Time**” means the time measured and recorded on the Portal.
- 2.1.15 “**Mandatory Requirements**” means the mandatory requirements listed in paragraph 10.3.1.
- 2.1.16 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- 2.1.17 “**Owner**” means Simcoe County District School Board and includes its employees, agents, trustees, officers and directors, whether involved with the Bid Process or not, and includes the Board.
- 2.1.18 “**Place of the Work**” has the meaning set out in paragraph 1.1.1.
- 2.1.19 “**Portal**” has the meaning set out in paragraph 3.1.1.
- 2.1.20 “**Prequalified Contractor**” has the meaning set out in paragraph 1.3.
- 2.1.21 “**Question Deadline**” is the date identified as such in paragraph 1.2.1(c).
- 2.1.22 “**Reports**” has the meaning set out in paragraph 4.1.1.
- 2.1.23 “**Request for Additional Information**” has the meaning set out in paragraph 10.2.1.
- 2.1.24 “**Security Documents**” has the meaning set out in paragraph 9.3.1.
- 2.1.25 “**Submission Deadline**” is the date and time identified as such in paragraph 1.2.1(e).
- 2.1.26 “**Supplementary Conditions**” means the Supplementary Conditions for the CCDC 2 – 2020 stipulated price contract included on the Portal.
- 2.1.27 “**Work**” means the total construction and related services described in the Bid Documents.

3. BID DOCUMENTS

3.1 ACCESS TO THE BID DOCUMENTS

- 3.1.1 The Bid Documents will be made available to Bidders through the online digital bidding system established for this Bid Process on the website hosted by eSolutions Group Limited at

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“www.bidsandtenders.ca” (the “**Portal**”). The Portal will include all Bid Documents as well as Reports and other relevant notices, information and communications.

3.1.2 Each Bidder is solely responsible to ensure that it:

- (a) registers with and obtains access to the Portal; and
- (b) has the appropriate software to access, input, download and upload contents from and to the Portal; and
- (c) visits and reviews the Portal as frequently as is necessary to ensure that it has the most current information, documents and addenda.

Bidders are solely responsible for visiting and checking the Portal for new content and the Owner accepts no responsibility for any Bidder lacking any documents or information posted to the Portal.

3.1.3 If there is a conflict or inconsistency between an electronic version of any document included or posted to the Portal and any other version of the same document, whether in electronic or paper form, the electronic version on the Portal shall govern.

3.2 THE BID DOCUMENTS

3.2.1 Bidders should ensure they have and/or have access to all of the documents listed below (collectively the “**Bid Documents**”). A Bid will be deemed to have been prepared on the basis of all Bid Documents issued and posted to the Portal prior to the Submission Deadline, and the Owner accepts no responsibility for any Bidder lacking or not being able to access any part of the Bid Documents.

- (a) Instructions to Bidders (this document).
- (b) Supplementary Conditions.
- (c) Specifications.
- (d) Drawings.
- (e) Addenda, if any.

3.2.2 Bidders should inform the Bid Coordinator immediately if any documents are missing or incomplete and/or upon finding any discrepancies or omissions in the Bid Documents.

3.2.3 The Bid Documents are made available only for the purpose of submitting Bids for the Work. Availability and/or use of the Bid Documents does not confer a license or grant for any other purpose.

4. BIDDERS’ DUE DILIGENCE

4.1.1 In addition to the Bid Documents, the Portal may include the Owner’s information, data and environmental, geotechnical or other reports prepared or obtained with respect to the Place of the Work (collectively the “**Reports**”). The Reports should not be considered a representation of the conditions of the entire Place of the Work and are provided for general information and guidance purposes only. The Owner does not guarantee the accuracy or completeness of the Reports nor assumes any responsibility for any interpretations or conclusions that Bidders may make or draw from the Reports.

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- 4.1.2 Nothing in this Bid Process or in the Bid Documents or in the Reports is intended to relieve Bidders from undertaking their own research, investigations or other due diligence, or forming their own opinions and conclusions with respect to the Work, the Place of the Work, the Bid Documents, the Contract, and all other matters related to this Bid Process. The Owner (a) does not accept or assume any responsibility for any interpretations or conclusions that Bidders may make or draw from the Bid Documents or the Reports, (b) does not represent, warrant or guarantee that the Bid Documents or the Reports are complete, accurate or comprehensive or exhaustive, and (c) assumes no responsibility for the completeness or accuracy of the Bid Documents or the Reports, or anything else provided or made available by the Owner during this Bid Process.
- 4.1.3 No allowances will be made for additional costs and no claims will be entertained in connection with:
- (a) conditions which could reasonably have been ascertained by the Bidders through investigation or other due diligence undertaken prior to the Submission Deadline; and/or
 - (b) Work which is required and which is reasonably inferable from the Bid Documents and/or the Reports as being necessary.

5. COMMUNICATIONS, QUESTIONS AND ADDENDA

5.1 COMMUNICATIONS

- 5.1.1 Except as may be permitted in the Bid Documents, Bidders are not to communicate with or otherwise contact the Owner regarding this Bid Process at any time before execution of the Contract, if any. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.
- 5.1.2 Except where provided otherwise in these Instructions to Bidders, all communications (including questions) with the Owner permitted by this Bid Process are to be in writing and are to be submitted online through the Portal

5.2 BIDDERS' QUESTIONS

- 5.2.1 Bidders are encouraged to ask questions or request clarification with respect to any part of this Bid Process or any Bid Documents which do not appear to be clear. Questions received by the Question Deadline will be reviewed and if the Owner believes that a response is warranted, it will include the question and its answer in an addendum. Questions received after the Question Deadline may not be considered and may not be answered, although the Owner reserves the discretion, but has no obligation, to consider and respond to questions received after the Question Deadline. In responding to questions the Owner may answer similar questions from different Bidders only once, may edit or rephrase the questions, and may ignore questions which, in the Owner's opinion, do not require a response. All questions must be submitted through the Portal.

5.3 ADDENDA

- 5.3.1 This Bid Process and the Bid Documents may be amended only by written addendum posted to the Portal. Answers, responses, clarifications, instructions or any other information provided by any other means, by any person, in whatever context or setting, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon by any Bidder, unless and until they are posted to the Portal in the form of an addendum.

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5.3.2 Addenda will be posted on the Portal only and will not be sent or otherwise distributed to the Bidders. Bidders are solely responsible:

- (a) to visit and review the Portal for addenda, and the Owner shall not be responsible if any addenda are not obtained by a Bidder;
- (b) to ensure they have received and that their Bid incorporates all addenda issued and posted to the Portal before the Submission Deadline and takes into account all resulting costs.

Bidders will be required to confirm their Bid incorporates all addenda by so indicating in their Bid.

6. MANDATORY SITE MEETING

6.1 MANDATORY ATTENDANCE

6.1.1 The Owner has scheduled a mandatory site meeting at the location, date and time specified in paragraph 1.2.1(a). The purpose of the meeting is to review the Bid Process and to provide those in attendance an opportunity to ask questions and tour the Place of the Work.

6.1.2 Attendance at the site meeting is mandatory:

- (a) for Bidders;
- (b) not used.

All persons attending the site meeting will be required to sign an attendance log to confirm their attendance.

6.2 CONSEQUENCES OF FAILING TO ATTEND THE MANDATORY SITE MEETING

6.2.1 Bids received from Bidders who fail to attend the mandatory site meeting, as determined from the attendance log, will not be considered.

6.2.2 Where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), then, Bids that fail to carry a prequalified Subcontractor that attended the mandatory site meeting, as determined from the attendance log, will not be considered.

6.3 INFORMATION OBTAINED AT THE MANDATORY SITE MEETING

6.3.1 Each Bidder acknowledges and agrees that:

- (a) notwithstanding the Owner may give answers and may provide information during the site meeting, such answers and information, whether in verbal or in written form, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon in any way by a Bidder, except and only to the extent expressly confirmed in an addendum;
- (b) anything said, written or done by the Owner or any other person, and any views or comments expressed in response to anything said or done during the site meeting, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon in any way by a Bidder except and only to the extent expressly confirmed in an addendum.

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7. SITE INVESTIGATION BY BIDDERS

- 7.1.1 Each Bidder is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any investigations considered necessary by the Bidder to satisfy itself as to the existence and/or locations of utilities and underground services and all other existing conditions, circumstances and limitations affecting the Place of the Work, the Work, the Bid Documents, the Contract, and all other matters related to this Bid Process. The Bidders' obligations set out in this paragraph apply irrespective of the information contained in the Bid Documents or the Reports or that is made available to the Bidders during this Bid Process.
- 7.1.2 Bidders shall not undertake any investigation activities at the Place of the Work except as provided in this Article 7.
- 7.1.3 Bidders who would like an opportunity to undertake an investigation of the Place of the Work must submit an e-mail request to the Bid Coordinator. Such request must be received at least 2 business days before the Bidder's proposed date for the proposed investigation, provided that all investigations must be completed by the Question Deadline. The request must include:
- (a) the proposed date and time and alternate date and time for the proposed investigation;
 - (b) the anticipated duration of the proposed investigation;
 - (c) names, titles and contact information of who will be attending;
 - (d) details of the proposed investigation, including who is proposed to carry out the investigation;
 - (e) area(s) of the Place of the Work for which access is requested;
 - (f) such other information as the Owner may reasonably require.
- A Bidder's request will not be complete and an appointment for the investigation will not be scheduled until all of the required information has been provided.
- 7.1.4 If the Owner approves a Bidder's request to investigate the Place of the Work, the Owner will issue a written notification of the date and time on which the Bidder may attend at the Place of the Work, as well as the investigation activity(ies) which the Bidder is authorized to undertake, and the duration of such activity(ies). A representative of the Owner may attend to monitor the Bidder's activities.
- 7.1.5 Bidders acknowledge that unforeseen circumstances may arise and the Owner may, in its sole discretion, cancel, reschedule and/or modify the Bidder's visit and/or investigation activities on short notice or no notice to the Bidder.
- 7.1.6 Each Bidder acknowledges and agrees:
- (a) that anything said, written or done by the Owner or its representatives, and any views or comments expressed in response to anything said or done during the investigation of the Place of the Work will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon by any Bidder;
 - (b) to waive any and all right to contest, claim, complain, protest and/or dispute this Bid Process based on the fact that findings, information, results or data may have been obtained by another Bidder as a result of that Bidder's investigation of the Place of the Work, that were not obtained by, shared with, or provided to other Bidders.

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- 7.1.7 Bidders shall, for their own forces and for their agents, consultants, contractors, subcontractors and all others attending at the Place of the Work with them or on their behalf:
- (a) assume overall responsibility for compliance with all aspects of the applicable workers' compensation and health and construction safety legislation and all related rules, regulations and practices, and shall ensure that appropriate occupational health and safety instruction and training are provided to all those attending the Place of the Work;
 - (b) perform only investigations authorized by the Owner;
 - (c) avoid disturbing and take all reasonable steps necessary to promote and maintain the safety of the occupants of the Place of the Work and any adjacent properties and the public in general;
 - (d) respect and comply with local regulations and the Owner's requirements regarding permitted work hours and noise levels;
 - (e) indemnify and save the Owner harmless from, and be responsible for, all claims, demands, losses, costs or damages related to or arising from any activities performed by the Bidder or anyone attending with or on behalf of the Bidder at the Place of the Work, whether or not authorized by the Bidder or the Owner.

8. DESIGNATED SUBSTANCES

- 8.1 Without limiting the obligations of the bidders set out in Article 5, where the Place of the Work is within or part of an existing building, bidders should note they may encounter designated substances such as lead, mercury, silica, asbestos-containing material ("ACM"), benzene, arsenic, etc. If applicable, a list of designated substances present at the Place of the Work has been provided to all bidders and, if ACM is included in the list of designated substances, a report has also been provided indicating the condition and location of any ACM that may be present at the Place of the Work (collectively the "OHS Reports").
- 8.2 In carrying out the Work under the Contract, bidders shall ensure they do not handle, deal with, disturb or remove any designated substance whether identified in the OHS Reports or not, unless included in the Work required by the Bid Documents. Should a bidder determine, prior to the Closing Date, that the Work cannot be completed without handling, dealing with, disturbing or removing any designated substance identified in the OHS Reports (and the Work does not otherwise require the bidder to handle, deal with, disturb and/or remove such substance), it shall immediately notify the Owner and the Consultant in writing so that, if necessary, instructions and/or clarifications may be issued in the form of an addendum.
- 8.3 All information provided to or obtained by bidders in connection with this bid process, including all Reports, Data and the OHS Reports, are and shall remain the property of the Owner and must be treated as confidential whether or not a contract is awarded, and which confidentiality obligations shall survive termination of the bid process. Such information is not to be used for any purpose other than submitting a Bid.

9. INSTRUCTIONS FOR BID COMPLETION

9.1 BID COMPLETION

- 9.1.1 Bids which are completed and/or submitted by any means other than as set out in this Article 9 will not be considered.

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9.1.2 Bidders shall:

- (a) provide, input, post and/or upload all requested information and shall fill in all spaces and blanks on the Portal, as provided in Section 9.2; and
- (b) submit the Security Documents described in Section 9.3 in accordance with and as provided in Section 9.4.

9.1.3 Bidders shall ensure all required information and documents are submitted through and uploaded / posted to the Portal BEFORE the Submission Deadline. Bidders who fail to do so before the Submission Deadline will be unable to submit their Bid.

9.2 INSTRUCTIONS

9.2.1 Bid Price. Bidders shall input in the space provided on the Portal the fixed, all-inclusive lump sum price for the Work (the “**Bid Price**”). The Bid Price shall exclude the Harmonized Sales Tax (HST) but shall include all other applicable taxes and duties.

9.2.2 Listing Subcontractors.

- (a) If required, Bidders shall input a list of the Subcontractors proposed to perform or supply an item of the Work identified on the Portal. Failure to do so may result in the Bid being declared non-compliant.
- (b) Where the Owner has prequalified one or more Subcontractors to perform or supply an identified item of the Work, Bidders shall select only a prequalified Subcontractor to perform or supply that item of Work. Failure to do so may result in the Bid being declared non-compliant.
- (c) Where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), Bidders shall select and carry only a prequalified Subcontractor that attended the mandatory site meeting, as determined from the attendance log. Failure to do so will result in the Bid being declared non-compliant.
- (d) Where a Bidder lists “own forces” in place of a Subcontractor, the Bidder shall perform such item of the Work with its own forces. In such case the Owner reserves the right to obtain information from the Bidder and from third parties respecting the qualifications and experience of the Bidder’s own forces for such item of the Work. If the Owner determines, acting reasonably, that the Bidder’s own forces are not qualified or experienced to perform such item of the Work, the Owner may declare the Bid non-compliant.

9.2.3 Unit, Separate, Itemized and Alternative Prices. If required, Bidders shall submit the following prices, all of which shall exclude the Harmonized Sales Tax (HST) but shall include all other applicable taxes and duties:

- (a) unit prices;
- (b) separate prices for work, if any, which is not included in the Bid Price and which the Owner may add for the amount(s) indicated;
- (c) itemized prices for Work, if any, which is included in the Bid Price and which the Owner may delete for the amount(s) indicated;
- (d) alternative prices for work, if any, which is not included in the Bid Price and which the Owner may substitute for Work which is included in the Bid Price for the amount(s) indicated.

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The Owner reserves the right to accept or reject any or all unit, separate, itemized and alternative prices submitted, and such prices shall remain in effect for the duration of the Contract.

9.3 SECURITY DOCUMENTS

9.3.1 Each Bidder shall submit the form of bid security specified or permitted in paragraph 1.2.1(f), as further described in paragraph 9.3.2. Where applicable, Bidders shall also submit the agreement to bond / surety's consent specified in paragraph 9.3.3 (the bid security and, where applicable, the agreement to bond / surety's consent are collectively referred to as the "**Security Documents**").

9.3.2 Bid Security.

The bid security specified in paragraph 1.2.1(f) is a digital bid bond, the digital bid bond shall be in the amount of 10% of the Bid Price in the form CCDC 220 – 2002 naming "Simcoe County District School Board" as obligee and issued by a surety licensed to conduct surety and insurance business in Canada. The bid bond shall remain valid for at least the duration of the Irrevocability Period. No other form of bid bond is acceptable.

The bid security of the successful Bidder will be retained by the Owner as compensation towards the damages the Owner will suffer should the successful Bidder fail to sign the Contract and/or fail to provide the specified performance security and/or otherwise breach the Bid Contract.

9.3.3 Agreement to Bond / Surety's Consent. Each Bidder that submits bid security in the form of a digital bid bond shall also submit an agreement to bond or surety's consent issued by the same surety that provides the digital bid bond, undertaking to provide a performance bond and a labour and material payment bond, each in the amount of fifty percent (50%) of the Bid Price. The agreement to bond / surety's consent shall remain valid for at least the duration of the Irrevocability Period.

9.3.4 Bidders shall include the costs of all Security Documents in their Bid Price.

9.4 DELIVERY OF THE SECURITY DOCUMENTS

9.4.1 Each Bidder that intends to submit bid security in the form of a digital bid bond shall:

- (a) upload or post the digital bond described in paragraph 0 to the Portal; and
- (b) upload or post to the Portal a scanned copy (in "pdf" format) of the agreement to bond or surety's consent described in paragraph 9.3.3.

9.4.2 Reserved.

9.4.3 Bids that do not comply with this Section 9.4 will be declared non-compliant.

9.5 BID IRREVOCABILITY

9.5.1 Each Bid shall be irrevocable and shall remain open for consideration by the Owner for the duration of the Irrevocability Period.

10. EVALUATING BIDS

10.1 GENERAL

10.1.1 Bids will be reviewed and evaluated by the Owner in private.

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10.1.2 Notwithstanding anything else contained in the Bid Documents, the award of the Contract, if any, shall be subject to the approval of the Board, in its sole and unfettered discretion. Bidders shall have no claims whatsoever against the Owner or the Board arising out of the exercise of authority by the Board, and/or in the event the Owner, in its sole and unfettered discretion, and for any or no reason, decides not to award the Contract.

10.2 REQUESTS FOR ADDITIONAL INFORMATION

10.2.1 The Bid Coordinator, on behalf of the Owner, may contact any one or more Bidders to request clarification of any information or documents submitted as part of a Bid, or to request supplementary information (collectively, “**Request for Additional Information**”), without any obligation to make the same or any Request for Additional Information of any other Bidder. Notwithstanding the preceding sentence, the Owner has no obligation to make any Request for Additional Information.

10.2.2 Bidders shall respond to all Requests for Additional Information within the time and in the manner stipulated in each Request for Additional Information, and any response received will form an integral part of a Bidder’s Bid. If a Bidder fails to respond to a Request for Additional Information, its Bid will be considered and evaluated based solely on the original Bid contents submitted.

10.2.3 A Bidder’s response to a Request for Additional Information shall not be an opportunity for the Bidder to either correct errors or to change its Bid in any substantive manner. Subject to that, information, prices, rates and documents submitted in response to a Request for Additional Information shall form part of a Bidder’s Bid.

10.3 MANDATORY REQUIREMENTS

10.3.1 Subject to paragraph 10.3.2, only Bids which are submitted through the Portal before the Submission Deadline and which meet all of the mandatory requirements listed below (collectively, the “**Mandatory Requirements**”) on a “pass/fail” basis will be eligible for evaluation and award of the Contract:

- (a) the Bidder is a Prequalified Contractor; and
- (b) the Bidder attended the mandatory site meeting, as determined from the attendance log; and
- (c) where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), the Bid includes prequalified Subcontractor(s) that attended the mandatory site meeting, as determined from the attendance log;
- (d) the Bid includes the specified Security Documents and complies with Section 9.4; and
- (e) the Bid substantially complies with the requirements of the Bid Documents. In this respect, the Owner reserves the right, in its sole and unfettered discretion, to waive minor errors and matters of non-compliance contained in a Bid.

10.3.2 If all Bids fail at least one of the Mandatory Requirements the Owner, in its sole discretion, may:

- (a) evaluate one or more Bids and proceed with the Bid Process and treat such Bid(s) as having met all of the Mandatory Requirements; and/or
- (b) negotiate a Contract for the whole or any part of the Work with any Bidder; and/or
- (c) take any action in accordance with paragraph 12.2.1.

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10.4 EVALUATION

- 10.4.1 Only Bids which pass all of the Mandatory Criteria or that are selected in accordance with paragraph 10.3.2(a) will be evaluated.
- 10.4.2 Reserved
- 10.4.3 It is the intent of the Simcoe County District School Board that a compliant bid submitted by a Bidder with the lowest base bid price be awarded the contract.
- 10.4.4 If there is a tie in the evaluation of two or more Bids, the tie will be broken by a coin toss or by the drawing of lots performed by the Owner in the presence (in person or virtually) of the tied Bidders.

11. AWARD OF THE CONTRACT, DOCUMENTS TO BE DELIVERED, AND SIGNING THE CONTRACT

11.1 AWARD OF THE CONTRACT

- 11.1.1 Subject to receiving the approval of the Board, and subject to the other provisions of the Bid Documents, if the Owner decides to award the Contract it will issue an award letter to the Bidder that submitted the Bid which received the highest Evaluation Score.

11.2 DOCUMENTS TO BE DELIVERED

- 11.2.1 Within 10 business days of receiving an award letter from the Owner the successful Bidder shall deliver to the Owner:
- (a) where the Bidder submitted an agreement to bond / surety's consent, the Bidder shall deliver the performance bond and the labour and material payment bond described in the Bid Documents, the forms of such bonds to comply with the requirements of the Contract;
 - (b) certified true copies of the insurance policies required by the Contract or certificates of insurance, at the option of the Owner;
 - (c) the Bidder's current WSIB clearance certificate;
 - (d) the Bidder's health and safety policy for the Work; and
 - (e) a copy of the notice of project issued by the Ministry of Labour naming the Bidder as the "constructor" for the Work.
- 11.2.2 A Bidder's failure to comply with paragraph 11.2.1 will constitute a breach of the Bid Contract.

11.3 SIGNING THE CONTRACT

- 11.3.1 The successful Bidder shall sign the Contract and shall deliver the signed original to the Owner within 10 business days of the Bidder's receipt of the execution copy of the Contract. A Bidder's failure to comply with this paragraph will constitute a breach of the Bid Contract.

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12. OWNER'S RIGHTS

12.1 GENERAL

12.1.1 In addition to any other express rights contained in the Bid Documents or any other rights which may be implied in the circumstances, the Owner reserves the right to exercise any or all or a combination of the rights described in this Article. The Owner shall not be liable for any costs, expenses or damages incurred or claimed by a Bidder resulting from the Owner's exercise of any of its rights.

12.1.2 A Bidder's submission or the Owner's evaluation of any Bid, even where only one Bid is submitted before the Submission Deadline and even where only one Bid meets all Mandatory Requirements, will not obligate the Owner to accept any Bid, award the Contract, or proceed further with this Bid Process.

12.2 THE OWNER'S RIGHTS

12.2.1 The Owner may, in its sole discretion, and for any or no reason:

- (a) reject any or one or more or all Bids, even if only one Bid is received;
- (b) reject the whole or any part of any Bid;
- (c) accept the whole or any part of a Bid;
- (d) if only one Bid meets all of the Mandatory Requirements, elect to accept or reject all or any part of it;
- (e) cancel this Bid Process at any time before the award of the Contract;
- (f) cancel this Bid Process at any time before the award of the Contract and issue a new procurement process for work which is same or similar to the Work, with the same or different participants.

12.2.2 The Board reserves the right to disqualify a Bidder and reject a Tender on the basis of: (I) past performance on previous Contracts awarded by the Simcoe County District School Board; (II) other relevant information that arises during this RFT Process, or (III) information provided by references.

12.2.3 The Owner reserves the right to:

- (a) waive minor errors and matters of non-compliance contained in a Bid;
- (b) adjust an Evaluation Score or reject a Bid on the basis of information received in response to a Request for Additional Information;
- (c) disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information relating to matters which the Owner, in its sole discretion, considers material;
- (d) Reserved.

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13. GENERAL

13.1 PROHIBITION ON LOBBYING AND COLLUSION

13.1.1 Bidders and their directors, officers, employees, consultants, agents, advisors and other representatives are strictly prohibited from engaging in conduct which is or could reasonably be considered as any form of political or other lobbying, or as an attempt to influence the outcome of this Bid Process. Without limiting the generality of the foregoing, and except as provided in the Bid Documents, no such person shall contact, communicate with or attempt to contact or communicate with, directly or indirectly and in any manner whatsoever, any staff, personnel or representative of the Owner or the Board in connection with this Bid Process, including for the purpose of:

- (a) commenting on, or attempting to influence the views on, the merits of the Bidder's Bid, or in relation to the Bids of other Bidders;
- (b) influencing or attempting to influence the evaluation of the Bids;
- (c) promoting the Bidder or its interests, including in preference to that of other Bidders;
- (d) commenting on or criticizing aspects of this Bid Process, the Bid Documents, the Work, or the Contract, including in a manner which may give the Bidder a competitive or other advantage over other Bidders;
- (e) criticizing other Bidders or the Bids of other Bidders.

13.1.2 Bidders and their directors, officers, employees, consultants, agents, advisors and other representatives are prohibited from communicating with or attempting to contact or communicate with, directly or indirectly and in any manner whatsoever, any information whatsoever regarding the preparation of a Bid to any other Bidder.

13.1.3 Failure of a Bidder to comply with this Section may result in the disqualification of the Bidder and the rejection of its Bid.

13.2 CONFLICT OF INTEREST

13.2.1 Bidders shall disclose all perceived, potential and actual Conflicts of Interest. For the purposes of this Bid Process, "**Conflict of Interest**" includes:

- (a) any situation or circumstances where, in relation to this Bid Process, the Work, and/or the Contract, the Bidder's other commitments, relationships or financial interests could or could be perceived to exert an improper influence over the objective, unbiased and impartial exercise of independent judgment by any member or representative of the Owner or the Board;
- (b) any situation or circumstances where any person employed by the Owner in any capacity:
 - (i) has a direct or indirect financial or other interest in any Bidder;
 - (ii) is an employee or a consultant to or under contract to any Bidder;
 - (iii) is negotiating or has an arrangement concerning future employment or contracting with any Bidder;
 - (iv) has an ownership interest in or is an officer or director or partner of any Bidder.

13.2.2 If a Bidder discovers, before or after the Submission Deadline, any perceived, potential or actual Conflict of Interest, the Bidder shall immediately send a written statement to the Bid Coordinator

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describing the perceived, potential or actual Conflict of Interest, along with a written proposal that, if implemented, would address the identified perceived, potential or actual Conflict of Interest. The Owner will review the Bidder's written statement and proposal and, without limiting the generality of Article 12, the Owner may, in its sole discretion:

- (a) disqualify the Bidder from participating in this Bid Process and reject its Bid;
- (b) waive any and all perceived, potential or actual Conflict of Interest upon such terms and conditions as the Owner, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized.

13.2.3 Failure of a Bidder to comply with this Section may result in the disqualification of the Bidder and the rejection of its Bid.

13.3 CONFIDENTIALITY, DISCLOSURE AND MFIPPA

13.3.1 All information provided by or obtained from the Owner in connection with this Bid Process, the Work, and/or the Contract, including all Reports, is and shall remain the property of the Owner and must be treated as confidential, and such confidentiality obligations shall survive the Bid Process. Such information is not to be used for any purpose other than responding to this Bid Process and, upon conclusion of this Bid Process, if requested by the Owner, Bidders shall return all such information.

13.3.2 Bidders acknowledge that the contents of their Bids will be disclosed within the Owner's organization and/or to the Owner's consultants and advisors. The Owner will use reasonable efforts to protect sensitive and confidential information provided by the Bidders, however, the Owner shall not be liable in any way whatsoever if such information, or any part of it, is disclosed, even if the Owner, its consultants, advisors, staff or any other person associated with them may have been negligent with respect to such disclosure. By submitting a Bid each Bidder agrees to such disclosure and releases the Bid Coordinator and the Owner from any liability for the same.

13.3.3 The Owner may be required to disclose parts or all of a Bid pursuant to the provisions of MFIPPA or other legislation. Subject to the provisions of such legislation, the Owner will use reasonable efforts to safeguard the confidentiality of any information identified by a Bidder as confidential, however, the Owner shall not be liable in any way whatsoever if such information is disclosed based on an order or decision made under such legislation or any other applicable law. By submitting a Bid each Bidder agrees to such disclosure and releases the Bid Coordinator and the Owner from any liability for the same.

13.4 DEBRIEFING

13.4.1 Following the conclusion of this Bid Process, and provided the Contract has been signed, the Owner will offer separate debriefings to unsuccessful Bidders, but only if requested in accordance with paragraph 13.4.2. Debriefings will be held in person or by telephone conference call, at the Owner's discretion, and will be scheduled on a date and time and for a duration to be confirmed by the Owner.

13.4.2 If an unsuccessful Bidder desires a debriefing it shall submit a written e-mail request to the Bid Coordinator within sixty (60) days after the expiry of the Irrevocability Period, failing which no debriefing will be provided.

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13.4.3 Evaluations and scoring of Bids are confidential and during a debriefing the Owner will not provide critiques or discuss the scores or the merits of any Bid other than the Bid submitted by the Bidder that requested the debriefing.

13.5 PUBLIC STATEMENTS

13.5.1 Bidders shall not publish, issue, advertise, distribute or make any statements, postings, blogs or releases, electronic or otherwise, concerning their or any other Bid, the Bid Process, the Contract, the evaluation of Bids, or the award of the Contract, without the Owner's prior express written consent. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.

13.6 AWARD DOES NOT CONSTITUTE ENDORSEMENT

13.6.1 The Owner's award of the Contract, if any, does not constitute a general endorsement of the successful Bidder's work or services.

13.7 LIMIT OF LIABILITY

13.7.1 Each Bidder agrees that the liability of the Owner to any Bidder and the aggregate amount of damages recoverable against the Owner for any and all claims relating to or arising from this Bid Process including:

- (a) claims arising from negligence, wilful misconduct or other conduct; and/or
- (b) claims arising from a breach of the Bid Contract or any other contractual or other relationship or obligation that may arise as a result of a Bidder's participation in this Bid Process and/or submission of a Bid,

shall be limited to the Bidder's reasonable demonstrated costs of preparing its Bid.

13.8 DISPUTES

13.8.1 If a dispute arises in connection with this Bid Process including, without limitation, a dispute concerning the existence of the Bid Contract or a breach of the Bid Contract, or a dispute as to whether a Bid meets the Mandatory Requirements, the parties to the dispute agree:

- (a) to use their best efforts to resolve the dispute through amicable and good faith negotiations for a period of at least fifteen (15) days, having such written and oral communications and meetings as appropriate;
- (b) if the dispute is not resolved through negotiations the Owner, in its unqualified subjective discretion, may refer the dispute to confidential final binding arbitration before a single arbitrator, selected by the Owner, to be held at Barrie, Ontario pursuant to the *Arbitration Act, 1991* (Ontario), as amended. If the Owner refers the dispute to arbitration, each Bidder agrees that it is bound to arbitrate such dispute. Unless the Owner refers such dispute to arbitration, there shall be no arbitration of such dispute.

13.8.2 The Owner may give notice of a dispute to one or more Bidders, each of whom shall be a party to and shall be entitled to participate in the negotiation and/or arbitration, as the case may be and, in the case of arbitration, each of whom shall be bound by the arbitrator's award, whether or not they participated in the arbitration.

13.8.3 If the Owner refers a dispute to arbitration, the parties to the arbitration shall exchange brief statements of their respective positions on the dispute, together with the relevant documents, and

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submit to an arbitration hearing which shall last no longer than two (2) days, subject to the discretion of the arbitrator to increase such time. The parties to the arbitration further agree that the arbitrator's award shall be final and binding and shall not be subject to appeal. The costs of the arbitrator and the venue shall be shared equally among the parties to the arbitration.

END OF DOCUMENT

These Supplementary Conditions modify, delete and/or add to the Agreement between Owner and Contractor, the Definitions, and the General Conditions of the Stipulated Price Contract, Standard Construction Document CCDC 2 – 2020.

SC 1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC 1.1 ARTICLE A-5 PAYMENT

1.1.1 Delete paragraph 5.2 and replace it with the following:

“5.2 Should either party fail to make payments as they become due under this *Contract* or in an award by arbitration, adjudication or court, interest will begin to accrue on the amount that is not paid from the date when it is due until the date it is paid at the prejudgment interest rate prescribed by the Courts of Justice Act (Ontario).”

SC 1.2 ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

1.2.1 Amend paragraph 6.2 by adding the following to the end:

“Provided that a *Notice in Writing* shall not be delivered by facsimile transmission.”

SC 1.3 ARTICLE A-9 TIME IS OF THE ESSENCE

1.3.1 Add a new Article A-9 as follows:

“ARTICLE A-9 TIME IS OF THE ESSENCE

9.1 The *Contractor* represents and warrants that it will attain *Ready-for-Takeover* by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK, as such date may be adjusted in accordance with this *Contract*, and acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that *Ready-for-Takeover* is attained by such date. The *Contractor* agrees that time shall be of the essence in the performance of the *Contractor's* obligations under this *Contract*.”

SC 1.4 ARTICLE A-10 EXECUTION OF THE CONTRACT

1.4.1 Add a new Article A-10 as follows:

“ARTICLE A-10 EXECUTION OF THE CONTRACT

10.1 This *Contract* may be executed in counterparts, including by electronic means, and each counterpart shall be deemed an original and both of which, taken together, shall constitute one and the same instrument. Delivery by e-mail of a PDF of any executed counterpart shall be deemed to be an original and of full force and effect and equally as effective as delivery of a manually executed original counterpart thereof.”

SC 2. DEFINITIONS

2.1.1 Amend the following Definitions:

(a) Amend the Definition of “*Consultant*” by adding the following to the end:

“For purposes of this *Contract*, the terms “*Consultant*”, “*Architect*” and “*Engineer*”, wherever used in the *Contract Documents*, shall be considered synonymous.”

(b) Amend the Definition of “*Contract Documents*” by adding the words “in writing” after the word “upon” in the second line.

(c) Amend the Definition of “*Owner*” by adding the following to the end:

“For purposes of this *Contract*, the terms “*Owner*”, “*SCDSB*” and the “*Board*”, wherever used in the *Contract Documents*, shall be considered synonymous.”

2.1.2 Add the following new Definitions:

(a) **Act**

“*Act* means the Construction Act (Ontario), as amended.”

(b) **Blackout Period**

“*Blackout Period* means the following dates in each calendar year:

- .1 January 1 to January 5, inclusive; and
- .2 December 15 to December 31, inclusive.”

(c) **Environmental Programs**

“*Environmental Programs* means the environmental plans, programs, procedures and requirements of the *Owner*. The *Environmental Programs* includes *Owner's* asbestos control program, its mould program, and a program for controlling and handling designated substances.”

(d) **Labour Dispute**

“*Labour Dispute* means any lawful or unlawful labour problems, work stoppage, labour disruption, strike, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractor's association of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), job action, slow down, picketing, refusal to work or continue to work, refusal to supply materials, cessation of work or other labour controversy which does, or might, affect the *Work*.”

(e) **OHSA**

“*OHSA* means the Occupational Health and Safety Act (Ontario), as amended, and all rules and regulations made thereunder.”

(f) **Proper Invoice**

“*Proper Invoice* means an application for payment given by the *Contractor* to the *Owner* that fully complies with the requirements of GC 5.1A – PROPER INVOICE.”

(g) **WSIB**

“*WSIB* means the Ontario Workplace Safety & Insurance Board.”

SC 3. GENERAL CONDITIONS

SC 3.1 GC 1.1 CONTRACT DOCUMENTS

3.1.1 Amend paragraph 1.1.2 by adding the following to the end:

“The intent of the *Contract Documents* is to include all labour, *Products*, materials, *Construction Equipment* and services necessary or normally considered necessary for the performance of the *Work*. Any item of *Work* mentioned in the *Contract Documents* or reasonably inferable from the *Contract Documents* but not otherwise shown or described, shall be provided by the *Contractor* as if shown or otherwise described or inferable. Any items omitted from the *Contract Documents* which are reasonably necessary or inferable for the completion of the *Work* shall be considered a portion of the *Work* and included in the scope of *Work* to be performed under this *Contract*.”

3.1.2 Amend paragraph 1.1.5 by changing the order of the first four bullet points so that, as reordered, the bullet points read as follows:

- Supplementary Conditions,
- the Agreement between *Owner* and *Contractor*,
- the Definitions,
- the General Conditions”

3.1.3 Add a new paragraph 1.1.5A as follows:

“1.1.5A Notwithstanding paragraph 1.1.5, if there is a conflict or discrepancy between *Drawings* or between *Drawings* and *Specifications* or any other *Contract Documents* in relation to the *Products* to be supplied or the amount of labour or materials required to complete a particular item of *Work*, the *Contractor* shall supply and shall include in the *Work* the *Products*, labour and materials which would provide the greatest benefit to the *Owner*, as determined by the *Owner*.”

3.1.4 Amend paragraph 1.1.9 by adding new paragraphs 1.1.9.1 and 1.1.9.2 as follows:

“1.1.9.1 The *Specifications* shall be read as a whole and are the minimum construction requirements. Neither the organization nor the division of the *Specifications* 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* in respect to such organization or division.

1.1.9.2 The *Drawings* are intended to convey the scope of the *Work* and indicate elevations and general and approximate locations, arrangement and sizes of fixtures, equipment, outlets, utilities and underground services. The *Contractor* shall obtain more accurate information and shall satisfy itself as to the conditions of the pre-grade elevations and the locations, arrangement and sizes of fixtures, equipment, outlets, utilities and underground services from study and coordination of the *Drawings*, including *Shop Drawings*, and shall satisfy itself and become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require reasonable minor changes to indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible.”

3.1.5 Amend paragraph 1.1.11 by deleting the words “at the *Owner*’s expense”.

3.1.6 Add new paragraphs 1.1.12 to 1.1.15 as follows

“1.1.12 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Except for the obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in paragraph 3.11.1 of GC 3.11 – STANDARD OF CARE, the *Contractor* will not be liable for damages or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents* which the *Contractor* did not discover.

1.1.13 If the *Contractor* finds any error, inconsistency or omission 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*, who will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions.

1.1.14 Notwithstanding paragraphs 1.1.12 and 1.1.13, errors, inconsistencies and/or omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or *Products* that are normally required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*.

1.1.15 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, proposed or contemplated change notices, *Change Orders*, *Change Directives*, record drawings marked up with any changes to be included in as-built drawings, cash allowance disbursement authorizations, reviewed *Shop Drawings*, reports and records of meetings at the *Place of the Work*, available to the *Owner* and *Consultant* in either electronic or paper format.”

SC 3.2 GC 1.3 RIGHTS AND REMEDIES

3.2.1 Add a new paragraph 1.3.3 as follows:

“1.3.3 To be effective, the *Owner*’s waiver of a right or remedy under this *Contract* must be expressly written by an authorized representative of the *Owner*. For greater certainty, actions of the *Owner* which shall not constitute a waiver include, but are not limited to, the following:

- .1 making partial payments to the *Contractor*;

- .2 any partial or entire use or occupancy of the *Project*;
- .3 final acceptance of the *Work*;
- .4 failure to object to known defects;
- .5 specifying a list of defects will not be held a waiver of defects not listed.”

SC 3.3 GC 2.2 ROLE OF THE CONSULTANT

3.3.1 Amend paragraph 2.2.12 by adding the following to the end:

“If, in the opinion of the *Contractor*, a *Supplemental Instruction* involves an adjustment in the *Contract Price* or the *Contract Time*, the *Contractor* shall, within ten (10) *Working Days* of receipt of a *Supplemental Instruction*, provide the *Consultant* with a *Notice in Writing* to that effect and shall await further instructions. The *Contractor’s* failure to provide such *Notice in Writing* within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment to the *Contract Price* or *Contract Time*.”

3.3.2 Delete paragraph 2.2.18 and replace it with the following:

“2.2.18 The *Contractor* shall not have any claim against the *Consultant* as a result of the performance or non-performance of the *Consultant’s* services. The *Contractor* shall include this provision in any contracts it makes with its *Subcontractors* and *Suppliers*.”

SC 3.4 GC 2.3 REVIEW AND INSPECTION OF THE WORK

3.4.1 Amend paragraph 2.3.5 by adding the following to the end of the second sentence:

“and there shall be no extension of the *Contract Time* resulting from any delay caused by such examination and correction.”

SC 3.5 GC 2.4 DEFECTIVE WORK

3.5.1 Amend paragraph 2.4.1 by adding new paragraphs 2.4.1.1 and 2.4.1.2 as follows:

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

2.4.1.2 The *Contractor* shall prioritize the correction of defective work or deficiencies identified as priorities by the *Owner* or the *Consultant*.”

SC 3.6 GC 3.0 PRECONSTRUCTION SUBMITTALS

3.6.1 Add a new GC 3.0 as follows:

“GC 3.0 PRECONSTRUCTION SUBMITTALS

3.0.1 Within 10 *Working Days* of signing this *Contract* and, in any event, before commencing any *Work* the *Contractor* shall submit to the *Owner* all of the following:

- .1 a current *WSIB* clearance certificate;
- .2 true copies of certificates of insurance evidencing the *Contractor* has secured the insurance policies required by the *Contract Documents*;
- .3 the bonds described in GC 14.7 – CONTRACT SECURITY;
- .4 documentation of the *Contractor’s* safety program to be implemented for the *Project*;
- .5 a copy of the “Notice of Project” filed with the appropriate government agency or ministry naming the *Contractor* as the “constructor” under *OHSA*; and
- .6 the construction schedule referred to in paragraph 3.4.1.1 of GC 3.4 – CONSTRUCTION SCHEDULE.”

SC 3.7 GC 3.1 CONTROL OF THE WORK

3.7.1 Add new paragraphs 3.1.3 to 3.1.7 as follows:

- “3.1.3 Notwithstanding paragraphs 3.1.1 and 3.1.2, the *Contractor* shall fully incorporate and comply with all policies and procedures of the *Owner* which are relevant to any activity to be performed under the *Contract*. The *Contractor* shall inquire from the *Owner* if such policies or procedures exist and the *Owner* agrees that it will use reasonable efforts to communicate to the *Contractor* all relevant policies or procedures.
- 3.1.4 Prior to commencing fabrication and construction activities, the *Contractor* shall verify all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and shall obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*. Failure to do so shall be at the sole risk and cost of the *Contractor*.
- 3.1.5 The *Contractor* shall be entirely responsible for the proper laying out of the whole of the *Work*. The *Contractor* shall employ an experienced and licensed land surveyor to establish and check grades, benchmarks, references, elevations, points and lines as from time to time may be required for the purposes of the *Work*, or layout of same, and the *Contractor* shall at every appropriate stage of the *Work* take all proper steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the *Project* site and in the exact position (or respective positions) established for such *Work*, and shall assume full responsibility for the correctness of all such lines, levels and measurements.
- 3.1.6 The *Contractor* shall perform the *Work* in accordance with modern practice and shall employ only good workmanship in accordance with the *Contract Documents*, applicable laws, ordinances, rules, regulations, or codes relating to the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* is responsible for coordinating the *Work* so that no part shall be left in an unfinished or incomplete condition.
- 3.1.7 The *Contractor*, without in any way limiting its responsibilities under this *Contract*, shall:
- .1 perform the *Work* so as to avoid causing excessive noise, annoyance and so as not to disturb the occupants of the *Place of the Work* or any occupants of adjacent premises or the public in general,
 - .2 respect and comply with local regulations and all *Owner's* requirements regarding permitted work hours, noise levels and work conditions,
 - .3 take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise, to avoid conditions likely to propagate mould or fungus of any kind, and shall take all other steps reasonably necessary to promote and maintain the safety and comfort of any occupants of the *Place of the Work* or any occupants of adjacent premises and the public in general, and to maintain access to and the operation of any existing facilities at the *Place of the Work*,
 - .4 take precautions not to allow any unauthorized visitors entry to the *Place of the Work*.
- The *Contractor* shall not permit any workers, *Subcontractors* or *Suppliers* to use any existing facilities including, without limitation, elevators, lavatories, toilets, entrances and parking areas other than those designated by the *Owner*.”

SC 3.8 GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS

- 3.8.1 Amend paragraph 3.2.2 by deleting the word “*Owner*” in the second line and replacing it with the word “*Contractor*”.
- 3.8.2 Delete paragraphs 3.2.2.2 and 3.2.2.3.
- 3.8.3 Amend paragraph 3.2.3.4 by adding the following to the end:

“Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the deficiencies in the work of *Other Contractors* or *Owner’s* own forces except for those deficiencies not then reasonably discoverable; and”

3.8.4 Add a new paragraph 3.2.3.5 as follows:

“3.2.3.5 assume overall responsibility for the *Owner’s* own forces and for *Other Contractors* for compliance with all aspects of the applicable health and construction safety legislation at the *Place of the Work*, including all of the responsibilities of the “constructor” under the *OHSA*.”

3.8.5 Amend paragraph 3.2.6 by adding the following to the end:

“Notwithstanding the foregoing, the *Contractor* shall not be entitled to any adjustment in the *Contract Time* or the *Contract Price* where the need for the cutting or remedial work was caused or contributed to by the *Contractor’s* failure to properly coordinate and schedule the *Work* with the work of *Other Contractors* and the *Owner’s* own forces.”

3.8.6 Add a new paragraph 3.2.7 as follows:

“3.2.7 The placement, installation, application and connection of work by the *Owner’s* own forces or by *Other Contractors* on and to the *Work* shall not relieve the *Contractor* of its responsibility to provide and maintain the warranties specified in this *Contract*. If the *Contractor* is of the view that the work of *Other Contractors* or the work of the *Owner’s* own forces will compromise, void or nullify any of the warranties to be provided pursuant to this *Contract*, the *Contractor* shall immediately give *Notice in Writing* to the *Owner* and shall include in such notice the reasons why, in the *Contractor’s* view, a warranty or warranties will be compromised, voided or nullified, together with the *Contractor’s* recommendations for avoiding such result.”

SC 3.9 GC 3.4 CONSTRUCTION SCHEDULE

3.9.1 Delete paragraph 3.4.1 and replace it with the following:

“3.4.1 The *Contractor* shall:

- .1 within ten (10) *Working Days* of entering into this *Contract*, submit to the *Owner* and the *Consultant*, for the *Owner’s* approval, a construction schedule that indicates the timing of major activities and critical milestone dates for the *Work*, demonstrating that the *Work* will be performed in conformity with the *Contract Time*. Such schedule:
 - (a) shall be provided in native editable electronic format approved by the *Owner* that includes and shows all logic links between activities, and
 - (b) shall be prepared in collaboration with, and supported by, the *Subcontractors* and *Suppliers* whose activities affect the critical path of the *Work*, and
 - (c) shall include and make provision for statutory holidays, weather conditions that are normally experienced at the *Place of the Work*, and the rectification of defects and deficiencies; and
 - (d) shall provide sufficient detail of the critical events and their inter-relationship and shall include a baseline schedule indicating the critical path for the *Project*; and
- .2 provide the expertise and resources, including labour and *Construction Equipment*, as are necessary to maintain progress under the construction schedule; and
- .3 monitor the adequacy of *Subcontractor* and *Supplier* personnel and equipment and the availability of *Products* to meet the construction schedule and take appropriate action when requirements of a contract with a *Subcontractor* or *Supplier* are not being met; and
- .4 monitor the progress of the *Work* relative to the construction schedule, update the schedule on a monthly basis, and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule within twenty four (24) hours of such variation or slippage becoming apparent; and

- .5 at each site meeting, provide in writing (or if the *Owner* so permits, verbally to be recorded in minutes) to the *Owner* and the *Consultant* a two (2) week look-ahead schedule indicating the major activities to be undertaken or constructed in such two (2) week period.
- 3.4.2 If at any time it should appear that the actual progress of the *Work* is behind schedule or is likely to fall behind schedule, or if the *Contractor* has so advised the *Owner* and the *Consultant*, the *Contractor* shall take appropriate steps, at the *Contractor's* own expense, to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Consultant*, for review and approval, a recovery plan demonstrating how the *Contractor* will achieve recovery of the schedule.
- 3.4.3 If after applying the expertise and resources required under paragraphs 3.4.1.2 and 3.4.2 the *Contractor* forms the opinion that the slippage in the construction schedule cannot be recovered, the *Contractor* shall give *Notice in Writing* to the *Owner* and the *Consultant* of any revisions required to the schedule.
- 3.4.4 The *Contractor* shall not change the scheduled *Ready-for-Takeover* date.”

SC 3.10 GC 3.5 SUPERVISION

- 3.10.1 Delete paragraph 3.5.1 and replace it with the following:

“3.5.1 The *Contractor* shall provide all necessary supervision and shall appoint a full-time superintendent who shall be in full time attendance at the *Place of the Work* while the *Work* is being performed. The superintendent shall not be changed by the *Contractor* without valid reason and the *Owner's* prior written consent, which consent will not be unreasonably withheld. All costs associated with the transition of new staff onto the *Project* shall be at the sole cost and expense of the *Contractor*.”

SC 3.11 GC 3.6 SUBCONTRACTORS AND SUPPLIERS

- 3.11.1 Add a new paragraph 3.6.1.4 as follows:

“3.6.1.4 ensure that all *Subcontractors* and *Suppliers* and anyone employed or engaged by them directly or indirectly have the qualifications, technical skills, levels of experience and knowledge required (including with respect to all applicable construction safety rules and regulations), and all applicable permits, licenses and approvals necessary to perform the work assigned to them in accordance with the terms of this *Contract*.”

- 3.11.2 Amend paragraph 3.6.2 as follows:

- (a) delete the words “before signing the *Contract*” in the third line; and
- (b) add the following to the end:

“The *Contractor* agrees not to change *Subcontractors* or *Suppliers* without the prior written approval of the *Owner*, which approval will not be unreasonably withheld.”

- 3.11.3 Amend paragraph 3.6.3 by deleting the words “before the *Owner* has signed the *Contract*” in the first line.

- 3.11.4 Add new paragraphs 3.6.7 and 3.6.8 as follows:

“3.6.7 If the *Contractor* intends to change any *Subcontractors* or *Suppliers*, the *Contractor* shall advise the *Owner* in writing, giving the *Contractor's* reasons for the proposed change. The *Contractor* shall not change any *Subcontractors* or *Suppliers* without the prior written approval of the *Owner*.”

- 3.6.8 Notwithstanding paragraph 3.6.5, the *Owner* may assign to the *Contractor*, and the *Contractor* shall accept the assignment of, any contract procured by the *Owner* for *Work* or *Products* required on the *Project* that has been pre-tendered or pre-negotiated by or on behalf of the *Owner*. In such event the *Contract Price* shall be increased by the balance of the contract price remaining under such assigned contract.”

SC 3.12 GC 3.7 LABOUR AND PRODUCTS

3.12.1 Amend paragraph 3.7.1 as follows:

- (a) insert the words “agents, *Subcontractors* and *Suppliers*” after the word “employees” in the first line; and
- (b) add the following to the end:

“Without in any way limiting the generality of the foregoing, the *Contractor* shall prepare and implement the job site rules more particularly described in the *Contract Documents*. If no job site rules are described in the *Contract Documents*, the *Contractor* shall draft job site rules for the review and approval of the *Owner*. Any such job site rules prepared by the *Contractor* shall be consistent with the *Contractor’s* duties and obligations under *OHSA* and shall also include provisions making smoking, vaping and the consumption of alcohol or non-prescription drugs on the *Project* site the subject of discipline proceedings and/or termination of employment.”

3.12.2 Amend paragraph 3.7.2 by adding the following sentence to the end:

“The *Contractor* represents and warrants that the *Products* supplied are not subject to any conditional sales contracts and are not subject to any security rights claimed or obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*.”

3.12.3 Delete paragraph 3.7.3 and replace with the following:

“3.7.3 *Products* provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, Ontario Building Code and all governmental authorities having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever, and such *Products* shall be brought to the *Place of the Work* at the sole risk of the *Contractor*.”

1.1.1 Add new paragraphs 3.7.4 to 3.7.7 as follows:

“3.7.4 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and *Other Contractors*) so as to avoid dangerous conditions, deterioration, damage or contamination to the *Products*, persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*.

3.7.5 The *Contractor* shall cooperate with the *Owner* and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations on the *Project*, including cooperation to attempt to avoid *Labour Disputes*. The *Contractor* shall not, and shall ensure that its *Subcontractors* and *Suppliers* do not, employ any persons on the *Project* whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. All costs arising from *Labour Disputes* arising from the *Contractor’s* failure to comply with this paragraph shall be the sole expense of the *Contractor*.

3.7.6 The *Owner* or the *Consultant*, acting reasonably, shall have the right to order the *Contractor* to remove from the *Project*, without cost to the *Owner*, any representative or employee of the *Contractor* or any representative or employee of any *Subcontractor* or *Supplier* whose conduct, in the opinion of the *Owner* or the *Consultant*, jeopardizes the safety or security of the *Project*, any person, the *Owner’s* operations, is a detriment to the *Project*, or whose behaviour may be considered as harassment in the workplace. Immediately upon receipt of such order the *Contractor* shall make arrangements for the appointment of a replacement representative or employee acceptable to the *Owner*. All costs associated with the transition of new staff onto the *Project* shall be at the sole cost and expense of the *Contractor*.

- 3.7.7 The *Owner* is required by provincial legislation to ensure that all contractors and other individuals who potentially have direct and regular contact with students are cleared by a vulnerable sector check (“**VSC**”) covering convictions, charges and occurrences that would be revealed by the long version vulnerable persons search of the automated criminal records system maintained by the Royal Canadian Mounted Police at the Canadian Police Information Centre. The *Contractor* must obtain a satisfactory VSC for all persons, including employees, *Subcontractors* and *Suppliers* who, in the course of performing the *Work*, may have direct and regular contact with students.”

SC 3.13 GC 3.8 SHOP DRAWINGS

- 3.13.1 Amend paragraph 3.8.1 by adding the following to the end:

“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*.”

- 3.13.2 Delete paragraph 3.8.3.1 and replace it with the following

“3.8.3.1 the *Contractor* has determined and correlated the field measurements with the *Shop Drawings* and field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so if not possible at that time, and”

- 3.13.3 Add new paragraphs 3.8.8 to 3.8.11 as follows:

“3.8.8 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* or the *Contract Time*.

3.8.9 The *Contractor* shall not use the term “by others” on *Shop Drawings* but shall identify the responsible *Subcontractor* or *Supplier* where such work is within the scope of the *Work*.

3.8.10 Where *Specifications* require the *Shop Drawings* to bear the seal and signature of a professional, such professional shall be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.11 The *Consultant’s* review of the *Shop Drawings* shall not relieve the *Contractor* from responsibility for defective *Work* resulting from errors or omissions of any kind on the reviewed *Shop Drawings* and shall not constitute authorization to the *Contractor* to perform additional *Work* or changed *Work*. The *Contractor* is solely responsible for dimensions to be confirmed and correlated at the job site, for information that pertains solely to fabrication processes, and for techniques of construction and installation.”

SC 3.14 GC 3.9 USE OF THE WORK

- 3.14.1 Add a new GC 3.9 as follows:

“GC 3.9 USE OF THE WORK

3.9.1 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*.

3.9.2 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*.”

SC 3.15 GC 3.10 CLEANUP

- 3.15.1 Add a new GC 3.10 as follows:

“GC 3.10 CLEANUP

3.10.1 The *Contractor* shall maintain the *Work* and the *Place of the Work* in a safe and tidy condition and free from the accumulation of waste products and debris. The *Contractor* shall ensure the

Place of the Work is cleaned and left in a tidy condition on a daily basis. In the event of any dispute regarding the removal of waste products and debris, the *Owner* may remove the said waste products and debris upon twenty-four (24) hours' written notice and charge the cost of doing so to the *Contractor*.

- 3.10.2 Before delivering the application for *Ready-for-Takeover* the *Contractor* shall remove any and all surplus *Products*, tools, *Construction Equipment*, *Temporary Work*, waste products and debris and shall ensure the *Place of the Work* is clean and tidy and suitable for occupancy by the *Owner*."

SC 3.16 **GC 3.11 STANDARD OF CARE**

- 3.16.1 Add a new GC 3.11 as follows:

"GC 3.11 STANDARD OF CARE

- 3.11.1 In performing this *Contract* the *Contractor* shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent contractor performing similar work for similar projects. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care, skill, judgment and diligence in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may employ on the *Project*.
- 3.11.2 The *Contractor* represents, covenants and warrants to the *Owner* that:
- .1 the personnel assigned to the *Project* are appropriately experienced and trained;
 - .2 it has sufficient qualified and competent personnel to replace its designated supervisor, superintendent and project manager, subject to the *Owner's* approval, in the event of 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 this *Contract*."

SC 3.17 **GC 3.12 CONTRACTOR'S USE OF PERMANENT EQUIPMENT OR SYSTEMS**

- 3.17.1 Add a new GC 3.12 as follows:

"GC 3.12 CONTRACTOR'S USE OF PERMANENT EQUIPMENT OR SYSTEMS

- 3.12.1 The *Contractor* shall not make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work*, including the HVAC system and elevators, without the *Owner's* prior express written consent obtained in accordance with this GC 3.12.
- 3.12.2 If the *Contractor* wishes to make use of such mechanical and electrical systems or equipment the *Contractor* shall:
- .1 obtain the manufacturer's instructions regarding any preventative maintenance services to be performed on such systems and equipment; and
 - .2 submit a written request to the *Owner* for consent to use such systems or equipment, which request shall include all of the information received from the manufacturer(s) of such systems or equipment and shall include the *Contractor's* comprehensive operation and preventative maintenance plan for such systems and equipment.
- 3.12.3 If the *Owner* consents to the *Contractor's* use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work*, the *Contractor* shall:
- .1 operate and maintain such systems and equipment in strict compliance with the requirements set out in the *Specifications*, any instructions received from the manufacturer(s) of such systems and equipment, and the *Contractor's* comprehensive operation and preventative maintenance plan; and
 - .2 perform all preventative maintenance services on such systems and equipment in accordance with the *Specifications*, any instructions received from the manufacturer(s) of

such systems and equipment, and the *Contractor's* comprehensive operation and preventative maintenance plan; and

- .3 before applying for *Ready-for-Takeover*, clean and make good, to the satisfaction of the *Consultant*, all such systems and equipment as it had been permitted to use; and
- .4 pay any and all costs associated with such use, operation, preventative maintenance services, cleaning and making good, at no cost or charge to the *Owner*; and
- .5 obtain and pay for, at the *Contractor's* sole cost and expense, an extension of the manufacturer's warranty equal to the time that the *Contractor* had used such systems and equipment."

SC 3.18 GC 4.1 CASH ALLOWANCES

3.18.1 Add new paragraphs 4.1.8 and 4.1.9 as follows:

- "4.1.8 Purchases from cash allowances must be authorized by written instructions issued by the *Consultant* and the form and methods of accounting for costs shall be approved by the *Consultant* before the *Contractor* proceeds with the purchase.
- 4.1.9 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* to be paid for from cash allowances."

SC 3.19 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

3.19.1 Delete GC 5.1.

SC 3.20 GC 5.1A PROPER INVOICE

3.20.1 Add a new GC 5.1A as follows:

"GC 5.1A PROPER INVOICE

- 5.1A.1 In this Contract a *Proper Invoice* shall mean an application for payment made by the *Contractor* that:
 - .1 is given to the *Owner* by email to both "fservices@scdsb.on.ca" and the specified *Project* coordinator, with a copy to the *Consultant*; and
 - .2 includes all of the following:
 - .1 the *Contractor's* name and address and HST registration number;
 - .2 the date of the application for payment and the period during which the *Work* was performed;
 - .3 information identifying the authority, whether in the *Contract* or otherwise, under which the *Work* was performed;
 - .4 a description, including quantities where appropriate, of the services and materials that were supplied;
 - .5 the amount payable for the services or materials that were supplied, and the payment terms;
 - .6 the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - .7 a statement based on the schedule of values for the *Work*;
 - .8 where the application includes amounts charged on the basis of hourly rates, documentation in support of the amount claimed, including dates that services were performed, identity of the person(s) involved, the hours spent, and a description of the services performed;
 - .9 where the application includes amounts expended under a cash allowance, documentation in support of the amount claimed, including copies of all invoices and charges incurred;

- .10 for all applications for payment except the final payment, an updated construction schedule that complies with the requirements of paragraph 3.4.1.1 of GC 3.4 – CONSTRUCTION SCHEDULE;
- .11 a current valid clearance certificate issued by the *WSIB*;
- .12 for the second and all subsequent applications for payment, a CCDC 9A Statutory Declaration stating that all accounts for services and materials and other indebtedness incurred by the *Contractor* for which the *Owner* may in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified matter in dispute; and
- .13 in respect of any subcontract with a value that exceeds \$100,000, a statutory declaration in form CCDC 9B – 2001.”

SC 3.21 GC 5.2 APPLICATIONS FOR PAYMENT

3.21.1 Delete paragraphs 5.2.1 and 5.2.2 and replace them with the following:

“5.2.1 Subject to paragraph 5.2.2, *Proper Invoices* for progress payment shall be given monthly to the *Owner* and the *Consultant* simultaneously as the *Work* progresses on a day of the month agreed to by the parties.

5.2.2 The *Contractor* shall not give a *Proper Invoice* for progress payment:

- .1 on any day that is not a *Working Day*; and
- .2 on any day that is within the *Blackout Period*; and
- .3 between the date certified as the date of *Substantial Performance of the Work* and the date that the *Contract* is completed.”

3.21.2 Amend paragraph 5.2.3 by adding the following to the end:

“No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties.”

3.21.3 Amend paragraph 5.2.4 by adding the following to the end:

“Such schedule of values shall include line items which assign an appropriate portion of the *Contract Price* for the preparation and delivery of as-built drawings, quality control, cleanup, and closeout of the *Work*.”

3.21.4 Amend paragraph 5.2.5 by inserting the words “, or as directed by the *Consultant*” after the words “as specified in the *Contract*”.

3.21.5 Amend paragraph 5.2.6 by adding the following to the end:

“, as modified by paragraph 5.1A.1.2 of GC 5.1A – PROPER INVOICE.”

3.21.6 Amend paragraph 5.2.8 by adding the following to the end:

“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 14.1 – OWNERSHIP OF MATERIALS.”

SC 3.22 GC 5.3 PAYMENT

3.22.1 Delete paragraph 5.3.1 and replace it with the following:

“5.3.1 After receipt by the *Consultant* and the *Owner* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, the *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the date of

receipt of the *Proper Invoice*, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due.

5.3.2 Subject to the *Owner's* right to give notice of non-payment in accordance with the *Act*, and subject to the holdback provisions of the *Act*, the *Owner* will pay the amount payable under a *Proper Invoice* for progress payment no later than 28 days after the date the *Owner* receives the *Proper Invoice*. Provided that the *Owner's* obligation to make payment shall not arise unless and until the *Contractor's* application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE. For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of an application for progress payment where:

- .3 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or
- .4 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*; and/or
- .5 the amount applied for exceeds the amount stated in the certificate for payment issued by the *Consultant* pursuant to paragraph 5.3.1.”

SC 3.23 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

3.23.1 Delete paragraphs 5.4.2 through 5.4.6 and replace them with the following:

“5.4.2 Immediately after the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*:

- .1 shall, in consultation with the *Owner* and the *Consultant*, establish reasonable dates for finishing the *Work* and correcting deficient *Work*; and
- .2 shall cause the certificate to be published in the manner prescribed by the *Act* and shall immediately thereafter deliver a copy of the published certificate to the *Owner*.

5.4.3 The *Contractor* shall submit an application for payment of the lien holdback amount which shall include all of the following.

- .1 a written request for the release of the holdback amount;
- .2 a declaration that no written notices of lien have been received by the *Contractor*;
- .3 a copy of the published certificate of *Substantial Performance of the Work*;
- .4 a current valid clearance certificate issued by the *WSIB*; and
- .5 a CCDC 9A Statutory Declaration stating that all accounts for services and materials and other indebtedness incurred by the *Contractor* for which the *Owner* may in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified matter in dispute.

5.4.4 Subject to the *Owner's* right to give notice of non-payment of holdback in accordance with the *Act*, the *Owner* will pay the amount authorized by the certificate for payment of the holdback in accordance with the *Act*. For certainty, and without limitation, the *Owner* may refuse to pay a portion of the holdback where the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*.”

SC 3.24 GC 5.5 FINAL PAYMENT

3.24.1 Delete paragraph 5.5.1 and replace it with the following:

“5.5.1 When the *Contractor* considers that the *Contract* is completed, the *Contractor* shall give to the *Owner* and the *Consultant* a *Proper Invoice* for final payment, provided that the *Contractor* shall not give such *Proper Invoice* on any day that is within the *Blackout Period*.”

3.24.2 Amend paragraph 5.5.2 by adding the following to the end:

“Without limiting the generality of the foregoing, the application for final payment will not be considered valid until *Products* installed are tested and conform to the requirements specified in the *Contract*

Documents and all documents required by the *Contract Documents* have been received and accepted by the *Consultant*.”

3.24.3 Delete paragraphs 5.5.3 and 5.5.4 and replace them with the following:

“5.5.3 Subject to the *Owner’s* right to give notice of non-payment in accordance with the *Act*, the *Owner* will pay the amount payable under a *Proper Invoice* for final payment no later than 28 days after the date the *Owner* receives the *Proper Invoice*. Provided that the *Owner’s* obligation to make payment shall not arise unless and until the *Contractor’s* application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE. For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of an application for final payment where:

- .1 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or
- .2 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*; and/or
- .3 the amount applied for exceeds the amount stated in the certificate for payment issued by the *Consultant* pursuant to paragraph 5.5.2.”

SC 3.25 **GC 5.8 WITHHOLDING OF PAYMENT**

3.25.1 Add a new GC 5.8 as follows:

“GC 5.8 WITHHOLDING OF PAYMENT

5.8.1 Notwithstanding any provision in the *Contract Documents* to the contrary, the *Owner* may withhold payment of any amount claimed in an application for payment, in a *Proper Invoice*, or in any certificate for payment to the extent required to offset any claims the *Owner* may have against the *Contractor*, or to offset previous over-payment made to the *Contractor*, or for damages or costs incurred by the *Owner*, or to the extent as may be necessary to protect and/or indemnify the *Owner* from loss, claims, and/or damage, including as a result of:

- .1 the *Contractor’s* failure to perform any of its material obligations under this *Contract*, or where the *Contractor* is otherwise in default under the *Contract Documents*;
- .2 defective portions of the *Work* not remedied;
- .3 damage done to work performed by *Other Contractors* or by the *Owner’s* own forces;
- .4 the *Contractor’s* failure to make prompt payments to its *Subcontractors* and *Suppliers* respecting *Work* for which the *Owner* has made payment to the *Contractor*;
- .5 claims or reasonable evidence indicating possible commencement of claims for which the *Contractor* may be responsible to indemnify the *Owner*;
- .6 the *Contractor’s* failure to remove liens arising from the *Work* or to otherwise satisfy its obligations under GC 14.2 – LIENS AND ACTIONS;
- .7 reasonable evidence the *Contractor* will not achieve *Ready-for-Takeover* in accordance with the construction schedule and/or within the *Contract Time*.

5.8.2 Where the *Owner* has withheld payment to the *Contractor* pursuant to the provisions of this *Contract*, the *Owner* shall be entitled to apply the funds withheld toward the costs of any required remedial work, completion costs, or toward damages or losses suffered and for which the *Owner* is entitled to compensation under this *Contract*, including legal costs and expenses.”

SC 3.26 **GC 6.1 OWNER’S RIGHT TO MAKE CHANGES**

3.26.1 Amend paragraph 6.1.2 by adding the following to the end:

“This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there is strict compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the *Contract* or the *Work*, and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether or

not there is any such unjust enrichment, shall be the basis of a claim for damages or additional payment or for a change in the *Contract Price* or *Contract Time*. Without limiting the generality of the foregoing, under circumstances of expediency the *Contractor* shall proceed with a change in the *Work* without first obtaining a *Change Order* or a *Change Directive* where it has received from the *Owner* or the *Owner's* authorized representative some form of written or e-mail direction agreeing to the change, in which case such change, and the value of such change, if any, will be determined pursuant to GC 6.2 or GC 6.3, at the option of the *Owner*."

3.26.2 Add a new paragraph 6.1.3 as follows:

"6.1.3 The *Contractor* agrees that changes resulting from construction coordination or *Subcontractor* or *Supplier* coordination are included in the *Contract Price* and shall not entitle the *Contractor* to claim any increase to the *Contract Price*."

SC 3.27 GC 6.2 CHANGE ORDER

3.27.1 Amend paragraph 6.2.1 by adding the following sentence to the end:

"Such adjustments and method of adjustment must be submitted by the *Contractor* to the *Consultant* in sufficient time to prevent interruption of the orderly process of construction and, in any event, no later than ten (10) days from the *Contractor's* receipt of the proposed change in the *Work*."

3.27.2 Add new paragraphs 6.2.3 to 6.2.6 as follows:

"6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the *Owner*:

- .1 by estimate and acceptance of a lump sum. The lump sum shall include overhead, profit and other reasonable charges and mark-ups of the *Contractor* and shall be the total cost to the *Owner*; or
- .2 by unit prices established in the *Contract* or subsequently agreed upon. Unit prices shall include all costs related to *Products*, labour, equipment, delivery and handling, statutory charges, overhead and profit, other related charges, and shall include all applicable duties (excluding *Value Added Taxes*), measured in place prior to excavation, or compacted/complete in place, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity; or
- .3 by actual credits and cost to the *Owner*. The cost to the *Owner* shall be the actual cost of labour charged at the prevailing rates at the *Place of the Work* plus statutory charges on labour including workers' compensation, employment insurance, Canada Pension, vacation pay, medical and health benefits, together with the actual costs, without mark-up, of materials and *Products* utilized in the change, plus the percentage fees set out in the table below for overhead and profit after all credits included in the change have been deducted. For certainty, no mark-up or other charges shall be permitted for overhead and profit where the change results in a net decrease (credit) to the *Contract Price*.

Cost of the Change (excl HST)	<i>Subcontractor</i> Mark-Up on Material and <i>Products</i> only	<i>Contractor</i> Mark-Up on <i>Subcontractor</i> work
\$0 to \$24,999.99	10%	10%
\$25,000 to \$49,999.99	10%	7.5%
\$50,000 or more	5%	5%

Interpretive Note: The mark-ups in the above table are flat not graduated. For example, a *Subcontractor* performed change valued at \$35,000 attracts a mark-up of 10% for the *Subcontractor* (on the cost of material and *Products* only) and 7.5% for the *Contractor*. The table is not intended to provide one set of mark-ups for the first \$25,000 of the change and a different set of mark-ups for the balance.

6.2.4 The percentage fee mark-ups set out in the table at paragraph 6.2.3.3 shall constitute the only compensation the *Contractor* shall be entitled to for any and all overhead, profit, general expenses, incidental and administrative costs whatsoever related to the change including, but

not limited to, costs relating to superintendence and supervision, general cleanup, *Shop Drawing* production, estimating, site office and head office expenses and personnel, administration costs, workers' tools, temporary facilities and controls, record drawings, as-built drawings, warranty, insurance, bonding, job safety costs, and coordination of any and all *Work*-related activities.

6.2.5 No claim whatsoever for a change in the *Contract Time*, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless first authorized by the *Consultant* and approved by the *Owner* and set out in a *Change Order*. For certainty, an adjustment to the *Contract Time* will be considered only when the *Contractor* demonstrates to the *Owner* that a change in the *Work* affects the critical path of the *Work*. Any costs associated with an adjustment to the *Contract Time* shall be identified by the *Contractor* and shall be limited to the reasonable direct costs directly attributable to the adjustment to the *Contract Time*.

6.2.6 The *Contractor* shall not be entitled to any additional compensation or an adjustment to the *Contract Time* arising out of changes to the *Work* aside from the amounts stated in a *Change Order*. In no event shall the *Owner* be liable to the *Contractor* for any costs, including indirect, impact or consequential costs, arising out of changes to the *Work* beyond the agreed upon amount of the *Change Order*."

SC 3.28 GC 6.3 CHANGE DIRECTIVE

3.28.1 Delete paragraph 6.3.6.3 and replace it with the following:

"6.3.6.3 The *Contractor's* fee shall be equal to the applicable percentage mark-up rates set out in paragraph 6.2.3.3 of GC 6.2 – CHANGE ORDER or as otherwise agreed by the parties."

3.28.2 Amend paragraph 6.3.7 as follows:

(a) insert the words "Subject to paragraph 6.3.14," at the beginning; and

(b) delete paragraphs 6.3.7.1(1), (2), (3) and (4) and replace them with the following:

"(1) performing the *Work*, including necessary supervisory services;

(2) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and as-built drawings; or

(3) including clerical staff engaged in processing changes in the *Work*.

(c) delete paragraphs 6.3.7.5, 6.3.7.12 to and including 6.3.7.15, and 6.3.7.17 to and including 6.2.7.19."

3.28.3 Amend paragraph 6.3.12 by adding the following to the beginning:

"An adjustment to the *Contract Time* will be considered only where the change affects the critical path of the *Work*."

3.28.4 Add a new paragraph 6.3.14 as follows:

"6.3.14 Without limitation, the following shall not form part of the cost of performing the work attributable to a *Change Directive*, and shall not be recoverable by the *Contractor*:

.1 head office salaries and benefits and all other overhead or general expenses, except only for the amounts described in paragraph 6.3.7.1;

.2 capital expenses and interest on capital;

.3 general clean-up, except where the performance of the work attributed to the *Change Directive* causes specific additional clean-up requirements;

.4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel;

.5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* or that are otherwise deemed unreasonable by the *Consultant*;

- .6 costs or expenses attributable to the negligence, improper work, deficiencies, or breaches of contract by the *Contractor*;
- .7 costs of quality assurance, such as inspection and testing services, charges levied by authorities having jurisdiction, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*;
- .8 amounts for small tools;
- .9 insurance and bonding premiums, unless such costs or fees are approved in writing by the *Owner*; and
- .10 preparation of as-built drawings.”

SC 3.29 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

3.29.1 Add a new paragraph 6.4.0 as follows:

“6.4.0 The *Contractor* confirms that, before signing the *Contract*, it carefully investigated and examined the *Place of the Work*, the *Contract Documents*, and any other documents made available by the *Owner*, and applied to such investigations and examinations the degree of care, skill and diligence described in paragraph 3.11.1 of GC 3.11 – STANDARD OF CARE. Through such investigations and examinations, the *Contractor* has satisfied itself as to the conditions, circumstances, limitations and requirements necessary for the *Contractor* to perform the *Work* in accordance with the *Contract Documents* including, but not necessarily limited to, such things as:

- .1 the nature and location of the *Work*, including the availability / restrictions of access to the *Project* site;
- .2 the character and content of the *Work*;
- .3 the character and scope of work to be done by *Other Contractors* and *Owner’s* own forces;
- .4 the availability of labour, equipment, material, *Products* and facilities needed for the on-time performance and completion of the *Work*;
- .5 all labour restrictions, including availability of skilled trades;
- .6 safety hazards and labour contract negotiations which may have an impact on the performance of the *Work*;
- .7 the location of any required utility services;
- .8 without limiting the generality of the foregoing, any contingency and/or circumstances which may affect the *Work*.

If the *Contractor* has not conducted the investigations and examinations described in this paragraph 6.4.0, it is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult to perform than was contemplated at the time the *Contract* was entered into. No allowances will be made for additional costs and no claims by the *Contractor* will be considered for an adjustment in the *Contract Price* or *Contract Time* in connection with conditions which were reasonably apparent or which could reasonably have been discovered by such investigations or examinations made before the signing of the *Contract*.”

3.29.2 Amend paragraphs 6.4.1.1 and 6.4.1.2 by adding the following to the end of each paragraph:

“and which were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0”

3.29.3 Amend paragraph 6.4.2 as follows:

(a) add a new first sentence as follows:

“Having regard to paragraph 6.4.0, if the *Contractor* believes that the conditions of the *Place of the Work* differ materially from those reasonably anticipated, or differ materially from those indicated in the *Contract Documents*, or were concealed from discovery notwithstanding the conduct of the

investigation described in paragraph 6.4.0, it shall notify the *Owner* and *Consultant* in writing no later than five (5) *Working Days* after first observing such conditions.”

- (b) insert the words “and were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0” after the word “materially” in the second line.

SC 3.30 GC 6.5 DELAYS

- 3.30.1 Amend paragraph 6.5.1 by deleting the last sentence and replacing it with the following:

“The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*.”

- 3.30.2 Amend paragraph 6.5.2 by deleting the last sentence and replacing it with the following:

“The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. Provided that this paragraph 6.5.2 shall not apply where the stop work order is issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic, in which case any resulting delay shall be governed by paragraph 6.5.3.”

- 3.30.3 Amend paragraph 6.5.3 as follows:

- (a) add a new subparagraph 6.5.3.0 as follows:

“6.5.3.0 acts, orders, legislation, regulations or directives of any court, government or other public authority, including stop work orders or *Project* closures or suspensions, made or issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic,”

- (b) add the following to the last sentence of paragraph 6.5.3:

“, in which case the *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor’s* head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any loss of profit or loss of opportunity costs and damages, both direct and indirect, arising from or caused by such delay, and regardless of whether any such costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*.”

- 3.30.4 Amend paragraph 6.5.4 by adding the following to the end:

“For greater certainty: (a) the fact there may be a discussion of delay during a meeting or the fact delay may be mentioned in minutes of meetings does not constitute *Notice in Writing* of the cause of delay nor an effective notice of delay; and (b) it is the intention of the parties that an extension for delay will be considered only when the *Contractor* demonstrates that the delay affects the critical path of the *Work* and any adjustment to the *Contract Time* shall only be to the extent that the critical path of the *Work* is affected.”

- 3.30.5 Add new paragraphs 6.5.6 to 6.5.9 as follows:

“6.5.6 The *Contractor* shall take all reasonable steps to reschedule the *Work* and to minimize the effect of the delay referred to in paragraphs 6.5.1, 6.5.2 and 6.5.3. If the *Contractor* fails to do so, the extension of the *Contract Time* and/or any amounts payable to the *Contractor* will be reduced accordingly.

- 6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of the *Work* as a result of the delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3, and the *Contractor* shall be reimbursed by the *Owner* for the reasonable direct costs incurred by the *Contractor* for such care, maintenance and protection, but excluding the *Contractor's* head office personnel and overhead costs.
- 6.5.8 The parties acknowledge and agree that the *Owner* shall not be liable for any delay or part thereof that occurs concurrently with an independent cause of delay for which the *Owner* is not responsible. In addition, in the event the *Owner* is responsible for two or more separate causes of delay that run in whole or in part parallel to each other, those two or more events shall be considered as one for the purpose of determining the duration of the extension of the *Contract Time* and/or any amount payable to the *Contractor*.
- 6.5.9 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Owner*. The *Contractor* shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of the *Work* as a result of the delay described in this paragraph, at its sole cost and expense. In addition, the *Owner* shall be reimbursed by the *Contractor* for all reasonable costs and expenses incurred by the *Owner* as a result of such delay including, but not limited to, the costs of all additional services required by the *Owner* from the *Consultant* or any other consultants, project managers, contractors, or others employed or engaged by the *Owner*."

SC 3.31 GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 3.31.1 Delete paragraph 7.1.2 and replace it with the following:
- "7.1.2 If the *Contractor* neglects to prosecute the *Work* properly, or fails or neglects to maintain the construction schedule, or otherwise fails to comply with the requirements of the *Contract*, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the five (5) *Working Days* immediately following the receipt of such notice, but without affecting in any respect the liability of the *Contractor* in respect of earlier defaults."
- 3.31.2 Add new paragraphs 7.1.5A and 7.1.5B as follows:
- "7.1.5A The *Owner* may terminate the *Contract* at any time for any or no reason. In such event, the *Owner* shall pay for the *Work* performed up to the effective date of termination, including demobilization costs, and for such additional costs, if any, directly flowing from such termination which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, and excluding any loss of profit or loss of opportunity costs and damages, both direct and indirect, arising from or caused by such termination, and regardless of whether any such costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*.
- 7.1.5B If the *Owner* terminates the *Contractor's* right to continue with the *Work* in whole or in part or terminates the *Contract* as provided in this GC 7.1, the *Contractor* shall deliver to the *Owner*, within five (5) days of the effective date of the termination, all of the materials listed in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER in the possession of or available to the *Contractor*."

SC 3.32 GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 3.32.1 Delete paragraph 7.2.2.

3.32.2 Amend paragraph 7.2.3 as follows:

- (a) delete paragraphs 7.2.3.1 and 7.2.3.2;
- (b) delete paragraphs 7.2.3.3 and 7.2.3.4 and replace them with the following:

“7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a court; provided that this paragraph shall not apply to the *Owner's* withholding of payments in accordance with the *Contract Documents*, or

7.2.3.4 the *Owner* breaches this *Contract* to a substantial degree, and the *Consultant* gives a written statement to the *Owner* and the *Contractor* that provides details of such breach and confirms to the *Contractor* and the *Owner* that sufficient cause exists to justify the *Contractor's* action.”

3.32.3 Amend paragraph 7.2.4 by deleting the number “5” in the second line and replacing it with “10”.

3.32.4 Delete paragraph 7.2.5 and replace it with the following:

“7.2.5 If the default cannot be corrected within the 10 *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it

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

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall ensure the *Work* and the *Place of the Work* are left in a safe and secure condition as required by authorities having jurisdiction and the *Contract Documents*, and shall be entitled to be paid for all *Work* performed to the date of termination. Subject to the *Contractor's* obligation to mitigate costs, the *Contractor* shall also be entitled to recover the costs directly flowing from and which are a reasonable consequence of the termination, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such termination, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. Such payment is further subject to the *Owner's* right to claim damages or set off for any costs or loss or damage suffered or which will be suffered by the *Owner*. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*.”

SC 3.33 GC 8.4 RETENTION OF RIGHTS

3.33.1 Add a new paragraph 8.4.3 as follows:

“8.4.3 If either party elects to have a dispute resolved by arbitration, the *Contractor* agrees that this paragraph 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings relating to the dispute until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. Provided that nothing in this paragraph 8.4.3 shall prevent the *Contractor* from taking the steps required by the *Act* to preserve and/or perfect a lien to which it may be entitled.”

SC 3.34 GC 9.1 PROTECTION OF WORK AND PROPERTY

3.34.1 Delete paragraph 9.1.1.1 and replace it with the following:

“9.1.1.1 errors or omissions in the *Contract Documents* which the *Contractor* could not reasonably have discovered; or”

3.34.2 Delete paragraph 9.1.2 and replace it with the following:

“9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents* or that are discoverable from an inspection of the *Place of the Work*.”

3.34.3 Add a new paragraph 9.1.5 as follows:

“9.1.5 Without in any way limiting the *Contractor*’s obligations under this GC 9.1, should the *Contractor* or any *Subcontractor* or *Supplier* cause loss or damage to property, including roads, buildings, structures, paving, grass, sod, trees or other plantings, whether owned by the *Owner* or others, and whether at the *Place of the Work* or not, the *Contractor* shall be liable for the cost of making good such damage and for the repair and replacement costs, including the costs of any consultants, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Contractor*.”

SC 3.35 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

3.35.1 Amend paragraph 9.2.3 by deleting the words “The *Owner*” in the first line and replacing them with “The *Contractor*”.

3.35.2 Amend paragraph 9.2.4 by deleting the words “Unless the *Contract* expressly provides otherwise, the *Owner*” in the first line and replacing them with “The *Contractor*”.

3.35.3 Amend paragraph 9.2.5.3 by adding the following after the words “*Place of the Work*” in line two:

“and no property is damaged or destroyed as a result of exposure to or the presence of the toxic or hazardous substances,”

3.35.4 Add a new paragraph 9.2.5.5 as follows:

“9.2.5.5 take all necessary steps to mitigate the impact on *Contract Time* and *Contract Price*.”

3.35.5 Amend paragraph 9.2.6 by inserting the following after the word “responsible”:

“or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,”

3.35.6 Amend paragraph 9.2.7.3 by adding the following after the words “as a result of the delay” at the end:

“, but excluding the costs of the *Contractor*’s head office personnel and overhead costs, any consequential, indirect or special damages, any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, and regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*”

3.35.7 Delete paragraph 9.2.7.4.

3.35.8 Amend paragraph 9.2.8 by adding the following after the word “responsible” in the second line:

“or that any toxic or hazardous substances already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,”

3.35.9 Add new paragraphs 9.2.10 and 9.2.11 as follows:

“9.2.10 Without limiting its other obligations under this GC 9.2, the *Contractor* acknowledges that its obligations under the *Contract* include compliance with the *Environmental Programs*. The *Contractor* acknowledges that the *Owner* may suffer loss and damage should the *Contractor* fail to comply with the *Environmental Programs* and agrees to indemnify and hold harmless the *Owner* with respect to any loss or damage to which the *Owner* is exposed by the *Contractor’s* failure to comply. The *Contractor* acknowledges that should it fail to comply with the *Environmental Programs*, such failure will constitute a failure to comply with the requirements of the *Contract* in a material way within the meaning of paragraph 7.1.2 of GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

9.2.11 The *Contractor* shall indemnify the *Owner* and its agents, officers, directors, trustees, employees, consultants, successors and assigns in respect of any loss, costs, expense or fine which might be imposed in respect of any failure by the *Contractor* to satisfy its obligations under this GC 9.2 and, without limiting the general nature of this indemnity, the *Contractor* shall indemnify the *Owner* and its agents, officers, directors, trustees, employees, consultants, successors and assigns in respect of any loss, costs, expense or fine if the *Project* is made subject to an order from a court or government agency requiring remediation of any contamination caused as a result of the *Work* performed by the *Contractor* or its *Subcontractors* or *Suppliers*.”

SC 3.36 GC 9.4 CONSTRUCTION SAFETY

3.36.1 Add new paragraphs 9.4.6 to 9.4.9 as follows:

“9.4.6 Without limiting the generality of paragraph 9.4.1, the *Contractor* shall be and shall assume all of the responsibilities of the “constructor” under the *OHSA* for the *Project* and shall file the “Notice of Project” with the appropriate government agency naming the *Contractor* as the “constructor”.

9.4.7 The *Contractor* shall be solely and exclusively responsible for controlling the workplace and the *Place of the Work* and shall take all steps to effectively direct and supervise the *Work* in order to ensure conformity and compliance with *OHSA* and all other applicable construction health and safety requirements, regulations, industry standards and guidelines, including COVID-19 protocols for construction sites. The *Contractor* represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Contractor’s* employees, *Subcontractors*, *Suppliers* and all others attending at the *Place of the Work*, including the *Owner’s* representatives, the *Owner’s* own forces, and *Other Contractors*. No comments, suggestions or instructions from the *Owner*, the *Consultant* or any other representative of the *Owner* are to be relied upon or assumed to reduce or replace the *Contractor’s* designation as the “constructor” or its responsibility for construction safety on the *Project*.

9.4.8 The *Contractor* shall indemnify and save harmless the *Owner* and its agents, officers, directors, trustees, employees, consultants, successors and assigns from and against any and all liability, costs, expenses, charges, fines, damages and all other consequences arising from any and all safety infractions on the *Project*, including the payment of legal fees and disbursements on a full indemnity basis.

9.4.9 The *Contractor* shall ensure that every “controlled Product” used at the *Project* site shall meet the labelling requirements and shall have an updated corresponding “Material Safety Data Sheet”, all as required by the WHMIS legislation. The *Contractor* shall ensure that all Material Safety Data Sheets are and are made available for review at the *Project* site.”

SC 3.37 GC 9.5 MOULD

3.37.1 Amend paragraph 9.5.3.3 by adding the following after the words “as a result of the delay” at the end:

“, but excluding the costs of the *Contractor’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or

caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*”

SC 3.38 GC 10.1 TAXES AND DUTIES

3.38.1 Amend paragraph 10.1.2 by adding the following to the end:

“For greater certainty, the *Contractor* shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties and the *Owner* shall not be entitled to any credit relating to mark-up for overhead or profit on any decrease in such taxes and duties.”

3.38.2 Add new paragraphs 10.1.3 to 10.1.6 as follows:

“10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with the 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 of equipment, material and component costs reflecting the sales 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*. The *Contractor* agrees to cooperate with the *Owner* and to cause all *Subcontractors* and *Suppliers* to cooperate with the *Owner* in the application for any refund of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such 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 or exemptions or refunds. All such 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.

10.1.6 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.”

SC 3.39 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

3.39.1 Amend paragraph 10.2.4 by adding the following to the end:

“The *Contractor* shall be present at each site inspection by an inspector or registered code agency.”

3.39.2 Amend paragraph 10.2.5 by deleting the word “The” in the first line and replacing it with the words “Subject to paragraph 1.1.12 of GC 1.1 – CONTRACT DOCUMENTS, the”.

3.39.3 Amend paragraph 10.2.6 as follows:

- (a) delete the words “performs work knowing it to be” and replace them with “performs work when it knew or ought to have known that such work is”; and
- (b) delete the words “bear the” in the third line and replace them with “indemnify and save the *Owner* harmless against all”.

3.39.4 Amend paragraph 10.2.7 by adding the following to the end:

“, provided that any claims arising from any delays due to such changes will be dealt with in accordance with GC 6.5 – DELAYS.”

SC 3.40 GC 11.1 INSURANCE

3.40.1 Amend paragraph 11.1.1.1 by adding the following sentence to the end:

“To the extent not already described in this paragraph, the *Contractor* shall provide legal liability coverage for compensatory damages because of bodily injury or property damage to third parties arising from all operations of the insured, including premises and operations, *Subcontractors*’ contingent liability, personal injury resulting from protection of persons / property, contractual liability (blanket), broad form property damage, employees as named insureds, cross liability clause and voluntary medical payments.”

3.40.2 Add a new paragraph 11.1.1.4A immediately after paragraph 11.1.1.4 as follows:

“11.1.1.4A In addition to the coverages described in CCDC 41, include:

- all risks of direct physical loss including flood;
- full replacement value, as basis for settlement;
- the following deductibles: for flood at \$50,000 and other at \$50,000.”

3.40.3 Amend paragraph 11.1.2 by adding the following to the end:

“The *Owner*’s acceptance or the *Contractor*’s delivery of any document evidencing the required policies of insurance does not constitute approval or agreement by the *Owner* that the insurance requirements have been met or that the insurance policies are in compliance with the requirements of this *Contract*. Failure of the *Owner* to demand evidence of full compliance with these insurance requirements or failure of the *Owner* to identify a deficiency from evidence provided will not be construed as a waiver of the *Contractor*’s obligation to maintain the insurance policies required by this *Contract*.”

3.40.4 Delete paragraph 11.1.3 and replace it with the following:

“11.1.3 In all of the policies described in paragraph 11.1.1 any deductible shown shall be the responsibility of the *Contractor*.”

3.40.5 Add new paragraphs 11.1.9 through 11.1.12 as follows:

“11.1.9 All occurrences and claims shall be reported immediately in writing to the *Owner* providing at least the following particulars:

- .1 date, time and location of occurrence;
- .2 cause and description of circumstances;
- .3 estimate of loss or damage;
- .4 names and telephone numbers of persons to contact.

11.1.10 Except for policies of automobile insurance, all insurance policies in any way related to the *Work* and secured and maintained by the *Contractor* shall include clauses stating each insurer will waive all rights of recovery, under subrogation or otherwise, against the *Owner*.

11.1.11 All insurance policies and coverages required of the *Contractor* will be primary over any other insurance that might be carried by the *Owner*.

11.1.12 By requiring insurance, the *Owner* does not represent that the coverages and limits will necessarily be adequate to protect the *Contractor*. The insurance obtained by the *Contractor* will not reduce or limit the *Contractor*’s contractual obligation to indemnify and defend the *Owner* as provided in this *Contract*.”

SC 3.41 GC 12.1 READY-FOR-TAKEOVER

3.41.1 Delete paragraphs 12.1.1.4 and 12.1.1.5 and replace them with the following:

“12.1.1.4 The delivery to the *Owner* of guarantees, warranties, certificates, testing and balancing reports and spare parts, distribution system diagrams, *Shop Drawings*, maintenance and operating manuals, instructions, samples, existing reports and correspondence from authorities having

jurisdiction, and all other close-out materials or documents specified in the *Contract Documents*.

12.1.1.5 The delivery to the *Owner* of the final as-built drawings acceptable to the *Consultant*.”

3.41.2 Add a new paragraph 12.1.1.9 as follows:

“12.1.1.9 Written confirmation from the *Consultant* that the aggregate cost of completing the remaining *Work* and correcting known defects and deficiencies is not more than the lesser of \$5,000 and 1% of the *Contract Price*.”

3.41.3 Delete paragraph 12.1.2.

3.41.4 Delete paragraphs 12.1.5 and 12.1.6.

SC 3.42 **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

3.42.1 Delete paragraphs 12.2.1 to 12.2.4 and replace them with the following:

“12.2.1 The *Owner*, its agents and *Other Contractors* shall have the right to enter, occupy, take possession of or use for any intended purpose any portion or all of the undelivered portion of the *Project*, even though *Ready-for-Takeover* may not have been attained, provided that such entry, occupation, taking of possession or use will not interfere, in any material way, with the progress of the *Work*. The entry, occupation, taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner*’s acknowledgement or acceptance of the *Work* or *Project*, nor shall it be deemed to be an acknowledgment or acceptance by the *Owner* that such *Work*, or portions of the *Work*, have met the *Ready-for-Takeover* requirements described in the *Contract Documents*, nor shall it entitle the *Contractor* to an adjustment in the *Contract Time* or *Contract Price*.

12.2.2 The entry, occupation, taking of possession or use of any portion of the *Project* by the *Owner*, its agents or *Other Contractors* pursuant to this GC 12.2 – EARLY OCCUPANCY BY THE OWNER shall not relieve the *Contractor* of any of its obligations under the *Contract*, including the *Contractor*’s designation and obligations as “constructor” under *OHSA* and the *Contractor*’s obligations respecting construction health and safety, and all of the *Contractor*’s other obligations, rules, regulations and practices shall continue to apply notwithstanding such entry, occupation, taking of possession or use.”

SC 3.43 **GC 12.3 WARRANTY**

3.43.1 Amend paragraph 12.3.1 by adding the following to the end:

“Notwithstanding the foregoing, if an item of *Work* is not completed at *Ready-for-Takeover*, except for extended warranties as described in paragraph 12.3.6, the warranty period for such item of *Work* shall be one year from the date that such item of *Work* has been completed and accepted in writing by the *Owner*.”

3.43.2 Amend paragraph 12.3.2 by adding the following to the end:

“If the *Contractor* has been permitted to make use of permanent equipment or systems, as provided in GC 3.12 – CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS, such permanent equipment or systems shall be subject to the same warranty as described in this GC 12.3 and shall be judged, for purposes of assessing compliance with the warranty, as though the equipment or system was new, clean and unused by the *Contractor*, except for normal commissioning and startup activities, prior to the date of *Ready-for-Takeover*.”

3.43.3 Amend paragraph 12.3.3 by adding the following to the end:

“The *Contractor* shall correct all remedial and warranty work identified in the *Notice in Writing* within 30 days of receipt of such notice, or within such other time as the parties may agree, failing which the *Owner* may engage others to perform the work necessary to complete and rectify such warranty work at the risk and cost of the *Contractor*.”

3.43.4 Amend paragraph 12.3.4 by adding the following to the end:

“The *Contractor* shall perform all remedial and warranty work at its own cost and expense and at a time convenient to the *Owner*, which may be outside of normal working hours. Before performing the remedial and warranty work the *Contractor* shall provide, for the *Owner's* review and approval, a proposed schedule for the performance of such work.”

SC 3.44 **GC13.1 INDEMNIFICATION**

3.44.1 Delete paragraphs 13.1.1 through 13.1.6 and replace them with the following:

“13.1.1 The *Contractor* shall defend, indemnify, and hold harmless the *Owner*, its agents, employees, trustees, officers, directors and assigns from and against all claims, demands, damages, losses, expenses, costs including legal fees, actions, causes of action, suits, charges or other proceedings (collectively “**Claims**”), by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to, directly or indirectly, the *Contractor's* performance or non-performance of the *Work* or the *Contract*, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the *Owner* from all *Claims* made by any person other than the *Contractor* itself, financial or otherwise, relating to or arising from the *Work*.

13.1.2 The *Owner* shall indemnify and hold harmless the *Contractor* and its agents and employees from and against all *Claims* arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.”

SC 3.45 **GC 13.2 WAIVER OF CLAIMS**

3.45.1 Delete paragraphs 13.2.1 through 13.2.10 and replace them with the following:

“13.2.1 As of the date on which the *Owner* makes final payment to the *Contractor*, the *Owner* expressly waives and releases the *Contractor* from all claims against the *Contractor* including, without limitation, those that might arise from negligence or breach of contract by the *Contractor* except for one or more of the following:

- .1 those made in writing prior to the date of the final payment and still unsettled;
- .2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;
- .3 those arising from GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the *Contractor* bringing or introducing any toxic or hazardous substances to the *Place of the Work* after the *Contractor* commences the *Work*;
- .4 those made by *Notice in Writing* within a period of six years from *Ready-for-Takeover*, or within such shorter period as may be prescribed in any limitation statute of the province or territory of the *Place of the Work* and arising from any liability of the *Contractor* for damages resulting from the *Contractor's* performance of the *Contract* or substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible. As used herein, “substantial defects or deficiencies” means those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies, either individually or in the aggregate, exceeds:
 - (A) if the *Contract Price* is \$2,000,000 or less, the sum of \$50,000, before *Value Added Taxes*;
 - (B) if the *Contract Price* is more than \$2,000,000, the sum of \$100,000, before *Value Added Taxes*.

13.2.2 As of the date of *Ready-for-Takeover*, the *Contractor* expressly waives and releases the *Owner* from all claims which it has or reasonably ought to have knowledge of that could be advanced against the *Owner* including, without limitation, those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those for which *Notice in Writing* was given prior to the *Contractor's* application for *Ready-for-Takeover* and still unsettled; and
- .2 claims for payment for *Work* completed after the *Contractor's* application for *Ready-for-Takeover.*"

SC 3.46 PART 14 OTHER PROVISIONS

3.46.1 Add a new Part as follows:

"PART 14 OTHER PROVISIONS**GC 14.1 OWNERSHIP OF MATERIALS**

14.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time this *Contract* is entered into shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work*, or to a pre-approved off site storage area, shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials from the *Place of the Work* as its property when notified in writing to do so by the *Consultant*.

GC 14.2 LIENS AND ACTIONS

14.2.1 The *Contractor* shall save and keep the *Owner* and the *Place of the Work* free from all construction liens and all other liens whatsoever arising out of the *Work*. If any lien is claimed, filed or registered or any written notice of a lien is received by reason of any *Work* supplied or claimed to have been supplied by or through a *Subcontractor* or *Supplier*, the *Contractor* shall, at its own expense, within ten (10) *Working Days* of being notified of the lien or written notice of a lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of a lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the *Owner* may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or written notice of a lien.

14.2.2 If a lien action is commenced arising out of a lien described in paragraph 14.2.1, the *Contractor* shall take all reasonable steps to remove the *Owner* from such action, and shall indemnify the *Owner* and hold it harmless in such action.

14.2.3 All amounts, including legal costs on a full indemnity basis, disbursements, interest, borrowing, premium or other bonding costs and/or charges incurred by the *Owner* in releasing, vacating, discharging and/or otherwise dealing with a *Subcontractor* or *Supplier* lien, written notice of a lien and/or defending or otherwise dealing with a lien action, shall be charged to the *Contractor* and shall be set off and deducted from any amount owing to the *Contractor*. If there is no amount owing by the *Owner* to the *Contractor* at that time, then the *Contractor* shall reimburse the *Owner* for all amounts incurred by the *Owner*.

GC 14.3 CONTRACTOR LIABILITY FOR DAMAGES

14.3.1 Notwithstanding any other provision in this *Contract*, if the *Owner*, as a result of the *Contractor's* act or omission or breach of this *Contract*, incurs damages, costs, fees or expenses, including costs of additional services performed by the *Consultant* and including legal fees, whether or not such act, omission or breach results in any lien, lien action or other legal proceeding, and whether or not such act, omission or breach results in the *Owner* taking any of the steps provided for in GC 7.1, all such damages, costs, fees (including legal fees on a full indemnity basis) and expenses shall be charged to the *Contractor* and the *Owner* shall be entitled to set off and deduct all such damages, costs, fees (including legal fees on a full indemnity basis) and expenses from any amount owing to the *Contractor*. If there is no amount owing by the *Owner* to the *Contractor* at that time, then the *Contractor* shall reimburse the *Owner* for all of the said damages, costs, fees and expenses.

GC 14.4 DAILY REPORTS / DAILY LOGS

14.4.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare and maintain a daily site log or diary recording, at least, the following: (a) daily weather conditions and temperatures at the *Place of the Work*, (b) the number of workers of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces at the *Place of the Work*, (c) the *Construction Equipment* at the *Place of the Work*, (d) the descriptions and quantities of *Products*

delivered and utilized, and (e) the general nature of *Project* activities. Such log or diary shall also record any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day workforce. The *Contractor* shall also take or arrange for the taking of *Project* photographs to record the progress of the *Work*.

- 14.4.2 The *Contractor* shall maintain, either at its head office or at the *Project* site, records recording labour and material resourcing on the *Project*, including the records identified in paragraph 14.4.1 and other records which document the activities of the *Contractor*.
- 14.4.3 Upon request of the *Owner* or the *Consultant*, the *Contractor* shall make available for inspection and copying all of the records generated pursuant to this GC 14.4, along with any other routine *Project* records ordinarily maintained by the *Contractor*.

GC 14.5 PUBLIC STATEMENTS

- 14.5.1 The *Contractor* shall not publish, issue or make any statements or news release, electronic or otherwise, concerning the *Contract*, the *Work*, or the *Project*, and shall not use the *Owner's* name, logo, etc. without the prior express written consent of the *Owner*. For greater certainty, the *Contractor* shall obtain the prior written approval of the *Owner* for any public advertising, written public sales promotions, press release or other general publicity matter, in which the name or logo of the *Owner* is mentioned or used, or in which words are used from which any connection with the *Owner* may be inferred. The *Contractor* will not erect or permit the erection of any sign or advertising without the prior written approval of the *Owner*.

GC 14.6 AMENDMENTS TO THE CONTRACT

- 14.6.1 Except for the written or e-mail direction referred to in paragraph 6.1.2 of GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, no alteration or amendment to this *Contract*, no course of conduct or dealing between the parties, and no express or implied acceptance of alterations or amendments to the *Contract* shall be binding unless it is in writing and signed by each party.
- 14.6.2 No waiver by or on behalf of a party of any breach of a provision of this *Contract* shall be binding upon the party unless it is expressed in writing and duly executed by the party or signed by its fully authorized representative, and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character. No waiver shall be inferred from or implied by the conduct of any party.

GC 14.7 CONTRACT SECURITY

- 14.7.1 The *Contractor* shall deliver to the *Owner* a performance bond and a labour and material payment bond in the forms specified in the *Act*, each in the amount of fifty per cent (50%) of the *Contract Price*.
- 14.7.2 Such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in Ontario and shall be maintained in good standing until the fulfillment of the *Contract*. All premiums and other costs of the bonds are included in the *Contract Price*."

END OF SUPPLEMENTARY CONDITIONS