

**Supplementary General Conditions
(CCDC 2-2020 - Stipulated Price Contract)**

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All references in this contract to the *Owner* shall refer to the entity identified in the Agreement Between *Owner* and *Contractor*, but all rights, benefits, or entitlements reserved to the *Owner* under the terms of this contract shall equally accrue to and be jointly or severally enforceable by His Majesty the King in Right of Ontario, and the *Owner*.

1. REFERENCE

- (a) The Canadian Standard Construction Document, CCDC 2-2020, Stipulated Price Contract, consisting of the Agreement between *Owner* and *Contractor*, Definitions and the General Conditions of the Stipulated Price Contract, and these Supplementary General Conditions, are part of the *Contract Documents*.
- (b) These Supplementary General Conditions supplement or amend the Agreement, Definitions and General Conditions of the Stipulated Price Contract. Supplementary General Conditions shall be read in conjunction with, and in the case of conflict, take precedence over the Agreement, Definitions and General Conditions. Where any of the Agreement, Definitions and General Conditions are supplemented or amended hereinafter, the unaffected provisions of such Agreement, Definitions and General Conditions shall remain in effect. Supplementary General Conditions to any provisions of the Agreement, Definitions and General Conditions shall be considered as added thereto. Amendments to any provisions of the Agreement, Definitions and General Conditions shall be considered as superseding the affected provision thereof.

2. AGREEMENT BETWEEN OWNER AND CONTRACTOR

(a) Article A-1 - THE WORK

- (i) Add the following at the end of the first sentence of paragraph 3.1: “and attain *Total Completion* of the *Work* within start date of June 2024 to handover date August 19, 2024. from the *Ready-for-Takeover* date.” (the “*Total Completion Date*”).

(b) Article A-3 - CONTRACT DOCUMENTS

- (i) Add in the list of *Contract Documents* in paragraph 3.1:
 - Supplementary General Conditions.

(c) Article A-5 - PAYMENT

- (i) Delete paragraph 5.1.2 and substitute the following:
 - .2 on the 61st calendar day following the publication of the certificate of *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount together with such *Value Added Taxes* as may be applicable to such payment provided (i) there are no claims for lien

registered against title to the *Place of the Work*, (ii) the *Owner* has not received any valid written notices of lien in respect of the *Work*, and (iii) the *Owner* has not published a notice of non-payment in the form prescribed by the *Construction Act* prior to the 40th calendar day following the publication of the certificate of *Substantial Performance of the Work*,.

(ii) Delete paragraph 5.2.1 and substitute the following:

- .1 If either party fails to make payments as they become due under the terms of the *Contract* or pursuant to any award by arbitration or court, interest at the lesser of (i) two percent (2%) per annum above the prime rate (compounded monthly); and (ii) the quarterly prejudgment interest rate prescribed by the *Courts of Justice Act* (Ontario), on such unpaid amounts shall also become due and shall accrue until payment. The prime rate set out in (i) above shall be the lowest rate of interest quoted by the Bank of Canada from time to time as the prime rate.

(iii) Add new paragraphs 5.3 – 5.4 as follows:

- 5.3 Notwithstanding any other provision of this *Contract*, and subject to the requirements of the *Construction Act*, the *Owner* may issue a notice of non-payment in accordance with the *Construction Act* and may make an allowance, set-off, adjustment or credit for any amount (other than release of holdback) (collectively, a “**Withholding**”) as may be necessary to protect the *Owner* from loss on account of:
 - .1 non-conforming or defective *Work*, which is not rectified or remedied in accordance with the *Contract*;
 - .2 failure of the *Contractor* to fulfil its obligations in respect of claims for lien in accordance with GC 5.8 - LIENS;
 - .3 damage to the *Work* or property of the *Owner* or others for which the *Contractor* is responsible under the *Contract* which is not addressed or rectified in accordance with GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .4 errors, discrepancies, inconsistencies or irregularities in any *Proper Invoice*;
 - .5 unsatisfactory prosecution of the *Work*, due to factors within the control of the *Contractor*, which is not rectified in accordance with paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE; or
 - .6 failure by the *Contractor* to provide any document deliverable in accordance with the *Contract Documents*.

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

- 5.4 Without prejudice to any other right or remedy of the *Owner*, the obligation of the *Owner* to make any payment to the *Contractor* under or in connection with the *Contract* is subject to the *Owner's* right to deduct or set off against any such payment any sum which may be due to the *Owner*, or to which the *Owner* has a claim, under the *Contract* and in such event the *Owner* may issue a notice of non-payment to the *Contractor* in accordance with the *Construction Act*. The *Owner* may retain from monies owing to the *Contractor* under this *Contract* an amount sufficient to cover any outstanding or disputed liabilities arising out of the *Contractor's* performance of this *Contract*, including the cost to remedy defects or deficiencies, the reduction in value of substandard portions of the *Work*, claims for damages by third parties which have not been determined in writing by the *Contractor's* insurer, and any outstanding workplace safety and insurance board assessments. Without limitation, if the *Contractor* is in breach or default of any provision of the *Contract*, and, after receiving notice thereof, the *Contractor* does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default in accordance with the terms of this *Contract*, the *Owner* may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any sums incurred by the *Owner* in respect thereof may be deducted from or set off against any amount owing to the *Contractor* under the *Contract*.

(d) **Article A-7 – LANGUAGE OF THE CONTRACT**

- (i) Delete paragraph 7.1 and substitute with the following: “[not used]”.

(e) **Article A-9 – GENERAL**

- (i) Add new Article A-9 – GENERAL as follows:

ARTICLE A-9 - GENERAL

- 9.1 Time is of the essence of this *Contract*.
- 9.2 The *Contract* shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflict of law rules that would direct application of the laws of another jurisdiction.
- 9.3 The *Contractor* shall be an independent *Contractor* in performing its obligations under the *Contract*. The *Contract* does not create any agency, partnership, joint venture, fiduciary or other relationship of the *Contractor*

with the *Owner* other than the relationship of independent contractor. Nothing contained in the *Contract* shall create any employment or contractual relationship between the *Owner* (or anyone acting on its behalf) and any *Contractor Personnel*.

- 9.4 The *Contractor* shall be solely responsible for the performance of the *Work* and for any acts or omissions of any *Contractor Personnel*.
- 9.5 No approval or consent of, or certification, inspection, review, comment, verification, confirmation, acknowledgement or audit by, any *Governmental Authority*, the *Owner*, the [**Commissioning Agent**] or the *Consultant*, or anyone on their behalf, shall relieve the *Contractor* from performing or fulfilling any of its obligations under the *Contract*. Without limitation, whenever any drawings, plans, procedures, programs or other work product of the *Contractor* requires any review, inspection, comment or approval by any *Governmental Authority*, the *Owner*, the [**Commissioning Agent**] or the *Consultant*, or anyone on their behalf, any such review, inspection, comment or approval shall not, in any way, reduce or modify any of the *Contractor's* obligations under the *Contract*.
- 9.6 Nothing contained in the *Contract* shall be construed as making the *Owner*, the [**Commissioning Agent**] or the *Consultant*, or anyone acting on their behalf, responsible for anything which is the responsibility of the *Contractor* under the *Contract*.
- 9.7 Nothing in this *Contract* shall in any way fetter the right, authority and discretion of the *Owner* as a college under the *Ontario Colleges of Applied Arts and Technology Act, 2002* (“**OCAATA**”) in fulfilling its statutory or other functions under law including under the OCAATA, Regulation 34/03 of the OCAATA and in accordance with the *Owner's* by-laws. The *Contractor* understands and agrees that nothing in this *Contract* shall preclude the *Owner's* board of directors or trustees from performing, discharging or exercising its duties, responsibilities and powers under law including under the OCAATA, Regulation 34/03 of the OCAATA and in accordance with the *Owner's* by-laws. The *Contractor* further agrees that it shall comply with all written directions issued by or on behalf of the *Owner's* board of directors from time to time and, as appropriate, such written directions will be implemented by way of a Change Order or Change Directive as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 9.8 The *Contractor* recognizes and understands that the *Owner* is a college under Regulation 34/03 of the OCAATA which is managed pursuant to the OCAATA and is therefore subject to a highly regulated legal and operational environment. The *Contractor* acknowledges that the college campus in which the *Work* is to be performed must remain in operation during the performance of the *Work*, except as specifically permitted by the

Owner, and that the *Contractor* will, without additional cost to the *Owner*, carry out, perform and coordinate the performance of the *Work* to minimize disruption and interference to the on-going operation of the college and its facilities, including the delivery of quality educational and training services provided to the students of the college. The *Contractor* further acknowledges that the *Owner* has provided it with requirements as to the manner in which the *Work* is to be performed in respect of minimizing disturbance to the college including in respect to noise, dust control, access to the *Place of the Work* and the particular requirements in respect to those portions of the *Work* which are to be carried out within existing buildings on the college campus and in respect to those portions of the *Work* where connections are being made to existing buildings on the college campus. In addition the *Contractor* acknowledges that it has familiarized itself with the college's operations and will perform the *Work* taking into account the requirements of the *Owner* to maintain normal college operations and that the *Contract Price* includes all premium time and overtime that may be required to perform the *Work* in accordance with the foregoing requirements.

- 9.10 If any part of the *Contract* or the application of such part to any party, person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the *Contract*, or the application of such part to any other party, person or circumstance, shall not be affected thereby and each provision of the *Contract* shall be valid and enforceable to the fullest extent permitted by law.
- 9.11 The terms of the *Contract*, which by their nature are continuing, shall survive the termination or other expiration of the *Contract*.
- 9.12 The parties shall, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of the *Contract*.
- 9.13 The table of contents, titles, section headings, running headlines and marginal notes contained in the *Contract Documents* are solely to facilitate reference to various provisions of the *Contract Documents* and in no way affect or limit the interpretation or construction of the provisions to which they refer.
- 9.14 This *Agreement*, including the *Contract Documents* described herein and the attachments, documents and other agreements to be furnished or executed in connection herewith, supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the subject matter hereof. No modification to the *Contract* shall be effective unless made in writing and signed by both the *Owner* and the *Contractor*, unless otherwise provided for herein.

- 9.15 This *Agreement* may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

3. DEFINITIONS

- (a) Amend the following definitions:

Contract

Add as the second sentence: “When this agreement is referred to herein as the “Agreement”, the term “Agreement” shall mean “*Contract*”.”

Contract Documents

Add at the end of the sentence the words “in writing”.

Payment Legislation

Add as a second sentence: “For the purposes of this *Contract*, *Payment Legislation* shall mean the *Construction Act*”.

Value Added Taxes

Delete the definition of “Value Added Taxes” and substitute with the following:

Value Added Taxes means the taxes exigible under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder, as amended from time to time, that are ordinarily known as the harmonized sales tax, and may also be referred to in this *Contract* as “HST”.

- (b) Add the following new definitions:

Adjudication

Adjudication means the construction dispute interim adjudication procedure under Part II.1 of the *Construction Act* with respect to any and all matters referred to in Section 13.5 of the *Construction Act* and the matters set out in GC 8.1.1.

Commissioning

Commissioning means the process of putting the *Work* or any part thereof into operation and includes start-up, verification and performance testing as described in the *Contract Documents*.

***C.C.N.* (Contemplated Change Notice)**

C.C.N. means a written notice from the *Consultant* to the *Contractor* describing a proposed change to the *Work* and instructing the *Contractor* to provide a *C.N.Q.*

***C.N.Q.* (Change Notice Quotation)**

C.N.Q. means a written quotation issued by the *Contractor* to the *Consultant* containing the *Contractor's* proposed method of adjustment or amount of adjustment to the *Contract Price*, if any, and the *Contractor's* proposed adjustment to the *Contract Time*, if any, and such other information as may be required under the applicable provisions of the *Contract*.

Construction Act

Construction Act means the *Construction Act* (Ontario), R.S.O. 1990, c. C.30, as may be amended, repealed, superseded or replaced.

Commissioning Agent

Commissioning Agent means the person designated by the *Owner* to witness the start-up, *Commissioning*, testing and demonstration of the performance of building systems and technologies forming part of the *Work* and to verify that such systems and technologies perform in accordance with the requirements of the *Contract Documents*. If the *Owner* chooses not to designate a person for the foregoing purposes, "Commissioning Agent" shall mean the *Owner*.

Contractor Personnel

Contractor Personnel means any *Subcontractor* or *Supplier* or other person performing or supplying any part of the *Work*, and any employees or agents thereof, and any employees or agents of the *Contractor*.

Governmental Authorities

Governmental Authorities means any government, legislature, municipality, regulatory authority, agency, commission, department, board or other law regulation or rule making entity (including, without limitation, a minister of the Crown).

Personal Information

Personal Information means recorded information about an identifiable individual or that may identify an individual.

Proper Invoice

Proper Invoice means a written bill or other request for payment for services and/or materials comprising the *Work* performed under this *Contract* issued by the *Contractor*, provided such bill or request:

- (i) contains the information set out in Section 6.1 of the *Construction Act*, which for certainty includes the following:
 - (A) The *Contractor's* name and address;

- (B) The date of the *Proper Invoice* and the period during which the services or materials were supplied;
 - (C) Information identifying the authority, whether in this *Contract* or otherwise, under which the services or materials were supplied;
 - (D) A description, including quantity where appropriate, of the services or materials that were supplied;
 - (E) The amount payable for the services or materials that were supplied, and the payment terms;
 - (F) The name, title, telephone number and mailing address of the person at the *Contractor* to whom payment is to be sent; and
 - (G) Any other information that may be prescribed by the *Construction Act*,
- (ii) meets the following requirements:
- (A) A *Proper Invoice* shall be delivered to both the *Owner* and the *Consultant* simultaneously between the hours of 9:00 AM and 5:00 PM on a *Working Day*. In the case of the *Owner*, the *Proper Invoice* shall be directed to the *Owner's* Project Manager for the *Project*, at the following addresses:

Tina Preston Fox: tina.preston-fox@senecapolytechnic.ca

Diana Salerno diana@artifactdevelopment.ca

- (B) **Contractor to submit a payment progress cycle for the Project Manager and Prime Consultant for review; and**
- (iii) meets the additional requirements outlined in paragraphs 5.2.2 - 5.2.9 of GC 5.2 – APPLICATIONS FOR PAYMENT PURSUANT TO THE SUBMISSION OF PROPER INVOICES.

Records

Records, for the purposes of the *Contract*, means any recorded information in the custody or control of the *Owner*, including any Personal Information, in any form: (a) provided by the *Owner* to the *Contractor*, or provided by the *Contractor* to the *Owner*, for the purposes of the *Contract*; or (b) created by the *Contractor* in the performance of the *Contract*.

R.F.I. (Request for Instruction)

R.F.I. means a written notice from the *Contractor* to the *Consultant* requesting a Supplemental Instruction.

Submittals

Submittals are documents or other forms of information which the *Contractor* is required to submit to the *Owner* or the *Consultant* and include, without limitation, *Shop Drawings*, samples, models, record drawings, test reports, certificates, diagrams and manuals.

Total Completion

Total Completion shall be attained when the entire *Work*, except those items arising from the provisions of GC 12.3-WARRANTY, has been performed in accordance with the requirements of the *Contract Documents*, as certified by the *Consultant*.

Total Completion Date

Total Completion Date means the date listed in paragraph 1.3 of Article A-1 – THE WORK by which time the *Contractor* is to have attained *Total Completion*. The *Total Completion Date* may only be amended by means of an approved *Change Order* or by the *Owner*, in writing.

Work Site

Work Site means, within the *Place of the Work*, the area shown on the drawings, or designated by the *Consultant* or the *Owner*, where the *Work* is to be carried out.

4. GENERAL CONDITIONS

(a) GC 1.1 - CONTRACT DOCUMENTS

(i) Delete GC 1.1.1 and substitute with the following:

1.1.1 It is the intent of the *Contract Documents* that, unless otherwise expressly provided in the *Contract Documents*, the *Contract Price* covers all of the *Contractor's* obligations under the *Contract* and all things necessary for the proper execution and completion of the *Work* in accordance with the *Contract* (together with anything reasonably inferable therefrom), including the remedying of any defects in the *Work* in accordance with the *Contractor's* warranty obligations and, in this regard, but without limiting the foregoing, the *Contractor* shall be considered to have thoroughly reviewed the *Contract Documents*, to have carried out such inspections and investigations described in paragraph 6.4.5 of GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, and to have obtained all other necessary information as to the risks, contingencies and other circumstances affecting the *Work* (including ground water, utility locations, climate, availability of labour, Products, status of existing conditions and equipment and other conditions which may affect the *Work*) and the *Contractor* accepts full

responsibility for having reasonably foreseen all difficulties and costs of successfully executing the *Work*, as well as meeting all other obligations of the *Contractor*, in accordance with the *Contract*.

(ii) Delete the second sentence of GC 1.1.2.

(iii) Delete GC 1.1.3 and GC 1.1.4 and substitute as follows:

1.1.3 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph GC 3.9.1 of GC 3.9 – PERFORMANCE BY CONTRACTOR. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damages or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

1.1.4 If the *Contractor* finds discrepancies in and/or omissions from 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.

(iv) Add new GC 1.1.5.6 as follows:

.6 in case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

(v) Add new sentence to the end of GC 1.1.9 as follows:

The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* in respect to such divisions.

(vi) Add new sentence to the end of GC 1.1.10 as follows:

The *Owner* shall have a perpetual, fully paid-up, royalty free, irrevocable, non-cancellable, non-terminable, worldwide, non-exclusive, sublicensable, assignable and transferable right to use all such specifications, drawings, models and copies with respect to the *Work* and for other uses as shall be reasonably required by the *Owner*.

- (vii) Add new GC 1.1.12 as follows:

1.1.12 The *Owner* shall provide the *Contractor*, without charge, one (1) hard copy and one (1) copy in electronic format, of the *Contract Documents*, exclusive of those required by *Governmental Authorities*. Additional copies will be furnished to the *Contractor* at the *Contractor's* cost of reproduction, handling and applicable taxes.

(b) **GC 1.4 - ASSIGNMENT**

- (i) Delete GC 1.4.1 and substitute with the following:

1.4.1 The Contractor shall not assign this Contract or a portion thereof without the prior written consent of the Owner. The Contractor, when requesting the Owner's consent to an assignment, shall provide evidence satisfactory to the Owner of the proposed assignee's ability to complete this Contract in respect of its technical and financial competence, its work force and its equipment, along with any other information reasonably requested by the Owner.

(c) **GC 2.1 - AUTHORITY OF THE CONSULTANT**

- (i) Add as the second sentence to GC 2.1.2: "The *Contractor's* consent shall not be unreasonably withheld."

(d) **GC 2.2 - ROLE OF THE CONSULTANT**

- (i) Delete the words "progress and quality of the work" in GC 2.2.2 and substitute with the following: "progress and quality of the *Work*".

- (ii) Delete GC 2.2.4 and substitute with the following:

2.2.4 Upon receipt of a *Proper Invoice*, the *Consultant* shall review the *Proper Invoice* and issue to the *Owner*, no later than **five (5)** calendar days after receipt of the *Proper Invoice*, a certificate for payment in accordance with subparagraph 5.3.1.1 of GC 5.3 - PAYMENT.

Add the words "to the *Contractor*" in GC 2.2.5 after the words "The *Consultant* will not be responsible" in the first two sentences of such paragraph.

- (iii) Delete in the first line of GC 2.2.6 the words "except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".

- (iv) Delete GC 2.2.7 – GC 2.2.10 and substitute with the following: "Intentionally Deleted".

- (v) Add new GC 2.2.19 as follows:

2.2.19 The *Consultant* or the *Owner*, acting reasonably, may from time to time require the *Contractor* to remove from any involvement in the *Work*, any *Contractor Personnel* including without limitation, project managers, superintendents, *Subcontractors* or *Suppliers*. Such persons shall be replaced by the *Contractor* in a timely fashion to the complete satisfaction of the *Consultant* or the *Owner*, as the case may be and without in any way limiting or deleting the *Contractor's* obligation and responsibility to properly manage all *Contractor Personnel*.

(e) **GC 2.4 - DEFECTIVE WORK**

(i) Add new GC 2.4.1.1 and GC 2.4.1.2 as follows:

- .1 The *Contractor* shall rectify, in a manner acceptable to the *Owner*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
- .2 The *Contractor* shall prioritize the correction of any defective *Work* which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

(ii) Amend GC 2.4.3 by deleting the words "... the difference in value between the *Work* as performed and that called for by the *Contract Documents*" and substitute with the following: "... the value of such *Work* as is necessary to correct any non-compliance with the *Contract Documents*."

(iii) Add new GC 2.4.4 – GC 2.4.6 as follows:

- 2.4.4 Acceptance of the *Work* by the *Owner* or *Consultant* shall not release the *Contractor* from responsibility for correcting deficiencies which were apparent but had not been identified at the time of drawing up the deficiency list or which become apparent during any warranty period provided for in this *Contract*.
- 2.4.5 Upon notification of a defect in the *Work*, the *Contractor* shall, within five (5) *Working Days*, promptly provide a written statement outlining the proposed remedial measures and a schedule for implementation. Once approved by the *Consultant*, the *Contractor* shall proceed with the remedial measures without adversely affecting the construction schedule.
- 2.4.6 Notwithstanding any rejection of the *Work* by the *Consultant* or deduction of an amount otherwise due to the *Contractor* by the *Owner* as a result of a defect in the *Work* that is not rectified in accordance with this GC 2.4, the *Contractor* is required to continue the *Work* in accordance with the *Contract Documents*.

(f) **GC 3.1 - CONTROL OF THE WORK**

(i) In GC 3.1.1, delete the words “and shall effectively direct” and substitute with the following: “and shall effectively schedule, coordinate, direct”.

(ii) Add new GC 3.1.3 – GC 3.1.5 as follows:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, 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 obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

3.1.4 The *Contractor* shall perform the *Work* in a good and workmanlike manner, using new materials, in accordance with all applicable laws and current best practices and standards in the construction industry at the *Place of the Work*. The *Contractor* acknowledges that both time and quality are of the essence and the *Contractor* will perform the *Work* or cause the *Subcontractors* and *Suppliers* to perform the *Work* in accordance with the construction schedule.

3.1.5 The *Contractor* shall perform all cutting and patching work by means which minimizes disruption or inconvenience to adjacent occupancies and operations. Where, in the opinion of the *Consultant*, such work may cause unacceptable disruption, noise or inconvenience, the *Consultant* may instruct the *Contractor* to perform such work at times and in a manner consistent with the requirements of this paragraph and the *Contractor* shall carry out such *Work* in conformity with such instruction without entitlement to any adjustment in *Contract Price* or *Contract Time*.

(g) **GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

(i) Delete GC 3.2.2.1 and GC 3.2.2.3 in their entirety.

(ii) Add new GC 3.2.3.5 as follows:

.5 subject to GC 9.4 CONSTRUCTION SAFETY, for the *Owner's* own forces and for *Other Contractors* performing work at the *Place of the Work*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation at the *Place of the Work*, including all of the responsibilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario).

(iii) Delete GC 3.2.6 and substitute with the following:

- 3.2.6 The *Owner* shall have the right to enter and take possession of the *Work* in whole or in part for the purposes of installing and testing fittings and equipment, or for such other temporary or permanent use, before the *Ready-for-Takeover* date, so long as such entry, occupation and use does not unreasonably interfere with the *Contractor* in the performance of the *Work* in accordance with the *Contract Documents*. Such entry, possession or use shall not be considered as acceptance of the *Work*, in whole or in part, or in any way relieve the *Contractor* from any of its obligations under the *Contract*. For certainty, care, custody and control of the *Work* shall remain with the *Contractor* until *Ready-for-Takeover* is achieved.

(h) **GC 3.3 - TEMPORARY WORK**

- (i) Delete GC 3.3.1 and substitute with the following:

3.3.1 The *Contractor* shall provide temporary supports, structures, services (namely water, electrical power and heat) and facilities as are required to execute the *Work* and shall have sole responsibility for the design, erection, operation, maintenance and removal of *Temporary Work*.

(i) **GC 3.4 - CONSTRUCTION SCHEDULE**

- (i) Delete GC 3.4.1 and substitute with the following:

3.4.1 The *Contractor* shall:

- .1 Within **Five (5) Working Days** after receiving the authorization to proceed with the *Work*, submit to the *Owner* and the *Consultant* for their review and acceptance a construction schedule indicating the critical path for the *Project* demonstrating that the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. The *Contractor* shall include the requisite time in the construction schedule to allow the *Commissioning Agent* and associated witnessing persons access and resources to perform the *Commissioning*. The *Contractor* shall provide the schedule information required by this paragraph in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule;
- .2 Provide the expertise and resources, such resources including manpower and equipment, as are necessary to meet and maintain the accepted baseline construction schedule referred to in subparagraph 3.4.1.1 or any successor or revised schedule accepted by the *Owner* pursuant to this GC 3.4;
- .3 Monitor the progress of the *Work* at a minimum on a weekly basis relative to the construction schedule reviewed and accepted pursuant

to subparagraph 3.4.1.1, or any successor or revised schedule accepted by the *Owner* pursuant to this GC 3.4, (or as otherwise specified in the *Contract Documents*), 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.

- (ii) Add new GC 3.4.2 as follows:

3.4.2 If:

- (i) at any time it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, based on critical path methodology; or
- (ii) the *Contractor* is delayed in the performance of the *Work* for any reason other than a reason for which an extension is granted as provided in the *Contract*; or
- (iii) if the *Contractor* fails to file written notice of a claim for extension of time as provided in the *Contract*; or
- (iv) the *Contractor* has given notice to the *Owner* or the *Consultant* of any variations from the base line schedule or slippage in the schedule pursuant to subparagraph 3.4.1.3; or
- (v) the *Contractor* does not perform the *Work* substantially in accordance with the agreed schedule as provided in this GC 3.4;

then the *Contractor* shall take whatever measures that are necessary at its own cost, including taking all appropriate preventative and corrective action and steps to cause the actual progress of the *Work* to conform to the schedule, including but not limited to such extra measures as shift work, double or “stacked” shifts or an expanded work force, to maintain the schedule, and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. Unless the circumstances giving rise to the delay are matters covered by Part 6 – CHANGES IN THE WORK, all costs of taking such preventative and corrective action and steps, as well as any costs reasonably incurred or damages suffered by the *Owner* arising out of or as a result of any such delay, shall be for the account of the *Contractor*.

(j) **GC 3.5 - SUPERVISION**

- (i) Delete GC 3.5 - SUPERVISION and substitute with the following:

GC 3.5 - SUPERVISORY PERSONNEL

- 3.5.1 The *Contractor* shall employ a supervisor in connection with the *Project* (and other assistant personnel as may be required) and such supervisor and personnel shall be in attendance at the *Place of the Work* at all times while the *Work* is being performed. The supervisor shall be the person who has charge of and responsibility for the *Work* and its performance. The said supervisor shall be a “competent person” as such term is defined in the *Occupational Health and Safety Act* (Ontario).
- 3.5.2 The supervisor shall represent the *Contractor* at the *Place of the Work* and notices and communications given to the supervisor by the *Consultant* or the *Owner* shall be deemed received by the *Contractor*.
- 3.5.3 The supervisory personnel assigned to the *Work* shall be fully qualified to effectively deal with all scheduling, coordination, field engineering, reviews, inspections, testing, *Commissioning* and like matters contemplated in the *Contract Documents*.
- 3.5.4 Supervisory personnel assigned to the *Work* shall not be changed without the prior written consent of the *Owner*.
- 3.5.5 The *Owner* may, by notice to the *Contractor*, instruct the *Contractor* to replace any supervisory personnel assigned to the *Work* for incompetence or upon such other grounds as the *Owner* deems appropriate. Upon receipt of any such notice, the *Contractor* shall, within fifteen (15) calendar days of such receipt, replace any such personnel with other personnel meeting the requirements of this GC 3.5.

(k) **GC 3.6 - SUBCONTRACTORS AND SUPPLIERS**

- (i) Delete GC 3.6.2 and substitute with the following:

3.6.2 When required by the *Contract Documents*, the *Contractor* agrees that only pre-qualified *Subcontractors* on the list of pre-qualified *Subcontractors* approved by the *Owner* shall be used by the *Contractor* in connection with the *Work*. The *Contractor* agrees not to change *Subcontractors* without the prior written approval of the *Owner*, which approval will not be unreasonably withheld. No *Subcontractors* identified in writing by the *Contractor* to the *Owner* with the bid documents shall be changed without the prior written approval of the *Owner*.

- (ii) Add new GC 3.6.7 as follows:

3.6.7 The *Contractor* shall pay all *Subcontractors*, *Suppliers* and workers which it employs, all such sums as are due to them, in accordance with the *Construction Act*. The *Contractor* shall take all necessary steps to ensure that *Subcontractors* and *Suppliers* do likewise. All payments shall be made promptly when due.

(l) **GC 3.7 - LABOUR AND PRODUCTS**

- (i) Delete GC 3.7.1 and substitute with the following:

3.7.1 The *Contractor* shall provide and pay for *Products* and provide and pay for labour, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract* (unless otherwise specified in the *Contract Documents*).

- (ii) Delete GC 3.7.3 and substitute with the following:

3.7.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* employees, *Subcontractors*, and *Suppliers* engaged on the *Work* and the *Contractor*, *Subcontractors*, and *Suppliers* shall not employ anyone not skilled in the tasks assigned or who is unsatisfactory to the *Owner*. All *Contractor Personnel* shall be competent and qualified to carry out any part of the *Work* to which they are assigned.

- (iii) Add new GC 3.7.4 as follows:

3.7.4 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 14.2 – TITLE TO PRODUCTS AND MATERIALS. The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and *Other Contractors* to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner*. The *Contractor* shall only store *Products* or equipment at locations at the *Place of the Work* which have been designated in writing by the *Owner* or the *Consultant* for such purposes (if any). The *Contractor* acknowledges and accepts that the *Owner* may not have space for storage of *Products* or equipment at the *Place of the Work* and, as such, the *Contractor* agrees that the *Owner* shall not have any responsibility or liability to permit the storage of *Products* or equipment at the *Place of Work*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

(m) **GC 3.8 - SHOP DRAWINGS**

- (i) Add the words “AND OTHER SUBMITTALS” to the title after SHOP DRAWINGS.
- (ii) Add “and *Submittals*” after the words “*Shop Drawings*” in each paragraph of GC 3.8.
- (iii) Add the following at the end of GC 3.8.2:

Prior to the first *Proper Invoice*, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and any *Submittals*. *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be submitted directly to such authority by the *Contractor* for approval. The *Contractor* shall copy the *Consultant* on all correspondence between the *Contractor* and any such authority.

(iv) Delete GC 3.8.3.1 and substitute with the following:

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

(v) Delete GC 3.8.7 and substitute with the following:

3.8.7 The *Consultant* will (or in the absence of a *Consultant*, the *Owner* will) review and return *Shop Drawings* and *Submittals* in accordance with the schedule agreed upon in GC 3.8.2, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Consultant* is unable to process them within the agreed-upon schedule or with reasonable promptness, the *Contractor* shall notify the *Consultant* and they shall meet to review and arrive at an acceptable revised schedule for processing. The *Contractor* shall update the *Shop Drawings* and *Submittals* Schedule to correspond to changes in the construction schedule. Changes in the *Contract Price* or *Contract Time* may be made only as otherwise provided in the *Contract*.

(vi) Add new GC 3.8.8 as follows:

3.8.8 *Shop Drawings* and all other drawings, plans, specifications, models, alternatives, suggestions, ideas and similar contributions by the *Contractor* to the design and execution of the *Work*, whether before or after execution of this *Contract*, shall not be considered proprietary information and may be used by the *Owner* in the execution of the *Work* and any subsequent renovation, reconstruction, addition or other work on the *Place of the Work*, all without any compensation to the *Contractor*. The *Owner* is hereby granted an irrevocable fully paid perpetual exclusive license to use such materials for such purposes (including the right to show the same to prospective lenders, appraisers or other persons and to assign such license to any mortgagee or subsequent owner of the Site with or without any specific assignment document). The *Contractor* warrants that it has full right, power and authority to grant the foregoing license either because such materials are the *Contractor's* property or because it has obtained adequate rights from the architects, engineers or other parties who have prepared them, or any other person owning any patent, copyright or other right with respect to anything incorporated in such materials.

(n) **GC 3.9 – PERFORMANCE BY CONTRACTOR**

- (i) Add new GC 3.9- PERFORMANCE BY CONTRACTOR as follows:

GC 3.9 - PERFORMANCE BY CONTRACTOR

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

(o) **GC 3.10 - COMMISSIONING**

- (i) Add new GC 3.10 - COMMISSIONING as follows:

GC 3.10 – COMMISSIONING

- 3.10.1 In each instance where the *Contractor* intends to commence *Commissioning* of any aspect of the building systems or technologies forming part of the *Work*, the *Contractor* will, at least thirty (30) *Working Days* in advance of such commencement, notify the *Consultant* of the need to begin preparations for such *Commissioning* and, in consultation with and through the *Consultant*, shall make arrangements with the *Commissioning Agent* to effect such preparations. In this regard, the *Contractor* shall, upon the written request of the *Commissioning Agent*, promptly provide to the *Commissioning Agent* all manufacturers' and other information with respect to such building systems as the *Commissioning Agent* may reasonably

require. Upon receipt and review of such information, the *Commissioning Agent* shall provide detailed information to the *Contractor* regarding checks, testing and demonstration requirements for such building systems and technologies including test parameters and evaluation criteria which are consistent with the demonstration of the proper *Commissioning* and operation of such building systems and technologies.

3.10.2 The *Contractor*, in consultation with the *Commissioning Agent* and the *Consultant*, shall schedule checks, tests and demonstrations to be carried out by, or on behalf of, the *Contractor* in respect of such *Commissioning*. The *Contractor* shall, through the *Consultant*, provide the *Commissioning Agent* with at least three (3) *Working Days*' prior notice of the conduct of any such checks, tests and demonstrations. The *Commissioning Agent* shall attend such checks, tests and demonstrations and make necessary inspections, measurements, calculations and empirical observations. Upon completion of such activities, the *Commissioning Agent* shall, as soon as reasonably practicable, provide to the *Contractor* and the *Consultant* a report of such activities. If such report indicates that any building system or technology does not perform in accordance with the *Contract Documents*, the *Contractor* shall, in consultation with the *Commissioning Agent* and the *Consultant*, prepare a work plan to remedy such deficiency and a schedule to check, test and re-commission any such building system or technology after such work plan has been completed. The foregoing provisions of this GC 3.10.2 will continue to apply until such time as the report of the *Commissioning Agent* indicates no deficiencies in such building systems or technologies.

3.10.3 The *Commissioning Agent* shall have access to the *Work Site* at all times for the purposes of carrying out the functions of the *Commissioning Agent* under this GC 3.10.

(p) **GC 3.11 – RIGHT OF ENTRY**

(i) Add new GC 3.11 - RIGHT OF ENTRY as follows:

GC 3.11 - RIGHT OF ENTRY

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

Health and Safety Act and the *Owner* shall comply with the *Contractor's* safety requirements and programs in such entry or occupation.

(q) **GC 3.12 – INTERFACE WORK**

- (i) Add new GC 3.12 – INTERFACE WORK as follows:

GC 3.12 – INTERFACE WORK

3.12.1 Where part of the *Work* is affected by or depends upon for its proper execution the work of *Other Contractors* or the *Owner's* own forces (hereinafter called “***Interface Work***”), the *Contractor* shall promptly report to the *Owner* in writing and prior to proceeding with that part of the *Interface Work*, any error, inconsistency or omission in such *Interface Work* that the *Contractor* may discover. Failure of the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the error, inconsistency or omission in such *Interface Work*, except those errors, inconsistencies or omissions not then reasonably discoverable during the *Contractor's* review.

3.12.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* or any related or surrounding structures or facilities with a weight or force that will endanger the safety or integrity of the *Work* or such structures or facilities.

3.12.3 If storage or other areas are required for the *Work* in addition to the *Work Site*, the *Contractor* shall be responsible for making arrangements to obtain the additional areas and obtaining any necessary permits, permission or authorization and, if required, for making payments for permits, rental or other payments that may be required for such purpose.

(r) **GC 4.1 - CASH ALLOWANCES**

- (i) Delete GC 4.1.7 and substitute with the following:

4.1.7 The *Contractor* shall, within ten (10) *Working Days* following *Contract* execution, prepare a schedule of the dates for submission and authorization of items called for under cash allowance for the *Consultant's* review and the *Owner's* review and approval, so as to facilitate the timely progress of the *Work*.

- (ii) Add new GC 4.1.8 as follows:

4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, competitive bids for portions of the *Work*, to be paid for from cash allowances. If the *Owner* determines to proceed with competitive bids, the *Contractor* shall comply with the directions of the *Owner*.

(s) **GC 4.2 - CONTINGENCY ALLOWANCE**

- (i) Delete GC 4.2 and substitute with the following: “Intentionally Deleted”.

(t) **GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER**

- (i) Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.

- (ii) Delete GC 5.1.1 and substitute with the following:

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

- (iii) Delete GC 5.1.2 in its entirety.

(u) **GC 5.2 - APPLICATIONS FOR PAYMENT**

- (i) Delete GC 5.2, including the heading, and substitute with the following:

GC 5.2 - APPLICATIONS FOR PAYMENTS PURSUANT TO THE SUBMISSION OF PROPER INVOICES

5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT shall be made pursuant to the delivery of *Proper Invoices* which shall be given to the *Owner* and the *Consultant* on a monthly basis as the *Work* progresses.

5.2.2 On or before the **twenty fifth (25th)** calendar day of each month, the *Contractor* shall submit simultaneously to the *Owner* and the *Consultant* a *Proper Invoice* for payment. Subject to the provisions of the *Construction Act*, payment shall be made by the *Owner* to the *Contractor* of the amount outlined in the *Proper Invoice* within twenty-eight (28) calendar days of the *Owner's* receipt of the *Proper Invoice*, unless within fourteen (14) calendar days of the *Owner's* receipt of the *Proper Invoice*, the *Owner* issues a notice of non-payment to the *Contractor* in accordance with the *Construction Act*. If a notice of non-payment is issued by the *Owner*, the *Owner* shall pay the *Contractor* the undisputed portion of the *Proper Invoice* within twenty-eight (28) calendar days after receiving the *Proper Invoice*.

Provided, however, a *Proper Invoice* shall not be submitted for any *Products* to be incorporated into the *Work* which have been delivered to the *Place of the Work* more than one (1) month in advance of their anticipated date of incorporation into the *Work* unless, in the reasonable opinion of the *Contractor* concurred by the *Owner*, the stockpiling of such *Products* more than one (1) month in advance of their anticipated date of incorporation into the *Work* is necessary or desirable because of:

- .1 impending cyclical delays in the availability of such *Products*;
 - .2 the probability of delay in delivery of such *Products* at a later date owing to impending or likely labour disputes, lockouts or other known or probable causes of delay at a later date; or
 - .3 cost benefit to the *Owner* not originally reflected in the *Contract Price*, which is sufficiently significant to justify early delivery of such *Products* to the *Place of the Work*.
- 5.2.3 If the *Proper Invoice* referenced in GC 5.2.2 is received by the *Owner* after 5:00 P.M. on a *Working Day* or at any time on a non-*Working Day*, the *Proper Invoice* shall be deemed to be received by the *Owner* on the following *Working Day*.
- 5.2.4 The *Contractor* shall submit to both the *Owner* and the *Consultant*, no later than five (5) *Working Days* before the first *Proper Invoice* is issued, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price* so as to facilitate review of the *Contractor's Proper Invoices* for the *Work*.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Owner* or the *Consultant* may reasonably require.
- 5.2.6 The *Contractor* shall submit, with each *Proper Invoice* after the first, a Statutory Declaration, on an original form of CCDC Document 9A-2018, declaring that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current *Proper Invoice*.
- 5.2.7 The *Contractor* shall submit, with each *Proper Invoice*, evidence of compliance with workers' compensation/workplace safety and insurance board legislation at the *Place of the Work*, including payments due thereunder.
- 5.2.8 The *Contractor* shall submit, with each *Proper Invoice*, an updated construction schedule along with an unconditional written declaration, duly signed by an authorized representative of the *Contractor*, stating that there has been no delay in the progress of the *Work* for which the *Contractor* has any claim against the *Owner* with the exception of any such claim previously disclosed in accordance with the applicable provisions of the *Contract*.
- 5.2.9 The *Contractor* shall submit, with each *Proper Invoice*, a statement which includes an itemized breakdown and comparison of the actual expenditures incurred as compared to the schedule of values provided.

5.2.10 The *Contractor* shall cause payment to be made to all *Subcontractors*, trade contractors, workers and *Suppliers* promptly when due in accordance with the *Construction Act*.

(v) **GC 5.3 - PAYMENT**

(i) Delete GC 5.3.1 and substitute with the following:

5.3.1 After receipt by the *Owner* and the *Consultant* of a *Proper Invoice* submitted by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENTS PURSUANT TO THE SUBMISSION OF PROPER INVOICES:

- .1 the *Consultant* will issue to the *Owner*, no later than five (5) calendar days after the *Consultant's* 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 following its review of such *Proper Invoice*. The issuance by the *Consultant* to the *Owner* of such certificate for payment is solely for the *Owner's* internal purposes and the *Owner's* receipt or approval of such certificate shall not be a condition of the giving or payment of the *Proper Invoice* in respect of which such certificate has been issued;
- .2 after the *Owner* has reviewed the *Proper Invoice* and the *Consultant's* review of the same, the *Contractor* may amend it if the *Owner* agrees in advance to the revision. For clarity, the form and date of the *Proper Invoice* cannot change despite such a revision; and
- .3 the *Owner* shall make payments to the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENTS PURSUANT TO THE SUBMISSION OF PROPER INVOICES.

(w) **GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK**

(i) Delete GC 5.4 and substitute with the following:

- 5.4.1 Prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish reasonable dates for completing the *Work* and correcting deficient *Work*.
- 5.4.2 Without limiting the rights of the *Owner* under paragraph 3.2.7 of GC 3.2 – CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS and subject to GC 12.2 – EARLY OCCUPANCY BY OWNER, upon *Substantial Performance of the Work*, the *Owner* shall be entitled to take complete possession of the *Work* and the *Contractor's* access to, or

continuing presence at, the *Work Site* shall be for the sole purpose of achieving *Ready-for-Takeover*, *Total Completion* and performing its obligations under the *Contract* which arise subsequent to *Substantial Performance of the Work* (including the *Contractor's* obligations under GC 12.3 - WARRANTY); provided that such access or continuing presence by the *Contractor*, shall not unreasonably interfere with the use or operation of the *Project* by the *Owner*, and the *Contractor*, in completing its obligations under the *Contract*, shall, at its own cost, take all reasonable measures to minimize the effect thereof on such use or operation.

- 5.4.3 The *Contractor* shall publish, in a construction trade newspaper (as prescribed by the *Construction Act*), a copy of the certificate of *Substantial Performance of the Work* within seven (7) calendar days of receiving a copy of the certificate issued by the *Consultant*, and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and the *Owner*. If the *Contractor* fails to publish such notice, the *Owner* shall be at liberty to publish and back charge the *Contractor* its reasonable costs for doing so.
- 5.4.4 Prior to or concurrent with the submission of its application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Owner* and *Consultant*:
- .1 written proof acceptable to the *Owner* and *Consultant* that the *Work* has been substantially performed in accordance with the requirements of all municipal, government and utilities authorities having jurisdiction;
 - .2 occupancy permits from the local authority having jurisdiction over the *Project*, if required;
 - .3 certification by all permit-issuing authorities, indicating approval of all permitted installations;
 - .4 certification by all testing, cleaning or inspection authorities or associations as specified in the *Contract Documents*;
 - .5 a list of major items to be completed or corrected, including the time required to perform the work and a value thereof as well as the proposed completion date; and
 - .6 any other materials or documentation required to be submitted under the *Contract*.

In addition, if available, the *Contractor* shall also submit to the *Owner* and *Consultant*:

- .7 all maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials as specified in the *Contract Documents*;
- .8 all required manufacturers' inspections, certifications, guarantees and warranties as specified in the *Contract Documents*;
- .9 all required "as-built" or "as-installed" drawings in the form specified in the *Contract Documents* and in electronic format (in both PDF and AutoCAD 2010 format), which shall include, without limitation, all applicable xREFs and CTB files;
- .10 a statement indicating reconciliation of all Change Orders, cash allowances and/or other claims to the *Contract*; and
- .11 certification that the *Contractor* is in good standing with workers' compensation or Workplace Safety and Insurance Board legislation at the *Place of the Work*.

- 5.4.5 Where the *Contractor* is unable to deliver the documents and materials described in GC 5.4.4.7 to GC 5.4.4.11, and, provided that none of the missing documents and/or materials interferes, in a material way, with the use and occupancy of the *Work*, failure to deliver same shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*.
- 5.4.6 Any documents or materials described in GC 5.4.4.7 to GC 5.4.4.11 not delivered in accordance therewith shall be delivered as provided in paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT, and will be included in the list of items under paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT and deemed to be a deficiency in performance of the *Work* by the *Contractor* under the *Contract* .and the *Contractor* acknowledges that the *Owner* shall have the right to, on account of the *Contractor's* failure to deliver such documents and materials in accordance with GC 5.4.4, publish a notice of non-payment in the form prescribed under the *Construction Act* prior to the 40th calendar day following the publication of the certificate of *Substantial Performance of the Work* as a consequence of such failure.
- 5.4.7 The *Contractor* shall submit an application for payment of the lien holdback amount pursuant to a *Proper Invoice* in accordance with GC 5.3 – PAYMENT. All holdback amounts shall be due and payable on the day following the expiry of the holdback period specified in the *Construction Act* for the retention of holdback funds following *Substantial Performance of the Work*, unless: (i) a claims for lien or certificate of action has been registered against the title to the *Place of the Work*; (ii) the *Owner* has received a valid written notice of lien in respect of the *Work*; or (iii) the *Owner* has published a notice of non-payment in the form prescribed by the

Construction Act prior to the 40th calendar day following the publication of the certificate of *Substantial Performance of the Work*.

(x) **GC 5.5 - FINAL PAYMENT**

(i) Delete GC 5.5.1 and substitute with the following:

5.5.1 When the *Contractor* considers that the *Work* is completed, and all deficiencies which are identified by the *Owner* or *Consultant* prior to the application for final payment are remedied, the *Contractor* shall submit an application for final payment pursuant to a *Proper Invoice*. The *Contractor's* application for final payment pursuant to a *Proper Invoice* shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4 of GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK together with the following, where applicable:

- .1 all required manufacturers' inspection reports, certifications, guarantees, warranties and other similar documentation as specified in the *Contract Documents*;
- .2 all maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials as specified in the *Contract Documents*;
- .3 certification by all permit issuing authorities having jurisdiction indicating approval of all permitted installations forming part of the *Project*;
- .4 certification by all testing, *Commissioning*, cleaning or inspection authorities or associations as specified in the *Contract Documents*;
- .5 all required "as-built", "as-installed" or "record drawings" in the form specified in the *Contract Documents*;
- .6 evidence of compliance with workers' compensation/workplace safety and insurance board legislation at the *Place of the Work* in respect of the *Contractor*;
- .7 statement of reconciliation of all change orders or claims against the *Contract*;
- .8 a Statutory Declaration on CCDC Form 9A and a Statutory Declaration that no valid written notices of lien have been received; and
- .9 after receipt of a report from the [*Commissioning Agent*] verifying that all building systems and other technologies forming part of the

Work are operational in accordance with the *Contract Documents* (subject to any qualifications noted in the report reflecting matters which are not of a material nature.

(ii) Add new GC 5.5.5 as follows:

5.5.5 As additional requirements for release of any finishing construction lien holdback, the *Contractor* shall submit the following documentation:

- .1 *Contractor's* written request for release of holdback, including a declaration that no written notices of lien have been received by it;
- .2 *Contractor's* Statutory Declaration CCDC 9A-2018; and
- .3 evidence of compliance with workers' compensation/workplace safety and insurance board legislation at the *Place of the Work*.

(y) **GC 5.6 – DEFERRED WORK**

(i) In GC 5.6.1, insert the words "Subject to the *Construction Act* and paragraph 5.2.2 of GC 5.2 – APPLICATIONS FOR PAYMENT PURSUANT TO THE SUBMISSION OF PROPER INVOICES," at the beginning of the paragraph and change the word "If" to lower case "if".

(z) **GC 5.8 - LIENS**

(i) Add new GC 5.8 – LIENS as follows:

5.8.1 In the event that a construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:

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

5.8.2 In the event that the *Contractor* fails to conform with the requirements of GC 5.8.1, the *Owner* may set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall promptly reimburse the *Owner* for all of the said costs and associated expenses.

(aa) **GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES**

(i) Add new GC 6.1.3 – GC 6.1.4 as follows:

6.1.3 If any change in the *Work* results in either a deletion of a part of the *Work* or the removal of a part of the *Work* in circumstances where the *Owner* determines, in its discretion, that the removed scope should be performed by the *Owner's* own forces or by *Other Contractors*, the *Contractor* shall not be entitled to any compensation for loss of profit or other consequential loss as a result of the deletion or removal.

6.1.4 Where the *Contractor* is required to perform changed or additional *Work*, resulting in an adjustment to the *Contract Price*, and provided that the parties do not agree to value the changed or additional work on a lump sum basis, the adjustment in the *Contract Price* for a change carried out by either a *Change Directive* or a *Change Order* shall be the difference between the Direct Costs directly related to or necessarily incurred by the *Contractor*, *Subcontractors* and sub-subcontractors in performing the changed or additional *Work* and the actual, net direct savings attributable to the *Change Directive* or *Change Order*, as the case may be, valued as follows:

- .1 If the change results in a net increase in the *Contractor's* Direct Costs, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* Direct Costs resulting from the change, plus the *Contractor's* percentage fee (for Overhead and Profit) on such net increase.
- .2 If the change results in a net decrease in the *Contractor's* Direct Costs, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* Direct Costs, with a corresponding reduction to the *Contractor's* percentage fee (for Overhead and Profit) on such net decrease.
- .3 When both additions and deletions covering related work or substitutions are involved in a change to the *Work*, the change in the *Contract Price* shall be calculated on the basis of the net difference, if any, between (i) the net increase in the *Contractor's* Direct Costs plus the *Contractor's* percentage fee (for Overhead and Profit) on such net increase resulting from additions involved in the change to the *Work*, and (ii) the net decrease in the *Contractor's* Direct Costs with a corresponding reduction to the *Contractor's* percentage fee (for Overhead and Profit) on such net decrease resulting from deletions involved in the change to the *Work*.
- .4 The *Contractor's* percentage fee shall be as follows:
 - (a) *Contractor's* fee on its own work:

- (i) Overhead 10%, Profit 5%
- (b) *Contractor's fee* on work performed by *Subcontractors* or sub-subcontractors:

- (i) Overhead 5%, Profit 5%

When the value of the *Subcontractors'* work or sub-subcontractors' work, after all credits in the C.C.N. have been deducted, is less than or equal to \$100,000:

- (c) *Subcontractor's* mark-up on work performed directly by *Subcontractor*:

- (i) Overhead 10%, Profit 5%.

- (d) *Subcontractor's* mark-up on work performed by sub-subcontractors:

- (i) Overhead 5%. Profit 5%

- (e) sub-subcontractor's mark-up on work performed directly by sub-subcontractor:

- (i) Overhead 5%. Profit 5%

When the value of the *Subcontractors'* work or sub-subcontractors' work exceeds \$100,000 after all credits have been deducted, the *Owner* and *Contractor*, acting reasonably and in good faith, shall negotiate the amount of Overhead and Profit paid to the *Subcontractors* and the sub-subcontractors.

The *Contractor* shall not be entitled to any mark-ups for Overhead and Profit on any changes in the *Work* to the extent the *Work* is performed by a *Subcontractor* or sub-subcontractor and such *Subcontractor* or sub-subcontractor is a parent, subsidiary, affiliate, division or other entity controlling, controlled by or under common control with the *Contractor* (as such terms are defined pursuant to the *Business Corporations Act* (Ontario)) (an "**Affiliate**"). Similarly, *Subcontractors* shall not be entitled to any mark-ups for Overhead and Profit on any changes in the *Work* performed by a sub-subcontractor who is an Affiliate of the *Subcontractor*.

- .5 "Direct Costs" of a change in the *Work* shall include (i) Material Costs, (ii) Total Labour Costs, (iii) Temporary Work Costs, and (iv) Construction Equipment Costs directly related to and arising from the change, and shall exclude Overhead and Profit.

- .1 “Material Costs” means the cost of *Materials*, including transportation and storage thereof. Rebates, refunds, returns from sale of surplus *Materials* and trade discounts other than prompt payment discounts, shall be credited to the *Owner*;
- .2 “Direct Labour Costs” means the base wage costs of employees, excluding Payroll Burden Costs. Labour rates shall be consistent with rates that are actually paid in the normal performance of the *Work* during regular working hours, and shall not exceed the following: (a) where collective agreements apply: (i) rates for direct labour cost shall not exceed rates established by collective agreements; and (ii) rates for Payroll Burden Costs shall not exceed rates established by collective agreements and statutory charges; and (b) where collective agreements do not apply, rates for Direct Labour Costs shall not exceed rates prevailing in the locality of the Project. Labour rates billed by the *Contractor* shall not in any event exceed the rates listed in the bid levelling form. Indirect labour costs shall include, but shall not be limited to, engineering, project management, procurement, IT support and administrative support and such costs shall not be included in the *Contract Price* adjustment. Foreman hours of the *Contractor* and all *Subcontractors* included in any change in the *Work* shall not exceed 10% of the journeyman hours of the *Contractor* or applicable *Subcontractor*, as the case may be, involved in and included in such change in the *Work*. Charges for any foreman hours in excess of 10% of the journeyman hours included in any change in the *Work* shall not be payable by the *Owner* or included in Direct Labour Costs of any change in the *Work*;
- .3 “Payroll Burden Costs” means the statutory charges and fringe benefit costs additional to Direct Labour Costs and include unemployment insurance, workers compensation, vacation pay, statutory holiday pay, health and welfare, pension plan, training fund, and other payroll costs which are hourly wage dependent and are paid by employers;
- .4 “Total Labour Costs” means the sum of Direct Labour Costs and Payroll Burden Costs;
- .5 “Temporary Work Costs” means the cost of temporary structures, facilities, services, controls, and other temporary items used in the performance of a change in the *Work*, including maintenance, dismantling and removal, less any residual value after dismantling and removal;

- .6 “Construction Equipment Costs” means the cost of rented or owned equipment, including cost of loading, transportation, unloading, erection, maintenance, dismantling and removal; and
- .7 “Overhead and Profit” means the *Contractor’s*, *Subcontractors’* and sub-subcontractors costs related to:
 - .1 operation and maintenance of head offices, branch offices and site offices,
 - .2 administration at head offices, branch offices and site offices,
 - .3 general management, legal, audit and accounting services,
 - .4 buying organization and corporate tax,
 - .5 financing and other bank charges,
 - .6 bonding and insurance,
 - .7 salaries and other compensation of off-site personnel,
 - .8 salaries and other compensation of on-site superintendents and other *Supervisory Personnel*,
 - .9 planning, estimating and scheduling of work,
 - .10 expendable and non-expendable small tools, including maintenance thereof,
 - .11 recruitment and training of on-site staff,
 - .12 project management costs, and
 - .13 all other costs not defined as Direct Costs.

All job costs not directly related to the labour and materials for the change in the *Work*, including without limitation, shipping, coordination/drafting, site layout, material handling, clean up, commissioning, etc. shall be included as part of the Overhead and Profit and will not be considered or payable as separate items in the pricing of the change.

- .6 All quotations for changes to the *Work* shall be accompanied by itemized breakdowns of all Direct Costs of the change together with

detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers*. Pricing quotation software (e.g. “Allpriser”, “epriser”, NECA software or similar publishing standards) shall not be used in providing quotations for changes to the *Work*. Notwithstanding the foregoing, if the *Contractor* and/or any *Contractor Personnel* (including, without limitation, *Subcontractors*) requires the use of, or uses, such software: (i) the software shall be used in connection with the calculation of the Direct Costs of any change in the *Work* constituting either an addition to the *Work* or a reduction to the *Work*; and (ii) the cost the *Contractor* and/or *Contractor Personnel* includes to purchase additional materials for the purpose of the quotation, or the credit provided by the *Contractor* and/or *Contractor Personnel* for any materials removed or deleted due to the change in the *Work*, shall be equal to 70% of the published price provided or produced by such software.

- .7 For the electrical trades, the NECA price list for changes in the *Work* must be identified in the bid form. Material Costs for changes in the *Work* shall be priced at 70% of the identified NECA price. Credits shall be priced at 70% of the identified NECA price. For clarity, both additions and deletions shall be priced at the same value.
- .8 For the mechanical trades, Material Costs for changes in the *Work* shall be priced at 70% of the All Prizer pricing. Credits shall be priced at 70% of the identified NECA price.
- .9 Quotations from distributors or third-party *Suppliers* for *Equipment* shall be broken down where possible and in a reasonable and itemized manner including but not limited to by quantity, name/identifier of *Equipment*, etc. The *Contractor* shall not accept from *Subcontractors* nor submit to the *Owner* one-line quotations with no breakdown.
- .10 The *Owner* reserves the right to ask the *Contractor* to provide multiple *Equipment* quotes as necessary to meet the broader public sector purchasing guidelines or in the event that the *Owner* is not satisfied with the cost breakdown of the quotation.
- .11 Unit and alternative prices included in the *Contract* include *Supply*, installation, *Products*, equipment, services, materials, labour, Overhead, Profit and taxes, but exclude *Value Added Taxes*.
- .12 Prior to commencing any changed *Work*, the *Subcontractors* must submit to the *Owner* a list of commonly used sub-subcontractors that will be utilized for the *Project* and shall provide, together with the *C.N.Q.*, the hourly labour rates for journeyman and foreman job

classifications. The *Owner* reserves the right to negotiate these rates or request the *Subcontractors* to substitute firms with lower labour rates.

- .13 The *Owner*, through the *Consultant*, reserves the right to authorize payment for changes in the *Work* by means of cash allowance disbursement authorizations.
- .14 If any change or deviation in, or omission from the *Work* is made by which the amount of *Work* to be performed is decreased, or if the whole or a portion of the *Work* is dispensed with, no compensation is claimable by the *Contractor* for any loss of anticipated profits in respect thereof.
- .15 For clarity, no additional fee or mark-up will be chargeable to the *Owner* other than as specified in this GC 6.1.4. Any cost which is not directly related to labour and *Materials* for the *Work* including, but not limited to, shipping, coordination, drafting, site layout, material handling, clean-up and/or commissioning shall be considered part of the Overhead and Profit of the *Contractor* or *Subcontractors* and shall not be considered as separate items in the *Contract Price* adjustment.

(bb) **GC 6.2 - CHANGE ORDER**

- (i) Delete GC 6.2.1 and substitute with the following:

6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall issue a C.C.N. to the *Contractor*. The C.C.N shall explicitly reference the documentation number providing direction. C.C.N.'s shall be provided on an individual basis for each change and no C.C.N. shall reference multiple changes or directives. Upon receipt of the C.C.N., the *Contractor* shall, as soon as reasonably practicable, submit to the *Consultant* a C.N.Q. in form acceptable to the *Consultant* and containing such information as the *Consultant* may reasonably require, including, as applicable, a breakdown of net Direct Costs estimated to be incurred to effect such change, the applicable percentage fee of the *Contractor* and any *Subcontractors* involved in the change (for Overhead and Profit), and the anticipated impact on the construction schedule based on critical path methodology.

- (ii) Delete GC 6.2.2 and substitute with the following:

6.2.2 The adjustment in the *Contract Price* for a change carried out by way of a *Change Order* shall be determined in accordance with GC 6.1.4. When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price*, the *Contractor's* percentage fee (for Overhead and Profit) and the *Contract Time*, such agreement shall be effective immediately and shall be recorded

in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the *Proper Invoice*.

(iii) Add new GC 6.2.3 as follows:

6.2.3 Upon the *Contractor* and the *Owner* signing a *Change Order*, the *Change Order* shall constitute full settlement of all matters addressed in the *Change Order*.

(cc) **GC 6.3 - CHANGE DIRECTIVE**

(i) Delete GC 6.3.6 and substitute with the following:

6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined in accordance with paragraph 6.1.4 of GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES.

(ii) Amend the first line of GC 6.3.7 by deleting the words “the *Change Directive*” and substituting with “a change in the *Work*” and deleting the words: “in as much as it contributes directly to the implementation of the *Change Directive*”.

(iii) Amend GC 6.3.7.1.(4) so that, as amended, it reads:

(4) the *Contractor*’s office personnel engaged in a technical capacity, including clerical staff engaged in processing the change in the *Work* attributable to the *Change Directive* for the time spent in the performance of the change in the *Work* attributable to the *Change Directive*;

(iv) Delete GC 6.3.7.13, GC 6.3.17, GC 6.3.18 and GC 6.3.19 and substitute with “intentionally left blank”.

(dd) **GC 6.4 - CONCEALED OR UNKNOWN CONDITIONS**

(i) Delete GC 6.4.1.2 in its entirety.

(ii) Add new GC 6.4.5 as follows:

6.4.5 The *Contractor* confirms that, prior to submitting a qualified submission or proposal for the *Project*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.9.1 of GC 3.9 – PERFORMANCE BY CONTRACTOR. Such investigation shall include, if appropriate and having regard to the nature of the *Work*, an inspection of any existing structures or conditions at the *Place of the Work* that might reasonably be expected to impact the *Work*. The *Contractor* shall not be entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to submission of the bid.

(ee) **GC 6.5 - DELAYS**

- (i) Delete GC 6.5.1 and substitute with the following:

6.5.1 If the *Contractor* is delayed in the performance of the *Work* by any breach by the *Owner* of its obligations under the *Contract*, or by any fault of *Other Contractors* of the *Owner* engaged by the *Owner* for the execution of the *Project*, or by any act or omission of the *Consultant* contrary to the provisions of the *Contract Documents*, or such is attributable to any person employed or engaged directly or indirectly by the *Owner*, any such *Other Contractors*, or the *Consultant*, as the case may be, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*, and the *Contractor* shall be reimbursed by the *Owner* for reasonable, actual direct costs necessarily incurred by the *Contractor* as result of the delay, all subject to, and in accordance with, the provisions of GC 6.5.5. To the extent such actual direct costs incurred by the *Contractor* as result of such delay are comprised of the hourly rate of *Contractor Personnel*, such hourly rates shall be preapproved by the *Owner* in advance of such delay.

- (ii) Amend the last sentence of GC 6.5.2 as follows:

The *Contractor* shall be reimbursed by the *Owner* for the *Contractor's* actual, direct costs necessarily incurred by the *Contractor* as a result of the delay subject to, and in accordance with, the provisions of GC 6.5.5.

- (iii) At GC 6.5.3, renumber GC 6.5.3.4 as 6.5.3.5, delete GC 6.5.3.4 and substitute with the following:

.4 disease, epidemics, pandemics, power shortages or outages, or

- (iv) At GC 6.5.3, delete the words “*Consultant* or anyone employed or engaged by them directly or indirectly” at the end of this paragraph.

- (v) Delete GC 6.5.5 and substitute with the following:

6.5.5 The *Contractor* shall not be entitled to any extension of *Contract Time* or to any compensation in respect of any delay referred to in paragraph 6.5.1 or paragraph 6.5.2, or to any extension of *Contract Time* in respect of any delay referred to in paragraph 6.5.3, unless the *Contractor* is able to demonstrate that:

- (a) the *Contractor* has taken all reasonable steps required to mitigate the effect of the delay;
- (b) the delay has an adverse impact on the ability of the *Contractor* to complete any critical path activity in accordance with the construction schedule; and

- (c) in respect of a delay referred to in paragraph 6.5.1, the delay is predominantly attributable to a breach, fault or act or omission referred to in such paragraph.

In such case, the *Contract Time* will be extended for such reasonable period which reflects the time lost as a result of such impact and, where the provisions of paragraph 6.5.1 apply, the *Contractor* shall only be compensated for reasonable actual direct costs necessarily incurred by the *Contractor* as a result of such impact including those incurred to reasonably mitigate the effect of the delay.

- (vi) Add new GC 6.5.6 – GC 6.5.8 as follows:

- 6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then, subject to paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE, the *Contract Time* may be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the *Ready-for-Takeover* date stated in paragraph 1.3 of Article A-1 – THE WORK herein as the same may be extended through the provisions of these General Conditions and any later, actual *Ready-for-Takeover* date achieved by the *Contractor*.
- 6.5.7 During any suspension of the *Work* or any construction or building operations, for whatever reason, the *Contractor* shall maintain adequate surveillance of the *Work* and undertake such maintenance and protection of the *Work* as may be necessary to maintain health and safety and, when possible, to protect *Products*, materials, plant and equipment already installed in the *Work* or delivered to the *Place of the Work*. The *Contractor* shall be responsible for the security, care, maintenance and protection of the *Work* in the event of any such shut down or interruption in the performance of the *Work*.
- 6.5.8 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone for whom the *Contractor* is responsible, then the *Contractor* shall be responsible to put in place any preventative or corrective measures to recover and prevent lost time in accordance with paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE.

(ff) **GC 6.6 - CLAIMS FOR A CHANGE IN CONTRACT PRICE**

- (i) Delete GC 6.6, including its heading, and substitute with the following:

GC 6.6 - CLAIM REPORTING

6.6.1 If the *Contractor* intends to make any claim for an extension to the *Contract Time* or an increase in the *Contract Price* (or reimbursement for costs or any other compensation) the *Contractor* shall give notice to the *Owner* and the *Consultant* of such intention as soon as reasonably practicable and, in any event, within ten (10) *Working Days* following the date when the event or circumstance giving rise to such claim becomes known to the *Contractor*. As soon as reasonably practicable and, in any event, within ten (10) *Working Days* following the date of such notice, the *Contractor* shall submit to the *Owner* and the *Consultant* such details of the claim that are then available, and promptly notify each of them if, at any time thereafter, the *Contractor* becomes aware of any further information pertaining to the claim, giving details of that information to the extent such information is new or renders information previously submitted inaccurate or misleading. The *Contractor* shall keep such records as may be necessary to substantiate any claim in respect of any such entitlement. The *Contractor* shall permit the *Owner* and the *Consultant* to inspect any such records, and shall provide copies to them upon their request. Failure of the *Contractor* to comply with the provisions of this paragraph in respect of any claim of the *Contractor* shall be deemed to be an express waiver by the *Contractor* of any right to assert such claim.

(gg) **GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

- (i) Delete GC 7.1.2 and substitute with the following:

7.1.2 If the *Contractor* should neglect to prosecute the *Work* properly or otherwise fail to comply with the requirements of the *Contract*, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default within five (5) *Working Days* of receipt of such *Notice in Writing*.

- (ii) Amend GC 7.1.3.2 by deleting "an acceptable schedule" and substituting "a schedule acceptable to the *Owner*".

- (iii) Delete GC 7.1.5.2 and substitute with the following:

.2 subject to the provisions of the *Construction Act*, withhold further payment to the *Contractor* until the *Owner* has completed all *Work* required by the *Contract Documents* and satisfied any of its costs or damages resulting from the *Contractor's* default ; and

- (iv) Delete the words "... the difference" at the end of GC 7.1.5.3 and substitute with the following: "... on the expiry of the warranty period specified in paragraph 12.3.1 of GC 12.3 – WARRANTY for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT."
- (v) Delete the words "the difference" at the end of GC 7.1.5.4 and substitute with the following: "... for that portion of the *Work* performed by the *Contractor*, provided such payment shall be made only in accordance with the requirements set out in GC 5.5 FINAL PAYMENT."
- (vi) Add new GC 7.1.5.5 as follows:
 - .5 the *Contractor's* entitlement to payment arising from termination of the *Contract* shall not affect the *Owner's* right to withhold payment (except from the release of any holdback amounts) because of: (i) the *Contractor's* failure to pay all legitimate claims promptly; (ii) the registration of liens against the title to the *Project*, until such claims for lien are discharged by the *Contractor* pursuant to the *Construction Act* and GC 5.8 - LIENS hereof; or (iii) those matters described in paragraph 5.4 of Article A-5 PAYMENT.
- (vii) Add new GC 7.1.7 – GC 7.1.9 as follows:
 - 7.1.7 The *Owner* has the authority, in its sole discretion, to stop or suspend the progress of the *Work* whenever, in the *Owner's* opinion, there is a danger to safety, life or property or to the neighbouring property or to the *Work*. If the progress of the *Work* is stopped or suspended by the *Owner*, the *Consultant* shall, within two (2) *Working Days* of such stoppage or suspension, provide written confirmation to the *Contractor* and the *Owner* of such stoppage or suspension.
 - 7.1.8 Where, pursuant to the provisions 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*, the *Owner* has exercised its right to terminate this *Contract*, the *Owner* shall have the right, upon written notice to the *Contractor*, to require the *Contractor* forthwith upon notification of the exercise of such right, to make available to the *Owner*, its authorized agents, servants and representatives, all accounts, records and documents of the *Contractor* relating to the *Work*. Upon the *Owner* exercising such right, the *Contractor* shall be deemed, without further formality, to have sold, assigned and set over unto the *Owner*, without further consideration, those agreements, arrangements and contracts with *Subcontractors*, *Suppliers*, engineers and others (as well as its interest in any performance bonds, labour and material payment bonds or other security held by the *Contractor* in respect of any such contracts) to which the *Contractor* is a party with respect to the performance of the *Work* which the *Owner* designates in writing to the

Contractor after the giving of notice to stop the *Work* or terminate the *Contract*. The remainder of such contracts shall continue to be the property and responsibility of the *Contractor*. The *Contractor* shall, upon written request by the *Owner* and in a form reasonably satisfactory to the *Owner*, execute such further assignments to give effect to the foregoing as the *Owner* shall reasonably require.

- 7.1.9 The *Owner* may terminate the *Contract* at any time for any reason or no reason, upon at least thirty (30) calendar days written notice to the *Contractor*. In such event, the *Owner* shall pay for the *Work* performed up to the effective date of termination and for any additional, verifiable direct costs related directly to such termination which are a reasonable consequence of the termination. The *Owner* shall not be liable to the *Contractor* for any other costs or damages whatsoever arising from such early termination of the *Contract* including, without limitation, any indirect, consequential or special damages, such as loss of profits or loss of opportunity.

(hh) **GC 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

- (i) Delete GC 7.2.2 and substitute with the following:

7.2.2 If the *Work* is stopped or otherwise suspended for a period of one hundred and twenty (120) calendar days or more under an order of a court or other public authority as the result of an act or default of the *Owner* or anyone employed or engaged by the *Owner*, the *Contractor* may, without prejudice to any other right or remedy that the *Contractor* may have, by giving the *Owner Notice in Writing*, terminate the *Contract*.

- (ii) Delete GC 7.2.3.1 and substitute with the following: "Intentionally Deleted".

- (iii) Delete GC 7.2.3.3 and substitute with the following:

.3 the *Owner* fails to pay the *Contractor* when due the undisputed portion of a *Proper Invoice*, or

- (iv) At GC 7.2.3.4, delete the words "and the *Consultant* except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Contractor* that sufficient cause exists."

- (v) Delete GC 7.2.4 and substitute with the following:

7.2.4 The *Contractor's Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise if the correction of the default is not commenced within ten (10) *Working Days* following receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, stop or suspend the *Work* or terminate the *Contract*.

- (vi) Add the following after the words “work performed” in line 2 of GC 7.2.5: “to the date of termination of the *Contract* by *Contractor*”, and in line 3, add the word “direct” before the word “damages.”

- (vii) Add the following at the end of GC 7.2.5:

The *Contractor's* entitlement to payment arising from termination of the *Contract* shall not affect the *Owner's* right to issue a notice of non-payment in accordance with the *Construction Act* because of: (i) the *Contractor's* failure to pay all legitimate claims promptly; (ii) the registration of liens against the title to the *Project*, until such claims for lien are discharged by the *Contractor* pursuant to the *Construction Act* and GC 5.8 - LIENS hereof; or (iii) those matters described in paragraph 5.4 of Article A-5 PAYMENT.

- (viii) Add new GC 7.2.6 as follows:

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination and the *Contractor* shall leave the *Work* and the *Work Site* in a safe and secure condition.

(ii) **GC 8.1 - AUTHORITY OF THE CONSULTANT**

- (i) Delete GC 8.1, including its heading, and substitute with the following: “Intentionally Deleted”.

(jj) **GC 8.2 – ADJUDICATION**

- (i) Delete GC 8.2 and substitute with the following:

8.2.1 Either party to this *Contract* may refer to *Adjudication*, subject to and in accordance with the *Construction Act*, a dispute with the other party with respect to those matters enumerated in Section 13.5(1) of the *Construction Act* and the following additional matters:

- .1 the *Contractor's* performance of the *Work* under the *Contract*, including without limitation the performance of the *Work* relative to the approved construction schedule and the quality of the *Work* performed by the *Contractor*;
- .2 claims for delay made by the *Contractor*;
- .3 the administration, process and timing of the *Contractor* in connection with *C.C.N.'s* and *C.N.Q.'s* and the *Contractor's* use of the change process in Part 6 - CHANGES;
- .4 differences or disputes between the parties to the *Contract* as to the interpretation, application, performance or administration of the

Contract or any failure to agree where agreement between the parties is called for, herein collectively called “disputes”;

.5 claims made by the *Contractor* for a change in the *Contract Price* or *Contract Time*; and

.6 interpretation of the *Contract Documents*.

8.2.2 Prior to referring any matter set out in GC 8.2.1 to *Adjudication*, the parties shall make all reasonable efforts to resolve any dispute by amicable negotiations, and agree to provide, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents to facilitate such negotiations.

(kk) **GC 8.3 - NEGOTIATION, MEDIATION, AND ARBITRATION**

(i) Delete GC 8.3. and substitute with the following:

8.3.1 Where neither party refers a dispute to *Adjudication* or where a dispute is referred to *Adjudication* and the parties are not satisfied with the outcome of *Adjudication*, the parties may jointly determine to mediate the dispute. Such mediation will be conducted in accordance with the current version of CCDC 40.

8.3.2 In the event that the dispute is not resolved through mediation, the parties may jointly, by agreement, made not later than ten (10) *Working Days* after the date of termination of the mediation, determine to arbitrate such dispute. Such an arbitration will be conducted in accordance with the current version of CCDC40.

8.3.3 Within five (5) calendar days of receipt of the agreement of the parties to arbitrate under GC 8.3.2, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:

.1 a copy of the agreement to arbitrate,

.2 a copy of the supplementary conditions to this *Contract*, and

.3 any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.3.4 The *Owner* and the *Contractor* agree that the *Consultant* may elect, within ten (10) calendar days of receipt of the notice under GC 8.3.3, to become a full party to the arbitration under GC 8.3.2 if the *Consultant*:

.1 has a vested or contingent financial interest in the outcome of the arbitration;

- .2 gives the notice of election to the *Owner* and the *Contractor* before the arbitrator is appointed;
 - .3 agrees to be a party to the arbitration within the meaning of the rules referred to in GC 8.3.3; and
 - .4 agrees to be bound by the arbitral award made in the arbitration.
- 8.3.5 If an election is made under GC 8.3.4, the *Consultant* may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in GC 8.3.2, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of election.
- 8.3.6 The arbitrator in the arbitration in which the *Consultant* has elected under GC 8.3.4 to become a full party may:
- .1 on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of GC 8.3.4, and
 - .2 make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

(II) **GC 8.4 - RETENTION OF RIGHTS**

- (i) Add new GC 8.4.3 as follows:

8.4.3 If the *Owner* and *Contractor* agree pursuant to GC 8.3.2 to have a dispute resolved by arbitration, the *Contractor* agrees that this GC 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Nothing in this GC 8.4.3 shall prevent the *Contractor* from taking the steps required by the *Construction Act* to preserve and/or perfect a lien to which it may be entitled.

(mm) **GC 9.1 - PROTECTION OF WORK AND PROPERTY**

- (i) Delete GC 9.1.1.1 and substitute with the following:

.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.9.1 of GC 3.9 – PERFORMANCE BY CONTRACTOR.

- (ii) Delete GC 9.1.2 and substitute with the following:

9.1.2 Before commencing any *Work*, and if applicable, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents* or that are discoverable by applying to an inspection of the *Place of the Work* the degree of care and skill described in paragraph 3.9.1 of GC 3.9 – PERFORMANCE BY CONTRACTOR.

(iii) Add new GC 9.1.5 as follows:

9.1.5 The *Contractor* shall neither undertake to repair and/or replace any damage whatsoever to the *Work* of *Other Contractors*, or to adjoining property, nor acknowledge the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. However, where there is danger to life or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger, and to protect the *Owner's* property.

(nn) **GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS**

(i) Delete GC 9.2 and substitute with the following:

9.2.1 Prior to the *Contractor* commencing the *Work*, the *Owner* shall

- .1 take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the *Place of the Work*, and
- .2 provide the *Contractor* with a written report with respect to any such substances or materials, which report will form part of the *Contract Documents*.

9.2.2 If the *Contractor* discovers at the *Place of the Work* any toxic or hazardous substances or materials which are not described in the *Contract Documents*, the *Contractor* shall immediately notify the *Owner* of the presence of such substances and materials and take all reasonable steps, including stopping all or any relevant portion of the *Work*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of such substances or materials, and, for the purposes of GC 9.2.3, such circumstance shall be dealt with as a change to the *Work* in accordance with the provisions of Part 6 – CHANGES with respect to any adjustment to the *Contract Time*.

9.2.3 As part of the *Work*, the *Contractor* shall be responsible for taking all necessary steps, in accordance with all applicable laws and regulations, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which are described in the *Contract Documents*, as well as any other toxic or hazardous substances or materials which are referred to in GC 9.2.2.

- 9.2.4 The *Contractor* shall not permit any person performing any part of the *Work* to introduce to the *Place of the Work* any toxic or hazardous substances or materials without the prior written consent of the *Owner*. The *Contractor* shall require all persons performing any part of the *Work* involving any such substances and materials to comply with all applicable laws and regulations regarding the safe use, handling and disposal of such substances and materials.
- 9.2.5 Notwithstanding any provision to the contrary in the *Contract Documents*, the *Contractor* shall indemnify and hold harmless the *Owner*, and the *Consultant*, and their respective agents, consultants, officers, directors and employees, from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of or resulting from any discharge, escape, emission, leak, deposit, dispersion, or migration into the environment (“***Release***”), or threatened *Release*, of any toxic or hazardous substances or material, which has or may have an adverse effect upon the environment or human health or safety and which is connected, in any way, with the performance of the *Work* in any of the following circumstances: (i) where the *Release* or threatened *Release* is due to the *Contractor*’s failure to comply with the provisions of GC 9.2.2, (ii) where any such substances or materials are required to be dealt with as part of the *Work* as provided in GC 9.2.3 and the *Release*, or threatened *Release*, is due to the fault or negligence of the *Contractor*, any *Subcontractor* or *Suppliers*, or anyone for whom they are responsible at law, or due to the failure of any of them to comply with any applicable legal and regulatory requirements in respect of such substances or materials, or (iii) where the *Release*, or threatened *Release*, is in relation to any other such substances or materials which have been brought or introduced to the *Place of the Work* by anyone performing the *Work*. In the event of any *Release*, or threatened *Release*, described in subparagraphs (i), (ii) or (iii) above, the *Contractor* shall immediately notify the *Owner* of such event and shall take all steps, at its cost, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of the *Release* or threatened *Release* and to remedy such circumstance as soon as reasonably practicable.

(oo) **GC 9.4 - CONSTRUCTION SAFETY**

- (i) Delete GC 9.4 and substitute with the following:

GC 9.4 – CONSTRUCTION SAFETY

- 9.4.1 The *Contractor* acknowledges that it is a “constructor” within the meaning of the *Occupational Health and Safety Act* (Ontario) and the *Contractor* undertakes to carry out the duties and responsibilities of a constructor with respect to the *Work*. The *Contractor* shall be responsible for developing a health and safety plan specific to the *Place of the Work* and which conforms to the *Owner*’s occupational health and safety, infection prevention and

control and emergency requirements at the *Place of the Work* (the “**HS Plan**”). Further, the *Contractor* shall be responsible for maintaining and supervising the HS Plan throughout the performance of the *Work*. Prior to commencement of the *Work*, the *Contractor* shall submit to the *Owner* a copy of the Notice of Project filed with the Ministry of Labour in respect of the *Work*. The *Contractor* shall indemnify and hold harmless the *Owner* and the *Consultant* from any liability for claims, damages or penalties, including reasonable legal fees to defend any offences arising from the *Contractor’s* failure to comply with such duties and responsibilities. In cases where the *Owner’s* own forces or *Other Contractors* are performing work at the *Place of the Work*, and do not have separate and defined work areas covered by a separate Notice of Project filed with the Ministry of Labour, the *Owner* will contractually require such forces or *Other Contractors* to comply with the *Contractor’s* HS Plan and overall directions and instructions respecting health and safety matters. For clarity, the *Contractor* shall be responsible as constructor for such *Owner* forces and *Other Contractors* and shall have the authority to remove such other forces or *Other Contractors* from the *Place of the Work* should they fail to comply with the *Contractor’s* directions or instructions respecting its HS Plan.

- 9.4.2 The *Contractor* shall comply with (and cause the *Contractor Personnel* to comply with) any safety regulations or directives issued in writing by or on behalf of the *Owner* in respect of the Project including, without limitation, in respect of infection control.

(pp) **GC 9.5 - MOULD**

- (i) Delete GC 9.5.3.3 and substitute with the following:

- .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. If, in the opinion of the *Consultant*, the *Contractor* has been delayed in performing the *Work* and/or has incurred additional costs under GC 9.5.1.2, the *Owner* shall reimburse the *Contractor* for reasonable direct costs incurred as a result of the delay and as a result of taking those steps, and

(qq) **GC 10.1 - TAXES AND DUTIES**

- (i) Add the following to the end of GC 10.1.2:

The *Contractor* shall provide the *Consultant* with a detailed statement, acceptable to the *Consultant*, verifying the increase or decrease to the *Contract Price* on account of tax or duty changes. For added certainty, there shall be no increase or decrease in the *Contract Price* as a result of any inability by the *Contractor* or any *Subcontractor* to recover its own HST expenses by means of credits, rebates or refunds.

- (ii) Add new GC 10.1.3 – GC 10.1.8 as follows:

- 10.1.3 HST is in addition to the *Contract Price* and shall be computed and disclosed separately on each *Proper Invoice* in accordance with the requirements of the *Excise Tax Act* (Canada) and the regulations made thereunder. This amount will be paid to the *Contractor* in addition to the amount paid under the *Proper Invoice* under this *Contract* and will therefore not affect the *Contract Price*. The *Contractor* shall further disclose on each *Proper Invoice* the HST registration number of the *Contractor* together with all of the other details required by the *Excise Tax Act* (Canada) and the regulations made thereunder to enable the *Owner* to recover such HST by way of credit, rebate or refund.
- 10.1.4 The *Contractor* shall report and remit to the appropriate taxing authority all taxes, including HST and shall, if requested by the *Owner*, provide to the *Owner* appropriate documentary evidence of such remittance within fifteen (15) calendar days of such request.
- 10.1.5 The *Contractor* shall take all reasonable measures requested by the *Owner* in relation to the performance of the *Work* for the purposes of minimizing the application of HST.
- 10.1.6 When an exemption or recovery of government sales taxes, customs duties or excise taxes, including HST, related to this *Contract* may be available to the *Owner*, the *Contractor* shall, at the request of the *Owner* or its agent, assist in the *Owner's* application for any exemption, credit, rebate, refund or other recovery of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*.
- 10.1.7 The parties shall co-operate to minimize the impact of any tax increases or new taxes and take advantage of all tax reductions and avoid any double taxation.
- 10.1.8 If any payment made by the *Contractor* to the *Owner* in connection with this *Contract*, including any amount that may be awarded by a court, is deemed by the *Excise Tax Act* (Canada) to include any HST, the amount of such payment shall be increased by such additional amounts as may be necessary in order that the net amount of the payment, after such a deemed inclusion of HST, will equal the amount that would have been paid if there had been no such deemed inclusion of HST.

(rr) **GC 10.2 - LAWS, NOTICES, PERMITS AND FEES**

- (i) At GC 10.2.2, delete the words “the building permit” in the first line.
- (ii) Add the following to the end of GC 10.2.3:

In the performance of the *Work* the *Contractor* will fulfill all requirements of the Municipality or any utility or other authority with jurisdiction over the *Work*, and

will co-ordinate the work of any utility or other authority (whether on or off the *Work Site*) with the *Work* of this *Contract* and avoid any extra cost to the *Owner*.

- (iii) At GC 10.2.4, add as the second sentence:

The *Contractor* shall be deemed to be familiar with the laws, ordinances, rules, regulations and codes relating to the *Work* and if the *Contractor* fails to give the said notices, the *Contractor* shall bear all costs arising out of the *Contractor's* actions.

- (iv) Add to the end of GC 10.2.4, the following:

The *Contractor* shall notify the applicable Chief Building Official of the readiness, substantial completion, and completion of the stages of construction set out in the Building Code legislation at the *Place of the Work*. The *Contractor* shall be present at each site inspection by an inspector as applicable under the Building Code legislation at the *Place of Work*.

- (v) Delete from GC 10.2.6 the words “knowing it to be”.

- (vi) Add new GC 10.2.8 as follows:

10.2.8 The *Contractor* shall furnish all certificates that are required or given by the appropriate *Governmental Authorities* as evidence that the *Work*, as installed, conforms with the laws and regulations of authorities having jurisdiction, including certificates of compliance for the *Owners'* occupancy or partial occupancy.

(ss) **GC 10.4 - WORKERS' COMPENSATION**

- (i) At GC 10.4.1 delete the following: “and again with the Contractor’s application for final payment,”.

(tt) **GC 11.1 - INSURANCE**

- (i) Item GC 11.1.1, delete the first three (3) lines and substitute with the following:

Without restricting the generality of GC 13.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC Insurance Requirements in effect at the time of bid closing except as hereinafter provided:

- (ii) Delete GC 11.1.1.4.

- (iii) At GC 11.1.1.1, add the words: “, which shall be project specific and which shall have limits of not less than [\$5,000,000] per occurrence, and an aggregate limit of not less than [\$5,000,000] within any policy year,” after the words “General liability insurance” at the beginning of the first line.

- (iv) Delete GC 11.1.1.6 and substitute with the following: “[Not used]”.

(uu) **GC 11.2 - CONTRACT SECURITY**

- (i) Add new GC 11.2 - CONTRACT SECURITY as follows:

GC 11.2 – CONTRACT SECURITY

11.2.1 The *Contractor* shall, prior to the commencement of the *Work*, provide to the *Owner* a performance bond and a labour and material payment bond, each in an amount equal to **[fifty percent (50%)]** of the *Contract Price* and each bond must extend protection to *Subcontractors* and *Suppliers* and the labour and material bond must extend protection to *Subcontractors* and persons supplying labour or materials to any part of the *Work*.

GC 12.1 — READY-FOR-TAKEOVER

- (ii) Add new GC 12.1.1.9 as follows:

.9 To the extent not duplicated in this GC 12.1.1, the documents and materials described in paragraph 5.4.4 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK.

- (iii) Delete GC 12.1.6 in its entirety.

(vv) **GC 12.2 — EARLY OCCUPATION BY OWNER**

- (i) Delete GC 12.2 and substitute with the following:

12.2.1 The *Owner* may take occupancy of a part or the entirety of the *Work* before *Ready-for-Takeover* provided that:

- .1 the *Owner* shall not occupy a part or the entirety of the *Work* without prior approval by authorities having jurisdiction; and
- .2 if the *Owner* takes occupancy of the entirety of the *Work* before all the prerequisites are met as described in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER, the *Work* shall, subject to the requirements of the *Construction Act*, be deemed to achieve *Ready-for-Takeover*. This shall not relieve the *Contractor's* responsibility to complete the *Work* in a timely manner.

(ww) **GC 12.3 - WARRANTY**

- (i) Amend GC 12.3.1 by deleting the words “one year”, inserting the words “two years”, and adding the following to the end of the paragraph:

except that in the case of *Product* warranties, such warranties shall be for a period of two (2) years from the date of installation or incorporation of the *Product*, as

approved by the *Consultant*, or one year from the *Ready-for-Takeover* date, whichever is longer, regardless of the date of delivery of such *Products* to the *Place of the Work* or the date of incorporation of such *Products* into the *Work*.

- (ii) Delete GC 12.3.3 and substitute with the following:

12.3.3 The *Contractor* shall, at its expense, promptly correct defects or deficiencies in the *Work* which appear prior to and during the warranty periods specified in the *Contract Documents*. The *Contractor* shall remain responsible for the correction of any such defects or deficiencies, notwithstanding the work required to effect such correction commences after or continues beyond the end of the warranty periods.

- (iii) Add the following words at the end of GC 12.3.6:

In the event that a manufacturer fails to issue a *Product* warranty in the name of the *Owner* as well as the *Contractor*, the *Contractor* shall assign such warranty to the *Owner* on the *Ready-for-Takeover* date or such earlier date as directed by the *Owner*. The *Contractor* shall cooperate with and reasonably assist the *Owner* during the warranty period in the enforcement of any and all *Product* warranties.

- (iv) Add new GC 12.3.7 – GC 12.3.9 as follows:

12.3.7 The *Contractor* agrees that the *Contractor* is able to perform the *Work* and the *Contractor* warrants the *Work* in accordance with the *Contract Documents*.

12.3.8 The *Contractor* shall, upon receiving notice of any defect or deficiency in the *Work*, commence the correction of such defect or deficiency within two (2) *Working Days* (or as otherwise agreed with the *Owner*) at such times that are convenient to the *Owner* except that, if any such defect or deficiency is of a nature which prevents or hinders, or is likely to affect any life safety, security or other material building system, such correction shall be carried out immediately. The correction of all defects and deficiencies shall be carried out in a manner to minimize any interference or disruption to educational and training services provided at the campus. If the correction of any defect or deficiency is likely to affect any life safety, security or other material building system, the *Owner* shall be entitled to effect any temporary corrective action as the *Owner* shall deem appropriate and charge the cost thereof to the *Contractor*. If the carrying out of the correction of any defects or deficiencies entails overtime work on the part of the *Contractor*, additional charges for overtime work shall be borne by the *Contractor*. Prior to the expiry of the warranty period, the *Owner* reserves the right to carry out a detailed and exhaustive inspection of the work for the purpose of establishing a final deficiency list (hereinafter called “**Punch List**”). The *Contractor* shall promptly correct, at the *Contractor*’s expense, any defects or deficiencies in the *Work* noted in the *Punch List*.

12.3.9 Prior to the application for final payment pursuant to a *Proper Invoice* under paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT, the *Contractor* shall assign to the *Owner* the benefit of all guarantees and warranties for all *Products* and services used or incorporated in the *Work* and shall ensure that such an assignment is also effected by all *Subcontractors*, *Suppliers* or consultants from whom the same have been obtained.

(xx) **GC 13.1 – INDEMNIFICATION**

- (i) Amend the reference in GC 13.1.2.2 by deleting “\$2,000,000” and substituting “\$5,000,000”.

(yy) **GC 13.2 – WAIVER OF CLAIMS**

- (i) Delete the definition of “Substantial defects or deficiencies” in GC 13.2.3.4 and substitute with the following:

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

- (a) if the *Contract Price* is \$2,000,000 or less, the sum of \$50,000, before HST;
- (b) if the *Contract Price* exceeds \$2,000,000, the sum of \$100,000, before HST.

In any event, “substantial defects or deficiencies” shall include defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.

- (ii) Delete GC 13.2.4 and 13.2.5.

(zz) **PART 14 - OTHER PROVISIONS**

- (i) Add new Part 14 – OTHER PROVISIONS as follows:

PART 14 – OTHER PROVISIONS

GC 14.1 – WORK PLAN

14,1,1 In addition to the obligations regarding the *Project* schedule, prior to commencing any *Work* at the *Place of the Work*, including mobilizing any labour or equipment at the *Place of the Work*, or entering into any part of the existing buildings on the college campus, the *Contractor* will deliver to the *Owner* and obtain the *Owner’s* approval for a work plan (the “**Work Plan**”) clearly identifying:

- .1 any *Work* activity that may impact or interfere with the on-going operation of the college, including interference to students, staff or

visitors, including a description of the nature, timing and extent of interference;

- .2 the steps the *Contractor* intends to take to minimum the extent of such interference;
- .3 any temporary measures that the *Owner* will be required to take to accommodate the interference; and
- .4 any specific reporting relationships between the *Contractor* and the *Owner's* staff required to coordinate the interference.

14.1.2 Prior to delivering a *Work Plan*, the *Contractor* will consult with the *Owner* and, upon reasonable request, the *Owner* will make appropriate staff available for such consultation, to determine the *Work Plan* that minimizes interference to the college.

14.1.3 The *Work Plan* may be developed, delivered and approved in stages, as the *Work* is planned and progresses, beginning, for example, with the *Contractor's* detailed investigation of the college.

14.1.4 With respect to any interruption of existing utilities that provide services to the college:

- .1 The *Contractor* will give a minimum of ten (10) calendar days advance written notice to the *Owner* and obtain written authorization to proceed from the *Owner's Project* representative prior to any interruption of existing services including, but not limited to, water, sewer, gas, medical gas systems, sprinklers, HVAC, power and electric, fire alarms, communication and security systems. The *Owner* may order the *Contractor* to stop the *Work* at any time due to emergency conditions and require required services to restart. The *Owner* may also order the *Contractor* to stop the *Work* at any time if any aspect of the *Work* affects or threatens to affect the continuous operation of the college and its facilities and operations.
- .2 The *Owner* will cooperate with the *Contractor*, at no cost to the *Contractor*, in the shutdown of services as is necessary to allow the *Contractor* to modify existing services and to perform the *Work*. If, however, as a result of defective materials or workmanship it is necessary for any shut downs to be repeated, any additional costs incurred by the *Owner*, including the cost of labour provided by the *Owner*, to repeat the shutdown and then re-connect the service, will be paid by the *Contractor*.

- .3 The *Contractor* shall take measures to avoid triggering false alarms, including fire or security alarms, and will pay for any municipal costs charged to the *Owner* as a result of false alarms.
- .4 The *Contractor* will, at its cost (including any overtime labour cost), provide the necessary coverage as required by applicable *Governmental Authorities* in the event of the loss of or lack of coverage of life safety systems.
- .5 The *Contractor* will, at its cost (including any overtime labour cost), make service connections or modifications outside of normal working hours, or will provide temporary service connections, if such connections or modifications cannot be undertaken safely during normal working hours, or if the *Work* would cause interruptions and interference with the *Owner's* normal education and training in the college that are unacceptable to the *Owner*.
- .6 The *Contractor* will carry out all final connections to existing operational systems under the direct supervision and as directed by the *Owner's* operational staff or authorized agent.

GC 14.2 – TITLE TO PRODUCTS AND MATERIALS

- 14.2.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*.
- 14.2.2 All *Work and Products* delivered to the *Place of the Work* by or on behalf of the *Contractor* shall be the property of the *Owner*, but shall be at the risk of the *Contractor* as set out in paragraph 3.7.4 of GC 3.7 – LABOUR AND PRODUCTS. Title shall be deemed to pass to the *Owner* upon delivery.
- 14.2.3 The *Contractor* shall promptly remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant* or the *Owner*.

GC 14.3 – POLICIES AND PROCEDURES

- 14.3.1 All policies and procedures applicable to the employees of the *Owner* regarding their conduct in connection with the business and affairs of the *Owner* shall, insofar as the same shall be required by the *Owner*, be applicable to the *Contractor* and the *Contractor Personnel* while performing the *Work* at the *Place of the Work*. It is the responsibility of the *Contractor Personnel* to familiarize themselves with all such policies and procedures, which the *Owner* shall provide to the *Contractor* prior to, or at the time of execution of the *Contract*.

14.3.2 In the event that any of the *Contractor Personnel* fails or refuses to abide by such policies and procedures, such *Contractor Personnel* shall be removed by the *Contractor* from performing any *Work* at the *Place of the Work*. In the event of such removal, no liability of any kind or nature whatsoever shall attach to the *Owner*. The *Owner* may also disallow admittance to any of the *Contractor Personnel* to the *Place of the Work* where such *Contractor Personnel* fails or refuses to abide by the applicable policies and procedures.

14.3.3 If requested by the *Owner*, the *Contractor* shall, based on the *Owner's* internal hiring policies, provide or assist in providing a criminal background or security check of the *Contractor Personnel*.

GC 14.4 – PUBLICITY

14.4.1 Neither the *Contractor* nor any *Contractor Personnel* shall release to the public, except as required by *Governmental Authorities*, any information relating to the *Contract* without the prior written consent of the *Owner*.

GC 14.5 – CONFIDENTIALITY

14.5.1 The *Contractor* shall not, except as is required to carry out its obligations, duties, responsibilities or liabilities under the *Contract*, divulge any confidential information communicated to or acquired by it in the course of carrying out its obligations, duties, responsibilities or liabilities under the *Contract*. No confidential information shall be used by the *Contractor* on any other project without the prior written approval of the *Owner* (which approval may be arbitrarily withheld). The *Contractor* shall not have any proprietary rights to or interest in the confidential information, nor shall the *Contractor* have any right to license such information to any *Subcontractor*, *Supplier* or other third party. The term, “confidential information” as used herein shall mean all information which the *Contractor* receives, either directly or indirectly, from the *Owner* or from the *Consultant*, except:

- .1 information which the *Contractor* can demonstrate is, at the time of disclosure, already known to the *Contractor*;
- .2 information which, at the time of disclosure, is or thereafter becomes a part of the public domain through no act or omission on the part of the *Contractor*; and
- .3 information which is disclosed to the *Contractor* by a third party without a covenant of confidentiality.

14.5.2 The *Contractor* may disclose the confidential information to those *Contractor Personnel* to whom disclosure is required for the performance of their respective responsibilities, duties, obligations and liabilities under the *Contract*. The *Contractor* shall require such *Contractor Personnel* to

treat such information as confidential and not to disclose such information to any person other than in accordance with the terms of the *Contract*.

14.5.3 *Contractor* acknowledges that the *Owner* is subject to the requirements of the *Freedom of Information and Protection of Privacy Act* (Ontario) (“*FIPPA*”) and affirms the importance of conducting its operations in a transparent manner and, as far as possible, in ways that are open to public scrutiny. The *Contractor* acknowledges and agrees that *FIPPA* applies to and governs all *Records* and may require the disclosure of such *Records* to third parties. Furthermore, the *Contractor* agrees:

- .1 to keep *Records* secure;
- .2 to provide *Records* to the *Owner* within seven (7) *Working Days* of being directed to do so by the *Owner* for any reason including an access request or privacy issue;
- .3 not to access any *Personal Information* unless the *Owner* determines, in its sole discretion, that access is permitted under *FIPPA* and is necessary in order to perform the *Work*;
- .4 not to directly or indirectly use, collect, disclose, or destroy any *Personal Information* for any purposes that are not authorized by the *Owner*;
- .5 to ensure the security and integrity of *Personal Information* and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so;
- .6 to restrict access to *Personal Information* to those of the *Contractor's* directors, officers, governors, employees, agents, partners, affiliates or volunteers and *Contractor Personnel* who have a need to know it for the purpose of performing the *Work* and who have been specifically authorized by the *Owner* to have such access for the purpose of performing the *Work*;
- .7 to implement other specific security measures that in the reasonable opinion of the *Owner* would improve the adequacy and effectiveness of the *Contractor's* measures to ensure the security and integrity of *Personal Information* and *Records* generally; and
- .8 that any confidential information supplied to the *Owner* may be disclosed by the *Owner* where it is obligated to do so under *FIPPA*, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent provisions in the *Contract*.

GC 14.6 CONTINGENT LIABILITY

14.6.1 The parties expressly agree that notwithstanding any other provision of this Agreement, the remedies, recourse and rights of the Contractor or any third party shall be limited to the Owner, and the Contractor unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the Agreement, and that it shall have no remedies, recourse or rights in respect of the Agreement against the Crown in right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or member, other than against the Owner and the Owner's assets.

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