

SUPPLEMENTARY CONDITIONS

The Standard Construction Document CCDC-2 2020 for Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 13 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. These Supplementary Conditions have been developed by Ontario Infrastructure and Lands Corporation, with the endorsement of the Ontario General Contractors Association.

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 *Infrastructure Ontario*, His Majesty the King in Right of Ontario, and the *Owner*.

Where an Article, Definition, General Condition or paragraph thereof is deleted by these Supplementary Conditions, the numbering of the remaining Article, Definition, General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 – CONTRACT DOCUMENTS

3.1 Include in the list of *Contract Documents* in paragraph 3.1:

- Supplementary Conditions
- *Ontario Fair Wage Program Labour Conditions* including the applicable *Schedule of Fair Wage Rates*
- Performance Bond
- Labour and Material Payment Bond
- Project Specific Supplementary Conditions

ARTICLE A-5 – PAYMENT

5.1.2 Delete paragraph 5.1.2 in its entirety and substitute new paragraph 5.1.2:

- 5.1.2 forthwith following the expiry of the holdback period specified in the *Construction Act* for the retention of holdback funds following *Substantial Performance of the Work* (which for certainty shall not exceed 10 *Working Days* following expiration of the holdback period stipulated in the *Construction Act*), 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 that (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*.

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

5.2 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by *Adjudication*, arbitration or court, interest on such unpaid amounts shall be calculated and payable in accordance with the *Construction Act*, which for certainty shall be the prejudgment interest rate under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

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

addition to any other rights and remedies that the *Owner* has under the *Contract*, in law, or in equity.

ARTICLE A-10 – CONFIDENTIALITY

Add new Article A-10 – Confidentiality:

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the currency of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any *Subcontractor* or *Supplier* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with the *Subcontractor* or *Supplier*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended (“*FIPPA*”), and the *Digital and Data Directive*, as all may be amended from time to time. The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information*, *Personal Information* and *Open Data* in the event that it is compelled to do so by law, through a request under *FIPPA*, the *Digital and Data Directive* or by the rules of any applicable regulatory authority.

DEFINITIONS

Add the following 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*.

Affected Party and Affected Parties

Affected Party and *Affected Parties* have the meaning set out in GC 14.6.4

As-Built Drawings

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

Confidential Information

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

- (a) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
- (b) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- (c) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- (d) is independently developed by the *Contractor* without use of any *Confidential Information*.

Construction Act

Construction Act means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, repealed, superseded or replaced from time to time. For the purposes of this *Contract*, *Payment Legislation* shall mean the *Construction Act*.

Contractor Personnel

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

Contractor Security Officer or “CSO”

Contractor Security Officer or “CSO” means the individual designated by the *Contractor* as the *Contractor’s* representative who will liaise with the *Owner* for the purposes of coordinating the *Security Clearance Checks* for the *Contractor* and all *Affected Parties* and who will have overall responsibility for carrying out *Contractor’s* security screening obligations outlined in this *Contract*, and to whom any additional information deemed

relevant to the required *Security Clearance Checks*, may be communicated during the contractor security screening process.

Digital and Data Directive

Digital and Data Directive means the Management Board of Cabinet's Digital and Data Directive published January 29, 2021, as amended from time to time.

Excess Soil

Excess Soil means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project as defined in the *Excess Soil Regulation*.

Excess Soil Legislation

Excess Soil Legislation means any laws, ordinances, rules, regulations or codes, which are or become in force during the performance of the *Work* dealing with the excavation, removal and transportation of *Excess Soil* including, without limitation, the *Excess Soil Regulation*.

Excess Soil Regulation

Excess Soil Regulation means the On-Site and Excess Soil Management Regulation (O. Reg. 406/19).

Fair Wage Program Labour Conditions

Fair Wage Program Labour Conditions refers to the Ontario Fair Wage Program Labour Conditions and applicable Schedule of Fair Wage Rates included in the *Contract Documents*.

Infrastructure Ontario or IO

Infrastructure Ontario or IO means Ontario Infrastructure and Lands Corporation, the statutory agent and delegate of His Majesty the King in Right of Ontario, as represented by the Minister of Infrastructure or his or her authorized successor.

Open Data

Open Data means data that is required to be released to the public pursuant to the Digital and Data Directive.

Personal Information

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

PPEB

PPEB means the Program & Policy Enablement Branch, Supply Chain Ontario, Ministry of Government & Consumer Services, or any successor thereof.

Proper Invoice

Proper Invoice shall have the meaning ascribed thereto in GC 5.2.1.

Project Leader

Project Leader means the “project leader” within the meaning of the *Excess Soil Regulation*.

Security Clearance Check

Security Clearance Check includes all of the following:

- (a) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;
- (b) a police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual in relation to:
 - (i) convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;
 - (ii) findings of guilt in relation to federal statutes for which a court has granted a discharge;
 - (iii) charges laid under the offense provisions of any federal statutes that are unresolved; and
 - (iv) records of judicial orders in effect made in relation to the offense provisions of federal statutes;
- (c) a police records check in other jurisdictions as deemed necessary by the information provided to the *PPEB* during a Security Clearance Check; and
- (d) if deemed necessary by *PPEB* considering the circumstances of the Project, a driving records check.

GENERAL CONDITIONS

GC 1.1 CONTRACT DOCUMENTS

- .1 Delete the second sentence of paragraph 1.1.2.
- .2 Delete paragraphs 1.1.3 and 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 be undertaken with the standard of care described in paragraph 3.9.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care. 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, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, and request a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.
- .3 Add new sentence to the end of paragraph 1.1.9:
 - 1.1.9 The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* or as between them and the *Contractor* with respect to such divisions.

GC 1.3 RIGHTS AND REMEDIES

- .1 Delete the word “No” from the beginning of paragraph 1.3.2 and substitute the words:
 - 1.3.2 “Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1, no ...”.

GC 1.4 ASSIGNMENT

- .1 Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1:

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

GC 2.2 ROLE OF THE CONSULTANT

- .1 Add the following to the end of paragraph 2.2.1:

2.2.1 , and where applicable, in accordance with the recommended procedures outlined in the OAA/OGCA Document No. 100-2018 dated July 1, 2018 (reissued January 8, 2019) and the OAA/OGCA Guide to Project Closeout Procedures dated November 2010, as each may be amended from time to time.

- .2 Delete GC 2.2.4 and substitute new paragraph 2.2.4:

2.2.4 The *Consultant* will participate in a monthly pre-screening meeting with the *Owner* and the *Contractor* in accordance with the *Owner's* timing and requirements to review the particulars, details, information and documentation, including the breakdown of the schedule of values, proposed to constitute the basis of *Contractor's Proper Invoice* for such month, so as to assist the *Contractor* with the preparation and submission of its *Proper Invoices* on a monthly basis. 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 GC 5.3.1.1.

GC 2.4 DEFECTIVE WORK

- .1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

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

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

GC 3.1 CONTROL OF THE WORK

- .1 Add new paragraph 3.1.3:

3.1.3 Prior to commencing the *Work*, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper completion of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and obtain *Supplemental Instructions* from the *Consultant* before proceeding with any part of the affected work.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- .1 Delete subparagraph 3.2.2.1 in its entirety

- .2 Add new subparagraph 3.2.3.5:

3.2.3.5 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.3 of General Condition 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the *Owner's* own forces and for *Other Contractors* performing work identified in the *Contract Documents*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation at the *Place of the Work*, including all of the responsibilities of the constructor as that term is defined in the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended.

GC 3.4 CONSTRUCTION SCHEDULE

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The *Contractor* shall,

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

the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the construction schedule to the *Owner* in editable format, together with a record version in PDF format. Once reviewed by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule. The review of the construction schedule by the *Owner* and the *Consultant* shall not be perceived as their approval in any way of the construction schedule. The *Contractor* is fully responsible for the means and methods necessary to meet the baseline construction schedule or any revision(s) thereto. The *Owner* and the *Consultant's* review are solely intended to help establish the *Contractor's* ability to meet the requirements of the *Contract*;

- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the baseline construction schedule or any successor or revised schedule pursuant to General Condition 3.4 – CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule pursuant to General Condition 3.4 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .4 if, after applying the expertise and resources required under subparagraph 3.4.1.2, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.4.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

.2 Add new paragraph 3.4.2:

- 3.4.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.4.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the

schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with General Condition 6.5 – DELAYS.

GC 3.5 SUPERVISION

- .1 Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

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

- .2 Add new paragraph 3.5.3:

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

GC 3.7 LABOUR AND PRODUCTS

- .1 Delete paragraph 3.7.3 and replace with new paragraph 3.7.3:

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

- .2 Add new paragraph 3.7.4:

3.7.4 The *Contractor* shall comply with all requirements set out in the *Fair Wage Program Labour Conditions*. The hours of work, the rates of wages paid, and the working conditions shall be in accordance with the Labour Conditions and applicable Schedule of Fair Wage Rates, included therein, as amended from time to time.

Add new General Conditions 3.9, 3.10, and 3.11:

GC 3.9 PERFORMANCE BY CONTRACTOR

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

GC 3.10 RIGHT OF ENTRY

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

GC 3.11 OAA/OGCA TAKE-OVER PROCEDURES

- 3.11.1 Unless otherwise required by this *Contract*, *Contractor* shall execute the closing stages of the *Work* in accordance with the OAA/OGCA Document No. 100-2018 dated July 1, 2018 (reissued January 8, 2019) and the OAA/OGCA Guide to Project Closeout Procedures dated November 2010, as each may be amended from time to time.

GC 4.1 CASH ALLOWANCES

- .1 Add new paragraph 4.1.8:

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

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

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

- .2 Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:

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*.

- .3 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PAYMENT

- .1 Revise the heading, “GC 5.2 - APPLICATIONS FOR PAYMENT” to read, “GC 5.2 - REQUIREMENTS OF A *PROPER INVOICE*, PROCESS AND TIMING FOR ISSUANCE OF *PROPER INVOICES*”.

- .2 Delete GC 5.2.1 in its entirety and replace with the following:

5.2.1 “*Proper Invoice*” shall mean 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:

(A) contains the information set out in Section 6.1 of the *Construction Act*, which for certainty includes the following:

1. The *Contractor’s* name and address;
2. The date of the invoice and the period during which the services or materials were supplied;
3. Information identifying the authority, whether in this *Contract* or otherwise, under which the services or materials were supplied;
4. A description, including quantity where appropriate, of the services or materials that were supplied;
5. The amount payable for the services or materials that were supplied, and the payment terms;

6. The name, title, telephone number and mailing address of the person at the *Contractor* to whom payment is to be sent; and
 7. Any other information that may be prescribed by the *Construction Act*,
- (B) contains the following information and meets the following requirements:
1. The name of the *Owner's* project manager for the *Project*;
 2. The *Owner's* and *Contractor's* full legal names;
 3. The *Proper Invoice* must include the applicable purchase order number, tax registration number and project number applicable to the *Work*;
 4. The *Proper Invoice* must not be combined with any other invoices when issued;
 5. Outlines the aggregate amount of the holdback retained by the *Owner* under the *Contract* and the amount of the holdback retained under and applicable to the *Proper Invoice*; and
 6. The invoice must accurately reflect all required components of the *Proper Invoice* and the amount billed thereunder.
- (C) meets the additional requirements with respect to process and contain such information as required by *Owner* as outlined in GC 5.2.2, 5.2.3, 5.2.4, 5.2.5 and 5.2.6 .
- .3 Delete GC 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7 and 5.2.8 in their entirety and replace with the following:
- 5.2.2 The *Contractor* shall submit to both the *Owner* and the *Consultant*, no later than five (5) *Working Days* after the *Work* has commenced, a schedule of values for the *Work*, aggregating the total amount of the *Contract Price* so as to facilitate review of the *Proper Invoices* for the *Work*.
- 5.2.3 On a monthly basis, the following process shall be followed in relation to applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT pursuant to the delivery of *Proper Invoices*, as follows:
- .1 By not later than the ninth (9th) day of the calendar month, which date shall be a *Working Day*, the *Contractor* shall submit to both the *Owner* and the *Consultant*, a breakdown of the schedule of values for costs incurred during the immediately preceding month for the *Work*, including outlining the total amount of the *Contract Price*. Such breakdown shall be provided in such form and supported by such evidence as the *Owner* or the *Consultant* may reasonably require;

- .2 By not later than the fifteenth (15th) day of the calendar month, the *Contractor* shall participate in a monthly pre-screening meeting with the *Owner* and the *Consultant*, the time and location of which shall be specified by the *Owner* in writing (which date shall be a *Working Day*), to review the particulars, details, information and documentation, including the breakdown of the schedule of values, proposed to constitute the basis of the *Contractor's Proper Invoice* for such month, so as to assist the *Contractor* with the preparation and submission of its *Proper Invoices* on a monthly basis;
- .3 By not later than the twenty-fifth (25th) day of the calendar month, between the hours of 9:00 A.M. and 5:00 P.M. on a *Working Day*, the *Contractor* shall submit simultaneously to the *Owner* (to the *Owner's* Finance Department with a copy to the *Owner's* project manager for the *Project*) and to the *Consultant*, a *Proper Invoice* for payment, for the immediately preceding month, including with the *Proper Invoice* the following:
 - .1 a Statutory Declaration on an original form 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 application and attesting to the truth of the statements made therein;
 - .2 evidence of compliance with workers' compensation at the *Place of the Work* including a Workplace Safety & Insurance Board Clearance Certificate, including payments due thereunder, with each application for progress payment; and
 - .3 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*.
- .4 For clarity, if the *Proper Invoice* referenced in GC 5.2.3.3 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 prepare current *As-Built Drawings* during the course of the *Work*, which current *As-Built Drawings* shall be maintained and made available to the *Consultant* for review with each *Proper Invoice*. The *Consultant* may retain a reasonable amount and up to a maximum of the amounts outlined in paragraph GC 5.4.7, from any application for payment for the value of the *As-Built Drawings* not presented for review until the *As-Built Drawings* are presented for review.

- 5.2.5 The *Contractor* agrees that any *Proper Invoice* submitted prior to the twenty-fifth (25th) day of the calendar month, as required pursuant to GC 5.2.3.3, shall be deemed to be received on the twenty-fifth (25th) day of the calendar month.
- 5.2.6 The *Contractor* agrees that any *Proper Invoice* which is not submitted by the twenty-fifth (25th) day of the calendar month, as required pursuant to GC 5.2.3.3, shall be the basis for the issuance of a notice of non-payment by the *Owner* in accordance with the *Construction Act*.

GC 5.3 PAYMENT

- .1 Revise the heading, “GC 5.3 - PAYMENT” to read, “GC 5.3 - PROCESS AND TIMING FOR PAYMENT FOLLOWING *OWNER’S RECEIPT OF PROPER INVOICE*”.
- .2 Delete GC 5.3.1 in its entirety and replace with the following:
- 5.3.1 After receipt of a *Proper Invoice* submitted by the *Contractor* in accordance with GC 5.2 - REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES:
- .1 The *Consultant* shall review the *Proper Invoice* and 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 of payment of the *Proper Invoice* in respect of which such certificate has been issued.
- .2 In the event that all or a portion of the *Proper Invoice* is disputed, the *Owner* shall issue a notice of non-payment of such portion of the *Proper Invoice*, in accordance with the *Construction Act*. After the *Owner* and the *Consultant* have reviewed the *Proper Invoice*, the *Contractor* shall amend it and submit to both the *Owner* and the *Consultant*, a revised *Proper Invoice* for the non-disputed portion of the *Proper Invoice* within two (2) *Working Days* following receipt of the *Owner’s* notice of non-payment, incorporating all of the information set out in the original *Proper Invoice* applicable to the non-disputed portion thereof. For clarity, the form and date of the *Proper Invoice* cannot change despite such a revision.
- .3 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*.

- .4 On receipt of payment or notice of non-payment from the *Owner*, the *Contractor* shall comply with the *Construction Act* and either cause payment to be made to all *Subcontractors*, trade contractors, workers and *Suppliers* promptly when due in accordance with the *Construction Act* or issue notices of non-payment in accordance with the timelines and requirements of the *Construction Act*. Additionally, the *Contractor* shall take all necessary steps to ensure that *Subcontractors* and *Suppliers* comply with the payment requirements of the *Construction Act*.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

.1 Delete paragraphs 5.4.2, 5.4.3 and 5.4.4 in their entirety, renumber paragraphs 5.4.5 and 5.4.6 as 5.4.10 and 5.4.11 and substitute new paragraphs 5.4.2, 5.4.3, 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8 and 5.4.9:

5.4.2 Immediately 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 finishing the *Work* and correcting deficiencies.

5.4.3 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* issued by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Act* or the regulations promulgated thereunder) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.

5.4.4 Prior to submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all:

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 testing and balancing reports;

- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance manuals;
- .8 samples;
- .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .10 commissioning verification form(s);
- .11 computerized maintenance management system form(s) for base building and/or client equipment;

and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*.

5.4.5 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.4, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. If the *Contractor* fails to deliver any of the materials required in subparagraphs 5.4.4.7 or 5.4.4.8, the *Owner* may retain from the payment of holdback under paragraph 5.4.9, the amount set out in paragraph 5.4.6, until the materials required pursuant to subparagraphs 5.4.4.7 or 5.4.4.8 are delivered, provided the *Owner*, within 40 calendar days after publication of the applicable certificate of *Substantial Performance of the Work*, publishes a notice of non-payment in the form prescribed by the *Construction Act*.

5.4.6 The amount to be retained by the *Consultant* as contemplated in subparagraphs 5.2.4 and 5.4.5 is as follows:

- .1 where the *Contract Price* is less than \$100,000 the amount to be retained is \$5,000;
- .2 where the *Contract Price* is greater than \$100,000 but less than \$500,000, the amount to be retained is 5% of the *Contract Price*;
- .3 where the *Contract Price* is greater than \$500,000 but less than \$5,000,000, the amount to be retained is the greater of \$25,000 or 3% of the *Contract Price*;
- .4 where the *Contract Price* is greater than \$5,000,000, the amount to be retained is 1.5% of the *Contract Price* up to a maximum of \$1,000,000.00.

5.4.7 Except for payment of holdback, from which amounts can only be retained or withheld in accordance with the *Construction Act*, should the *As-Built Drawings* not be delivered in accordance with subparagraph 5.2.4 or any documents or materials not be delivered in accordance with paragraph 5.4.4 by the earlier of 50 days following the date of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.5.1 of General Condition 5.5 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.4 or 5.4.6 shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Price* shall be reduced accordingly.

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

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

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Contractor* shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to

in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Contractor* and the *Owner*.

- 5.4.9 The *Contractor* submit an application for payment of the lien holdback amount pursuant to the *Proper Invoice* in accordance with GC 5.3 – PAYMENT. All holdback amounts shall be due and payable forthwith following the expiry of the holdback period specified in the *Construction Act* for the retention of holdback funds following *Substantial Performance of the Work* (which for certainty shall not exceed 10 *Working Days* following expiration of the holdback period stipulated in the *Construction Act*), unless (i) a claim for lien has been registered against 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*.

GC 5.5 FINAL PAYMENT

- .1 Delete paragraph 5.5.1 in its entirety and substitute new paragraph 5.5.1:

- 5.5.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment 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 and the delivery of such documents and materials shall constitute a requirement of the *Proper Invoice* for the final payment under this *Contract*. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered.

- .2 Delete from the first line of paragraph 5.5.2 the words, “calendar days” and substitute the words:

“*Working Days*”.

- .3 Delete from the second line of paragraph 5.5.4 the words, “calendar days” and substitute the words:

“*Working Days*”.

.4 Add new paragraph 5.5.5:

5.5.5 Prior to the release of the finishing holdback provided for under the *Construction Act*, the *Contractor* shall submit:

- .1 *Contractor's* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;
- .2 a Statutory Declaration CCDC 9A-2018; and
- .3 a final Workplace Safety & Insurance Board Clearance Certificate.

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

.1 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 determined on the basis of the cost of the *Contractor's* actual, net direct expenditures and savings attributable to the *Change Directive* or *Change Order*, as the case may be, valued in accordance with GC 6.3.7 and as follows:

- .1 If the change results in a net increase in the *Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* cost, plus the *Contractor's* percentage fee on such net increase.
- .2 If the change results in a net decrease in the *Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* cost, with a corresponding reduction to the *Contractor's* percentage fee 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* cost plus the *Contractor's* percentage fee on such net increase resulting from additions involved in the change to the

Work, and (ii) the net decrease in the *Contractor's* cost with a corresponding reduction to the *Contractor's* percentage fee on such net decrease resulting from deletions involved in the change to the *Work*.

- .4 The *Contractor's* percentage fee for overhead and profit and, to the extent any changes in the *Work* are performed by *Subcontractor's* or sub-Subcontractors, the *Subcontractor's* percentage fee for overhead and profit shall be as follows:
 - .1 For the *Contractor*:
 - .1 15% for work carried out by the *Contractor's* own forces; and
 - .2 10% for work carried out by *Subcontractors*.
 - .2 For the *Subcontractors*:
 - .1 15% for work carried out by their own forces; and
 - .2 10% for work carried out by their subcontractors.
- .5 In no event shall the maximum aggregate mark-up applied by all levels of contract for overhead and profit exceed 40% of an approved change.
- .6 The *Contractor's* overhead includes without limitation all site and head office costs including head office personnel, insurance and bonding (except where additional bonding is at the *Owner's* expense pursuant to paragraph 11.2.3), traveling costs, financing costs including those related to holdback; the salaries, premiums for overtime or shift time unless otherwise approved by the *Owner* in writing prior to the *Work* being performed, and other miscellaneous employee benefits of superintendents and sub-trade superintendence, engineers, timekeepers, accountants, clerks, watch persons and security, office administration; processing correspondence, changes, shop drawings, engineering, *As-Built Drawings*, maintenance manuals and all other documents required to be provided prior to certification of *Substantial Performance* of the *Work*, costing and accounting, payroll, technical staff, and all other site supervision staff above foreperson employed directly on the *Work*; coordination with other trades affected, use of temporary offices, plant, tools and equipment including operators, sheds, storage compounds and other general temporary site support facilities and all utilities used therein; first aid, safety and protection measures, including training; licences and permits; scheduling; temporary protection; daily clean up; disposal; garbage chute; scaffolding; hoisting

and unloading; commissioning; cutting and patching, and shall be applied to both extras and credits equally.

GC 6.2 CHANGE ORDER

- .1 Delete from the second line of paragraph 6.2.1 the words “that can be reasonably evaluated” and replace with “acceptable to the *Consultant*”.
- .2 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*.

GC 6.3 CHANGE DIRECTIVE

- .1 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 GC 6.1.4.
- .2 Delete subparagraph 6.3.7.1(2) and replace it with:
 - “(2) the *Contractor's* personnel when stationed at the field office, to the extent that such personnel are engaged in carrying out the change in the *Work* attributable to the *Change Directive*, including necessary supervisory services;”
- .3 Delete subparagraph 6.3.7.1(3) and replace it with
 - “(3) intentionally left blank.”
- .4 Amend subparagraph 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*.”
- .5 Delete subparagraphs 6.3.7.13, 6.3.7.17, 6.3.7.18 and 6.3.7.19 and replace with ‘intentionally left blank’.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

.1 Add new paragraph 6.4.5:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.9.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.1, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or because of conditions that could not reasonably have been inferred from the material provided with the *Contract Documents*.

GC 6.5 DELAYS

.1 Delete paragraph 6.5.1 and replace 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 Contractor*, 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 a 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.

- .2 Amend the last sentence of paragraph 6.5.2 to read:

“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.”

- .3 At paragraph 6.5.3, renumber subparagraph 6.5.3.4 as 6.5.3.5, and insert a new subparagraph 6.5.3.4 as follows:

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

- .4 Amend paragraph 6.5.3 by deleting the words “*Consultant* or anyone employed or engaged by them directly or indirectly” at the end of this paragraph.

- .5 Delete paragraph 6.5.5 in its entirety and replace 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 GC 6.5.1 or GC 6.5.2, or to any extension of *Contract Time* in respect of any delay referred to in GC 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 GC 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 GC 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.

- .6 Add new paragraphs 6.5.6 – 6.5.9 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 GC 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 scheduled recovery plan to recover and prevent lost time in accordance with paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE.
- 6.5.9 The *Owner* and the *Contractor* acknowledge and agree that any delay or failure of the *Contractor* to perform its obligations under this *Contract* to the extent such delay or failure was caused, directly or indirectly, by an outbreak of a disease or pandemic/epidemic, including but not limited to, the 2019 novel coronavirus disease and pandemic or any other future pandemics/epidemics (collectively, “**Pandemic/Epidemic**”), shall be determined in accordance with the following principles:
- .1 The term “**Pandemic/Epidemic Change in Law**” means any change in applicable laws that:
- (a) came into effect after the date of this *Agreement*;
 - (b) is directly the result of and is directly related to the occurrence, control, spread or ending of a Pandemic/Epidemic; and
 - (c) directly affects (i) the performance of the *Work*, or (ii) the *Contract Price*.

For the purposes of this *Agreement*, this definition shall include any new applicable law or any amendment or other modification to or repeal or replacement of any applicable law that satisfies the foregoing requirements of subsections (a) to (c) (inclusive) and “applicable law” shall include all ordinances, rules, regulations, codes and guidelines of any public authority having jurisdiction (including but not limited to the Ontario Ministry of Labour, Training and Skills Development and Chief Medical Officer of Health) as well as any guidelines or policies promulgated by the World Health Organization and/or the Ontario Public Service (collectively, “**Pandemic/Epidemic Rules**”).

- .2 With respect to the impact of a Pandemic/Epidemic, the *Contractor* shall assume the known conditions of such Pandemic/Epidemic (including all Pandemic/Epidemic Rules in force) at the time of execution and delivery of this *Agreement* during the performance of the *Work*. The *Owner* and the *Contractor* agree that any delay or failure of either party to perform its obligations under this *Contract* to the extent such delay or failure was caused, directly or indirectly, by the known conditions of such Pandemic/Epidemic (including all Pandemic/Epidemic Rules in force at the time of execution and delivery of this *Agreement*), including, but not limited to, the financial inability to perform, will not excuse performance by such party under this *Contract* or constitute a cause of delay in the performance of the *Work* under this *Contract*.
- .3 Subject to a stop work order in accordance with GC 6.5.9.5, relief shall be provided to the *Contractor* for delays in the performance of the *Work* which arise as a result of a Pandemic/Epidemic Change in Law and that change and impose more onerous requirements than the Pandemic/Epidemic Rules in force at the time of execution and delivery of this *Agreement*. Such relief shall be provided in accordance with GC 6.5.3. There will be no unjust enrichment from a Pandemic/Epidemic Change in Law.
- .4 The *Contractor* shall prepare and submit a plan (the “**Pandemic/Epidemic Response and Mitigation Plan**”) prior to the execution and delivery of this *Agreement*, (which Pandemic/Epidemic Response and Mitigation Plan shall be incorporated by reference into and shall become a part of this *Agreement*) outlining how it will prepare for and respond to any potential or actual pandemic or epidemic that may affect the *Work*, including a subsequent outbreak of such Pandemic/Epidemic. The Pandemic/Epidemic Response and Mitigation Plan (and all updates thereto) shall:

- (a) demonstrate how potential impacts will be reduced if risks of future pandemics materialize;
- (b) set out the activities and reporting to the *Owner* that the *Contractor* will implement as part of the *Work* to prepare for and respond to any potential or actual pandemic or epidemic that may affect the *Work* (including a subsequent outbreak of an existing Pandemic/Epidemic), including the detailed steps that the *Contractor* and its *Subcontractors* will undertake to prepare for and respond to any potential future pandemic or epidemic that could occur and affect the *Work*, including a subsequent outbreak of an existing Pandemic/Epidemic; and
- (c) be subject to review and comment by the *Owner*.

In the event that, at any time prior to *Ready-For-Takeover*, a Pandemic/Epidemic (including a subsequent outbreak of an existing Pandemic/Epidemic) is reasonably foreseeable and likely to occur and affect the *Work* or otherwise occurs and affects the *Work*, the *Contractor* shall, at its cost, promptly (at the request of the *Owner* or on its own volition) update the Pandemic/Epidemic Response and Mitigation Plan on a monthly basis and submit each such update to the *Owner* until such time as the *Owner* agrees, acting reasonably, that either the Pandemic/Epidemic will not occur and affect the *Work* or such Pandemic/Epidemic has ended, no longer affects the *Work* and no further updates to such plan are required. Following the review by the *Owner* of each updated Pandemic/Epidemic Response and Mitigation Plan, the *Contractor* shall implement such plan in accordance with its terms.

- .5 If pursuant to GC 6.5.2, a stop work order is issued by a court or other public authority as a result of a Pandemic/Epidemic, the *Contractor* shall be entitled to relief pursuant to GC 6.5.2.
- .6 Notwithstanding anything to the contrary in this GC 6.5 - DELAYS or paragraph 10.2.7 of GC 10.2 – LAWS, NOTICES, PERMITS AND FEES, the *Owner* and the *Contractor* acknowledge and agree that (other than supply chain impact) if a Pandemic/Epidemic Change in Law occurs that:
 - (a) imposes more onerous requirements than the Pandemic/Epidemic Rules in force at the time of execution and delivery of this *Agreement*,

- (b) results in an incremental increase in the cost of the *Work*, and
- (c) does not have a material, adverse impact to any critical path activities,

then the *Contractor* may be permitted to submit a claim in accordance with the requirement of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

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

- .1 Revise the heading, “**OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**” to read, “**OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT**”

- .2 Delete paragraph 7.1.6 and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11 and 7.1.12:

7.1.6 In addition to its right to terminate the *Contract* set out herein, the *Owner* may terminate this *Contract* at any time for any other reason or no reason and without cause upon giving the *Contractor Notice in Writing* to that effect and in such event the *Owner* shall publish, in the form prescribed by the *Construction Act*, a notice of termination in accordance with the *Construction Act* which, in any event, shall include the date on which the *Contract* is terminated. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.

7.1.7 The *Owner* may suspend *Work* under this *Contract* at any time for any reason or no reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the suspension of the *Work*, but in no event

shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than 180 calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.

- 7.1.8 In the case of either a termination of the *Contract*, or a suspension of the *Work* under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.9 Upon the resumption of the *Work* following a suspension under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.10 The *Contractor's* obligation under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.
- 7.1.11 If any security check performed in accordance with GC14.6 discloses a security problem that is not resolved by the *Contractor* to the satisfaction of the *Owner* within ten (10) *Working Days* following receipt of written notice of such problem from the *Owner*, the *Owner* may terminate this *Contract* by giving the *Contractor* notice in writing to that effect.
- 7.1.12 Without limiting the foregoing in this section, a finding on a security check that is incompatible with ensuring any of the achievement of the following objectives is a security problem:
- (i) the *Contractor's* ability to provide the *Work* in accordance with the Agreement;
 - (ii) the safety of the *Owner's* directors, officers, appointees, employees, agents or consultants, as well as the *Contractor's* directors, officers, employees, agents, consultants or *Subcontractors*, the *Owner's* clients and their directors,

officers, appointees, employees, agents, consultants or subcontractors, as well as any *Subcontractor's* directors, officers, employees, agents, consultants or sub-subcontractors, and the public;

- (iii) the reputation of or public confidence in the *Owner*;
- (iv) the security of the *Owner's* financial assets and revenue;
- (v) the security of any real property owned, controlled or managed by the *Owner*;
- (vi) the security of any other property owned, controlled, managed or licensed by the *Owner*;
- (vii) the security, confidentiality or integrity of the *Owner's* confidential information and the integrity of any other materials held by the *Owner*.

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

.1 Delete paragraph 7.2.2 in its entirety.

.2 Delete subparagraph 7.2.3.1 in its entirety.

.3 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

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

.4 Delete from subparagraph 7.2.3.4, the words:

7.2.3.4 “, except for General Condition 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,”

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

7.2.4 “until the default is corrected, provided, however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the *Contractor's Notice in Writing* to the *Owner* was given pursuant to subparagraph 7.2.3.3, then, 180 days after the delivery of the *Notice in Writing*, the *Contractor* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply and in such event the *Contractor* shall publish, in the form

prescribed by the *Construction Act*, a notice of termination in accordance with the *Construction Act* which, in any event, shall include the date on which the *Contract* is terminated.”

GC 8.1 AUTHORITY OF THE CONSULTANT

- .1 Delete the last sentence of 8.1.3 and substitute the following sentence:

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

GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

- .1 Delete paragraphs 8.3.6, 8.3.7, and 8.3.8 in their entirety and substitute new subparagraph 8.3.6:

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

GC 9.1 PROTECTION OF WORK AND PROPERTY

- .1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.9.1;

- .2 Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

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

.3 Add new paragraph 9.1.5:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of *Other Contractors*, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

.4 Add new paragraph 9.1.6:

9.1.6 The *Contractor* shall be responsible for securing the *Place of Work* at all times and shall take all reasonable precautions necessary to protect the *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours. Where the *Consultant* or the *Owner* deems the provision of security guard services to be necessary, the *Contractor* shall provide those services at the *Owner's* expense.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

.1 Add new subparagraph 9.2.5.5

9.2.5.5 take all reasonable steps to mitigate the impact on *Contract Time* and *Contract Price*.

.2 Delete subparagraph 9.2.7.4 in its entirety.

.3 Add to subparagraph 9.2.8.3 immediately before the semi-colon, the following new words:

“and as a result of the delay;”

GC 9.4 CONSTRUCTION SAFETY

.1 Delete paragraphs 9.4.1, 9.4.2, 9.4.3, 9.4.4 and 9.4.5 in their entirety and substitute the following:

9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and

supervising all safety precautions and programs in connection with the performance of the *Work*.

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

- .1 a current Workplace Safety & Insurance Board Clearance Certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation setting out the *Contractor's* in-house safety programs;
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended.

9.4.3 The *Contractor* shall be responsible for ensuring compliance with the recommended rules, regulations, guidelines, policies and practices provided by the World Health Organization and/or the Ontario Public Service as such may apply to a *Pandemic/Epidemic*.

9.4.4 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended, including the payment of legal fees and disbursements on a substantial indemnity basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.5 The *Owner* undertakes to include in its contracts with *Other Contractors* and in its instructions to its own forces the requirement that the *Other Contractors* or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters. Prior to admission to the *Place of the Work*, the *Contractor* may, as a condition of admission, require any *Other Contractors* or the *Owner's* own forces to sign a written acknowledgement in the following form:

Acknowledgement

The undersigned acknowledges that the *Work* it will perform on behalf of the *Owner* requires it to enter a *Place of the Work* which is under the total control of a *Contractor* that has a *Contract* with the *Owner*, pursuant to which the *Contractor* has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended, as well as responsibility to co-ordinate and schedule the activities of our work with the *Work* of the *Contractor* under its *Contract*. The undersigned agrees to comply with the *Contractor*’s directions and instructions with respect to health, safety, co-ordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned’s *Contract* with the *Owner*, as the case may be. The undersigned also agrees to have the *Contractor* named as an additional insured on any comprehensive liability insurance policy, where such insurance is required.

Name:

Title:

Date:

GC 9.5 MOULD

- .1 Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:

“and as a result of the delay,”

- .2 Delete subparagraph 9.5.3.4 in its entirety.

GC 9.6 MANAGEMENT OF EXCESS SOILS

- .1 Add new GC 9.6 – MANAGEMENT OF EXCESS SOILS as follows:

9.6.1 Notwithstanding GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, the *Contractor* shall be responsible to determine whether the *Excess Soil Legislation* applies to the *Work* or the *Project* and shall provide the *Owner* with immediate written notice of such determination. For clarity, the *Contractor* acknowledges and agrees that this is an ongoing obligation of the *Contractor* during the performance of the *Work*. If the *Excess Soil Legislation* applies to the *Work* or the *Project*, the *Contractor*, at the *Contractor*’s cost and expense, shall:

- .1 be solely responsible for compliance with the requirements of the *Excess Soil Legislation* during the performance of the *Work*;

- .2 assume and take on the responsibilities of the *Project Leader* for the *Work*; and
 - .3 perform the *Work* in accordance with, and subject to, the *Excess Soil Legislation*.
- 9.6.2 The *Contractor* shall be solely responsible for the management of any *Excess Soil* generated or encountered during the performance of the *Work*.
- 9.6.3 The *Contractor* shall be solely responsible for compliance with the *Excess Soil Regulation* made under the Ontario *Environmental Protection Act* including the “Rules for Soil Management and Excess Soil Quality Standards” adopted by reference in the *Excess Soil Regulation*.
- 9.6.4 Without limiting the generality of paragraph 9.6.3, the *Contractor* shall comply with all applicable requirements prior to removal of any *Excess Soil* from the *Place of Work* including preparation of an assessment of past uses; preparation and implementation of a sampling and analysis plan; preparation of a soil characterization report; preparation of an excess soil destination assessment report; and development and implementation of a tracking system, all of which shall be undertaken by a “qualified person”, as defined in O. Reg. 153/04 – Records of Site Condition made under the Ontario *Environmental Protection Act*.
- 9.6.5 The *Contractor’s* responsibilities include, without limitation, procuring, and, as a part of the *Contract Price*, paying for, all permits, approvals and disposal fees, costs and expenses required by the *Excess Soil Legislation*.
- 9.6.6 The *Contractor* shall provide the *Owner* and the *Consultant* with copies of the assessments, plans and reports referred to in paragraph 9.6.4.
- 9.6.7 Without limiting the generality of paragraph 9.6.3, the *Contractor* shall comply with all applicable storage, processing, reuse and disposal requirements for any *Excess Soil* generated or encountered during the performance of the *Work*.

GC 10.1 TAXES AND DUTIES

- .1 Add new paragraph 10.1.3:

- 10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or

any other taxing authority, as may be required to give effect to this paragraph.

- .2 Add new paragraph 10.1.4:

10.1.4 In the event that new or additional taxes in respect of the *Work* are required by federal, provincial, territorial, regional or municipal legislation after the *Contract* is executed, the amount payable under this *Contract* shall be adjusted to include such taxes.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- .1 Add to the end of paragraph 10.2.4 the following words:

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

- .2 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:

“Subject to paragraph 1.1.3 and 1.1.4, the”.

GC 10.3 PATENT FEES

- .1 Delete paragraph 10.3.2 in its entirety.

GC 10.4 WORKERS’ COMPENSATION

- .1 Add to the end of subparagraph 10.4.1 the following new words:

“The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*.”

- .2 Add new paragraph 10.4.2:

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

GC 11.1 INSURANCE

- .1 Add to the end of paragraph 11.1.1.1 the following new words:

11.1.1.1 “In addition, this policy shall include coverage for non-owned automobiles.”

- .2 Add new subparagraph 11.1.1.6(4):

11.1.1.6(4) If any loss occurs involving damage to property in an amount greater than \$25,000, bodily injury to any person, or damage to any existing structure, the *Contractor* shall, in addition to the other requirements set out herein, immediately provide a detailed written report to the *Owner* and to *Infrastructure Ontario*, 1 Dundas Street West, Suite 2000, Toronto, Ontario M5G 2L5, Att’n: Divisional Lead, Real Estate Management & Lending.

- .3 Add new subparagraph 11.1.1.8:

11.1.1.8 Pollution Liability Insurance, naming the Owner as insured, with limits of not less than \$5 million per occurrence, an aggregate limit of not less than \$5 million within any policy year, and a deductible not exceeding \$5,000, such insurance to be maintained from the date of commencement of the *Work* until one year from the date of *Ready-for-Takeover*.

- .4 Delete paragraph 11.1.2 in its entirety and substitute new paragraph 11.1.2:

11.1.2 In all instances in paragraph 11.1.1 where the *Contractor* is required to obtain insurance coverages naming or jointly naming the *Owner* or the *Consultant*, such policies shall instead include the *Consultant* (where applicable), the *Owner*, Ontario Infrastructure and Lands Corporation and His Majesty the King in Right of Ontario as additional insureds. Each of the policies of insurance shall also contain a provision requiring not less than 30 days' written notice to each named insured prior to cancellation or any change that would reduce coverage. At least 10 calendar days prior to commencement of the *Work* and upon any renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.

- .5 Add new subparagraph 11.1.9 as follows:

11.1.9 The parenthetical reference in CCDC 41 - INSURANCE REQUIREMENTS, paragraph 4 which reads: “(excluding flood and

earthquake)” is deleted and replaced with the following: “(including flood, earthquake, testing, and commissioning)”.

GC 11.2 CONTRACT SECURITY

.1 Add new GC 11.2 – CONTRACT SECURITY as follows:

GC 11.2 – CONTRACT SECURITY

11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner*:

- .1 a performance bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Price*, covering the performance of the *Contract*, including the *Contractor's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and
- .2 a labour and material payment bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Price* covering payment for labour, *Products*, or both.

11.2.2 The bonds referred to in paragraph 11.2.1 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until two years following the *Ready-for-Takeover* date.

11.2.3 If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Price*, the *Contractor* shall promptly acquire additional bonding at the *Owner's* expense. Where additional bonding premiums are paid by the *Owner*, the *Contractor* shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original revised performance bond(s).

GC 12.1 – READY-FOR-TAKEOVER

.1 Add new subparagraph 12.1.1.9 as follows:

12.1.1.9 To the extent not duplicated in this 12.1.1, the documents and materials described in subparagraph 5.4.4.

.2 Delete paragraph 12.1.6 in its entirety.

GC 12.2 EARLY OCCUPANCY BY OWNER

.1 Delete GC 12.2 – EARLY OCCUPANCY BY OWNER in its entirety and substitute:

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.

GC 12.3 WARRANTY

- .1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words:

“Subject to paragraphs 1.1.3 and 1.1.4, the...”.

GC 13.1 INDEMNIFICATION

- .1 Delete General Condition 13.1 – INDEMNIFICATION in its entirety and substitute:

13.1 The *Contractor* shall indemnify and hold harmless *IO*, His Majesty the King in right of Ontario, the *Owner*, the *Consultant*, and their respective agents, appointees, directors, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the *Contractor's* performance of the *Contract*. Nothing in this paragraph 13.1, shall limit any claim that *IO*, His Majesty the King in right of Ontario, or the *Owner* may have under the insurance coverage to be provided under General Condition 11.1 - INSURANCE.

GC 13.2 WAIVER OF CLAIMS

- .1 Delete the reference to “395 calendar days” in the last line of paragraph 13.2.2 and substitute “120 calendar days”.

- .2 Delete the last sentence of subparagraph 13.2.3.4 and substitute:

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

- .1 if the *Contract Price* is \$2 million or less, the sum of \$50,000, before *Value Added Taxes*;
- .2 if the *Contract Price* exceeds \$2 million, the sum of \$100,000, before *Value Added Taxes*;

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

Add new PART 14 as follows:

PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

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

GC 14.2 CONSTRUCTION LIENS

- 14.2.1 In the event that a claim for lien is registered against the Project by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then the *Contractor* shall, at its own expense:
 - .1 within 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and
 - .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.
- 14.2.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 14.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.

GC 14.3 CONTRACTOR DISCHARGE OF LIABILITIES

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

GC 14.4 RECORDS/DAILY REPORTS/DAILY LOGS

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

GC 14.5 CONTRACTOR EVALUATION

- 14.5.1 The *Owner* will evaluate the performance of the *Contractor* with respect to the *Work* in accordance with the *Owner's* procurement policy or alternate vendor performance framework, as each may be amended and modified from time to time.

GC 14.6 SECURITY SCREENING

- 14.6.1 *Contractor* acknowledges that the Ontario government has implemented a policy that requires the *Contractor* and all individuals who will be performing work on behalf of the *Contractor* doing business with the Ontario government to undergo *Security Clearance Checks*. The *Security Clearance Checks* are administered by the *PPEB*.
- 14.6.2 *Contractor* shall comply with the above-noted policy. Should there be any discrepancy between the above-noted policy and the security screening steps outlined herein, the former shall govern. *Contractor* shall ensure that *Contractor's* staff and all *Subcontractors* are in full compliance with the above-noted policy.

- 14.6.3 *Contractor* shall ensure that the screening provisions outlined herein are included in each subcontract *Contractor* enters into with its *Subcontractors* for any part of the *Work*. In addition, *Contractor* shall require its *Subcontractors* to include the screening provisions outlined herein into every level of contract thereunder with each of their respective subcontractors for any part of the *Work*.
- 14.6.4 *Contractor* acknowledges that *PPEB* will perform *Security Clearance Checks* on *Contractor*, including its directors, officers, owner's, partners, if applicable, and shareholders (if a privately held corporation and as requested by *PPEB*), *Contractor's* staff and *Contractor's Subcontractors* (including each *Subcontractor's* directors, officers, owners, partners, shareholders and employees who will perform any part of the *Work*) (collectively referred to in this section as "***Affected Parties***" and individually as an "***Affected Party***"). Accordingly, *Contractor* shall require each *Affected Party* to undergo a *Security Clearance Check*.
- 14.6.5 *Contractor* further acknowledges that unless stated otherwise by the *Owner* in writing, *Security Clearance Checks* must be completed for each *Affected Party* and each *Affected Party* must receive clearance in accordance with the timelines set out in 14.6.5(i) and 14.6.5(ii) in order for *Contractor* its staff and *Subcontractors* to perform any part of the *Work* required for the *Project*. Accordingly:
- (i) *Contractor*, its directors, officers, owners, partners, if applicable, shareholders (if a privately held corporation and as requested by *PPEB*) and *Contractor's* staff then assigned to the *Project* must receive clearance prior to award of the *Contract*; and
 - (ii) *Subcontractors* (including each of the *Subcontractor's* directors, officers, owners, partners, shareholders and staff who will be required to perform any part of the *Work*), must receive clearance prior to performing any part of the *Work*.
- 14.6.6 The *Owner* will provide *CSO* with all forms and information necessary to coordinate and facilitate the required *Security Clearance Checks*.
- 14.6.7 *Contractor's CSO* shall obtain:
- (i) written consent to perform a *Security Clearance Check*, in the form provided by the *Owner*, from each *Affected Party*; and
 - (ii) any other information that the *Owner*, in its sole and absolute discretion acting on the direction of *PPEB*, may deem necessary in order to conduct a *Security Clearance Check* on the *Affected Parties*;

and shall submit this information to the *Owner* in the prescribed form, where required.

- 14.6.8 As a consequence of any *Security Clearance Check*, the *Owner*, acting promptly on the determination by *PPEB*, may notify *Contractor's CSO* that an *Affected Party* did not receive clearance. Upon request by the *Owner*, *Contractor* will remove and replace any such *Affected Party* in accordance with GC 14.6.11 and GC 14.6.12 so that such *Affected Party* is no longer performing the *Work* or any part thereof. *Contractor* further acknowledges and agrees that the *Owner* shall be acting reasonably and consistent with applicable laws if the *Owner* requests the replacement of an *Affected Party* who did not receive clearance following a *Security Clearance Check*.
- 14.6.9 During the term or any extension term of this agreement, *Contractor* shall ensure that, within five (5) *Working Days* of becoming aware of any change, *Contractor* shall inform the *Owner* in writing of any:
- (i) change to any information related to *Security Clearance Checks* for any existing *Affected Party* to enable *PPEB* to update the individual's *Security Clearance Check*; and
 - (ii) addition to the *Affected Parties* for the purpose of enabling *PPEB* to perform *Security Clearance Checks* on any such new *Affected Party*. *Contractor* shall provide any such information in accordance with GC 14.6.4, 14.6.5 and GC 14.6.7.
- 14.6.10 All administrative costs incurred by *Contractor* in complying with the requirements of this GC 14.6 shall be borne solely by *Contractor*.
- 14.6.11 If any *Affected Party* refuses to consent to a security check performed in accordance with this G C14.6 or if any security check performed in accordance with this GC 14.6 relating to any *Affected Party* assigned to fulfil *Contractor's* obligations under this agreement discloses any security issue relating to the *Affected Party*, the *Owner* may determine that any such *Affected Party* is a security threat and provide written notice to *Contractor* of the *Owner's* determination. Upon receipt of such written notice, *Contractor* shall promptly replace any such *Affected Party*.
- 14.6.12 Unless otherwise agreed to by the *Owner* in writing, any individual proposed by *Contractor* to replace an *Affected Party* further to GC 14.6.11 must possess the equivalent or greater qualifications and experience than that of the *Affected Party* being replaced and such individual must be provided at no incremental cost to the *Owner*.

GC 14.7 COUNTERPART EXECUTION

- 14.7.1 The *Contract* may be signed in counterparts and each such counterpart shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. The *Contract* may be executed and delivered by facsimile or electronic (including pdf) transmission and each of the parties hereto may rely on such facsimile or electronic signature as though such facsimile or electronic signature were an original signature.

END OF DOCUMENT