

## 1. GENERAL

- 1.1 The following Supplementary Conditions modify, change, delete from and/or add to the Articles of Agreement, the Definitions, and the General Conditions of the Stipulated Price Contract, Standard Construction Document CCDC 2-2020.
- 1.2 Where any Article, Definition, General Condition, Paragraph, or Subparagraph in the Agreement and/or General Conditions is supplemented by one of the following paragraphs, the provisions of such Article, Paragraph or Subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto.
- 1.3 Where any Article, Definition, General Condition, Paragraph, or Subparagraph in the Agreement and/or General Conditions is amended, voided, or superseded by any of the following paragraphs, the provisions of such Article, Definition, General Condition, Paragraph, or Subparagraph not so amended, voided, or superseded shall remain in effect.
- 1.4 The term “provide” as used in the *Contract Documents*, shall mean the furnishing of all labour, materials, equipment, transportation and all other services required, including all costs in connection therewith, to complete the *Work*.
- 1.5 Wherein any of the words “submit”, “satisfactory”, “acceptable”, “notification” or similar term are used throughout the *Contract Documents*, they shall be followed by the words “to the *Consultant*” unless expressly stated herein or the context provides otherwise. Wherein any of the words “approved”, “designated”, “determined”, “reviewed”, “directed”, “identified”, “inspected”, “instructed”, “permitted”, “evaluated”, “required”, “ordered”, “satisfactory”, “accepted”, “selected” or similar term are used in the *Contract Documents*, they shall be followed by the words “by the *Consultant*” unless expressly stated herein or the context provides otherwise.
- 1.6 Wherein the words “by others” are used in the *Specifications* or on the drawings they will not mean by someone other than the *Contractor*. The only means by which something shown or specified will be indicated as not being in the Contract is by the use of the initials “NIC” or the words “not in (the) *Contract*” or “by *Owner*”.
- 1.7 The following Articles, Definitions, General Conditions, Paragraphs, Subparagraphs or Clauses thereof have been modified in these Supplementary Conditions.

## 2. SUPPLEMENTARY ARTICLES OF AGREEMENT

### 2.1 ARTICLE A-1 THE WORK

- .1 Add the following words at the end of paragraph 1.3:

“, and attain *Total Performance of the Work*, within thirty (30) calendar days of attaining *Substantial Performance of the Work* save and except for work that may be deferred to a later date in the sole discretion of the *Owner*.”

### 2.2 ARTICLE A-5 PAYMENT

- .1 Delete the words “in the amount certified by the *Consultant*” in Article 5.1.1.

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

“5.2.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by the Court, or under a determination in an adjudication conducted pursuant to Part II.1 of the *Act* and Part 13 - ADJUDICATION, interest on such amounts shall also become due and payable until payment is made at the prejudgment interest rate determined under subsection 127(2) of the *Courts of Justice Act*.”

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

.1 Delete paragraphs 6.1 to 6.4 in their entirety and replace with the following:

“6.1 *Notices in Writing* between the parties, or between them and the *Consultant*, shall be considered to have been received by the addressee, addressed as set out below, on the date of receipt if delivered by hand, by commercial courier, by prepaid registered post, or by facsimile or by email during the transmission of which no indication of failure of receipt is communicated to the sender. Such *Notices in Writing* will be deemed to be received by the addressee on the next *Working Day* if sent by facsimile or email after normal business hours or if sent by overnight commercial courier. Such *Notices in Writing* will be deemed to be received by the addressee on the fifth *Working Day* following the date of mailing, if sent by prepaid registered post. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.”

## 3. SUPPLEMENTARY DEFINITIONS

3.1 Add the words “in writing” after the word “upon” in the second line of definition “*Contract Documents*”.

3.2 Delete the definition of *Working Day* and replace with the following:

### “**Working Day**

*Working Day* means any day other than a Saturday, Sunday, statutory holiday, civic holiday, or a statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.”

3.3 Add the following new Definitions:

### “**Abnormal Weather Condition**

An *Abnormal Weather Condition* is a weather condition:

- that delays, hinders or prevents the *Contractor* from performing all or a material part of the *Work* in accordance with the critical path of the *Construction Schedule*;
- that is abnormal and outside the range of weather conditions reasonably expected at the applicable time of year based on the ten (10) year historical range of weather conditions at such time of year in Sudbury as recorded by Environment Canada, the evidence of which shall be provided by the *Contractor* to the *Consultant* or the *Owner* no later than twenty (20) days following the notice referenced in the following bullet point; and
- for which the *Contractor* provided the *Consultant* a notice of such claim for the occurrence of such abnormal weather condition no later than five (5) days of the occurrence of such abnormal weather condition, failing the timely delivery of which the *Contractor* shall not make or enforce any claim against the *Owner*, whether for a change in the *Contract Price* or other compensation, or for an extension of the *Contract Time*, arising from the *Abnormal Weather Condition*.

**Act**

*Act* means the *Construction Act*, R.S.O. 1990, c. C.30 as amended from time to time, and all regulations thereto.

**As-Built Drawings**

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

**Authority**

*Authority* means the Authorized Nominating Authority designated under section 13.2 of the *Act*.

**Bid Solicitation**

*Bid Solicitation* means the process issued by the *Owner* to procure the *Work* for this *Contract* including all instructions, terms, appendices, exhibits, attachments, reference documents, notices addenda or any other information issued or provided by the *Owner* thereto.

**Construction Schedule**

*Construction Schedule* means the baseline construction schedule for the performance of the *Work* provided by the *Contractor* pursuant to GC 3.4 - CONSTRUCTION SCHEDULE, and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract* including, but not limited to:

- *Work* completed to the date of submission,
- status of *Work* in progress, including areas where progress is ahead of schedule and areas where progress is behind schedule,
- measures taken/proposed to be taken, where necessary to bring *Work* progress back on schedule,
- any additions, deletions or revisions to the *Work* that have arisen since the previous submitted *Construction Schedule*, and
- any mutually agreed upon amendments to the baseline schedule.

**Critical Path**

*Critical Path* means the longest sequence of activities as established in the *Construction Schedule* that must be finished in conformity with the *Contract Time*.

**Draft Proper Invoice**

*Draft Proper Invoice* means a preliminary invoice submitted by the *Contractor* to the *Consultant*, constituting a *Notice in Writing*, on the form or similar to that if provided by the *Owner* in the *Contract Documents* containing the following information, to the extent applicable:

- the *Contractor's* invoice number,
- the *Owner's* progress payment or purchase order number,
- the *Contract* title and number,
- the *Contractor's* name and address,
- the date on which the *Draft Proper Invoice* is submitted to the *Owner* and the period during which the services or materials for which payment is being applied were supplied,
- Information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied,
- a description of the services or materials that were supplied during the payment period detailing the following information:
  - item number,
  - item description

- tender quantity,
- unit of measurement,
- unit price,
- quantity for the previous payment period,
- quantity for the payment period,
- approved revised quantity,
- quantity to date, and
- percentage of the *Work* completed to date,
- previous payment amount,
- the amount payable for the services or materials that were supplied during the payment period, and the payment terms,
- the *Contract Price*,
- total amount paid to date,
- subtotals detailing tender items, approved *Change Orders*, incentives, disincentives, and quality assurance payment adjustments,
- a clear identification of the portions of the payment amount that are subject to interest on late payments, Harmonized Sales Tax (HST), holdbacks, reserves, set-offs, retainers, securities and liquidated damages,
- the name, title, telephone number and mailing address of the person to whom payment is to be sent,
- the *Contractor's* HST number,
- evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Draft Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*,
- backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 - CASH ALLOWANCES,
- statement based on the schedule of values,
- an updated *Construction Schedule*, and
- the signature of the *Contractor*.

### **Excess Soil**

*Excess Soil* has the same meaning as defined in Ontario Regulation 406/19 (On-Site and Excess Soil Management) ("O. Reg. 406/19").

### **Force Majeure**

*Force Majeure* means an event that is outside the *Contractor's* reasonable control that delays, hinders or prevents the *Contractor* from performing all or a material part of the *Work* in accordance with the *Critical Path* of the *Construction Schedule* and rendering the *Contractor's* performance obligations under this *Contract* impossible or so impractical as reasonably to be considered impossible in the circumstances, other than a cause resulting from a default or breach of *Contract* by the *Contractor*, and that is caused by:

- an *Abnormal Weather Conditions*;
- a labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound);
- a pandemics or epidemics, subject to GC 6.5 – DELAYS;
- changes in the building code or changes in applicable laws (where such change could not reasonably be anticipated with reasonable professional care); or
- fire, unusual delay by common carriers or unavoidable casualties (where such event was not caused by the *Contractor* and could not reasonably be anticipated with reasonable professional care),

provided that, and for greater clarity, the following are not considered to be events of *Force Majeure*:

- failure of a *Subcontractor* to perform the *Work* or failure of a *Supplier* to deliver Products in accordance with the *Construction Schedule*, unless such failure itself was caused by an event of *Force Majeure*;
- weather delays and conditions that are not *Abnormal Weather Conditions*;
- delays caused by economic conditions, including supply chain shortages or labour shortages, and price increases, unless such economic conditions fully prevented the *Contractor* and its *Subcontractors* from performing the affected portion of the *Work*;
- delays caused by the failure of the *Contractor* to take customary precautions and protections of the *Work* and the *Construction Schedule* in accordance with the *Standard of Care*; and
- public orders, guidelines, directives and laws in existence prior to the date the Agreement was signed, including in relation to the COVID-19 pandemic.

### **including**

*including* means “including but not limited to”.

### **MECP**

*MECP* means Ontario’s Ministry of the Environment, Conservation and Parks.

### **OHSA**

*OHSA* is the *Occupational Health and Safety Act* (Ontario).

### **Ontario’s Excess Soil and Waste Laws**

*Ontario’s Excess Soil and Waste Laws* means O. Reg. 406/19, Ontario’s *Environmental Protection Act*, R.S.O. 1990, c. E.19 (“EPA”), R.R.O. 1990, Regulation 347 (General – Waste Management) (“Reg. 347”), Ontario Regulation 351/12 (Registrations under Part II.2 of the Act – Waste Management Systems) (“O. Reg. 351/12”), the Rules for Soil Management and Excess Soil Quality Standards, and the Beneficial Reuse Assessment Tool, where applicable, and all as amended from time to time.

### **Overhead**

*Overhead* means any additional charges and/or premiums for permits, bonds, insurance and the like, which may result from changes in the *Work*, whether calculated on the basis of quoted unit prices, or on the basis of cost plus fee or mark-up.

### **Payroll Burden**

*Payroll Burden* means the payments in respect of workplace insurance, vacation pay, employment insurance, public liability and property damage insurance, sickness and accident insurance, pension fund, and such other welfare and benefit payments forming part of the *Contractor’s* normal labour costs and shall include any cost or expense as the *Owner* may approve, which has been incurred by the *Contractor* for food, lodging or similar items.

### **Proper Invoice**

A *Proper Invoice* means an invoice submitted by the *Contractor* to the *Consultant*, constituting a *Notice in Writing*, on the form similar to that if provided by the *Owner* in the *Contract Documents* on or after or after the ten (10) calendar days following submission by the *Contractor* to the *Consultant* of a *Draft Proper Invoice* containing the following information, to the extent applicable:

- the *Contractor’s* invoice number,
- the *Owner’s* progress payment or purchase order number,
- the *Contract* title and number,
- the *Contractor’s* name and address,

- the date on which the *Draft Proper Invoice* is submitted to the *Owner* and the period during which the services or materials for which payment is being applied were supplied,
- information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied,
- a description of the services or materials that were supplied during the payment period detailing the following information:
  - item number,
  - item description,
  - tender quantity,
  - unit of measurement,
  - unit price,
  - quantity for the previous payment period,
  - quantity for the payment period,
  - approved revised quantity,
  - quantity to date, and
  - percentage of the *Work* completed to date,
- previous payment amount,
- the amount payable for the services or materials that were supplied during the payment period, and the payment terms,
- the *Contract Price*,
- total amount paid to date,
- subtotals detailing tender items, approved *Change Orders*, incentives, disincentives, and quality assurance payment adjustments,
- a clear identification of the portions of the payment amount that are subject to interest on late payments, Harmonized Sales Tax (HST), holdbacks, reserves, set-offs, retainers, securities and liquidated damages,
- the name, title, telephone number and mailing address of the person to whom payment is to be sent,
- the *Contractor's* HST number,
- evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Draft Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*,
- statement based on the schedule of values,
- an updated *Construction Schedule*,
- evidence reasonably required by the *Consultant* to establish the value and delivery of *Products* for which payment is claimed in the *Proper Invoice*, and which have been delivered to the *Place of Work*, but have not yet been incorporated into the *Work*,
- backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 - CASH ALLOWANCES,
- a statement based on the schedule of values,
- current redline *Drawings* as of the date of the last calendar day of the period for which payment is being applied for,
- an executed CCDC 9A - 2018 Statutory Declaration of Progress Payment Distribution by Contractor,
- Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB) confirming that all assessments or compensation to the WSIB have been paid at the time the *Proper Invoice* is submitted,
- insurance certificate confirming coverage as required under the *Contract*, and
- the signature of the *Contractor*.

### Proposal

*Proposal* means the *Contractor's* proposal submitted in response to the *Bid Solicitation*, including all appendices, exhibits, attachments, proposal clarification letter(s) and any other information proposed or issued by the *Contractor* thereto.

### Standard of Care

The *Standard of Care* means the standards of performance set out in GC 3.9 – PERFORMANCE BY THE CONTRACTOR.

### Submittals

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

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

### Total Performance of the Work

*Total Performance of the Work* means when the entire *Work*, except for those items arising from GC 12.3 - WARRANTY, has been performed in accordance with the requirements of the *Contract Documents* and is so certified by the *Consultant*.”

## 4. SUPPLEMENTARY GENERAL CONDITIONS

### PART 1 GENERAL PROVISIONS

#### 4.1 GC 1.1 CONTRACT DOCUMENTS

.1 Delete Subparagraph 1.1.5.1 in its entirety and replace with the following:

“1.1.5 The *Contract Documents* including the following documents incorporated by reference herein, represents the entire *Contract* between the *Owner* and the *Contractor*:

- .1 *Change Order* or an amendment to this *Contract*, with the most recent having priority (if any),
- .2 the Agreement between the *Owner* and the *Contractor*,
- .3 City of Greater Sudbury - Supplement to CCDC 2 – 2020 Stipulated Price Contract,
- .4 CCDC 2 – 2020 Stipulated Price Contract, including:
  - (1) the Definitions,
  - (2) the General Conditions,
  - (3) the *Owner's Statement of Requirements*, and
  - (4) the *Construction Documents*,
- .5 the *Bid Solicitation*,
- .6 the *Proposal*, and
- .7 any other documentation listed in ARTICLE A-3 – CONTRACT DOCUMENTS.

In the event of conflict between any of the *Contract Documents*, the order of priority (to the extent of the conflict), from highest to lowest, shall be as listed above.”

.2 Add the following new paragraphs 1.1.5.8, 1.1.5.9, and 1.1.5.10:

“1.1.5.8 architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining,

determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction. It shall be understood that the integrity and installation of the engineered systems are to remain with each of the applicable engineering disciplines.

1.1.5.9 in case of conflict, other documents shall govern over the Colour Schedule and Colour Schedule Drawings.

1.1.5.10 addenda shall have priority over the documents they refer to or amend and addenda of a later date shall have priority over earlier documents of the same type.”

.3 Add the following to the end of paragraph 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.”

.4 Add the following new paragraphs 1.1.12, 1.1.13, 1.1.14, 1.1.15, and 1.1.16:

“1.1.12 The *Contractor* will be provided with four (4) sets of the *Drawings* and *Specifications* without charge. Additional copies will be provided at cost.

1.1.13 The *Contractor* shall be provided with an electronic copy of Base AutoCAD Architectural, Structural, Mechanical and Electrical *Drawings* from the *Consultant* for the purpose of preparing *Shop Drawings* and *As-Built Drawings*. A service charge of three hundred dollars (\$300.00) will apply for each electronic drawing file requested. The *Contractor* is responsible for distribution of files to and recovery of costs from *Subcontractors*.

1.1.14 The digital data supplied by the *Consultant* will be provided to the *Contractor* as a matter of courtesy and convenience and is in no way to be taken as appurtenant to, associated with, or in placement of the officially signed and sealed *Contract* documents. The data contained will be provided “as is” without warranty of any kind either expressed or implied. Although every care and diligence is taken to ensure the accuracy and correctness of all supplied data, any and all liabilities for damage, direct or indirect, however caused and resulting, in any form, from the use of the supplied digital data will be the full responsibility of the *Contractor*.

1.1.15 The *Contractor* represents that in entering into the *Contract* with the *Owner* for the performance of the *Work*, it has or will have either inspected the *Place of Work* and investigated for itself all information provided by the *Owner*, the character of the *Work* to be done, and all local conditions, including the position of all registered easements, pole lines, conduits, watermains, sewers and other underground and overground utilities and structures, or that, not having so inspected or investigated, the *Contractor* will assume all risk of conditions now existing or arising in the course of the *Work* that might or could make the *Work*, or any items thereof, more expensive in character, or more onerous to fulfil than was contemplated or known when the *Contract* was signed, or that the *Contractor* ought to have known applying the *Standard of Care*.



- 1.1.16 The terms and conditions of this *Contract* will be incorporated into all subcontracts entered into between the *Contractor* and its *Subcontractors* and *Suppliers* to the extent applicable. To the extent that the *Contractor* does not comply with this provision or does not enforce its rights and interests in such subcontracts, the *Contractor* shall bear all related costs and expenses.”

#### 4.2 GC 1.3 RIGHTS AND REMEDIES

- .1 Add the following new paragraph 1.3.3:

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

#### 4.3 GC 1.4 ASSIGNMENT

- .1 Add the following new paragraph 1.4.2:

“1.4.2 In the event of an assignment of the *Contract* by the *Contractor*, such assignment shall not relieve the *Contractor* from its obligations and liabilities hereunder.”

#### 4.4 ADDITIONAL GENERAL CONDITIONS TO PART 1

- .1 Add the following new General Conditions after GC 1.4 - ASSIGNMENT:

##### “GC 1.5 CONFIDENTIALITY

- 1.5.1 The *Owner* and the *Contractor* shall keep confidential all matters respecting technical, commercial, and legal issues relating to or arising out of the *Work* or the performance of the *Contract*. The *Owner* and the *Contractor* shall not disclose any such matters, except (i) in strict confidence, to its professional advisors, *Consultants*, *Other Consultants*, *Subcontractors* and *Suppliers*, (ii) where prior written consent of the other party has been provided, or (iii) as may otherwise be required by law, but in each case the disclosure shall be to the most limited extent necessary to satisfy the purpose or requirement for disclosure.
- 1.5.2 The *Contractor* agrees that all personal information that the *Contractor* accesses or of which the *Contractor* acquires knowledge as a result of the provision of the *Work*, will be used, retained, protected, disclosed and disposed of in accordance with all applicable municipal, provincial and federal laws and regulations governing the collection, use, retention, disclosure and disposal of such information, including without limitation, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as may be amended from time to time.
- 1.5.3 Except as authorized by the *Municipal Act, 2001*, 2001, S.O. 2001, c. 25, as may be amended from time to time, or any by-law passed pursuant to the legislation, the *Contractor* shall obtain the *Owner’s* consent in writing before publishing or issuing any detailed information regarding the *Work*.
- 1.5.4 Failure to comply with this GC 1.5 – CONFIDENTIALITY will be grounds for immediate termination of this *Contract*, at the discretion of the *Owner*.

### **GC 1.6 ADVERTISING**

- 1.6.1 The *Contractor* will obtain the *Owner's* prior written approval for any public advertising, press release or other general publicity matter, in which the name, logo or trademarks of the *Owner* or any related person are mentioned or used or in which words are used from which any connection with the *Owner* may be inferred. The *Contractor* will not allow or permit any public ceremony in connection with the *Work* or the *Contractor* without the permission of the *Owner* provided in writing. The *Contractor* will not erect or permit the erection of any sign or advertising without the prior written approval of the *Owner*.

### **GC 1.7 CONFLICT OF INTEREST**

- 1.7.1 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*.
- 1.7.2 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 *Subcontractors* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.
- 1.7.3 A breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law or in equity.

### **GC 1.8 SEVERABILITY**

- 1.8.1 If any provision of this Contract is found to be invalid or unenforceable in any circumstances, the remainder of this Contract, and the application of such provision in any other circumstances, shall not be affected.

### **GC 1.9 TIME OF ESSENCE**

- 1.9.1 Time shall be of the essence of the *Contract* and under all *Contract Documents*.

### **GC 1.10 OWNERSHIP OF MATERIALS**

- 1.10.1 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*. The *Owner* shall have a permanent non-exclusive royalty-free licence to use the concept, product or process, produced by or resulting from this *Contract*.

### **GC 1.11 SALVAGE GOODS**

- 1.11.1 If the *Work* involves the removal or replacement of any goods, material or equipment that may be of some continuing value, such goods, material or equipment shall remain the property of the *Owner* unless otherwise stated herein and the *Contractor*

shall return or provide such goods, material or equipment to a location as determined by the *Owner*.

#### **GC 1.12 INTELLECTUAL PROPERTY**

- 1.12.1 All information, materials, reports, statistics, records, documents, data, ideas, forms and graphics prepared, created, obtained, developed, gathered or delivered by the *Contractor* or its employees in connection with the *Work* or otherwise resulting from the *Work*, in whatever form, whether written, electronic or otherwise, (the "Documents"), as well as all copyright and all other intellectual property in the Documents, shall be owned by and remain the sole property of the *Owner*. The *Owner* shall own all rights of copyright therein and the Documents are not to be used by anyone without the permission of *Owner*.
- 1.12.2 The Documents shall be used by the *Contractor* only for purposes within the scope of this *Contract* and shall not be used for any other purpose without the express written consent of the *Owner*.
- 1.12.3 In the event that the Documents are used by the *Contractor* for purposes other than in connection with the *Work*, or if the Documents have been amended, altered or revised in any manner whatsoever without notice to the *Owner* and without receiving its prior written consent, the *Owner* does not warrant the fitness of same for the *Contractor's* use or purpose.

#### **GC 1.13 CONSTRUCTION LIENS**

- 1.13.1 The *Contractor* shall cause any and all construction liens relating to the *Work* preserved by any *Subcontractor*, sub-subcontractor, *Supplier*, *Contractor's* employees, or any other party to whom the *Contractor* is or may be responsible at law, to be discharged or vacated by the *Contractor* within seven (7) *Working Days* of the date of the *Contractor* becoming aware, all at the *Contractor's* sole expense.
- 1.13.2 If the *Contractor* fails to discharge or vacate any such lien, or to have any such written notice of lien withdrawn, then the *Owner* may, at its sole option, do so and set-off and deduct from any amount owing to the *Contractor*, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. 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 expenses of so doing.

#### **GC 1.14 PROJECT RECORDS**

- 1.14.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, daily reports, daily logs, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law, but in any event for not less than six (6) years from the date of *Substantial Performance of the Work* or until all claims have been settled, whichever is later. The records shall include detailed records of all actions taken by the *Contractor* related to security and health and safety legislation in the *Place of the Work*. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during

normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

#### **GC 1.15 CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS**

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

#### **GC 1.16 EVALUATION OF PERFORMANCE**

- 1.16.1 The *Owner*, during and/or upon completion of the *Work*, may monitor performance and conduct a formal performance evaluation of the *Contractor* and any *Subcontractor(s)* engaged by the *Contractor*.
- 1.16.2 The *Contractor* will be provided a copy of any evaluation completed in accordance paragraph 1.16.1 upon written request to the *Owner*.
- 1.16.3 Evaluations will be placed in the *Owner's* file and may be considered by the *Owner* when making future decisions regarding contract extensions and renewals, contract awards and procurement-related decisions including, but not limited to, the *Contractor* being excluded from eligibility to bid on future contracts with the *Owner*.
- 1.16.4 By agreeing to undertake the *Work*, the *Contractor* hereby authorizes the maintenance and release of information related to evaluations completed in accordance with paragraph 1.16.1, including, but not limited to, release to other municipalities or government bodies upon request by the *Owner*, where the *Contractor* has listed the *Owner* as a reference.

#### **GC 1.17 HUMAN RIGHTS CODE**

- 1.17.1 It is a condition of this *Contract* that no right under the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended, or other applicable Human Rights Policy will be infringed. Breach of this condition is sufficient grounds for termination of this *Contract*.

#### **GC 1.18 CONDONATION NOT A WAIVER**

- 1.18.1 Any failure by the *Owner* to insist in one or more instances upon strict performance by the *Contractor* of any of the terms or conditions of the *Contract* shall not be construed as a waiver by the *Owner* of its right to require strict performance of any such terms or conditions, and the obligations of the *Contractor* with respect to such performance shall continue in full force and effect.

### GC 1.19 INVALIDITY OF PROVISION

- 1.19.1 If any provision of this *Contract* shall be held to be invalid or unenforceable, it shall be considered separate and severable from this *Contract* and the remaining provisions of this *Contract* shall not be affected thereby and shall remain in full force and effect and shall be binding as though such invalid or unenforceable provision had not been included in this *Contract*.

### GC 1.20 AMENDMENT

- 1.20.1 The terms of this *Contract* may be amended, altered, substituted, deleted, replaced or added to only if such modification is in writing, signed by the parties and expressly stated to be a modification of this *Contract*.

### GC 1.21 COUNTERPARTS AND PDF DELIVERY

- 1.21.1 In its sole discretion, the *Owner* may request this *Contract* to be executed and delivered in counterparts by facsimile or by email transmission scanned in a Portable Document Format (PDF file) to the extent such electronic execution is permitted under Ontario's *Electronic Commerce Act, 2000*, S.O. 2000, c. 17. Each instrument when executed in counterpart, scanned and delivered shall be deemed an original and, collectively, all such instruments shall constitute the *Contract* to be valid and binding upon the parties. Any party executing this *Contract* and transmitting it via facsimile or email using PDF shall immediately upon request provide an originally signed counterpart of this *Contract*, provided however, that any failure to provide such originally signed counterpart shall not constitute a breach of this *Contract*.

### GC 1.22 INDEPENDENT LEGAL ADVICE

- 1.22.1 The *Contractor* acknowledges that it has been advised to consult a lawyer before executing this *Contract*. The *Contractor* represents and warrants that it has either obtained independent legal advice from its own lawyer with respect to the terms of this *Contract* prior to execution or declined seeking such independent legal advice. The *Contractor* represents and warrants that it has read this *Contract* and understands the terms and conditions and its rights and obligations under this *Contract* and agrees to be bound by it.

### GC 1.23 COMPLIANCE WITH AUTHORITIES

- 1.23.1 The *Contractor* shall comply with all municipal, provincial and federal statutes, regulations, codes and by-laws, and any and all applicable industry standards and guidelines. Without limiting the generality of the foregoing, the *Contractor* shall at all times, where applicable, comply and deliver the *Contractor's* services in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c.11, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, *Environmental Protection Act*, R.S.O. 1990, c. E.19, the OHSA, , and the City's Anti-Idling By-law 2013-194, available at [greatersudbury.ca/linkservid/F773ABED-F215-0E99-660FC5CA24131558/showMeta/0/](https://www.greatersudbury.ca/linkservid/F773ABED-F215-0E99-660FC5CA24131558/showMeta/0/), all as amended or re-enacted from time to time, and any successor legislation.
- 1.23.2 The *Contractor* shall obtain and maintain at its own cost such licenses, permits or other approvals from federal, provincial, municipal or other government authorities

and such private licenses, permits or approvals as may be necessary to enable the *Contractor* to furnish the *Contractor's* services pursuant to this *Contract*. The *Contractor* shall not do or cause to be done anything in violation of any such private licenses, permits consents and approvals and, if the attention of the *Contractor* is called to such violation on the part of the *Contractor*, the *Contractor* shall immediately, at its sole expense, cease such action and correct the violation.

#### **GC 1.24 TAXES, REMITTANCES AND WSIA**

- 1.24.1 The *Contractor* agrees that it is not, nor is any person hired by it, covered by the *Owner* pursuant to the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Schedule A, as amended (the "WSIA"), and the *Contractor* shall be responsible for and shall pay all dues and assessments payable under the WSIA, whether provincial or federal in respect to the *Contractor's*, the *Contractor's* employees or operators, where applicable. The *Contractor*, shall upon request, furnish the *Owner* with a valid Clearance Certificate or equivalent establishing that the *Contractor* has complied with the provisions of the WSIA or proof of exemption from such requirements. If the *Contractor* fails to provide the evidence required by the *Owner*, the *Owner* shall be entitled to withhold payment of such sums of money due to the *Contractor* in an amount sufficient to satisfy assessments due by the *Contractor* and the *Owner* shall have the right to pay same to the appropriate agency.
- 1.24.2 The *Contractor* acknowledges that it will be the responsibility of the *Contractor* to collect and remit to all relevant governmental authorities all applicable taxes and duties.
- 1.24.3 The *Contractor* shall be responsible for and shall pay when due to all relevant governmental authorities, premiums, or remittances on account of income and, without limiting the generality, those required pursuant to the *Canada Pension Plan*, R.S.C., 1985, c. C-8, *Employment Insurance Act*, S.C. 1996, c. 23, and the *Income Tax Act*, R.S.C., 1985, c. 1 (5<sup>th</sup> Supp.), as amended."

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

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

- .1 Add the word "schedules," after the word "techniques" in the first sentence of paragraph 2.2.5 and add the words "or to adhere to the *Project Schedule*" to the end of the second sentence.
- .2 Delete the words "Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the" at the beginning of paragraph 2.2.6 and replace with "The".
- .3 Add the following to the end of paragraph 2.2.8:  
  
"The *Contractor* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings in accordance with paragraphs 2.2.6, 2.2.7 and 2.2.8."
- .4 Add the following to the end of paragraph 2.2.10:  
  
"The *Consultant's* obligation to make findings on a large claim or large number of claims is subject to the terms and conditions of the *Owner / Consultant* agreement."
- .5 Add the following to the end of paragraph 2.2.12:

"If, in the opinion of the *Contractor*, performance of the *Supplemental Instructions* will result in an increase in the *Contract Price* or to the *Contract Time*, the *Contractor* shall, within ten (10) *Working Days* of receipt of the *Supplemental Instructions*, provide the *Consultant* with *Notice in Writing* of the cause and duration of the delay and of any increase in *Contract Price*. Failure to provide the *Notice in Writing* shall be a deemed acceptance of the *Supplemental Instructions* by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*."

.6 Delete paragraph 2.2.13 in its entirety and replace with the following:

"2.2.13 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples, and other *Contractor's Submittals* which are provided, in accordance with the *Contract Documents*."

.7 Add the following new paragraphs 2.2.19 and 2.2.20:

"2.2.19 The *Consultant* will inform the *Owner* that the *Consultant* has received a:

- .1 *Draft Proper Invoice* from the *Contractor* on the same day that the *Draft Proper Invoice* is received by the *Consultant* as provided in paragraph 5.2.2 of GC 5.2 – APPLICATIONS FOR PAYMENT and shall provide a copy of such *Draft Proper Invoice* to the *Owner* on the same day that it is received by the *Consultant*, and
- .2 *Proper Invoice* from the *Contractor* on the same day that the *Proper Invoice* is received by the *Consultant* as provided in paragraph 5.2.6 of GC 5.2 – APPLICATIONS FOR PAYMENT and shall provide a copy of such *Proper Invoice* to the *Owner* on the same day that it is received by the *Consultant*."

"2.2.20 The *Consultant* will conduct reviews of the *Work* to determine the date of *Total Performance of the Work* as provided in paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT."

#### 4.6 GC 2.3 REVIEW AND INSPECTION OF THE WORK

.1 Add the following new paragraphs 2.3.8, 2.3.9 and 2.3.10:

"2.3.8 The *Contractor* shall immediately inform the *Owner* and the *Consultant* of any notices, warnings or asserted violations issued by any regulatory or government agencies having jurisdiction relating to the *Work*.

2.3.9 No review of the *Work* by the *Owner* or the *Consultant* shall relieve the *Contractor* from its responsibility to perform the *Work* in accordance with the *Contract Documents*.

2.3.10 Where standards of performance are specified in the *Contract Documents* and the *Work* does not comply with the performance as specified, such deficiency shall be corrected as directed by the *Consultant*. Any testing of work identified as defective in accordance with GC 2.4 – DEFECTIVE WORK, including retesting required by the *Owner* to verify performance, shall be done at the *Contractor's* expense."

#### 4.7 GC 2.4 DEFECTIVE WORK

.1 Add the following paragraph to the end of paragraph 2.4.1:

“The correction of defective *Work* shall be at the *Contractor’s* expense. The *Contractor* shall rectify, in a manner acceptable to the *Consultant*, all defective or deficient *Work*, whether or not specifically identified by the *Consultant*, and the *Contractor* shall prioritize the correction of any such *Work* so as not to interfere with, or derogate from, the *Contract Time*. The *Owner* reserves the right to contract out the correction of deficiencies if same has not been completed within a reasonable amount of time, as determined by the *Consultant*, acting reasonably, without prejudice to any other right or remedy and without affecting the warranty period applicable to such deficient work. Any testing (including retesting by the *Owner*) to ensure that the defective or deficient *Work* has been corrected and complies with the *Contract Documents*, including any standards of performance specified therein, shall be carried out at the *Contractor’s* expense and shall not entitle the *Contractor* to an extension of the *Contract Time*.”

- .2 Delete the words “the difference in value between the work as performed and that called for by” in the second and third lines of paragraph 2.4.3 and replace with “the value of such work as is necessary to correct any non-compliance with”.

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

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

- .1 Add the word “schedules,” after the word “techniques” in the first line of paragraph 3.1.2.

- .2 Add the following new paragraphs 3.1.3, 3.1.4 and 3.1.5:

“3.1.3 The *Contractor* shall perform the *Work* in accordance with the *Standard of Care* and shall employ only good workmanship subject to specific requirements of the *Contract Documents*, and in accordance with applicable laws, ordinances, rules, regulations, or codes relating to the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* is responsible for the intermeshing of the various parts of the *Work* so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the various *Subcontractors* and *Suppliers*, or between any of the *Subcontractors* and *Suppliers* and the *Contractor* as to where the *Work* of one begins or ends with relation to the *Work* of the other.

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

3.1.5 The *Contractor* shall employ an experienced and licensed land surveyor when establishing and checking grades, bench marks, references, elevations, points and lines as from time to time may be required for the purposes of the *Work*, or lay out of same, and the *Contractor* shall at every appropriate stage of the *Work*, take all proper steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the site and in the exact



position (or respective positions) established for such *Work* and shall assume full responsibility for the correctness of all such lines, levels and measurements.”

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

.1 Add the following new paragraph 3.2.3.5:

“3.2.3.5 Subject to GC 9.4 – CONSTRUCTION SAFETY, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work* for the *Owner’s* own forces and for Other Contractors, including all of the responsibilities of the contractor or constructor as may apply in accordance with the applicable health and safety legislation of the *Place of the Work* as defined in the *OHSA*.”

.2 Add the following new paragraph 3.2.7:

“3.2.7 The *Contractor* shall act as “constructor” under the *OHSA* for all Other Contractors, the *Owner’s* own forces, and the *Consultant*. The *Owner* shall ensure that its own forces and Other Contractors comply with all health and safety precautions and programs established by the *Contractor* as constructor at the *Place of the Work*.”

#### 4.10 GC 3.4 CONSTRUCTION SCHEDULE

.1 Delete paragraph 3.4.1 in its entirety and replace with the following:

3.4.1 “The *Contractor* shall:

- .1 within ten (10) *Working Days* following the notice of award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a *Construction Schedule* that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that 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 project 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 *Construction Schedule*. The *Contractor* shall provide the *Construction Schedule* and any successor or revised *Construction Schedule* to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ project scheduling software, the *Contractor* shall provide the *Construction Schedule* to the *Owner* in editable format, together with a record version in PDF format. Once accepted by the *Owner* and the *Consultant*, the *Construction Schedule* submitted by the *Contractor* shall become the baseline *Construction Schedule*. If the *Construction Schedule* submitted by the *Contractor* is not accepted by the *Owner* and the *Consultant*, the *Contractor* shall make revisions to the *Construction Schedule* until it is accepted by the *Owner* and the *Consultant*,
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline *Construction Schedule* or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE,

- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline *Construction Schedule*, or any successor or revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, update the *Construction Schedule* on a bi-weekly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the *Construction Schedule*, and
  - .4 if, after applying the expertise and resources required under paragraph 3.4.1.2, the *Contractor* forms the opinion that the variation or slippage in the *Construction Schedule* reported pursuant to 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* under PART 6 – CHANGES IN THE WORK.”
- .2 Add the following new paragraph 3.4.2:
- “3.4.2 If, at any time, the *Owner* or the *Consultant* advise the *Contractor* that it appears 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 paragraph 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.”

#### 4.11 GC 3.5 SUPERVISION

- .1 Add the words “and upon the *Contractor* obtaining the *Owner’s* written consent, which consent will not be unreasonably withheld.” at the end of paragraph 3.5.1.
- .2 Add the following new paragraphs 3.5.3 to 3.5.7:
  - “3.5.3 The *Owner* may, with reasonable cause, at any time during the course of the *Work*, order the *Contractor* to remove from the *Project* any representative or employee of the *Contractor*, *Subcontractors* or *Suppliers* who, in the opinion of the *Owner*, are a detriment to the *Project*.
  - 3.5.4 The *Contractor* shall furnish competent and adequate staff, who shall be in attendance at the *Place of the Work* at all times, as necessary, for the proper administration, co-ordination, supervision and superintendence of the *Work*; organize the procurement of all *Products* and *Construction Equipment* so that they will be available at the time they are needed for the *Work*; and keep an adequate force of skilled workers on the job to complete the *Work* in accordance with all requirements of the *Contract Documents*.
  - 3.5.5 Prior to commencement of the *Work*, the *Contractor* shall select a competent and experienced full time *Project* manager (the “Project Manager”) who shall be in attendance at the *Place of the Work* or on the road and engaged in the *Work* at all times, and a competent and experienced full time site supervisor (the “Site Supervisor”) who shall be in attendance at the *Place of the Work* at all times. The Project Manager shall have full responsibility for the prosecution of the *Work*, with full authority to act in all matters as may be necessary for the proper co-ordination, supervision, direction and technical administration of the *Work*, who shall attend site meetings in order to render reports on the progress of the *Work* and who shall have

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

3.5.6 The Project Manager and Site Supervisor shall represent the *Contractor* at the *Place of the Work* and notices and instructions given to the Project Manager and/or Site Supervisor shall be held to have been received by the *Contractor*.

3.5.7 The *Contractor* shall provide the *Owner* and the *Consultant* with the names, work addresses and telephone numbers of the Project Manager, the Site Supervisor and other responsible field persons who may be contacted for emergency and other reasons during non-working hours.”

#### 4.12 GC 3.6 SUBCONTRACTORS AND SUPPLIERS

.1 Add the following at the end of paragraph 3.6.2:

“The contracts entered into by the *Contractor* with *Subcontractors* and *Suppliers* shall comply with the terms of paragraph 1.1.16 of GC 1.1 – CONTRACT DOCUMENTS, unless the *Owner* otherwise agrees in writing. The *Contractor* may not agree to an amendment, change or other adjustment to a contract with a *Subcontractor* or *Supplier*, including pricing, after the pricing has been reviewed and approved by the *Owner*. No review by the *Owner* of a bid or other procurement document, nor acceptance of a *Subcontractor* or *Supplier* by the *Owner*, nor review by the *Owner* of a contract with a *Subcontractor* or *Supplier* relieves the *Contractor’s* obligation under this paragraph. For greater certainty, any agreement by the *Contractor* to an increase in the amounts owing to a *Subcontractor* or *Supplier* without a *Change Order* will be for the *Contractor’s* account.”

.2 Delete the words “, through the *Consultant*,” in paragraph 3.6.6.

#### 4.13 GC 3.7 LABOUR AND PRODUCTS

.1 Delete paragraph 3.7.3 in its entirety and replace with the following:

“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 the following new paragraphs 3.7.4, 3.7.5, 3.7.6 and 3.7.7:

“3.7.4 The responsibility as to which *Subcontractor* provides labour, materials, products, and services rest solely with the *Contractor*.

3.7.5 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and Other Contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

3.7.6 All *Products* and materials paid for by the *Owner* as part of the *Contract Price* are deemed to be the property of the *Owner*; however, the *Owner* shall be under no

liability for loss thereof or damage thereto arising from any cause whatsoever. The *Contractor* shall ensure that the price agreed to with a *Subcontractor* or *Supplier* includes the cost of delivery and storage of all *Products*.

3.7.7 The *Contractor* represents and warrants that the *Products* provided for in accordance with the *Contract* are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*.”

#### 4.14 GC 3.8 SHOP DRAWINGS

- .1 Replace the title of GC 3.8 to read: “**GC 3.8 SHOP DRAWINGS AND OTHER SUBMITTALS**”.
- .2 Add the words “and *Submittals*” after the words “*Shop Drawings*” in paragraphs 3.8.1, 3.8.2, 3.8.3.1, 3.8.3.2, 3.8.5, 3.8.6, and 3.8.7.
- .3 Delete the last Sentence in paragraph 3.8.5.
- .4 Delete paragraph 3.8.7 in its entirety and replace with the following:

“3.8.7 The *Consultant* will review and return *Shop Drawings* and *Submittals* in accordance with the *Shop Drawings* and *Submittals* schedule prepared by the *Contractor* and agreed upon at the commencement of the *Work* or, in the absence of such schedule, with reasonable promptness. The *Contractor* shall allow the *Consultant* a minimum of fifteen (15) *Working Days* to review *Shop Drawings* and *Submittals* from the date of receipt to the date of issuance, for return by post or courier, based upon a regular and reasonable flow of *Shop Drawings* and *Submittals*. If the *Contractor* is required to resubmit *Shop Drawings* or *Submittals*, the *Consultant* shall be allowed an additional fifteen (15) *Working Days* from the receipt of resubmission.”
- .5 Add the following new paragraphs 3.8.8 to 3.8.12:

“3.8.8 Prior to the first application for payment, the *Contractor* shall prepare a schedule of the dates for provision, review and return of *Shop Drawings* and *Submittals* and submit it to the *Consultant* for review.

3.8.9 If at any time, the *Contractor* submits an unusually large number of *Shop Drawings* or *Submittals*, such that the *Consultant* cannot process within fifteen (15) *Working Days*, the *Consultant*, within five (5) *Working Days* of receipt of such *Shop Drawings* or *Submittals*, will provide the *Contractor* with an estimate of the time necessary for processing. The *Contractor* shall periodically resubmit the *Shop Drawings* and *Submittals* schedule to correspond to changes in the *Construction Schedule*. The schedule for resubmissions shall maintain the minimum fifteen (15) *Working Day* period for the *Consultant’s* review.

3.8.10 The *Consultant’s* review will not include review fabrication processes, construction means or methods, the coordination of trades, or safety factors relating to the construction for which the *Contractor* has the sole responsibility in connection therewith. Should any errors in dimensions, or interferences with other work be noted by the *Consultant* in his review of the *Shop Drawings* or *Submittals*, the attention of the *Contractor* will be called to them, but review of *Shop Drawings* or *Submittals* by the *Consultant* shall not in any way whatsoever relieve the *Contractor*

from the responsibilities indicated for the preparation and submission of *Shop Drawings* or other *Submittals*.

- 3.8.11 Only *Shop Drawings* indicated as 'Reviewed', 'Reviewed for General Design', 'Reviewed as Noted' or 'Reviewed as Modified' and bearing the *Consultant's* review date and initials, shall be used at the *Place of the Work* or for the manufacture or fabrication of *Products*. The review of *Shop Drawings* or other *Submittals*, by the *Consultant*, does not authorize a change in the *Contract Price* or *Contract Time*.
- 3.8.12 In the event that work or materials are condemned and the *Contractor* does not remove such condemned work or materials within the time fixed by written notice, the *Owner* may remove them and may store such materials at the expense of the *Contractor*. If the *Contractor* does not pay the expense of such removal within five (5) calendar days thereafter, the *Owner* may, upon ten (10) days' written notice sell such materials, with the proceeds thereof, if any, after deducting all the costs and expenses that should have been borne by the *Contractor*, being returned to the *Contractor*."

#### 4.15 ADDITIONAL GENERAL CONDITIONS TO PART 3

- .1 Add the following new General Conditions after GC 3.8 – SHOP DRAWINGS AND SUBMITTALS:

##### **"GC 3.9 PERFORMANCE BY CONTRACTOR**

- 3.9.1 In performing the *Work*, the *Contractor* shall exercise a standard of care, skill, judgment and diligence described in this GC 3.9 (the "***Standard of Care***").
- 3.9.2 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill, judgment and diligence that would normally be provided by an experienced, skilled and prudent contractor supplying similar services for similar projects, utilizing trained, experienced construction management personnel employing current industry standard construction management practices and techniques in an efficient manner. The *Contractor* shall provide an adequate and appropriate number of qualified construction management, accounts payable, and support staff to perform the duties and responsibilities assumed by the *Contractor* under the *Contract*. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*. For greater certainty, the *Contractor* is not a professional architect or engineer, and neither the *Standard of Care* nor the scope of the *Work* include any design, architectural, engineering or similar consulting engineering services or work.
- 3.9.3 In addition, the *Contractor* shall (1) take all reasonable steps (as would a prudent owner of comparable property) with respect to the proper protection of and accounting for the *Project*, including maintaining adequate books and records with respect to the *Work*; (2) cause the *Work* to be constructed in a professional manner consistent with the standard of comparable projects (subject, in all events, to the availability of funds required to be provided by the *Owner*); and (iii) deal at "arms-length" with all third parties.

- 3.9.4 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 its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation, and
  - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.
- 3.9.5 The *Contractor* shall also ensure that:
- .1 sufficient staff of qualified and competent personnel are employed by the *Contractor* in order to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation;
  - .2 sufficient competent and experienced staff are present at the *Place of the Work* for the necessary duration to ensure timely completion of the *Work* in accordance with the *Standard of Care*;
  - .3 if the *Owner* provides *Notice in Writing* to the *Contractor* giving good reason why it no longer wishes the project director, senior project manager or the general superintendent to be engaged on the *Project*, the *Contractor* shall comply with such request and promptly use reasonable efforts to find a replacement candidate acceptable to the *Owner* within sixty (60) days of the *Owner's* request, during which time the existing project director, senior project manager or the general superintendent shall continue to perform the *Work*;
  - .4 sufficient goods, equipment and services required for the construction of the *Project* that are not the responsibility of any *Subcontractors* and *Suppliers* (including winter protection, temporary gas, heating equipment and fuel consumption, hoarding and gates, garbage bins and disposal, site security and safety, construction signage, construction hoists, general construction supplies, equipment rental, street cleaning/snow removal, final suite/window cleaning, temporary toilets, internet, phone and IT, surveying and insurance) are procured for the *Project*, and that the reimbursable expenses relating thereto are managed in a cost effective manner; and
  - .5 all *Contractor* senior personnel shall make themselves available to meet frequently, and as reasonably requested by the *Owner*, at the *Owner's* head office, in person or virtually by video conferencing.

### GC 3.10 INTERFERENCE

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

- .4 subject to work restrictions set out elsewhere in the *Contract Documents*, any work that generates excessive noise shall not be carried out by the *Contractor* between the hours of 9:00 p.m. and 7:00 a.m. or on weekends and holidays as may be agreed upon between the *Contractor* and the *Owner*, subject to applicable by-laws.

### GC 3.11 RIGHT OF ENTRY

- 3.11.1 The *Owner* shall have the right to enter or occupy the *Place of the Work* in whole or in part for the purpose of placing materials, fittings and equipment or for other uses at any time before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* or achieving *Substantial Performance of the Work* within the *Contract Time*. Such entry or occupation or use of equipment or systems shall not be considered as occupancy for the purposes of GC 12.2 – EARLY OCCUPANCY or as acceptance of the *Work* in whole or in part, or in any way relieve the *Contractor* from its responsibility as constructor under the *OHSA* or to complete the *Contract*.”

## PART 4 ALLOWANCES

### 4.16 GC 4.1 CASH ALLOWANCES

- .1 Delete paragraph 4.1.7 in its entirety and replace with the following:  
“4.1.7 The *Contractor* shall prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.”
- .2 Add the following 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.”

## PART 5 PAYMENT

### 4.17 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- .1 Replace the title of CG 5.1 to read, “**GC 5.1 FINANCING INFORMATION REQUIRED**”.
- .2 Delete paragraph 5.1.1 in its entirety and replace with the following:  
“5.1.1 The *Owner* and *Contractor* shall provide each other with a 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.

### 4.18 GC 5.2 APPLICATIONS FOR PAYMENT

- .1 Add the word “progress” after the words “Applications for” in the first line of paragraph 5.2.1.
- .2 Delete paragraph 5.2.2 in its entirety and replace with the following:

“5.2.2 The *Contractor* shall submit a *Draft Proper Invoice* to the *Consultant* for an amount proportionate to the amount of the *Contract of Work* performed and *Products* delivered and incorporated into the *Work* no later than five (5) calendar days following the last calendar day of the monthly payment period. Only portable document format (PDF - non-editable) file attachments will be accepted by the *Consultant*.”

.3 Delete paragraph 5.2.3 in its entirety and replace with the following:

“5.2.3 The *Consultant* will review the *Draft Proper Invoice* given by the *Contractor* to confirm compliance with the *Construction Act* and the *Contract* and copy the *Owner* on the same day of receipt. The *Contractor* shall correspond with the *Consultant* as necessary to facilitate resolution of any disputes arising the *Draft Proper Invoice* from such draft invoice(s). For greater certainty, such evaluation or comments by the *Consultant* is not a condition precedent for the submission of a *Proper Invoice* by the *Contractor* pursuant to paragraph 5.2.6.”

.4 Delete paragraph 5.2.6 in its entirety and replace with the following:

“5.2.6 The *Contractor* shall submit a *Proper Invoice* to the *Consultant* for an amount proportionate to the amount of the *Contract of Work* performed and *Products* delivered and incorporated into the *Work* on or after ten (10) calendar days following the *Contractor’s* submission of a *Draft Proper Invoice* to the *Consultant*. Only portable document format (PDF - non-editable) file attachments will be accepted by the *Consultant*.”

.5 Delete paragraph 5.2.8 in its entirety and replace with the following:

“5.2.8 Any *Proper Invoice* that is submitted before ten (10) calendar days following the *Consultant’s* receipt of a *Draft Proper Invoice* shall not constitute a *Proper Invoice* or be considered received by the *Consultant* until after such ten (10) calendar days.”

.6 Add the following new paragraphs 5.2.9, 5.2.10 and 5.2.11:

“5.2.9 A *Proper Invoice* is deemed to be received by the *Owner* on the date that it is received by the *Consultant*, subject to paragraph 5.2.7.

5.2.10 A *Proper Invoice* may be revised by the *Contractor* after it has been given to the *Owner*, provided that the *Consultant* agrees in advance to the revision and the *Proper Invoice* continues to meet the definition of a *Proper Invoice* after it has been revised.

5.2.11 Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to GC 1.10 – OWNERSHIP OF MATERIALS.”

#### 4.19 GC 5.3 PAYMENT

.1 Add the word “progress” after the words “application for” in the first line of paragraph 5.3.1.

.2 Add at the start of paragraph 5.3.1.1 the following:

“The *Consultant* will inform the *Owner* that the *Consultant* has received a *Proper Invoice* from the *Contractor* on the same calendar day that the *Proper Invoice* is received by the *Consultant*.”



The *Consultant* will provide a copy of such *Proper Invoice* to the *Owner* on the day that it is received by the *Consultant* from the *Contractor*.”

- .3 Add the word “progress” after the words “application for” in the second line of paragraph 5.3.1.1.
- .4 Delete the second sentence of paragraph 5.3.1.1.
- .5 Delete paragraph 5.3.1.2 in its entirety and replace with the following:

“5.3.1.2 subject to the giving of a notice of non-payment under paragraph 5.3.1.4, the *Owner* shall make payment to the *Contractor* on account as provided in ARTICLE A5 – PAYMENT no later than twenty-eight (28) calendar days after receipt of a *Proper Invoice*,”
- .6 Add the following new paragraphs 5.3.1.3, 5.3.1.4 and 5.3.1.5:

“5.3.1.3 if the *Contractor* fails to submit an invoice in compliance with the requirements of a *Proper Invoice*, the *Owner* shall not be required to make payment to the *Contractor* within the twenty-eight (28) calendar days, which shall not commence until such time as the *Owner* has received a compliant *Proper Invoice* from the *Contractor*,

5.3.1.4 in the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Proper Invoice*, the *Owner* shall, no later than fourteen (14) calendar days after receiving the *Proper Invoice* from the *Contractor*, give to the *Contractor* a notice of non-payment, in the form and manner prescribed in the *Act*, specifying the amount of the *Proper Invoice* that is not being paid and detailing the reasons for non-payment,

5.3.1.5 the *Contractor* shall be deemed to have been paid on the calendar day that the *Contractor* is advised by the *Owner*, or its representative, in writing, that payment has been processed and will be deposited to the bank account provided by the *Contractor*.”

#### 4.20 GC 5.4 SUBSTANTIAL PERFORMANCE OF WORK AND PAYMENT OF HOLDBACK

- .1 Delete paragraph 5.4.5 in its entirety.
- .2 Add the following new paragraphs 5.4.7 to 5.4.14:4

“5.4.7 The *Contractor*, shall attain *Total Performance of the Work*, including the rectification of all deficiencies, within thirty (30) *Working Days* of attaining *Substantial Performance of the Work* date, save and except for work that may be deferred to a later date in the sole discretion of the *Owner*.

5.4.8 The *Contractor* shall co-operate with the *Consultant* and the *Owner* in establishing a deficiency list before *Substantial Performance of the Work*. The *Contractor* shall complete the *Work* noted on the deficiency list expeditiously and at the discretion and convenience of the *Owner*.

- 5.4.9 Acceptance of the *Work* by the *Owner* does not relieve the *Contractor* from correcting deficiencies that are missed at the time of preparing the deficiency list, or hidden deficiencies, which become apparent during the warranty period.
- 5.4.10 Within seven (7) *Working Days* of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Act*) 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.
- 5.4.11 In addition to the requirements of the *Act*, a condition precedent to *Substantial Performance of the Work* shall, in an acceptable manner and where applicable, include submission to the *Consultant* of the following materials and documentation:
- .1 receipt and submission of the municipal occupancy permit,
  - .2 submission to and acceptance by the *Consultant* of interim accounts of the *Work* showing all additions and deletions to the *Contract Price*,
  - .3 existing reports, correspondence and approvals from governing authorities having jurisdiction in the *Place of the Work*, including, but not limited to:
    - (1) receipt and submission of elevator inspection and approvals,
    - (2) verification reports confirming systems and equipment started up and tested, except for final balancing,
    - (3) verification reports confirming all life safety systems verified by *Contractor* as complying with the requirements of the *Contract Documents*,
    - (4) inspection reports from local fire authority confirming that life safety systems installed are acceptable, and
    - (5) receipt and submission of sprinkler system approval from the Insurers' Advisory Organization,
  - .4 submit a written declaration that no liens or written notices of liens have been received; and
  - .5 submit a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB) confirming that all assessments or compensation to the WSIB have been paid.
- 5.4.12 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.11, 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*. Any documents or materials not delivered in accordance with paragraph 5.4.11 shall be delivered as provided in paragraph 5.5.1 of GC 5.5 – FINAL PAYMENT.
- 5.4.13 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, if any,
- .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 *Contractor* expressly acknowledges that the submission of the aforesaid complete statutory declaration is a condition precedent to the *Contractor* receiving payment from the *Owner* of any amount pertaining to any claim or dispute referred to in this paragraph, and that 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 unresolved dispute or claim between the *Contractor* and the *Owner*.

- 5.4.14 The publication by the *Contractor* of the Certificate of *Substantial Performance of the Work* shall constitute a waiver by the *Contractor* for all claims whatsoever against the *Owner* under this *Contract*, whether for a change in the *Contract Price*, extension of *Contract Time* or otherwise, except those made in writing, prior to the *Contractor's* application for payment upon *Substantial Performance of the Work*, and still unsettled."

#### 4.21 GC 5.5 FINAL PAYMENT

- .1 Delete paragraph 5.5.1 in its entirety and replace with the following:
  - "5.5.1 When the *Contractor* considers that the *Work* has been totally performed, the *Contractor* shall submit an application for final payment, together with a written application for review by the *Consultant* to establish *Total Performance of the Work*. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.11 of CG 5.4 – SUBSTANTIAL PERFORMANCE OF WORK AND PAYMENT OF HOLDBACK together with complete *As-Built Drawings*. The *Contractor* shall have no right to receive payment of the amount so withheld until such time as all required documents and materials referenced in paragraph 5.4.11 of CG 5.4 – SUBSTANTIAL PERFORMANCE OF WORK AND PAYMENT OF HOLDBACK have been delivered."
- .2 Add after "validity of the application" in the second line of paragraph 5.5.2:
  - "and:
    - .1 advise the *Contractor* in writing that the *Work* is not totally performed and give reasons why, or
    - .2 state the date of *Total Performance of the Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*."

- .3 Delete the words “finds the *Contractor’s* application for final payment valid” in the second and third lines of paragraph 5.5.2 and replace with “issues the certificate of *Total Performance of the Work*”.
- .4 Delete paragraph 5.5.4 in its entirety and replace with the following:
  - 5.5.4 “Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS’ COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than twenty (20) *Working Days* after the issuance of a final certificate for payment, pay the *Contractor* as provided in ARTICLE A-5 – PAYMENT and in any event, in compliance with *Payment Legislation*.”

#### 4.22 GC 5.8 PROGRESSIVE RELEASE OF HOLDBACK

- .1 Add the following new General Conditions after GC 5.7 – NON-CONFORMING WORK:

##### “GC 5.8 PROGRESSIVE RELEASE OF HOLDBACK

- “5.8.1 Provided that the *Contract Price* is greater than ten million dollars (\$10,000,000) (or such higher amount as set out in the Regulations under the *Act*) and the *Owner* agrees, the *Contractor* may apply for the payment of holdback that has accrued under the *Contract* over the previous full calendar year, and the *Owner* shall pay such holdback to the *Contractor* on the 61<sup>st</sup> day after all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under the *Act* (“**Annual Holdback Payment Date**”), subject to the *Act* and to the following:
  - .1 the *Contractor* submits to the *Owner* all of the following:
    - (1) a statutory declaration signed by the *Contractor* affirming (i) the amount of the *Contract Price* paid in that year, (ii) the amount of the *Contract Price* remaining under the *Contract* (including amounts of all *Change Orders* and *Change Directives*), (iii) the amount of the holdback accrued during that year, (iv) there are no adjudications or claims (including lien claims) are outstanding between the *Contractor* and any of its *Subcontractors* or *Suppliers*, (v) there are no liens registered against title to the *Place of the Work*, and (vi) the *Contractor* has not received any notice in writing of a lien claim;
    - (2) evidence substantiating the amount of the accrued holdback claimed in the *Contractor’s* application for payment, if requested by the *Owner* or the *Consultant*;
    - (3) the name, title, telephone number and mailing address of the person to whom payment is to be sent;
    - (4) the *Contractor’s* HST number;
    - (5) a CCDC 9 Statutory Declaration in the most current form from the *Contractor* and all *Subcontractors* and *Suppliers* for which the holdback has been accrued; and
    - (6) a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB) confirming that all assessments or compensation to the WSIB have been paid at the time the Proper Invoice is submitted;
  - .2 the *Contractor* is not in default at the time of its application for payment or on the *Annual Holdback Payment Date*;
  - .3 the *Contractor* agrees to pay to each applicable *Subcontractor* and *Supplier* their respect amount of the accrued holdback paid by the *Owner*;

- .4 as of the *Annual Holdback Payment Date*, (i) there are no preserved or perfected liens in respect of the *Contract*, (ii) all liens in respect of the *Contract* have been satisfied, discharged or otherwise provided for under the *Act*, and (iii) the *Owner* has not issued to the *Contractor* a notice of non-payment of holdback; and
- .5 the *Contractor* agrees to defend, indemnify and hold harmless the *Indemnified Parties* (as defined in GC 13.1.2) from and against all actions, claims, demands, losses, costs (including fees and disbursements), damages, suits or proceedings whatsoever which may be brought against or made upon the *Indemnified Parties* and against all loss, liability, judgments, claims, suits, demands or expenses which the *Indemnified Parties* may sustain, suffer or be put to resulting from or arising out of the payment of holdback pursuant to this paragraph.”

## PART 6 CHANGES IN THE WORK

### 4.23 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

- .1 Add the following new paragraphs 6.1.3, 6.1.4 and 6.1.5:
  - “6.1.3 The *Contractor* shall not be entitled to receive any additional compensation arising out of changes to the *Work* other than the amounts determined and agreed to under GC 6.2 – CHANGE ORDER, or as provided in GC 6.3 – CHANGE DIRECTIVE.
  - 6.1.4 For the purpose of valuing expenditures under cash allowances pursuant to paragraph 4.1.4 of GC 4.1 – CASH ALLOWANCES, expenditures under the contingency allowance pursuant to paragraph 4.2.2 of GC 4.2 – CONTINGENCY ALLOWANCE, changes which result in an increase in the *Contract Price*, and any other items under the *Contract Documents* which provide for payment to the *Contractor* of *Overhead* and profit, allowances for *Overhead* and profit shall be included in the percentages set out in paragraph 6.2.4 of GC 6.2 – CHANGE ORDER.
  - 6.1.5 The *Contractor’s* percentage fee mark-up on changes is intended to cover all general expenses and *Overhead* costs incurred by the *Contractor* in relation to the change. For greater certainty, the following items of cost to the *Contractor* in relation to any changes are covered by and included in the *Contractor’s Overhead* and profit percentage fee mark-up on changes:
    - .1 project management costs;
    - .2 estimating, site supervision, safety, preparation of *As-Built Drawings*, coordination and administration costs;
    - .3 warranty costs;
    - .4 bonding and insurance costs; and
    - .5 general clean-up and disposal costs.”

### 4.24 GC 6.2 CHANGE ORDER

- .1 Add the following new paragraphs 6.2.3 to 6.2.8:
  - “6.2.3 The value of a *Change Order* shall be determined in one (1) or more of the following methods to be determined by the *Consultant*.

- .1 by quotation and acceptance in a lump sum. All quotations must contain an itemized and complete breakdown of costs, including hours and hourly rates of labour, payroll burden, itemized costs of materials, quantity of materials, *Products*, and all other costs to perform the change in the *Work*, including the *Contractor's* mark-up fee set out in paragraph 6.2.4, such that the quotations are capable of being evaluated by the *Consultant*. The *Contractor* shall require *Subcontractors* and *Suppliers* to supply similar information to the *Consultant*,
  - .2 by unit prices set out in the *Contract* or subsequently agreed upon. Unit prices shall include materials, labour, equipment, delivery, freight, handling, disposal, statutory charges, supervisions, testing, all applicable duties, brokerage charges, import charges, taxes, bonding, *Overhead*, profit and all relative charges and expenses including, but not limited to, office administration charges such as disbursements, travel costs, printing and incidentals to the *Contractor*, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity, and
  - .3 by cost and a fixed or percentage fee.
- 6.2.4 In the case of changes in the *Work* to be paid for under methods .1 and .2 of paragraph 6.2.3, the *Contractor* and *Subcontractor*, respectively, may add to the reasonable net cost of additional work a fee, or mark-up, inclusive of *Overhead* and profit, limited to the following:
- .1 the *Subcontractor* may add to the total net cost of labour and materials, a fee, or mark-up, equal to ten percent (10%) of such cost;
  - .2 the *Contractor* may add to the net cost of additional work by a *Subcontractor*, a fee, or mark-up, equal to ten percent (10%) of the total sum quoted by such *Subcontractor*,
  - .3 the *Contractor* may add to the total net cost of labour and materials of additional work to be carried out by his own forces a fee, or markup equal to fifteen percent (15%) of such cost;
  - .4 for substitution of building material(s) and/or building component(s) with no additional labour content by the *Contractor*, a total mark-up of five percent (5%) shall be allowed on such change regardless of the value of the change.
  - .5 for substitution of building material(s) and/or building component(s) with no additional labour content by *Subcontractor(s)*, the *Subcontractor(s)* shall be allowed a total mark-up of five percent (5%) and the *Contractor* shall be allowed an additional total markup of five percent (5%) regardless of the value of the change; and
  - .6 such fee or mark-up, by the *Contractor* and *Subcontractor* respectively, shall be based on net additional cost for any one change in the *Work*, such net additional cost being derived by deducting credits for labour and materials involved in deleted work from the cost of labour and materials involved in additional work. When quantities of the same product or material are changed in the same change in the *Work*, the change in the *Contract Price* shall be based on the net difference in quantity between the product or material deleted and the same product or material added. The procedure of crediting deleted material at a certain unit cost and then charging the aggregate quantity of the same material at a higher unit cost will not be accepted.
- 6.2.5 In the case of a change in the *Work* to be paid for under method (.2) of paragraph 6.2.3, involving a class of work for which a unit price was required to be quoted in the tender proposal, the cost to be paid for such class of work is derived by deducting

quantity of deleted work involved in such change from the quantity of additional work involved in such change, multiplied by the applicable unit prices quoted.

- 6.2.6 Except where unit prices have been quoted, the value of a change in the *Work* shall be determined by method (.3) of paragraph 6.2.3.
- 6.2.7 Where the additional cost of a change in the *Work* has been quoted by the *Contractor* and accepted by the *Owner* in the form of a lump sum as evidenced by the issuance of a *Change Order*, such quoted cost shall be deemed to have included all costs, including any costs for delay of the *Work*, which are or may be occasioned by such change. No later claims for additional costs will be considered.
- 6.2.8 The *Contractor's* fee, or mark-up, inclusive of overhead and profit, is understood to include, without limitation, the following:
- .1 the *Contractor's* head office and administration expenses, associated travelling / accommodation / meal costs, financing costs including holdback, bonding and *Payroll Burden*,
  - .2 all supervision, co-ordination, administration, margin and risk of undertaking within stipulated amount,
  - .3 the salaries of superintendents, project managers, engineers, timekeepers, accountants, clerks, and all other site supervision staff above foreperson level employed directly on the *Work*,
  - .4 the *Contractor's* mark-up and profit,
  - .5 use of temporary offices, sheds and other general temporary Site support facilities and all utilities used therein, and
  - .6 miscellaneous additional costs related to:
    - (1) licences, building permit and statutory fees, except when these are special for a particular item of *Work*,
    - (2) purchase of rental material, plant and equipment,
    - (3) purchase of small tools and supplies, or
    - (4) COVID-19 measures in accordance with GC 9.4 – CONSTRUCTION SAFETY.”

#### 4.25 GC 6.3 CHANGE DIRECTIVE

- .1 Delete paragraph 6.3.3 in its entirety.
- .2 Delete paragraph 6.3.5 in its entirety.
- .3 Delete paragraph 6.3.7.1(2) and replace with the following:

“6.3.7.1(2) the *Contractor's* personnel carrying out the *Work*, including necessary supervisory services;”
- .4 Delete paragraph 6.3.7.1(3) in its entirety.

#### 4.26 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- .1 Delete paragraph 6.4.1 in its entirety and replace with the following:

“6.4.1 If the *Contractor* discovers conditions at the *Place of the Work* which:
  - .1 are subsurface or otherwise concealed physical conditions which existed before the commencement of the *Contract*,

- .2 could not reasonably have been discovered by proper investigation by the *Contractor*, and
- .3 differ materially from those disclosed in the *Contract Documents*, including any geotechnical report, environmental assessment, or other report included or referenced in the *Contract Documents* or provided or made known to the *Contractor* before the commencement of the *Contract*, then the *Contractor* shall give *Notice in Writing* to the *Owner* of such conditions before they are disturbed and in no event later than five (5) *Working Days* after first observance of the conditions. The *Contractor* shall give the notice provided under this paragraph after discovery of the conditions or the time when the *Contractor* by reasonable diligence could have discovered the conditions, failing which the *Contractor* may not make or enforce any claim against the *Owner*, whether for a change in the *Contract Price* or other compensation or for an extension of the *Contract Time* arising from those conditions.”
- .2 Delete the words “If the finding is that the conditions differ materially and this would cause” in the first and second lines of paragraph 6.4.2 and replace with “If the requirements of paragraph 6.4.1 are satisfied and the relevant conditions would cause”.
- .3 Delete the words “the conditions at the *Place of Work* are not materially different” the first line of paragraph 6.4.3 and replace with “the requirements of paragraph 6.4.1 are not satisfied”.
- .4 Add the following to the end of Paragraph 6.4.4:  
“or GC 14.10 – EXCESS SOIL, as applicable.”
- .5 Add the following new paragraphs 6.4.5, 6.4.6 and 6.4.7:
- “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 character of the *Work*, the *Place of the Work* and all local conditions which might affect its obligations and that it has satisfied itself as to the nature and extent of the *Work*, the *Contract Documents* and the *Contract* and as to the facilities and difficulties in attending and completing the execution of the *Work*. The *Contractor* confirms that it has applied to its investigation the degree of care and skill required by paragraph 3.1.1 of GC 3.1 – CONTROL OF THE WORK. In those circumstances, notwithstanding the provisions of paragraph 6.4.2, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.
- 6.4.6 To the extent the *Contractor* has not investigated as referenced in paragraph 6.4.5, the *Contractor* willingly assumes responsibility for all losses, damages, costs, expenses (including all legal costs on a full indemnity basis), liabilities, claims, actions, and demands, whether arising under statute, contract or at common law, which such investigations might have avoided or reduced and shall indemnify and save harmless the *Owner* from all risk which might make it more onerous and more



expensive to fulfill or perform the *Work* than was contemplated or known when the *Contract* was signed, and for any and all liability, responsibility and obligations which the *Owner* may have to any third parties resulting from any failure to investigate.

- 6.4.7 If the finding made pursuant to paragraph 6.4.2 is that the subsurface or otherwise concealed physical conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, and if the said conditions were otherwise discoverable by the *Contractor* in the proper performance of its duties and obligations under the *Contract*, all costs and expenses resulting from any delay (excluding, for clarity, the direct cost of remediating the said conditions) in the completion of the *Work* that is caused, or contributed to, as a result of the said conditions, will be borne by the *Contractor*."

#### 4.27 GC 6.5 DELAYS

- .1 Delete the period at the end of paragraph 6.5.1 and add the following:  
“, but excluding any consequential, incidental, indirect or special damages including, without limitation, loss of profits, loss of opportunity or loss of productivity resulting from such delay.”
- .2 Delete the period at the end of paragraph 6.5.2 and add the following:  
“, but excluding any consequential, incidental, indirect or special damages including, without limitation, loss of profits, loss of opportunity or loss of productivity resulting from such delay. The *Contractor* acknowledges and agrees that a stop work order shall not include any government directives, Orders in Council or legislation made or enacted to respond to public health emergencies, including, without limitation, government directives, Orders in Council or legislation made or enacted under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, as amended.”
- .3 Delete paragraph 6.5.3 in its entirety and replace with the following:  
“6.5.3 If the *Contractor* is delayed in the performance of the *Work* by an event of *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost on the *Critical Path* as the result of the *Force Majeure* event unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by a *Force Majeure* event, unless such *Force Majeure* event results from actions of the *Owner*, the *Consultant* or anyone employed or engaged by them directly.”
- .4 Delete paragraph 6.5.4 in its entirety and replace with the following:  
“6.5.4 No compensation for delay shall be paid to the *Contractor* and no extension shall be made for delay unless *Notice in Writing* providing full particulars of the cause of the delay, reasons necessitating the extension of time and the anticipated period of delay is given to the *Owner* no later than ten (10) *Working Days* after the commencement of the delay. The *Contractor* shall immediately use best commercial efforts to mitigate the situation, including taking all precautions, due care and applying all possible alternative measures, all with the objective of fulfilling its performance obligations under the *Contract*. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.”

.5 Add the following new paragraphs 6.5.6 and 6.5.7:

“6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor*, any *Subcontractor* or *Supplier*, or anyone employed or engaged by them, directly or indirectly, or by any cause within the *Contractor’s* control, the *Contractor* shall devote such additional resources and take all steps necessary, all at the *Contractor’s* own cost and expense, to ensure that the dates for attaining *Substantial Performance of the Work* and *Total Performance of the Work* under the *Contract* as may have been amended in accordance with the provisions of PART 6 – CHANGES IN THE WORK, are met. If the *Contractor* fails to attain *Substantial Performance of the Work* or *Total Performance of the Work* as aforesaid, the *Owner* shall be reimbursed by the *Contractor* for all reasonable costs, damages and expenses incurred by the *Owner* as the result of any such failure, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any subconsultants, project managers, or others employed or engaged by the *Owner*.

6.5.7 The *Contractor* recognizes and agrees that the *Owner* will suffer financial loss if the *Work* is not completed within the time specified in the *Contract*. The *Contractor* also recognizes the delays, expenses and difficulties involved in proving the actual loss suffered by the *Owner* if the *Work* is not completed on time. Accordingly, instead of requiring any such proof, the *Contractor* agrees that as liquidated damages for delay (but not as a penalty) the *Contractor* shall pay to the *Owner*, as liquidated damages, an amount of **one-thousand dollars (\$1,000.00)** for each and every calendar day’s delay from the specified time for completion of the *Work* until actual completion of the *Work*, and it is further expressly acknowledged and agreed by the *Contractor* that:

- .1 this amount is a genuine and reasonable estimate of the actual damages that will be incurred by the *Owner* due to any failure to complete the *Work* within the time required by this *Contract*,
- .2 the *Owner* may deduct any amount due under this GC 6.5 - DELAYS from any monies that may be due or payable to the *Contractor* on this *Contract*,
- .3 the *Owner* may invoice *Contractor* for liquidated damages owing, and *Contractor* shall pay such invoices within twenty-eight (28) calendar days of receipt, and
- .4 the liquidated damages provided for in this GC 6.5 - DELAYS are in addition to without prejudice to any other right, claim, action or any other remedy to which the *Owner* is entitled at law or in equity.”

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

.1 Add the following at the end of paragraph 6.6.3:

“The claim shall also identify the provisions of the *Contract* upon which the party relies in making the claim.”

.2 Delete paragraph 6.6.5 in its entirety and replace with the following:

“6.6.5 The *Consultant’s* findings, with respect to a claim made by either party will be given by *Notice in Writing* by the *Consultant* to both parties within reasonable time after receipt of the claim information noted in paragraph 6.6.3.”

.3 Add the following new paragraph 6.6.7:

“6.6.7 The *Owner* may make claims arising out of the costs incurred for additional services provided by the *Consultant* resulting from the *Contractor's* failure to reasonably perform the *Work* in accordance with the terms and conditions of the *Contract*, including the *Contractor's* issuance of unnecessary requests for information. The *Consultant* will notify the *Owner* and *Contractor* where it has been determined that additional services will be required or have been provided in order not to cause a delay.”

## PART 7 DEFAULT NOTICE

### 4.29 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 Add the words “**SUSPEND OR**” after the word “**WORK,**” in the first line of the heading for GC 7.1.

.2 Delete the words “to a substantial degree” in the second line of paragraph 7.1.2 and replace with “in a material way”.

.3 Add the following new paragraphs 7.1.7 to 7.1.14:

“7.1.7 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the *Work*, terminate the *Contractor's* right to continue with the *Work* or terminate the *Contract*, in whole or in part, by giving *Notice in Writing* to that effect to the *Contractor*. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other. The *Owner's* entitlement to so suspend or terminate shall be absolute and unconditional and exercisable by the *Owner* in its sole discretion.

7.1.8 The *Contractor* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except for work which, in the *Contractor's* opinion, is necessary for the safety of personnel and for the care and preservation of the *Work* and *Products*. Subject to any directions in the notice of suspension or termination, the *Contractor* shall discontinue ordering materials, facilities, and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available.

7.1.9 During any period of suspension, the *Contractor* shall not remove from the site any part of the *Work*, or any *Products* or materials without the consent of the *Owner*.

7.1.10 If the *Work* should be suspended for a period of sixty (60) consecutive calendar days or less, the *Contractor*, upon the expiration of the period of suspension, shall resume the performance of the *Work* in accordance with the *Contract Documents*. If the suspension was not due to an act or omission of the *Contractor*, the *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 - DELAYS.

7.1.11 If after sixty (60) consecutive calendar days from the date of notice of suspension of the *Work*, the *Owner* and the *Contractor* agree to continue with and complete the

*Work*, the *Contractor* shall resume operations and complete the *Work* in accordance with any terms and conditions agreed upon by the *Owner* and the *Contractor*. Failing such an agreement, the provisions of paragraph 7.2.2 of GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT shall become applicable.

- 7.1.12 If the *Owner* terminates the *Contract* pursuant to paragraph 7.1.7, the *Contractor* shall only be entitled to receive payment for all work performed up to the date of termination as certified by the *Consultant* and the direct costs associated with the termination incurred by the *Contractor*, including the costs of the demobilization, losses sustained on *Products* and *Construction Equipment* and *Subcontractor* and sub-subcontractor cancellation costs (which costs shall not include loss of profit claims) reasonably incurred by the *Contractor*. The *Contractor* shall not be entitled to any additional reimbursement on account of the termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the *Contract Documents*.
- 7.1.13 In the case of either a termination or a suspension under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, SUSPEND OR TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT or GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.14 Upon the resumption of the *Work* following a suspension under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, SUSPEND OR TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT or GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavor to minimize the delay and financial consequences arising out of the suspension.”

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

- .1 Delete the words “20 Working Days” in the first line of paragraph 7.2.2 and replace with “sixty (60) consecutive calendar days”.
- .2 Add the following to the end of paragraph 7.2.2:  
“The *Contractor* acknowledges and agrees that an order by a public authority under this paragraph 7.2.2 excludes any government directives, Orders in Council or legislation made or enacted to respond to public health emergencies, including, without limitation, government directives, Orders in Council or legislation made or enacted under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, as amended.”
- .3 Delete paragraph 7.2.3.1 in its entirety.
- .4 Delete paragraph 7.2.3.3 in its entirety and replace with the following:  
“7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount required in accordance with a determination made by an adjudicator pursuant to Part II.1 of the *Act* and GC 13 – ADJUDICATION or awarded by arbitration or a court, or”

- .5 Delete the words “, except for General Provision 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,” from the first and second lines of paragraph 7.2.3.4.
- .6 Delete paragraph 7.2.5 in its entirety and replace with the following:
- “7.2.5 Subject to a condition of termination pursuant paragraph 7.2.2, which shall only entitle the *Contractor* to an extension of time in accordance with GC 6.5 – DELAYS, if the *Contractor* terminates the *Contract* under the remaining conditions set out above, the *Contractor* shall be entitled to be paid for all work performed to the date of termination. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the *Contract Documents*.”
- .7 Add the following new paragraphs 7.2.6 and 7.2.7:
- “7.2.6 In the event that a lien is preserved against the *Project* premises or the *Owner* receives written notice of a lien in relation to the *Project*, the *Owner’s* withholding of a progress payment, holdback payment or final payment pursuant to the terms of the *Contract*, shall not constitute a default under paragraph 7.2.3 which would permit the *Contractor* to stop the *Work* or terminate the *Contract*. In such circumstances, the *Contractor* shall continue with the *Work*.
- 7.2.7 If the *Contractor* stops the *Work* or terminates the *Contract* in accordance with this GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall leave the *Place of the Work* and the *Work* in a secure condition.”

#### 4.31 GC 7.3 ASSIGNMENT OF SUBCONTRACTS ON TERMINATION

- .1 Add the following new GC 7.3 – ASSIGNMENT OF SUBCONTRACTS ON TERMINATION:
- “GC 7.3 ASSIGNMENT OF SUBCONTRACTS ON TERMINATION**
- 7.3.1 The *Owner* shall not be deemed by virtue of the *Contract* or for any other reason to have any contractual relationship with or obligation to any *Subcontractor* or *Supplier* but the *Contractor* hereby agrees that in the event that this *Contract* is terminated or the right of the *Contractor* to continue the *Work* is terminated, as provided in paragraphs 7.1.1, 7.1.4 or 7.1.7, at the option of the *Owner*, any or all subcontracts as may be selected by the *Owner* shall, upon notice to the *Contractor* and the affected *Subcontractors* and *Suppliers* from the *Owner*, be assigned to the *Owner*, without any action being necessary from the *Contractor* and in order to ensure the rights of the *Owner*, the *Contractor* shall:
- .1 contractually obligate each of its *Subcontractors* and *Suppliers* to agree that each such subcontract shall be assignable, at the option of the *Owner*, to the *Owner*, upon delivery of the notice described above, in the event that:
- (a) this *Contract* is terminated, or
- (b) the right of the *Contractor* to continue the *Work* is terminated, as provided in paragraphs 7.1.1, 7.1.4 or 7.1.7, and

- .2 add the following wording to all subcontracts, including supplier contracts:  
“The Subcontractor or Supplier acknowledges, and consents to the fact, that the Contractor has agreed that this subcontract shall be assigned to the Owner or its permitted successors or assigns under the Contract in the event that the Contract between the Owner and the Contractor is terminated or the right of the Contractor to continue the Work under the Contract is terminated and the Owner gives notice to the Contractor and the Subcontractor or Supplier that it wishes to take an assignment of this subcontract by providing a Notice of Assignment. The Subcontractor or Supplier agrees with the Contractor and the Owner that:
- (a) until Notice of Assignment is received, the Contractor is the person entitled to receive the property, services and work to be delivered and performed under the subcontract and to exercise and enforce all of the rights, entitlements and benefits which may arise under the subcontract;
  - (b) following receipt of a Notice of Assignment, the Owner, or its permitted successors or assigns under the Contract, shall be the person entitled to receive, enjoy and deal with the property, services and work to be delivered and provided under the subcontract and to enjoy, exercise and enforce all of the rights, entitlements, benefits, advantages, authorities, discretions, powers and remedies arising under the subcontract; and
  - (c) the Owner, or its permitted successors or assigns under the Contract, shall only be responsible for obligations which accrue under the subcontract after the date of receipt of notice of assignment.”.

## **PART 8 DISPUTE RESOLUTION**

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

- .1 Delete the last sentence of paragraph 8.1.3 and replace with the following:

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

### **4.33 GC 8.2 ADJUDICATION**

- .1 Add new paragraph 8.2.2 as follows:

“8.2.2 The commencement of an adjudication under applicable *Payment Legislation* will not be deemed to be a stay, suspension, termination or bar of any other dispute resolution process under Part 8 – DISPUTE RESOLUTION.”

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

- .1 Replace the title of GC 8.3 to read: “**GC 8.3 NEGOTIATION AND MEDIATION**”.
- .2 Delete the words “shall appoint a Project Mediator” from the second line of paragraph 8.3.1 and replace with “may appoint a Project Mediator, except that such appointment shall only be made if both the *Owner* and the *Contractor* agree.”

- .3 Add the following to the end of paragraph 8.3.3:
- “However, the *Owner* and the *Contractor* nonetheless irrevocably and unconditionally attorn to the jurisdiction of the courts of Ontario, and courts to which appeals therefrom may be taken, in respect of any dispute or claim arising under or relating to the *Contract*. The *Owner* and the *Contractor* acknowledge and agree that such courts have jurisdiction, but not necessarily exclusive jurisdiction in respect of any such dispute or claim.”
- .4 Delete the words “the parties shall request the Project Mediator” from the second line of paragraph 8.3.4 and replace with “and subject to paragraph 8.3.1 the parties may request the Project Mediator”.
- .5 Delete paragraph 8.3.6 in its entirety.
- .6 Delete paragraph 8.3.7 in its entirety and replace with the following:
- “8.3.7 Notwithstanding any other provision of this *Contract*, the provisions set out in GC 8.3 – NEGOTIATION AND MEDIATION shall only apply if the parties agree in writing to submit a dispute to all or any part of those alternative dispute resolution processes. If the parties do not agree as aforesaid, the courts shall have exclusive jurisdiction to determine any dispute relating to the *Work* or to the *Contract*.”
- .7 Delete paragraph 8.3.8 in its entirety.

## PART 9 PROTECTION OF PERSONS AND PROPERTY

### 4.35 GC 9.1 PROTECTION OF WORK AND PROPERTY

- .1 Delete paragraph 9.1.1 in its entirety and replace with the following:
- “9.1.1 The *Contractor* shall protect the *Work Products* delivered or to be delivered to the *Place of the Work*, the *Owner’s* property and property on or adjacent to the *Place of the Work* from theft and damage which may arise as the result of the *Contractor’s* operations under the *Contract*, and shall be responsible for such theft and damage, except theft and damage which occurs as the result of:
- .1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in GC 3.1 – CONTROL OF THE WORK; and
  - .2 acts or omissions by the *Owner’s*, Other Contractors, or their agents and employees.”
- .2 Delete paragraph 9.1.2 in its entirety and replace with the following:
- “9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in or reasonably determinable from the *Contract Documents*, or that are reasonably determinable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.12.1 of GC 3.12 – PERFORMANCE BY CONTRACTOR.”
- .3 Delete the words “Should damage occur to the *Work* or the *Owner’s* property for which the *Contractor* is not responsible,” from the first line of paragraph 9.1.4 and replace with “Should damage occur to the *Work*, *Products* delivered or to be delivered to the *Place of the Work*, the

Owner's property or property on or adjacent to the *Place of the Work*, for which the *Contractor* is not responsible,"

- .4 Add the following new paragraphs 9.1.5 and 9.1.6:

"9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the *Work* of Other Contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*.

9.1.6 The *Contractor* shall be responsible for securing the *Work*, *Products* delivered or to be delivered to the *Place of the Work* and *Place of the Work* at all times and shall take all reasonable precautions necessary to protect the *Work*, *Products* delivered or to be delivered to the *Place of the Work* and *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours."

#### 4.36 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- .1 Delete Paragraph 9.2.2 in its entirety and replace with the following:

"9.2.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall provide the *Contractor* with a written list of any toxic or hazardous substances or materials present at the *Place of the Work* of which the *Owner* is aware."

- .2 Delete Paragraph 9.2.4 in its entirety.

- .3 Add the following new paragraph 9.2.5.5:

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

- .4 Add the following after the word "responsible," in the second line of paragraph 9.2.6:

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

- .5 Delete paragraph 9.2.7.4 in its entirety.

- .6 Add the following after the word "responsible," in the second line of paragraph 9.2.8:

"or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory



requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others.”.

.7 Add the words “and the *Consultant*” after the word “*Owner*” to paragraph 9.2.8.4.

.8 Add the following new Paragraphs 9.2.10 to 9.2.13:

“9.2.10 Without limiting its other obligations under this GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, the *Contractor* acknowledges that its obligations under the *Contract* include compliance with the EPA, *Canadian Environmental Protection Act, 1999* (S.C. 1999, c. 33) (the “CEPA”) and the *Transportation of Dangerous Goods Act, 1992* (S.C. 1992, c. 34 (the “TGDA”), all as amended. The *Contractor* acknowledges that the *Owner* may suffer loss and damage should the *Contractor* fail to comply with EPA, CEPA and TGDA and agrees to indemnify and hold harmless the *Owner* with respect to any loss or damage to which the *Owner* is exposed by the *Contractor*’s failure to comply. The *Contractor* expressly agrees that such loss and damage shall be included within the scope of the *Contractor*’s indemnity described in Paragraph 13.2.1. The *Contractor* acknowledges that should it fail to comply with EPA, CEPA and TGDA, such failure will constitute a failure to comply with the *Contract* in a material way within the meaning of Paragraph 7.2.2.

9.2.11 Whenever encountering any toxic or hazardous substances or materials, the *Contractor* shall comply with federal, provincial, and local requirements pertaining to the handling, management, haulage, and/or disposal of any toxic or hazardous substances or materials including but not limited to the following, all as amended:

- .1 OHSA, O. Reg. 278/05: Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations;
- .2 EPA and Reg. 347 thereunder;
- .3 *Dangerous Goods Transportation Act*, R.S.O. 1990, c. D.1; and
- .4 TDGA.

9.2.12 Upon proper removal of any toxic or hazardous substances or materials, the *Contractor* shall submit to the *Owner* proof of proper disposal including a waybill / receipt from the waste disposal site authorized and approved by the MECP to receive and dispose of the any toxic or hazardous substances or materials within fifteen (15) *Working Days* of *Substantial Performance of the Work*. The *Owner* may withhold payment related to the removal if the *Contractor* fails to submit proof of proper removal.

9.2.13 For the purposes of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, references to toxic or hazardous substances or materials shall exclude *Excess Soil*.”

#### 4.37 GC 9.3 ARTIFACTS AND FOSSILS

.1 Delete paragraphs 9.3.1, 9.3.2 and 9.3.3 in their entirety and replace with the following:

“9.3.1 If the *Contractor* or anyone for whom the *Contractor* is responsible discovers fossils coins, articles of value or antiquity, structures and other remains or things of scientific, cultural or historical interest at the *Place of the Work* (the “Historical Items”), the *Contractor* shall immediately give *Notice in Writing* thereof to the *Owner*.

As between the *Owner* and the *Contractor*, all Historical Items shall be, and shall be deemed to be, the absolute property of the *Owner*, and the *Contractor* hereby irrevocably waives and disclaims any right, title or interest therein.

- 9.3.2 The *Contractor* shall take all reasonable precautions and shall comply with all reasonable directions from the *Owner*, to prevent removal or damage to Historical Items as identified in paragraph 9.3.1 or as otherwise known to be present at the *Place of the Work*.
- 9.3.3 The *Owner* will investigate the impact on the *Work* of the discovery of any Historical Item identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Owner* will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE."

#### 4.38 GC 9.4 CONSTRUCTION SAFETY

- .1 Delete paragraphs 9.4.1 to 9.4.5 in its entirety and replace with the following:

- "9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work*. The *Contractor* acknowledges that it has read, understood and shall at all times, at its own cost and expense, comply and take all necessary steps to ensure compliance by its workers and any subcontractors with all applicable federal, provincial or municipal legislation relating to occupational health and safety, all applicable regulations thereunder and any and all applicable industry standards and guidelines (the "**Health and Safety Requirement(s)**") pertaining to the *Work*. The *Contractor* shall assume the role of "constructor" in accordance with the *OHSA* and provide to the *Owner* copies of the related *Health and Safety Requirement* notices and documents. Without limiting the generality of the forgoing, the *Contractor* shall be the "constructor" for the purposes of the *OHSA*, any regulations thereunder and any applicable industry standards and guidelines pertaining to the *Work* and shall meet all applicable requirements including but not limited to registration as a "constructor" and filing of a "Notice of Project" as may be required."
- 9.4.2 The *Contractor* shall ensure that it has implemented and maintains a comprehensive safety program in relation to the *Work* including but not limited to having written policies and procedures relating to health and safety aspects of the *Work*, training on the Health and Safety Requirements, standards and guidelines and monitoring and enforcement of its safety program. The *Contractor* shall maintain and strictly enforce its health and safety program. The *Contractor* shall also provide such information within such timeframes as may be required in order to allow the *Owner* to fulfill its obligations pursuant to the *OHSA*, including, without limitation, the obligation to notify the "Director" as defined by the *OHSA* in the event of an accident causing personal injury.
- 9.4.3 Prior to commencement of the *Work*, the *Contractor* shall, at its own cost and expense, ensure that those performing the *Work* on behalf of the *Contractor*, including employees, *Subcontractors* and agents ("Personnel"), successfully complete the *NORCAT CGS EHS Rules – Contractor is Constructor* training module and any other training as required in the RFP. Course registration for the *NORCAT CGS EHS Rules – Contractor is Constructor* training module can be made by phone

at 705-521-8324 extension 401, Monday to Friday, 9:00 a.m. to 4:00 p.m. The following applies to the health and safety training required under this *Contract*:

.1 training of Personnel shall be conducted by a "*competent person*" as defined in the *OHSA*. If it is equipment training for example, the person conducting the training must be well-versed in the operation and function of the equipment as well as any inherent hazards and regulations pertaining to the operation of that equipment, and

.2 the organization conducting the training shall maintain and provide a written record of training including date and content of the training, and such record shall be signed by an official of the organization who can vouch for the validity of the training and be readily available upon request by the *Owner*. As training records must be submitted to NORCAT for uploading, the training titles must match those listed above.

Proof of completed training will be uploaded onto a NORCAT Safety Wallet Smart Card that will be issued to Personnel and must remain on their person when performing any *Work* and be provided upon request by the *Owner* at any time. Each training event shall be dated and include the training information that was provided. All Personnel receiving the training shall sign the training log and a copy of the log shall be kept under their name and provided to NORCAT. The individual training records shall be clear as to what position the individual has been trained in and what roles they are qualified to fill. The *Contractor* shall at all times ensure that proof of training is readily available, maintained and uploaded to the NORCAT Safety Wallet Smart Card under the *Contract*. The *Contractor* understands that the *Owner* will be scanning the NORCAT Safety Wallet Smart Card periodically to ensure compliance.

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

.1 the Contractor's health and safety policies and program for control and supervision of the *Work*; and

.2 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the *OHSA* for the *Project*, including over the *Owner's* own forces, the *Consultant* and *Other Contractors*.

9.4.5 The *Contractor* agrees that the receipt and/or review by the *Owner* of any health and safety policies, procedures or programs of the *Contractor* shall not constitute an approval as to the content of such policies, procedures or programs and it shall be the responsibility of the *Contractor* to ensure that such documents meet the *Health and Safety Requirements*. The *Contractor* further agrees that *Owner* shall not be liable or be under any obligation to the *Contractor* or any person whatsoever merely by reason of receipt of a *Contractor's* health and safety policy.

9.4.6 In the event of an emergency threatening health, life or property, the *Contractor* shall take such action as may be necessary to save lives and protect persons from injury, and to protect and preserve the property. The *Contractor* shall notify the *Owner* and the *Consultant* of such emergency as promptly as is practical under the circumstances.

9.4.7 The *Owner* undertakes to include in its contracts with *Other Contractors* and in its instructions to its own forces the requirement that the *Other Contractor* 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.

- 9.4.8 The *Contractor* shall be responsible for the selection of its subcontractors and shall be solely responsible for the means, methods, techniques, sequences and procedures and for coordinating the Work and ensuring that foreseeable health or safety hazards are known by its own employees and the employees of any subcontractor as well as the employees of the *Owner* or any other third parties required to be at or on the *Project* site. The *Owner*, the *Consultant* or their authorized representatives shall have access to the site of the Work at all times for the purposes of determining compliance with the requirements of the *Contract* and it is understood and agreed that the *Owner* and the *Consultant* shall not be performing any supervisory or inspection function with respect to the *Health and Safety Requirements* or controlling the *Work*.
- 9.4.9 The *Contractor* shall comply with and cause its *Subcontractors* to comply with all legislative amendments, by-laws, letters of instruction, controls, regulations, requirements and order that were or are issued by the Government of Canada or the Province of Ontario in response to the global pandemic of the virus leading to COVID-19, including any resurgence or mutation thereof.
- 9.4.10 The *Contractor* shall provide proper training, conditions, instructions and protective materials to ensure Public Health Sudbury & Districts recommendations and Provincial guidelines for COVID-19 are followed in the performance of the *Work*, including but not limited to, recognizing the signs and symptoms of COVID-19, screening, social/physical distancing and proper mask use.
- 9.4.11 The *Contractor* and its *Subcontractors* shall strictly adhere to all *Owner* policies, procedures and protocols for COVID-19 when performing any *Services* at the *Place of the Work*. In the event of a failure to comply under this Paragraph, as determined by the *Owner* in its sole discretion, the *Contractor* or its *Subcontractors* will not be permitted to perform the *Work* and the *Contractor* shall immediately schedule alternate replacements, at its own cost and expense.”

#### 4.39 GC 9.5 MOULD

- .1 Add “and the *Consultant*” after the word “*Owner*” in paragraph 9.5.2.4.
- .2 Delete paragraph 9.5.3.4 in its entirety:

#### PART 10 GOVERNING REGULATIONS

#### 4.40 GC 10.1 TAXES AND DUTIES

- .1 Add the following new paragraphs 10.1.3 to 10.1.7:
- “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 GC 10.1 – TAXES AND DUTIES.

- 10.1.4 The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.
- 10.1.5 Any refund of taxes, including without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*.
- 10.1.6 The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the *Owner* in the application for any rebates, incentives or refund or exemption of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such rebates, incentives, refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications. All such rebates, incentives or refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.
- 10.1.7 Customs duties, penalties, or any other penalty, fine or assessment levied against the *Contractor* shall not be treated as a tax or customs duty for purposes of this GC 10.1 – TAXES AND DUTIES.”

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

- .1 Delete paragraph 10.2.4 in its entirety and replace with the following:
- “10.2.4 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, codes, and industry best practices and guidelines which are or become in force during the performance of the *Work* and which relate to the *Work*, to the environment, to the preservation of the public health, and to construction safety. The *Contractor* shall provide the *Owner* with copies of all such required notices and related health and safety documents. The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. 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 the word “The” in the first line of paragraph 10.2.5 and replace with “Subject to paragraph 3.14.1 of GC 3.12 – PERFORMANCE BY CONTRACTOR, the”.
- .3 Add the following before the period at the end of the second sentence of paragraph 10.2.5:
- “and no further work on the affected components of the *Contract* shall proceed until these changes to the *Contract Documents* have been obtained by the *Contractor* from the *Consultant*.”

#### 4.42 GC 10.4 WORKERS' COMPENSATION

- .1 Add the words “again with each application for progress payment, and” after the word “*Work*”, in the first line of paragraph 10.4.1.

- .2 Add the following new paragraphs 10.4.2 and 10.4.3:
- “10.4.2 The *Contractor* shall ensure that each *Subcontractor* complies with the workers’ compensation legislation at the *Place of the Work*. At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.”
- “10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers’ compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor’s* admission to the *Place of the Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers’ compensation legislation.”

## PART 11 INSURANCE

### 4.43 GC 11.1 INSURANCE

- .1 Replace the title of GC 11.1 to read: “**GC 11.1 INSURANCE AND THIRD-PARTY CLAIMS HANDLING**”.
- .2 Delete the words “, the requirements of which are specified in CCDC 41 – CCDC Insurance Requirements” in paragraph 11.1.1.
- .3 Add the following to the end of paragraph 11.1.1.1:
- “General liability insurance, if the *Contract Documents* require, shall be carried with limits of not less than \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000 within any policy year with respect to completed operations. Such policy shall include coverages and standard clauses relating to non-owned automobile liability, bodily injury including death, broad form property damage or loss, blanket contractual liability, owners and contractors’ protective liability, products and completed operations, contingent employers’ liability, cross liability and severability of interest. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used.”
- .4 Add the following to the end of paragraph 11.1.1.2:
- “Automobile liability insurance in respect of all licensed vehicles (including all vehicles required to be licensed) and trailers owned, rented and/or leased by or on behalf of the *Contractor* while on any business connected with the *Work* that are required by law to be insured under a contract by an Automobile Liability Policy, shall have limits of not less than two million dollars (\$2,000,000) inclusive per occurrence, unless otherwise specified in the *Contract Documents*, for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.”

- .5 Delete paragraph 11.1.1.3 in its entirety and replace with the following:

“11.1.1.3 If owned or non-owned aircraft and/or watercraft are used directly or indirectly in the performance of the *Work*, including use of additional premises, the *Contractor* shall carry aircraft and watercraft liability insurance from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*. Aircraft and watercraft liability insurance shall have limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.”

- .6 Delete the words “Broad form” property insurance and add the words “All risks” property insurance, or broad form builder’s risk insurance, if specified in the *Contract Documents*” in the first sentence of paragraph 11.1.1.4.

- .7 Add the following after “*Subcontractors*” in paragraph 11.1.1.4:

“All risks” property insurance or broad form builder’s risk insurance under this paragraph shall have limits of not less than the sum of one point one (1.1) times the *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified to be provided by the *Owner* for incorporation into the *Work* or equal to one hundred percent (100%) of the full (new) replacement cost of this *Project* (i.e. buildings/contents), with a deductible not exceeding ten thousand dollars (\$10,000). The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.”

- .8 Delete paragraph 11.1.1.5 in its entirety and replace with the following:

“11.1.1.5 If the performance of the *Work* requires equipment breakdown (boiler and machinery) insurance in the joint names of the *Contractor* and the *Owner* and shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy including hot testing and commissioning.”

- .9 Delete the words “The “Broad form” property and boiler and machinery” at the beginning of paragraph 11.1.1.6 and replace with the following:

“The “all risk” property (or broad form builder’s risk, if specified in the *Contract Documents*) and the equipment breakdown (boiler and machinery)”

- .10 Delete paragraph 11.1.1.7 in its entirety and replace with the following:

“11.1.1.7 *Contractor’s* equipment insurance, if specified in the *Contract Documents*, from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.”

- .11 Delete paragraph 11.1.1.8 in its entirety and replace with the following:

“11.1.1.8 *Contractor’s* pollution liability insurance, if specified in the *Contract Documents*, from the date of commencement of the *Work* until one year after the date of *Ready-for-Takeover*.”

.12 Add the following paragraphs 11.1.1.9 to 11.1.1.13:

“11.1.1.9 When the performance of the *Work* requires the use of unpiloted aerial vehicles (drones) then proper aircraft liability (drone liability) insurance is required with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*). Such insurance shall cover liability for flights, landing and all use of the aircraft and have limits of not less than two million dollars (\$2,000,000) per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.

11.1.1.10 If the performance of the *Work* requires contractors' pollution liability or sudden and accidental pollution liability insurance, coverage shall include a minimum discovery and report period of one hundred and twenty (120) hours, for the performance of the *Work* including coverage for loss or claims from contamination to third party property or bodily injury during transit. Such policy shall have limits of not less than two million dollars (\$2,000,000) per occurrence, unless otherwise specified in the *Contract Documents*, for bodily injury, death and damage to property, and shall remain in force for twelve (12) months following the completion of the *Work*.

11.1.1.11 If the performance of the *Work* requires the process of hot works, blasting, underpinning, below grade work or welding, the general liability policy must be endorsed to include the hot works, blasting, welding, below grade work or underpinning services provided by the *Contractor*. Confirmation of this extension of coverage will be accepted in a form of written confirmation from the *Contractor's* insurance representative or outlined within the certificate of insurance document.

11.1.1.12 If the performance of the *Work* requires crane and hoist operations, the *Contractor's* general liability shall not contain an exclusion for crane or hoist operations.

11.1.1.13 If the performance of the *Work* involves any services, sales or maintenance of the *Owner's* computer network or any *Owner* equipment, device, program or site connected to the *Owner's* computer network, the *Contractor* shall provide network/cyber security and privacy liability insurance including Payment Card Coverage Extension which shall cover liability for financial loss, imposed by law or assumed under contract for the failure or breach of network security, failure to safeguard against breach caused by hacking or viruses, unauthorized release of and/or failure to protect private personal or corporation information, theft of hardware on which data is stored, and costs to restore and/or recreate lost data. Such insurance shall be in an amount of at least \$2,000,000 per claim and shall provide for full defense costs.”

.13 Delete the entirety of paragraphs 11.1.6, 11.1.7 and 11.1.8.

.14 Add the following new paragraphs 11.1.6 to 11.1.17:

“11.1.6 The *Contractor* shall take out insurance with insurance companies licensed to transact business in the Province of Ontario. The taking out of insurance shall not relieve the *Contractor* of any of its obligations under this *Contract*.

11.1.7 Nothing in this GC 11.1 – INSURANCE AND THIRD-PARTY CLAIMS HANDLING derogates or diminishes the *Contractor's* responsibility to purchase such forms of commercially available coverage and limits that are usual to that of a prudent



contractor's business operation performing the same *Work*. The *Contractor* is responsible for purchasing and maintaining appropriate insurance for loss or damage or resulting loss of business to their own property and property of others that they are responsible for insuring and also for their liability exposures. The limits and types of coverage requested in this GC 11.1 – INSURANCE AND THIRD-PARTY CLAIMS HANDLING are minimum requirements and may not reflect potential insurable risks or exposures for all circumstances. It is the responsibility of the *Contractor* relying on the advice of their insurance or legal representative to purchase higher limits or any additional available coverage appropriate for all claim circumstances.

- 11.1.8 Each policy of insurance shall provide that the policy is non-contributing and applies only as primary and not as excess to any other insurance available to the *Owner*. Every policy of insurance shall contain either no deductible amount or a deductible amount which is reasonable considering the financial circumstances of the *Contractor*. The *Contractor* shall be responsible to pay all deductible amounts. If there is an umbrella or excess liability policy, the *Contractor* shall ensure that the certificate of insurance submitted to the *Owner* clearly identifies which underlying liability policy is affected by the umbrella or excess limits.
- 11.1.9 All policies of property insurance required to be obtained by the *Contractor* pursuant to this GC 11.1 – INSURANCE AND THIRD-PARTY CLAIMS HANDLING shall contain:
- .1 when available, a waiver by the insurer of any rights of subrogation, or indemnity, or any other claim over to which the insurer thereunder might be entitled against the *Owner*, its, employees, servants or any other person for whom the foregoing are in law responsible; and
  - .2 provisions to the effect the *Contractor's* insurance policies shall not call into contribution other insurance available to the *Owner*.
- 11.1.10 The policies required by this GC 11.1 - INSURANCE AND THIRD-PARTY CLAIMS HANDLING to provide the *Owner* a requirement to endeavour to provide with not less than thirty (30) calendar days written notice of expiry or cancellation.
- 11.1.11 Prior to the *Owner's* execution of the *Contract*, the *Contractor* shall provide the *Owner* with proof of insurance, by submitting an original Certificate of Insurance on the *Owner's* standard "Certificate of Insurance" form completed by the *Contractor's* insurer(s) or an insurance certificate signed by an authorized representative of the *Contractor's* insurer(s), demonstrating that the policy or policies maintained by it comply with the requirements of the *Contract* to the satisfaction of the *Owner* in its sole discretion. The certificate must identify the *Contract* or job number and the *Owner's* department managing the *Contract*. To the extent applicable, the policies required herein shall include the "City of Greater Sudbury" as an additional insured with respect to the *Contractor's* operations, acts and omissions relating to its obligations pursuant to this *Contract*. The *Contractor* shall not commence the *Work* until such time as evidence of insurance has been provided to the *Owner* in accordance with this paragraph. The *Contractor* shall ensure that evidence of the continuance of said insurance is filed with the *Owner* prior to each policy renewal date for the duration of this *Contract*.
- 11.1.12 Each policy of insurance shall be made available for inspection by the *Owner* upon request. Failure to provide the required insurance information within ten (10) calendar days of the *Owner's* written request and continuously maintain the required

insurance coverage throughout the duration of the *Contract* will constitute a default by the *Contractor*. Upon written request by the *Contractor*, the deadline in this paragraph may be extended by the *Owner*, which shall not be unreasonably withheld.

- 11.1.13 No review or approval of any such insurance certificate by the *Owner* shall derogate from or diminish the *Owner's* rights or the *Contractor's* obligation contained in this *Contract*.
- 11.1.14 The *Contractor* shall ensure that any *Subcontractor(s)* engaged by the *Contractor* have the necessary insurance equal to or exceeding the limits and coverages required herein and list the *Contractor* as an additional insured where applicable.
- 11.1.15 No insurance taken out by the *Owner* shall relieve the *Contractor* of its obligation to insure as required by this GC 11.1 – INSURANCE AND THIRD PARTY CLAIMS HANDLING.
- 11.1.16 Upon the receipt of any indemnifiable third-party claim received in connection with or in any way related to the delivery or performance of *Work*, if the *Contractor* elects to manage an uninsured claim or a claim below their deductible, they shall:
- .1 respond to, and deal with, all indemnifiable third-party claims in a prompt, courteous and efficient manner,
  - .2 contact all third-party claimants and acknowledge receipt of all third-party claims in writing within seven (7) *Working Days* upon being notified in writing of the third-party claim,
  - .3 immediately provide the *Owner* written notice of the third-party claim,
  - .4 in the event of serious injury or death, report the incident in writing to the *Owner* within twenty-four (24) hours of the incident. Serious injury includes events where the injured person is hospitalized or attended to by an ambulance attendant or paramedic, and
  - .5 not advise the third-party claimant that the *Owner* is responsible for their claim.
- 11.1.17 If, in the sole discretion of the *Owner*, acting reasonably, a third-party claim is not being dealt with in a manner consistent with the provisions of this *Contract*, which includes, without limiting the generality of the foregoing, failure of the *Contractor* to acknowledge receipt of the third-party claim in the manner set out above, the *Owner* reserves the right to appoint an insurance adjuster to investigate on behalf of the *Owner's* interest in the matter, if any.”

#### 4.44 GC 11.2 CONTRACT SECURITY

- .1 Add the following new **GC 11.2 – CONTRACT SECURITY**:

##### “GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner* a performance bond and a labour and material payment bond in the form prescribed under the *Act*. Each surety bond shall:
- .1 be of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

- .2 have a coverage limit of at least fifty per cent (50%) of the *Contract Price*, or such other percentage of the *Contract Price* as may be prescribed; and
  - .3 extend protection to *Subcontractor(s)* and persons supplying labour or materials to the *Work*.”
- 11.2.2 The bonds referred to in paragraph 11.2.1 shall be maintained in good standing until the *Contractor* has fulfilled all of its obligations under the *Contract*.”
- 11.2.3 If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Price* the *Contractor* shall, if requested in writing to do so by the *Owner*, 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 bond(s).”

## **PART 12 OWNER TAKEOVER**

### **4.45 GC 12.1 READY-FOR-TAKE-OVER**

- .1 Add the following as a new paragraph 12.1.1.9:
  - “12.1.1.9 The *Contractor* shall have completed the requirements for takeover as set out in Appendix A (Ready-for-Takeover).”

### **4.46 12.2 EARLY OCCUPANCY BY THE OWNER**

- .1 Delete paragraph 12.2.3.2 and replace with the following:
  - “12.2.3.2 The *Contractor* shall cease to be responsible as constructor under the *OHSA* for such part as from this date, provided that: (1) the *Owner* shall not be considered or deemed to become constructor or employer for the remaining parts; (2) the *Contractor* remains responsible and liable to perform, complete, and if necessary correct all of the *Work* for such part, including all items identified in the punchlist of incomplete and deficient *Work* approved by the *Consultant*; and (3) the *Contractor* shall remain responsible for securing the perimeter of such part.”
- .2 Add the following at the end of paragraph 12.2.3.3:
  - “; other than any portion of such part that is integrated or not separable from the balance of the *Work*.”
- .3 Delete the first sentence of paragraph 12.2.4.

### **4.47 GC 12.3 WARRANTY**

- .1 Add the following to the end of paragraph 12.3.1:
  - “Where the *Contractor* has been permitted to make use of permanent equipment or systems, as provided in GC 1.15 – CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS, prior to the issuance of the certificate of *Substantial Performance of the Work*, such permanent equipment or system shall be subject to the same warranty as described in this paragraph and shall be judged, for purposes of assessing compliance with the warranty, as though the equipment or system was new, clean and unused by the *Contractor*, except for

normal commissioning and start up activities, prior to the date of *Substantial Performance of the Work*.”

- .2 Add the following to the end of paragraph 12.3.5:

“The carrying out of the replacement work and making good of defects shall be executed at such times as are convenient with the *Owner* which may entail overtime work on the part of the *Contractor*. Additional charges for overtime work in this regard shall be borne by the *Contractor*.”

- .3 Add the following new paragraph 12.3.7:

“12.3.7 The *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for work, services or *Products* performed or supplied by any *Subcontractor*, *Supplier* or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*. Until the expiry of the relevant warranty periods enforceable against the *Contractor*, the *Owner* shall have in its custody all warranties, guarantees and other obligations to third parties respecting the *Work*.”

**4.48 GC 12.3 WARRANTY HOLDBACK**

- .1 Add the following new **GC 12.4 – WARRANTY HOLDBACK**:

**“GC 12.4 WARRANTY HOLDBACK**

- 12.4.1 The *Contractor* agrees that the *Owner* may withhold an amount of the payments due by the *Owner* to the *Contractor* hereunder to secure the *Contractor*’s performance under the *Contract Documents*, including and without limitation, correction of deficiencies and performance of warranty obligations (the “***Warranty Holdback***”).
- 12.4.2 The *Warranty Holdback* will be held and administered by the *Owner* and is in addition to the statutory holdbacks required to be retained by the *Owner* under the *Construction Act* and the holdback described in Paragraph 5.5.1. The amount of the *Warranty Holdback* shall be determined based on the *Contract Price* in accordance with the following table:

<b>Contract Price</b>	<b>Warranty Holdback (withheld from each Progress Payment)</b>	<b>Warranty Holdback Aggregate Maximum Amount</b>
\$0 to \$4,999,999.99	2.5%	2.5%
\$5,000,000.00 to \$9,999,999.99	2.0%	2.0%
\$10,000,000.00 and over	1.5%	1.5%

For the avoidance of doubt, the *Warranty Holdback* shall be adjusted from time to time to account for changes to the *Contract Price* as a result of approved *Change Orders* and *Change Directives*.

- 12.4.3 In order to fund the *Warranty Holdback*, the *Owner* may, at its sole discretion, retain the *Warranty Holdback* as a lump sum upon the achievement of *Substantial Performance of the Work* and, if the funds retained are insufficient at the time of *Substantial Performance of the Work*, retain a portion of any remaining payment owing to the *Contractor*, including any remaining progress payment, final or finishing work payment, or the holdbacks under the *Act*, if any.
- 12.4.4 The *Owner* shall release the *Warranty Holdback*, less any amount due to the *Owner* by the *Contractor* hereunder, at the end of the one (1) year warranty period as set out in Paragraph 12.3.1 or any extended warranty required under Paragraph 12.3.6, whichever is later (the "*Warranty Period*"). Notwithstanding the foregoing:
- .1 after the first twelve (12) months of the *Warranty Period*, the *Contractor* may apply for a release of eighty per cent (80%) of the *Warranty Holdback*, provided that the balance of the *Warranty Holdback* shall not be below five thousand dollars (\$5,000) as a result of the release and provided that there are no outstanding deficiencies at the time of the application; and
  - .2 the *Contractor* may apply in writing to the *Owner* at the time of *Substantial Performance of the Work* to substitute for the monies retained as the *Warranty Holdback* an alternative warranty security of equivalent or greater value comprising:
    - (1) one or more irrevocable letters of credit, or
    - (2) another readily negotiable security.
- 12.4.5 Acceptance of any such alternative shall be at the discretion of the *Owner*.
- 12.4.6 Following receipt and acceptance of any such alternative security by the *Owner*, the *Consultant* shall release to the *Contractor* the monies previously retained for *Warranty Holdback* purposes.
- 12.4.7 The *Owner* may, at its discretion, allow the total *Warranty Holdback* to be made up in part of monies retained under the *Contract* and in part of an alternative warranty security as indicated in (1) and (2) above provided that the total value of such parts, as determined by the *Owner*, shall be not less than the required value as derived from the table set out above.
- 12.4.8 Such alternative warranty security or the monies derived therefrom, less any deductions made as provided for in the *Contract*, shall be released to the *Contractor* following the issuance by the *Payment Certifier* of a *Warranty Holdback* payment certificate."

## PART 5 - INDEMNIFICATION AND WAIVER

### 4.49 GC 13.1 INDEMNIFICATION

- .1 Replace the title of GC 13.1 to read: "**GC 13.1 INDEMNITY AND LIABILITY**".
- .2 Delete paragraphs 13.1.1 to 13.1.6 in their entirety and replace with the following:

- “13.1.1 Without restricting the generality of any other provision in the *Contract*, the *Contractor* shall defend, indemnify and hold harmless the *Owner* and its elected and non-elected officials, directors, staff, agents and employees (collectively, the “**Indemnified Parties**”) from and against all damages, liabilities, expenses, costs, claims, demands, losses, actions, suits, or proceedings of every nature and kind whatsoever that any one or more of the Indemnified Parties may suffer, sustain or incur or that may be brought against any one or more of the Indemnified Parties, directly or indirectly arising out of or are attributable to (a) the negligent act or omission of the *Contractor* or anyone for whose act the *Contractor* may be liable or (b) the failure of the *Contractor* to fulfill the terms and conditions of the *Contract* (collectively, the “**Indemnity**”).
- 13.1.2 The *Indemnity* shall include, without limitation:
- .1 all claims, demands, actions, suits or proceedings by any of the employees of the *Contractor*, or *Subcontractors* or sub-subcontractors arising from the *Contractor’s* failure to maintain worker’s compensation insurance required by the *Contract Documents*, which shall survive the completion of the *Work* or the termination for any reason of the *Contract*;
  - .2 the consequences of any and all safety infractions committed by the *Contractor* or any of its *Subcontractors* under the OHS/A, including the payment of legal fees and disbursements on a full 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 or other damages;
  - .3 the *Contractor’s* failure to comply with the requirements of PART 15 EXCESS SOILS LEGISLATION, including without limitation, compliance with *Ontario’s Excess Soil and Waste Laws*; and
  - .4 orders, actions, suits, claims, proceedings, penalties (including administrative monetary penalties), fines, statutory obligations, professional fees (including retainers for professional services), settlements, and/or other penalties whether imposed by a governmental authority (including any competent local government, board, commission, department or officer), court or through settlement, and legal fees and disbursements to defend and/or appeal any orders, offences, charges, prosecutions, actions, suits, claims, administrative monetary penalties, or proceedings, including, without limitation, those arising out of or attributable to *Ontario’s Excess Soil and Waste Laws* and the *Owner’s* failure or alleged failure to comply with any duties or responsibilities it may be found to have, or alleged to have, as a Project Leader.
- 13.2.3 Where the *Owner*, at its sole and absolute discretion, retains separate legal representation independently of the *Contractor* to defend any claim arising from or out of or related to this *Contract*, the *Contractor* understands and agrees that the *Owner* is entitled to defend, compromise, or settle the claim on such terms as it deems fit. Upon written demand by the *Owner*, the *Contractor* shall reimburse the *Owner* for the sum or sums paid by it together with any and all related expenses within thirty (30) calendar days of such demand. In addition to any other remedies the *Owner* may have, the *Owner* may deduct the amounts of any payments or expenses made or incurred in dealing with a claim from any sums due or to become due to the *Contractor* under this *Contract*.

- 13.2.4 Notwithstanding the any other term or condition of this *Contract* to the contrary:
- .1 where in the opinion of the *Owner*, the *Contractor* has failed to rectify any damage or infringement for which the *Contractor* is responsible under this *Contract*, the *Owner*, following notice in writing to the *Contractor* of its intention to do so, may withhold payment of monies due to the *Contractor* under this *Contract* until the *Contractor* has rectified such damage or infringement;
  - .2 the *Owner* shall have the right to set-off the amount of any claims for which *Notice in Writing* has been given by the *Owner* to the *Contractor* in accordance with GC 6.6 - CLAIMS FOR A CHANGE TO CONTRACT PRICE or GC 12.2 - INDEMNIFICATION against any amounts which may be otherwise owing or payable to the *Contractor* pursuant to the terms of this *Contract*, and
  - .3 except to the extent such loss is paid by insurance, neither party shall be liable for any consequential, indirect, special or incidental damages of any kind or nature no matter how arising, including in contract, tort (including negligence), warranty, strict liability or any other theory of liability at law or in equity.

13.2.5 The *Indemnity* is in addition to and in lieu of any insurance coverage required in connection with this *Contract*.”

#### 4.50 C 13.2 WAIVER OF CLAIMS

- .1 Delete the reference to “395 calendar days” in the last line of paragraph 13.2.2 and replace with “one hundred and twenty (120) calendar days”.
- .2 Delete the last sentence of paragraph 13.2.3.4 and replace with the following:  
  
“Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:
  - (1) if the *Contract Price* is two million dollars (\$2,000,000) or less, the sum of fifty thousand dollars (\$50,000), before *Value Added Taxes*,
  - (2) if the *Contract Price* exceeds two million dollars (\$2,000,000), the sum of one hundred thousand dollars (\$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 defect or deficiency” regardless of the cost of repair.”
- .3 Add the words “and 13.2.3.4” immediately following the words “paragraph 13.2.3.2” in paragraph 13.2.5.1.
- .4 Delete the reference to “395 calendar days” in the last line of paragraph 13.2.5 and replace with “120 calendar days”.

#### PART 14 ADJUDICATION

4.51 Add the following new **PART 14 ADJUDICATION**:

##### “PART 14 ADJUDICATION

##### GC 14.1 COMMENCEMENT OF ADJUDICATION

- 14.1.1 Subject to the notice requirements in paragraph 14.1.2, if either party wishes to refer a dispute to adjudication in accordance with Part II.1 of the *Act*, such party shall give

to the other party *Notice in Writing* of an adjudication, including, to the extent applicable:

- .1 *Contractor's* invoice number;
- .2 *Owner's* progress payment or purchase order number;
- .3 *Contract* title and number;
- .4 the names and addresses of the parties;
- .5 the nature, and a brief description of the dispute, including details respecting how and when it arose;
- .6 the nature of the redress sought, including but not limited to a summary of:
  - (1) quantities,
  - (2) actual or estimated costs, and
  - (3) indirect costs or estimated indirect costs;
- .7 relevant provisions of the *Contract* in support of the dispute and the reasons the provisions are relevant, including the *Contractor's* services affected by the dispute, areas of the *Contractor's* services incurring additional costs and the changes from the *Bid Solicitation*;
- .8 copies of all supporting documentation and records of the *Contractor's* applicable to the dispute;
- .9 the names of three (3) adjudicators that the referring party nominates to adjudicate the dispute, each of whom must be listed in the registry established by the *Authority*; and
- .10 the date that any required notice was given in accordance with paragraph 14.1.2 and a copy of the notice.

14.1.2 Notwithstanding paragraph 14.1.1, a party seeking to refer a dispute to adjudication that does not arise from non-payment of a *Proper Invoice* or holdback shall provide notice of a dispute in writing to the other party setting out the nature and a brief description at least thirty (30) calendar days prior to referring the claim to adjudication. Any *Notice in Writing* of a dispute given in accordance with paragraph 8.2.2 of GC 8.2 – NEGOTIATION AND MEDIATION shall constitute *Notice in Writing* of a dispute in accordance with this paragraph.

14.1.3 Notice in writing of an adjudication given by the *Contractor* shall be delivered to both the *Consultant* and the *Owner's* project manager at the email address provided in ARTICLE A-6 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING either by prepaid registered mail or electronic format, bearing the *Contract* number in the subject line. Only portable document format (PDF - non-editable) file attachments will be accepted by the *Owner*.

14.1.4 The party giving notice in writing of an adjudication in accordance with this GC 14.1 – COMMENCEMENT OF ADJUDICATION shall, on the same day, provide a copy of the notice to the *Authority* in electronic format. For clarity, a notice of adjudication received by the *Owner* on a date that is not a *Working Day* shall be deemed to be received by the *Owner* on the next *Working Day* following such date.

#### **GC 14.2 APPOINTMENT OF ADJUDICATOR**

14.2.1 No later than three (3) calendar days following receipt of the *Notice in Writing* of an adjudication, the responding party shall give *Notice in Writing* to the referring party stating that either (a) the responding party accepts one of the referring party's nominees or (b) none of the referring party's nominees are acceptable. If the responding party accepts one of the referring party's nominees, the referring party



shall notify the nominee of such appointment on the day that *Notice in Writing* of the acceptance is received from the responding party and shall request the nominee's prompt consent to conduct the adjudication. If none of the referring party's nominees are acceptable to the responding party, the parties may discuss the appointment of another mutually agreeable adjudicator. In the event that the parties have not selected a mutually agreeable adjudicator by the close of business three (3) calendar days following the giving of *Notice in Writing* of an adjudication, the referring party shall, by the next calendar day, request that the *Authority* appoint an adjudicator.

- 14.2.2 If, by the close of business four (4) calendar days following the giving of the *Notice in Writing* of an adjudication, the parties' agreed upon adjudicator, if any, has not consented to conduct the adjudication, the referring party shall immediately request that the *Authority* appoint an adjudicator.

### GC 14.3 ADJUDICATION PROCEDURE

- 14.3.1 No later than five (5) calendar days after an adjudicator agrees, or is appointed, to conduct the adjudication, the party who gave *Notice in Writing* of an adjudication shall provide to the adjudicator a copy of the *Notice in Writing* of an adjudication and shall provide to the responding party and the adjudicator a copy of the *Contract* any documents that the party intends to rely upon during the adjudication.
- 14.3.2 Subject to a direction issued by the adjudicator, a party who received *Notice in Writing* of an adjudication shall provide to the adjudicator and to the referring party any documents that it intends to rely upon at the adjudication within twenty (20) calendar days of receiving the documents referred to in paragraph 14.3.1.
- 14.3.3 The adjudicator shall make a determination of the matter that is the subject of the adjudication no later than thirty (30) calendar days after receiving the documents referred to in paragraph 14.3.1, subject to any extension of the deadline in accordance with subsection 13.13(2)(a) of the *Act*.
- 14.3.4 Subject to the direction of the adjudicator, each party shall, if requested by the other party, agree to extend the timeline referred to in paragraph 14.3.2 to forty (40) calendar days and the timeline referred to in paragraph 14.3.3 to sixty (60) calendar days or such other reasonable extensions as either party may request.
- 14.3.5 The following procedures shall apply to any adjudication the parties engage in under the *Act*.
- .1 any hearing shall be held at a venue within the jurisdiction of the Project or such other venue as the parties may agree and which is acceptable to the adjudicator,
  - .2 the adjudication shall be conducted in English,
  - .3 the parties may be represented by their legal representatives throughout an adjudication, and
  - .4 there shall not be oral communications with respect to issues in dispute that are the subject of an adjudication between a party and the adjudicator, unless it is made in the presence of both parties, or their legal representatives.
- 14.3.6 Any documents or information disclosed by the parties during an adjudication are confidential and the parties shall not use such documents or information for any purpose other than the adjudication in which they are disclosed and shall not disclose

such documents and information to any third party, unless otherwise required by law, save and except for the adjudicator.

- 14.3.7 Notwithstanding any adjudication between the parties, there shall be no interruption of the *Work* pending a resolution or determination of the dispute by adjudication.
- 14.3.8 Neither party may deliver notice in writing of an adjudication in accordance with this PART 14 – ADJUDICATION or Part II.1 of the *Act* after completion of the *Work*.
- 14.3.9 Neither party may deliver a *Notice in Writing* of an adjudication in accordance with PART 14 – ADJUDICATION or Part II.1 of the *Act* after final payment in accordance with the *Contract*.
- 14.3.10 The *Contractor* shall respond promptly to all requests made by the *Owner* for documents and information required in connection with any adjudication not directly between the *Contractor* and the *Owner* under Part II.1 of the *Act*. If requested by the *Owner*, the *Contractor* agrees to attend such adjudication and provide evidence at its own cost and expense. The *Contractor* shall be paid for any related services and expenses on a time and material basis, less a reduction of thirty per cent (30%) of the applicable hourly rate(s), or as otherwise mutually agreed with the *Owner*.”

## **PART 15 EXCESS SOIL LEGISLATION**

### **4.52 Add the following new PART 15 EXCESS SOIL:**

#### **“PART 15 EXCESS SOIL**

##### **GC 15.1 EXCESS SOIL**

- 15.1.1 Unless noted otherwise, all materials determined to be excess by the *Contractor*, including earth and rock excavation, broken concrete, rubble and broken asphalt, shall be removed by the *Contractor*. The cost of removal and disposal of excess materials shall be included in the *Contract Price*.
- 15.1.2 The *Contractor* shall determine the extent to which *Ontario’s Excess Soil and Waste Laws* apply 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*.
- 15.1.3 To the extent that excess material is neither “excavated soil” as that term is referred to in O. Reg. 406/19 (“**Excavated Soil**”) nor *Excess Soil*, but otherwise constitutes “waste” pursuant to the EPA and Reg. 347 (“**Non-Soil Waste**”), the *Contractor* shall ensure that the *Non-Soil Waste* is managed, transported, and disposed of in accordance with the EPA, Reg. 347 and O. Reg. 351/12, including but not limited to ensuring that the *Non-Soil Waste* is transported by a hauler approved by the *MECP* to transport the *Non-Soil Waste* and disposed of at a waste disposal site approved by the *MECP* to receive the *Non-Soil Waste* for final disposal.
- 15.1.4 To the extent that material that is *Excavated Soil* and/or *Excess Soil* is generated and/or otherwise needs to be managed as part of the *Work* or the *Project*, the *Contractor*, at the *Contractor’s* cost and expense, shall:

- .1 perform the *Work* in accordance with *Ontario's Excess Soil and Waste Laws* and arrange for and ensure management, processing, transporting, tracking, storage, reuse and/or disposal of *Excavated Soil* and/or *Excess Soil* is completed in accordance with *Ontario's Excess Soil and Waste Laws*, including but not limited to completing the following tasks:
- (1) ensure that the excavation of "soil" and "rock" as those terms are defined in *Ontario's Excess Soil and Waste Laws* is completed under the supervision of a qualified person as defined in O. Reg. 406/19 ("**Qualified Person**") retained by the *Contractor* and subject to the *Owner's* prior approval,
  - (2) ensure that *Excavated Soil* and/or *Excess Soil* is lawfully transported to and then either reused for a beneficial purpose or disposed of with consideration to the quantity of the soil, the quality of the soil, the intended receiving site (if not reused at the *Place of the Work*), and the presence or absence of debris or deleterious materials, all in accordance with *Ontario's Excess Soil and Waste Laws*,
  - (3) if required by *Ontario's Excess Soil and Waste Laws*, implement a record-keeping system to document and track information about the *Excess Soil* transported to an intended receiving site (if not reused at the *Place of the Work*), including the quantity and quality of the *Excess Soil*,
  - (4) generate all required records within the deadlines stipulated by *Ontario's Excess Soil and Waste Laws*, maintain its records in an organized manner for a minimum of seven (7) years, and provide these records to the *Owner*,
  - (5) in advance of commencing the *Work*, ensure that the *Qualified Person* prepare and implements a procedure in compliance with section 23 of O. Reg. 406/19 (the "**Section 23 Procedure**") to ensure that, in the event that during the *Work* any person working at the *Place of the Work* who makes an observation that suggests that soil being excavated may be affected by the "discharge" of a "contaminant" as those terms are defined in *Ontario's Excess Soil and Waste Laws*, the *Contractor* and all persons on-site follow the *Section 23 Procedure*,
  - (6) if required by *Ontario's Excess Soil and Waste Laws*, file and update specified notices on the registry as defined in O. Reg. 406/19, and provide a copy of these notices to the *Owner*,
  - (7) if required by *Ontario's Excess Soil and Waste Laws*, require the *Contractor's Qualified Person* to complete and/or update an assessment of past uses, sampling and analysis plan, soil characterization report and/or excess soil destination assessment report,
  - (8) provide to the *Owner* the name, address, current permits, approvals and sampling requirements of any and all proposed receiving facilities for the *Excess Soil* arising from the *Work* prior to the transportation of the *Excess Soil* to the proposed receiving facility/facilities,
  - (9) where applicable, require the *Contractor's Qualified Person* to issue a letter to any proposed receiving facility/facilities for the *Excess Soil* providing a summary of soil testing results about the *Excess Soil* and a professional opinion regarding the suitability of the *Excess Soil* for off-site temporary storage, temporary processing, reuse or disposal at the intended receiving facility/facilities ("**QP Letter**"), and provide a copy of the *QP Letter* to the *Owner*, and

- .2 comply with all by-laws of the *Owner*, including site alteration and/or fill by-law(s), as amended, and any additional prescribed earthworks best practices required by the *Owner*.
- 15.1.5 Without restricting the generality of any other provision in the *Contract Documents*:
- .1 for the duration of the *Project*, until *Total Performance of the Work*, in respect of the *Work*, the *Project* and the *Place of the Work*, the *Owner* is the *Project Leader* and the *Contractor* shall carry out, and fulfill, the duties and responsibilities of the *Project Leader* in accordance with the requirements of this *Contract* and *Ontario's Excess Soil and Waste Laws*;
  - .2 the *Contractor's* responsibilities under GC 10.2.3 include, without limitation, procuring, and, as a part of the *Contract Price*, paying for, all permits, approvals and disposal fees, costs and expenses required pursuant to *Ontario's Excess Soil and Waste Laws*; and
  - .3 the documents at the *Place of the Work* referred to in GC 3.9.1 include, without limitation, all documents evidencing that the *Work* complies with *Ontario's Excess Soil and Waste Laws* and such other documents as required by *Ontario's Excess Soil and Waste Laws*.
- 15.1.6 For clarity, this GC 15.1 – EXCESS SOIL is applicable to *Excavated Soil* and *Excess Soil*, even when such *Excavated Soil* and *Excess Soil* differs materially from that as indicated in the *Contract Documents* or is of a nature which differs materially from as ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*.
- 15.1.7 The *Owner's* receipt of any document or record required under this GC 15.1 – EXCESS SOIL shall not be deemed to connote acceptance or approval of its content or derogate from or diminish the *Contractor's* obligations contained in this GC 15.1 – EXCESS SOIL. The *Owner* shall not be liable or be under any obligation to the *Contractor* or any person whatsoever merely by reason of receipt of a document or record from the *Contractor*.”

Appendix A to Supplementary Conditions

Ready-for-Takeover

*Ready-for-Takeover* shall not be considered achieved until the following has occurred or been provided:

1. The *Consultant* has certified or verified the *Substantial Performance of the Work*;
2. Evidence of compliance with the requirements for occupancy or occupancy permit;
3. Completion of final cleaning and waste removal, as required by the *Contract Documents*;
4. Delivery of operations and maintenance documents to the *Owner*, as required by the *Contract Documents*, including operation and maintenance manuals;
5. Completion and provision of to-date *As-Built Drawings* on site;
6. Startup testing and call commissioning completed for immediate occupancy, as required by the *Contract Documents*;
7. Secure access to the *Place of the Work* has been provided to the *Owner*;
8. Demonstration and training, as required by the *Contract Documents*, has been scheduled by the *Contractor*, acting reasonably;
9. Punchlist of deficiencies and incomplete items of the *Work* approved by the *Consultant* and the *Owner*, acting reasonably, and a plan for correcting or completing all punchlist items approved by the *Consultant* and the *Owner*, acting reasonably;
10. Certificate of Search of Title from a solicitor testifying there are no liens registered relative to the *Work*;
11. Submission of guarantees, warranties and certificates;
12. *As-Built Drawings*, *Submittals* and a copy of all *Shop Drawings* processed in accordance with GC 3.8 – SHOP DRAWINGS AND OTHER SUBMITTALS showing all notations and amendments made by the *Contractor* and the *Consultant* and, if requested by the *Owner*, provision of editable copies of such *As-Built Drawings* at no additional cost for use at the *Owner's* own risk;
13. Testing and balancing reports;
14. Systems demonstrations/diagrams and instruction of *Owner* in the operation of systems;
15. Samples; and
16. Submission of all spare parts and maintenance materials, 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*.

\*\*\* END OF SUPPLEMENTARY CONDITIONS \*\*\*