

December 11, 2025

Addendum No. 04

File Reference Number: RFP 2025 101

Title: Rail and Tie Installation/Surfacing

RE: Clarifications/Questions

QUESTIONS/CLARIFICATIONS:

Item 1: The CWR track mileages noted on this document adds up to 18 track miles of rail to change. Addendum No. 03 indicates that there is 9 track miles of rail to change. Would ONTC please revise the CWR mileages on the summary sheet to reflect the quantity noted within Addendum No. 03?

Answer: ONTC advises that quantities are estimated, as stated in Paragraph 3 of Appendix B - The Deliverables - Project (A). See below:

It is anticipated that the estimated volume of rail installed per year will be approximately:

- 192,000' of new CWR in 1,600' lengths in 2026, 96,000' of new CWR in 1,600' lengths in 2027 and 2028
- 21,120' of new 80' 115 lb. jointed rail.
- 52,800' of relay 115 lb. rail in varying lengths (39', 78', 80') (released from the CWR installation areas).

These volumes are estimates only and are subject to change. Locations are also subject to change. Respondents should assume installations could occur anywhere on ONTC's 700-mile system.

Item 2: Please see attached Supplementary Conditions and Special Supplementary Conditions to be included at Appendix A - Form of Agreement.

In order to maintain consistency, and reflect the language in the draft agreement, ONTC is required to amend the following language:

A. Part 1 - Invitation and Submission Instructions - Section 1.5.2 Term of Contract shall be deleted and replaced with the following:

The term of the Agreement is for an initial one-year period from 1 November 2026 to 31 October 2027 (the "Initial Period"). ONTC reserves the right, in its sole discretion, to renew the Contract for up to four (4) additional one-year periods (each a "Renewal Term"), for a potential total contract duration of five (5) years. Each Renewal Term, if exercised, will be the subject of a separate renewal contract as set out in the Special Supplementary Conditions and Appendix A.

B. Appendix B - Material Disclosures - Liquidated Damages shall be deleted and replaced with the following:

3.1 Schedule Liquidated Damages

The per diem rate for liquidated damages for delay to Substantial Performance is \$500.00 for each calendar day of delay beyond the prescribed date for Substantial Performance of the Work for each contract period until Substantial Performance of the Work is achieved and certified, pursuant to Article A-10 of the Supplementary Conditions.

3.2 Operational Liquidated Damages

In addition to schedule liquidated damages, the Contract includes operational liquidated damages as set out in Article A-10 of the Supplementary Conditions.

If the Contractor's performance of the Work necessitates deployment of a rescue train, the Contractor shall be liable for ONTC's actual documented costs directly attributable to the rescue train deployment. Such costs may include crew costs for both affected and rescue trains, equipment costs, fuel costs, dispatch costs, passenger accommodation and compensation costs, freight delay penalties, and other demonstrable operational costs.

Causation standards, assessment procedures, and dispute resolution processes are set out in Article A-10 of the Supplementary Conditions. ONTC shall provide Notice in Writing of any claim for operational liquidated damages within thirty (30) days of the rescue train deployment.

3.3 Multi-Year Contract Structure

This Contract is for an initial one-year term from 1 November 2026 to 31 October 2027 (the "Initial Period"). ONTC reserves the right, in its sole discretion, to renew the Contract for up to four (4) additional one-year periods (each a "Renewal Term") on the terms and conditions set out in the Special Supplementary Conditions.

Each Renewal Term, if exercised, will be the subject of a separate renewal contract requiring fresh performance and labour & material payment bonds in accordance

with the Construction Act. Pricing for any Renewal Term will be based on the unit prices submitted in the Proponent's proposal applied to the scope and quantities for that Renewal Term as negotiated between the parties.

ONTC has no obligation to exercise any renewal right. The Contractor has no right to demand renewal.

3.4 Annual Bonding Requirements

At the time of award for the Initial Period, the successful proponent must deliver a Performance Bond equal to fifty percent (50%) of the Contract Price and a Labour and Material Payment Bond equal to fifty percent (50%) of the Contract Price, both in Construction Act form (Forms 31 and 32).

For each Renewal Term, if exercised, the Contractor must deliver fresh Performance and Labour & Material Payment Bonds, each equal to fifty percent (50%) of the Contract Price for that Renewal Term, as a condition precedent to commencing work in that Renewal Term. These bonds must be separate and independent bonds for that Renewal Term, not amendments to or increases of bonds issued for the Initial Period or any other Renewal Term.

Full particulars of bonding requirements are set out in the Special Supplementary Conditions and the Supplementary Conditions.

3.5 Annual Substantial Performance Certification

Substantial Performance shall be certified separately for each contract period (Initial Period or Renewal Term) upon completion of that period's Work. Publication of the certificate, release of holdback, and final payment shall follow the Construction Act requirements for each contract period independently.

Full particulars are set out in the Special Supplementary Conditions.

- C. Appendix B - Material Disclosures - Bid Security - Sections 3.3 and 3.4 shall be deleted and replaced with the following:**

3.3 The Agreement to Bond shall include the following acknowledgement:

3.3.1 *"The Surety acknowledges that the Contract includes renewal rights for up to four (4) additional one-year periods at ONTC's sole discretion as set out in the Special Supplementary Conditions. If ONTC exercises a renewal right, the Contractor will be required to provide fresh performance and labour & material payment bonds for that Renewal Term in accordance with the Special Supplementary Conditions. This Agreement to Bond applies only to the Initial Period from 1 November 2026 to 31 October 2027. The Surety makes no*

commitment regarding bonding for any Renewal Term. Any bonds for a Renewal Term will be the subject of separate underwriting and separate bond documents."

3.4 *Proposals not accompanied by the required Bid Performance Security and the required agreement to bond will be declared non-compliant.*

3.5 *The Proponent shall include the actual cost of all bonds, with no mark-up, in the Price Proposal.*

D. Appendix E - Material Disclosures - Pre-Conditions of Award - (b) Certificates of insurance as specified the Draft Agreement shall be deleted and replaced with the following:

(b) Certificates of insurance as specified the Supplementary Conditions

This Addendum hereby forms part of the RFP.

Regards,

Nicole Laplante
Procurement Contracts Specialist
nicole.laplante@ontarionorthland.ca

ONTARIO NORTHLAND – SUPPLEMENTARY CONDITIONS – CCDC 4 – 2023 – REVISED 10 DECEMBER 2025
AMENDMENTS TO THE AGREEMENT BETWEEN OWNER AND CONTRACTOR

1. ARTICLE A-1 THE WORK

- 1.1 In paragraph 1.1, delete the words “and for which” and “is acting as and hereinafter called the “*Consultant*””.
- 1.2 Delete paragraph 1.3 in its entirety and replace it with the following:
- “1.3 commence the *Work* by the 1st day of November in the year 2026 and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* by the 31st day of October in the year 2027, and *Ready-for-Takeover* by the 31st day of October in the year 2027.
- 1.3 Add a new paragraph 1.4 as follows:
- “1.4 The multi-year contract structure and renewal framework is set out in the Special Supplementary Conditions.

2. ARTICLE A-4 CONTRACT PRICE

- 2.1 Delete paragraph 4.4 and replace it with the following:
- “The *Contract Price* shall remain fixed for the duration of the *Contract Time*, subject only to adjustments as provided for in the *Contract Documents*. For certainty, the *Contractor* assumes all risks in connection with cost increases for *Products*, *Labour*, and *Construction Equipment* prescribed by the *Contract Documents* for the performance of the *Work*, and the *Contractor* assumes all responsibility for liabilities and additional costs that may arise as a result of the *Contractor’s* inclusion of any *Product*, *Construction Equipment*, *Supplier*, or *Subcontractor* in its calculation of the *Contract Price*.”

3. ARTICLE A-5 PAYMENT

- 3.1 Delete paragraph 5.1 in its entirety, including all subparagraphs thereunder and replace it with the following:
- “5.1 Subject to the provisions of the *Contract Documents* and the *Construction Act*, the *Owner* shall:
- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payments,
 - .2 upon *Substantial Performance of the Work* being achieved, as jointly certified by the *Owner* and the *Contractor*, and upon the expiry of the holdback period that follows the publication of the certificate of *Substantial Performance of the Work*, as stipulated in the *Construction Act*, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the holdback, together with such *Value Added Taxes* as may be applicable to such payment, less any amount stated in any *Notice of Non-Payment* that is published by the *Owner* in accordance with the *Construction Act*, and
 - .3 after *Ready-for-Takeover* has been achieved in accordance with the *Contract Documents* and the *Work* is complete, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the *Contract Price* in accordance with GC 5.5. – FINAL PAYMENT, together with such *Value Added Taxes* as may be applicable to such payment.”
- 3.2 Delete paragraph 5.2, including all subparagraphs thereunder in its entirety and replace it with the following:
- “5.2 Interest on late payments, if any, will be in accordance with the *Construction Act*.”

4. ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 4.1 Delete the text of ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING (retaining the provisions setting out the addresses of the *Owner* and the *Contractor*) and replace it with the following:

- “6.1 *Notices in Writing* between the parties or between them and the *Owner's* project manager shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier during normal business hours or if sent during normal business hours by e-mail during the transmission of which no indication of failure of receipt is communicated to the sender, and addressed as set out below. Such *Notices in Writing* will be deemed to be received by the addressee on the next *Working Day* if sent by e-mail 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 pre-paid registered post, when addressed as set out below. 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.”

5. ARTICLE A-9 CONFLICT OF INTEREST

- 5.1 Add new Article A-9 as follows:

“ARTICLE A-9 CONFLICT OF INTEREST

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a *Conflict of Interest* (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a *Conflict of Interest* or a potential *Conflict of Interest*, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.”

6. ARTICLE A-10 TIME OF THE ESSENCE / LIQUIDATED DAMAGES

- 6.1 Add new ARTICLE A-10 TIME OF THE ESSENCE/LIQUIDATED DAMAGES as follows:

- 10.1 It is agreed that one of the reasons the *Contractor* was selected by the *Owner* for this *Contract* is the *Contractor's* representation and warranty that it will attain *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time* stated in Article A-1.3 of this *Contract*. The *Contractor* acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that *Substantial Performance of the Work* and *Ready-for-Takeover* is achieved within the *Contract Time*. The *Contractor* agrees that time is of the essence in the performance of the *Contractor's* obligations under this *Contract*.
- 10.2 The *Contractor* further acknowledges its understanding that the *Owner* is responsible and must account to the Government of Ontario, its customers and passengers and the residents of Northern Ontario. A failure by the *Contractor* to attain *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time* will result in damages to the *Owner* and to the Government of Ontario, its customers and passengers and the residents and businesses in Northern Ontario, which would be difficult or impractical to quantify but would nevertheless have a significant negative impact on the *Owner* and its ability to provide the services the *Owner* is obliged to provide to the residents and businesses in Northern Ontario.
- 10.3 Given the significance of the requirement for the *Contractor* to achieve *Substantial Performance of the Work* and *Ready-for-Takeover*, as described in Article A-10.2, the *Contractor* further acknowledges and agrees that, without limiting the *Owner's* entitlement to any additional or other damages, if it fails to achieve *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time*, the *Owner* will incur substantial damages and the extent of such damages shall be incapable or very difficult of accurate measurement. Nonetheless, the parties acknowledge that as of the effective date of this *Contract*, the amount of liquidated damages set forth in subparagraph 10.4 below represents a good faith estimate on the part of the parties as to the actual potential damages that the *Owner* would suffer because of late completion of the *Project*. It is expressly acknowledged and agreed by and between the parties that the amount of such liquidated damages does not include any penalty. Notwithstanding the foregoing, where the *Project* is delayed beyond the *Contract Time*, the *Owner* shall be entitled to (i) the liquidated damages as calculated pursuant to Article A-10.4, or (ii) in the event that the *Contractor* claims that this liquidated damages provision is invalid or unenforceable and the *Contractor* prevails on such a defence, the damages arising from the delay suffered by the *Owner* including, without limitation, consequential, special, incidental, and indirect damages, costs and other expenses incurred or suffered by the *Owner*. Where the *Contract* comprises multiple contract periods (an *Initial Period* and *Renewal Terms*) pursuant to the *Special*

Supplementary Conditions, the provisions of this Article A-10 shall apply separately to each contract period, and references to *Contract Time* and *Substantial Performance of the Work* shall mean the *Contract Time* and *Substantial Performance of the Work* for the applicable contract period.

- 10.4 The Owner shall require that the Contractor pay to the Owner (or have deducted from Contract payments) liquidated damages at the per diem rate set out in the *Contract Documents* for each calendar day of delay beyond the prescribed date for *Ready-for-Takeover* until *Ready-for-Takeover* is achieved and certified, pursuant to the terms of the *Contract*. If there is no per diem rate set out in the *Contract Documents*, the Contractor shall pay to the Owner the *Administration Costs* incurred by the Owner as a result of the delay. Where the *Contract* comprises multiple contract periods (an *Initial Period* and *Renewal Terms*) pursuant to the *Special Supplementary Conditions*, liquidated damages shall apply separately to the prescribed completion date for each contract period and shall be calculated based on delay beyond the prescribed date for *Substantial Performance of the Work* and *Ready-for-Takeover* for that contract period. If there is no per diem rate set out in the *Contract Documents*, the Contractor shall pay to the Owner the *Administration Costs* incurred by the Owner as a result of the delay.
- 10.5 If the Contractor's performance of the *Work* necessitates deployment of a rescue train, the Contractor shall pay to Owner liquidated damages equal to Owner's actual documented costs directly caused by the rescue train deployment. Such costs may include crew costs for both affected and rescue trains, equipment costs, fuel costs, dispatch costs, passenger accommodation and compensation costs, freight delay penalties or claims, and other demonstrable operational costs directly attributable to the rescue train deployment.
- 10.6 For the purposes of this Article, rescue train deployment shall be deemed caused by the Contractor's performance of the *Work* where it results from the Contractor's failure to complete *Work* within agreed *Work Blocks* as set out in the *Train Service Plan* or as otherwise agreed in writing with Owner; the Contractor's failure to restore track to safe operating condition by the agreed time; incidents, accidents, or safety issues arising from the Contractor's operations; or the Contractor's equipment, materials, or personnel obstructing or interfering with train operations outside agreed *Work Blocks*. Rescue train deployment shall not be deemed caused by the Contractor's performance where it results from the Owner's scheduling changes, *Force Majeure* events, or other causes beyond the Contractor's reasonable control.
- 10.7 Owner shall provide the Contractor with *Notice in Writing* of any claim for liquidated damages under this Article within thirty (30) days of the incident, including particulars of the delay or rescue train deployment, the basis for attributing causation to the Contractor pursuant to Article A-10.6, and the calculation of actual costs. The Contractor shall have seven (7) days from receipt of such *Notice in Writing* to provide written objections or dispute the claim. If no objection is received within the seven (7) day period or following resolution of any dispute in accordance with Part 8 - DISPUTE RESOLUTION, Owner may deduct the liquidated damages from amounts due to the Contractor or recover them as a debt.
- 10.8 Liquidated damages will be assessed as incurred and reflected as deductions from amounts that may be due under any applications for payment pending at the time that such liquidated damages are assessed. All liquidated damages not deducted from payments prior to final payment shall be deducted from the final payment to be made by the Owner to the Contractor pursuant to GC 5.5 FINAL PAYMENT and any amount of liquidated damages in excess of the final payment amount, shall be paid by the Contractor to the Owner, within 30 days following a written demand by the Owner for such payment.
- 10.9 The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or any other alternative claim that may be available to the Owner.

AMENDMENTS TO THE DEFINITIONS

7. DEFINITIONS

7.1 Add the following new definitions:

Acceptance and *Accepted* means the Owner acknowledges that the work for a *Submittal* has been completed and that the *Submittal* on its face conforms to the requirements of the *Contract Documents*. *Acceptance* does not mean confirmation by the Owner that the *Submittal* does not contain errors or omissions, defects, deficiencies or deviations from the *Contract Documents*. Wherever the words "acceptance" and "accepted" are used in the *Contract Documents*, they shall have the meaning set out in this definition even if the words are not capitalized.

Administration Costs means those costs and expenses incurred by the *Owner* as a result of carrying out a process or activity due to a delay in the performance of the *Work* by the *Contractor* and include:

- (a) additional fees payable by the *Owner* to a professional service provider required for the *Project* on a per diem basis according to the professional service provider's personnel rates;
- (b) the *Owner's* personnel costs associated with the delay, in an amount solely determined by the *Owner*; and
- (c) any additional costs or loss of revenue incurred by the *Owner* due to the delay.

Adjudication means construction dispute interim adjudication as defined under the *Construction Act*.

Arbitration Act means the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended.

As-Built Drawings means a set of drawings that are marked-up during construction by the *Contractor* that show how the structures and other parts of the *Work* were actually constructed versus how the structures and other parts of the *Work* were originally designed and "*As-Built Record Drawings*" means the *As-Built Drawings* prepared by the *Contractor* following completion of the *Work* that are *Submitted* to the *Owner* with the *Close-Out Documentation*.

Authority Having Jurisdiction or AHJ means the federal, provincial or municipal entity that is responsible for enforcing codes, standards and regulations relating to building construction, has the power to pass regulations to direct, specify and govern elements or activities of construction projects such as codes, safety, health or standards of manufacture or installation.

Close-out Documentation has the meaning given in GC 5.5.1.2.

Confidential Information means all information of the *Owner* that is confidential by its nature or in the circumstances in which it is received, including without limitation Personal Information and all confidential information in the custody or control of the *Contractor*, regardless of whether it is identified as confidential or not, which comes into the knowledge, possession or control of the *Contractor* in connection with this *Contract*, but *Confidential Information* does not include information that:

- .1 is or becomes generally available to the public without fault or breach by the *Contractor*, but only after that information becomes generally available to the public;
- .2 the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* without any obligation of confidence from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- .3 the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor*, free of any obligation of confidence, when disclosed; or
- .4 is independently developed by the *Contractor* without the use of any of the *Owner's Confidential Information*.

Conflict of Interest includes, but is not limited to, any situation or circumstance where the interests, conduct, other commitments or relationships of a *Contractor*, a *Contractor's* family member or an officer, director or employee of the *Contractor* could or could be perceived to, directly or indirectly, compromise, impair or be in conflict with the interests of the *Owner*.

Construction Act means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, including all regulations passed under it that are enforceable as of the date of execution of this *Contract*. For certainty, the first procurement process for the *Project* (i.e., the "improvement" as that term is defined in the *Construction Act*) was commenced on or after October 1, 2019, and Parts I.1 (Prompt Payment) and II.1 (Construction *Dispute* Interim Adjudication) of the *Construction Act* apply to this *Contract*.

Construction Schedule or construction schedule means the schedule for the performance of the *Work Submitted* by the *Contractor* and *Accepted* by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.

Dispute means all unresolved claims, disputes or controversies of any kind arising out of or in connection with this *Contract* or the carrying out of the *Work*.

Environmental Contaminants means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws;

Environmental Laws means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any *Authority Having Jurisdiction* relating to *Environmental Contaminants* or the protection of human health, natural resources or the environment;

Estimate means a calculation of the quantity or cost of the *Work* or part of it depending on the context.

Excess Soil means “excess soil” as that term is defined under section 3 of the *Excess Soil Regulation*.

Excess Soil Regulation means O. Reg. 406/19: On-Site and Excess Soil Management to the Environmental Protection Act, R.S.O. 1990, c. E.19, as amended.

Extended Warranty means the extended warranties described in the *Specifications* and *Extended Warranty Period* means the period or periods described in the *Specifications*;

Force Majeure means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or priorities of any *Authority Having Jurisdiction*; provided such event is not caused by the affected party’s negligence, default, failure to exercise reasonable diligence, bankruptcy or insolvency. A *Force Majeure* event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the *Project*.

Impact Assessment Reports means the impact assessment reports, if any, listed in the *RFP* related to the Fisheries Act; Navigable Waters Act; Lakes and Rivers Improvement Act; heritage reviews; Endangered Species Act and Species at Risk Act; terrestrial resources (vegetation, wildlife, other features); socio-economic impacts and Indigenous consultations.

Initial Period means the initial one-year contract period from 1 November 2026 to 31 October 2027, as set out in the Special Supplementary Conditions.

Intellectual Property means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all *Intellectual Property* rights contained, embedded or disclosed in the *Work*.

Notice of Non-Payment means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the *Construction Act*, as applicable to the circumstances.

Payment Period or ‘payment period’ means the fixed segments of time for which the *Contractor* shall be entitled to claim payment for *Work* performed during such period, as set out in GC 5.2.2 or as otherwise agreed upon by the *Owner* and the *Contractor* at the first pre-construction meeting. To be effective, such agreement must be in writing or reflected in the final and approved pre-construction meeting minutes.

Personal Information means information that relates to an identifiable individual or that identifies or may identify an individual as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended.

Renewal Term means each additional one-year contract period following the *Initial Period* for which the *Owner* exercises its renewal rights pursuant to the Special Supplementary Conditions, being Renewal Term 1 (1 November 2027 to 31 October 2028), Renewal Term 2 (1 November 2028 to 31 October 2029), Renewal Term 3 (1 November 2029 to 31 October 2030), and Renewal Term 4 (1 November 2030 to 31 October 2031).

Proper Invoice means a “proper invoice” as that term is defined in Section 6.1 of the *Construction Act* that complies with the minimum requirements set out in Schedule A to the Supplementary Conditions.

Proper Invoice Submission Date is the date referenced in GC 5.2.13.

Restricted Period (Adjudication) means the (inclusive) period of time between November 15 in one calendar year to January 2 in the next calendar year, in any given year throughout the duration of the *Contract*.

Restricted Period (Proper Invoice) means the (inclusive) period of time between December 10 to December 28 in any given year throughout the duration of the *Contract*.

RFP means the procurement documents used by the *Owner* for the procurement of the *Contractor* for the *Project*.

Special Supplementary Conditions means the Ontario Northland Special Supplementary Conditions - Renewal - RFP 2025 101 - Rail and Tie Program 2026-2031, which set out the multi-year contract structure, renewal framework, and bonding requirements for Renewal Terms.

Statutory Declaration means the “Ontario Northland Statutory Declaration of Progress Payment Distribution by *Contractor*” form, attached to the Supplementary Conditions as Schedule “B”.

Train Service Plan means the plan setting out agreed work blocks and train operating schedules for the coordination of the Work with the Owner's train operations, as may be amended from time to time by agreement of the parties.

Submittal(s) means all documentation prepared by the *Contractor* and submitted to the *Owner* for review and *Acceptance* in accordance with the *Contract Documents*.

Third-Party Property Owner means the owner, tenant or other person having the right to use a property.

Warranty Period means the period during which the *Contractor* provides a warranty for the *Work* described in GC 12.3.

Work Block means a period of time during which the Owner suspends train operations on a specified section of track to permit the *Contractor* to perform the Work, as set out in the Train Service Plan.

Waste Management Plan means the plan to be submitted by the *Contractor* to the *Owner* described in GC 3.11.1 and *Waste Management Report* has the meaning described in the *Specifications*.”

7.2 Delete the definition of “*Consultant*” and replace it with the following:

“The *Consultant* is the *Owner*’s project manager designated by the *Owner* to be the *Owner*’s representative for the purposes of the *Contract*. All references to the *Consultant* in the *Contract Documents* shall mean the *Owner* and, unless otherwise provided in the *Contract Documents*, any requirement for a decision or opinion, in writing or otherwise, by the *Consultant* shall mean a decision of the *Owner*. References to the “Engineer” in the *Specifications* or to the “Contract Administrator” in OPSS shall mean the *Consultant* as defined herein.”

7.3 Delete the definition of “*Contract Price*” and replace it with the following:

“*Contract Price* is the amount payable by the *Owner* to the *Contractor* for *Work* to be completed under the *Contract* in accordance with the method and manner of payment stipulated in the *Contract Documents* and the lump sum *Price* submitted by the *Contractor* in its Proposal as stipulated in Article A-4.1 as amended by any Change Orders.”

7.4 At the end of the definition of “*Drawings*”, add the following words “and a *Waste Management Plan*.”

7.5 Delete the definition of “*Payment Legislation*”.

7.6 Amend the definition of *Ready-for-Takeover* by deleting all the words after “as verified” and replacing them with “and *Accepted* by the *Owner*.”

AMENDMENTS TO THE GENERAL CONDITIONS OF THE UNIT PRICE CONTRACT

8. GC 1.1 CONTRACT DOCUMENTS

8.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

8.2 Delete paragraph 1.1.3 and replace it with the following:

"1.1.3 "The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Owner* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.12.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in this paragraph 1.1.3 , the *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents* which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall immediately notify the *Owner* and shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Owner*. If the *Contractor* finds discrepancies in and/or omissions from the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* must immediately notify the *Owner* by means of a written Request for Information ("RFI") and the *Owner* will provide written instructions or explanations. The *Owner* will not be responsible for oral instructions."

8.3 Delete paragraph 1.1.4 and replace it with the following:

"1.1.4 Notwithstanding the foregoing, errors, inconsistencies and/or omissions shall not include lack of reference on the drawings or in the specifications to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use RFIs, issued during execution of the *Work*, in and of themselves to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE WORK. In the event an RFI or the cumulative effect of RFIs leads to what the *Contractor* considers to be a change in the *Work*, then the procedure under Part 6 – CHANGES IN THE WORK shall be followed."

8.4 Delete paragraph 1.1.5.1 in its entirety and replace it with new 1.1.5.1:

"the order of priority of *Documents*, from highest to lowest, shall be:

- Special Provisions, if any
- ONTC Special Supplementary Conditions, if any
- ONTC Supplementary Conditions to CCDC 4
- Agreement between the Owner and the Contractor
- Definitions
- General Conditions
- Addenda to the Request for Proposals ("RFP")
- Schedule 2-A to the RFP – RFP Data Sheet
- Schedule 3-A-1 to the RFP – Scope of Work
- Schedule 3-A-2 to the RFP – Technical Specifications – Surfacing
- Schedule 3-A-3 to the RFP – Sections of ONTC's Manual of Track Requirements (MTR)
- Schedule 3-A-4 to the RFP – Policies and Procedures
- Schedule 3-A-5 to the RFP – Work Block
- Contractor's Proposal in Part 4 of the RFP in response to the RFP"

8.5 Add a new subparagraph 1.1.5.6 as follows:

"6 Schedules of Division 01 - General Requirements of the Specifications shall form part of and be read in conjunction with the technical specification section."

8.6 Add a new sentence to the end of paragraph 1.1.9 as follows:

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

8.7 Delete paragraph 1.1.10 in its entirety and replace it with new paragraph 1.1.10:

"All *Submittals* and *Intellectual Property* rights produced by or resulting from the *Work*, including all *Specifications*, *Drawings*, models and copies thereof, shall vest in the *Owner* and are the sole and absolute property of the *Owner* as and when created. The *Contractor* hereby irrevocably assigns and conveys and agrees to assign and convey, without further consideration, all right, title and interest in and to the *Intellectual Property* rights produced or resulting from the *Work*, in perpetuity and throughout the world, to the *Owner* and its successors and assigns. This paragraph 1.1.10 shall survive termination of the *Contract*."

8.8 Add new paragraphs 1.1.12, 1.1.13, 1.1.14, 1.1.15, 1.1.16, and 1.1.17 as follows:

"1.1.12 The *Owner* shall provide the *Contractor*, without charge, an electronic version of the *Contract Documents*.

1.1.13 If an item is shown on one document, and it can be reasonably inferred that it was intended to include work not shown on other related *Documents*, the *Contract Price* shall nevertheless include for the cost of the item of work, unless the *Owner* agrees otherwise.

1.1.14 Where a provision in the *Contract* is made for the giving or issuing of any *Notice in Writing*, consent, *Acceptance*, approval, certificate or determination by any person, unless otherwise specified such *Notice in Writing*, consent, *Acceptance*, approval certificate or determination shall be in writing and shall not unreasonably be withheld or delayed.

1.1.15 The *Contractor* shall keep one copy of the current *Contract Documents*, Supplemental Instructions, Contemplated Change Orders, Change Orders, Change Directives, reviewed *Shop Drawings*, reports and records of meetings at the Place of *Work* in good order and available to the *Owner*.

1.1.16 The *Contractor* shall keep one copy of current standards and manufacturers' literature specified in the *Contract Documents* at the Place of *Work* in good order and available to the *Owner* for the duration of the *Work*.

1.1.17 The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangement and sizes of materials. The *Contractor* shall obtain more accurate information about the locations, arrangement and sizes from study and coordination of the drawings and shall become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*."

9. GC 1.2 LAW OF THE CONTRACT

9.1 Delete paragraph 1.2.1 in its entirety and replace it with new paragraph 1.2.1:

"This *Contract* shall be governed by and constituted in accordance with the laws in force in the Province of Ontario excluding any conflict of laws principles. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this *Contract* or the performance of the obligations hereunder."

10. GC 1.4 ASSIGNMENT

10.1 Delete paragraph 1.4.1 in its entirety and replace it with new paragraph 1.4.1:

"Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent, in the case of the *Owner*, is at the sole discretion of the *Owner*. In the event of an assignment of the *Contract* by the *Contractor*, such assignment shall require prior written consent of the *Owner* and shall not relieve the *Contractor* from its obligations and liabilities hereunder."

11. GC 2.1 AUTHORITY OF THE CONSULTANT

- 11.1 Delete GC 2.1 in its entirety and replace it with the following:

"The *Owner's* internal project manager shall have the authority to act on behalf of the *Owner* for all matters arising under the *Contract*."

- 11.2 Delete paragraph 2.2.2 in its entirety.

12. GC 2.2 ROLE OF THE CONSULTANT

- 12.1 Delete paragraph 2.2.3 in its entirety.

- 12.2 Amend paragraph 2.2.4 by adding the words "Within 7 calendar days of receipt of the *Contractor's Proper Invoice*," at the beginning of the paragraph.

- and -

Add to the end of the paragraph the following words "If the *Owner* determines that the amount payable to the *Contractor* differs from the amount stated in a *Proper Invoice*, the *Owner* shall prepare the applicable Notice of Non-Payment for the amount in dispute."

- 12.3 Delete paragraph 2.2.7 in its entirety and replace with the following:

"If there is a *Dispute* between the *Owner* and the *Contractor* regarding the performance of the *Work* or the interpretation of the Contract Documents, the parties shall resolve the *Dispute* in accordance with PART 8 – DISPUTE RESOLUTION."

- 12.4 Delete paragraph 2.2.8 in its entirety.

- 12.5 Delete paragraph 2.2.9 in its entirety.

- 12.6 Delete paragraph 2.2.10 in its entirety.

- 12.7 Delete paragraph 2.2.11 in its entirety.

- 12.8 Amend paragraph 2.2.12 by adding the following to the end of that paragraph:

"The Supplemental Instruction is not a change in the *Contract Documents*. If, in the opinion of the *Contractor*, the Supplemental Instruction requires an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within 3 *Working Days* after receipt of a Supplemental Instruction provide the *Owner* with *Notice in Writing* to that effect. Failure to provide the *Notice in Writing* within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the Supplemental Instruction by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*."

- 12.9 Delete paragraph 2.2.18 in its entirety and replace it with the following:

"The *Owner* will receive and review written warranties and related documents required by the Contract and provided by the *Contractor* and advise the *Contractor* of any deficiencies in such warranties or related documents, or that the warranties and related documents are acceptable."

13. GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 13.1 Add new paragraph 2.3.8 as follows:

"Where inspection and testing services are specified, the service provider employed for such services shall be the service provider named by the *Owner*."

- 13.2 Add new paragraph 2.3.9 as follows:

"Where standards of performance are specified and the *Work* does not comply with the specified standard of performance, the deficiency in the *Work* shall be corrected as directed by the *Owner*. Subsequent testing to ensure that the standard of performance has been attained (including re-testing by the *Owner*), shall be carried out at the *Contractor's* expense and shall not be paid from the cash allowances described in GC 4.1."

14. GC 2.4 DEFECTIVE WORK

14.1 Add new paragraphs 2.4.1.1, 2.4.1.2, 2.4.1.3 and 2.4.1.4 as follows:

- “.1 Without limiting the foregoing, the *Contractor* shall rectify, in a manner acceptable to the *Owner*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Owner*.
- .2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner*.
- .3 All such corrections of defective work and deficiencies shall be at the *Contractor's* expense.
- .4 If the *Contractor* fails to do the work to correct the defective *Work* or deficiencies, the *Owner* may carry out such remediation work by its own forces or by other *Contractors* and the *Owner* shall be entitled to recover from the *Contractor* the costs thereof or may deduct the same from any monies due or that become due to the *Contractor*."

14.2 Amend paragraph 2.4.3 by deleting the last sentence and replacing it with the following:

"If the *Owner* and the *Contractor* do not agree in the difference in value, they shall resolve the disagreement pursuant to Part 8 – DISPUTE RESOLUTION."

14.3 Add new paragraph 2.4.4 as follows:

"2.4.4 Neither the *Acceptance* of the *Work* by the *Owner*, nor any failure by the *Owner* to identify, observe or warn of defective *Work* or any deficiency in the *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost, even where such failure to identify, observe or warn is negligent."

15. GC 2.5 EMERGENCY SITUATIONS

15.1 Add new GC 2.5 EMERGENCY SITUATIONS as follows:

- “.1 The *Owner* has the right to determine the existence of an emergency situation and, when such an emergency situation is deemed to exist, the *Owner* may instruct the *Contractor* to take action to remedy the situation. If the *Contractor* does not take timely action or, if the *Contractor* is not available, the *Owner* may direct others to remedy the situation. Any such action or direction taken by the *Owner* shall not relieve the *Contractor* of its responsibilities as the "constructor" pursuant to the *Occupational Health and Safety Act (Ontario)*.
- .2 If the emergency situation was the fault of the *Contractor*, the remedial work shall be completed at the cost of the *Contractor* and with no additional cost to the *Owner* and the *Owner* shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- .3 If the emergency situation was not the fault of the *Contractor*, the *Owner* shall pay for the remedial work."

16. GC 3.1 CONTROL OF THE WORK

16.1 Add new paragraph 3.1.3 as follows:

"Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not

apparent, the *Contractor* shall immediately notify the *Owner* in writing and obtain written clarification from the *Owner* before proceeding with any part of the affected work.”

16.2 Add new paragraph 3.1.4 as follows:

“The *Contractor* shall perform the work in a good and workmanlike manner, using new materials, in accordance with all applicable laws and current best practices and standards in the construction industry at the Place of *Work*. The *Contractor* acknowledges that both time and quality are of the essence and the *Contractor* will perform the *Work* or cause the *Subcontractors* and *Suppliers* to perform the *Work* in accordance with the *Construction Schedule*, as amended from time to time, and in an expeditious and professional manner.

17. GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

17.1 Add new paragraph 3.2.3.5 as follows:

“Subject to GC 9.4 – CONSTRUCTION SAFETY, for the *Owner’s* own forces and for *Other Contractors*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the *Place of the Work*, including all of the responsibilities of the “Constructor” under the *Occupational Health and Safety Act* (Ontario).”

18.3 Add new paragraph 3.2.3.6 as follows:

“provide for the co-ordination of the activities and work of *Other Contractors* and *Owner’s* own forces with the *Work of the Contract*.”

18. GC 3.4 CONSTRUCTION SCHEDULE

18.1 Delete paragraph 3.4.1 in its entirety and replace it with the following:

“3.4.1 The *Contractor* shall:

- .1 within 10 *Working Days* from the date of *Contract* award, prepare for the *Owner’s* review and *Acceptance*, a construction schedule, including identification of the critical path of the *Work*, the schedule of operations, the proposed methods of construction and sequence of *Work*, and the time the *Contractor* proposes to complete the various items of *Work* within the *Contract Time*. The schedule shall be designed to ensure conformity with the *Contract Time*. The schedule will be in a Gantt chart format in either .pdf or excel format and include:

- (a) activity sequences and durations;
- (b) process for obtaining any required permits;
- (c) work block planning and track protection requested;
- (d) special allocation of labour and *Products*;
- (e) processing of *Shop Drawings* and samples;
- (f) delivery of *Products* involving long lead time procurement;
- (g) usage and occupancy requirements of the *Owner* of those portions of the *Work* having usage or occupancy priority;
- (h) *Substantial Performance of the Work*, and *Ready-for-Takeover* for the applicable contract period reflecting that such milestones will be achieved by no later than the dates specified in Article A-1.3 or the applicable *Renewal Contract*; and
- (i) any other schedule requirements set out in the *Contract Documents*.

If the construction schedule submitted by the *Contractor* is not *Accepted* by the *Owner*, the *Contractor* shall make revisions to the construction schedule until it is accepted by the *Owner*. Once *Accepted* by the *Owner*, the schedule submitted by the *Contractor* shall become the "*Construction Schedule*." Notwithstanding any other terms of this *Contract*, the *Contractor* shall not be entitled to receive any payment from the *Owner* until a construction schedule has been submitted by the *Contractor* and *Accepted* by the *Owner*. The *Owner* may, at its sole discretion, not issue an order to commence work until the schedule has been received and *Accepted*.

- .2 during performance of the *Work* and in accordance with the controls and reporting requirements in the *Contract Documents*, provide for the *Owner's* review and *Acceptance*, progress reports updating the *Construction Schedule*, reporting on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted. If the schedule is affected by approved *Change Orders*, the *Contractor* shall submit an updated *Construction Schedule*, if requested by the *Owner* within 7 *Working Days* of the request. This updated schedule shall show how the *Contractor* proposes to perform the balance of the *Work*, so as to complete the *Work* within the *Contract Time*.
- .3 provide progress reports with each application for payment, in the form provided by the *Owner* attached as Schedule C, for review and *Acceptance*, including an update of the *Construction Schedule* referred to in paragraph 3.4.1."

18.2 Add new paragraphs 3.4.2 and 3.4.3 as follows:

"3.4.2 If,

- .1 at any time it should reasonably appear to the *Owner* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, based on critical path methodology, and *Notice in Writing* of such opinion is given to the *Contractor*; or
- .2 the *Contractor* becomes aware of or notices a slippage in the *Construction Schedule*,

then the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* and shall produce and present to the *Owner*, for its review and *Acceptance*, within 5 *Working Days* after becoming aware of the schedule slippage, a recovery plan demonstrating how the *Contractor* will achieve the recovery of the *Construction Schedule*.

3.4.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the *Accepted* baseline *Construction Schedule* or *Accepted* revised *Construction Schedule* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, during construction are deemed NOT to be approved extensions to the *Contract Time*. Revisions to the *Construction Schedule* shall not be made without the prior written *Acceptance* of the *Owner*. All requests by the *Contractor* for a revision to the *Construction Schedule* that includes an extension to the *Contract Time* or adjustment to the date(s) for *Substantial Performance of the Work* or *Ready-for-Takeover* must be approved by the *Owner* through an executed *Change Order*."

19. GC 3.5 SUPERVISION

19.1 Amend paragraph 3.5.1 by adding at the end of that paragraph:

"..., and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld."

19.2 Add new paragraph 3.5.3 as follows:

"Notwithstanding paragraph 3.5.2, the representative of the *Contractor* attending a meeting with the *Owner* shall be deemed to have authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to this *Contract*."

19.3 Add new paragraph 3.5.4 as follows:

"The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed *Contractor's* representative(s), where the grounds for the request involve conduct on the part of the *Contractor's* representative(s) which jeopardizes the safety of the *Owner's* operations or the *Work* or the proper progress of the *Work*. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an Acceptable replacement. The *Contractor* shall indemnify and hold the *Owner* harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by the *Owner* arising from the conduct of the representative that is being replaced."

20. GC 3.6 SUBCONTRACTORS AND SUPPLIERS

20.1 Add new paragraph 3.6.1.4:

"ensure the *Subcontractors* and *Suppliers*, while working on the *Owner's* property, are aware of and comply with the *Owner's* policies, including its Fit for Duty Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, the current Ontario Northland Time Table, C.R.O.R. 2022, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable."

20.2 Delete paragraph 3.6.2 in its entirety and replace it with new paragraph 3.6.2

"The *Contractor* shall not change *Subcontractors* or *Suppliers* identified in the *Contract Documents* without the prior written approval of the *Owner* which approval will not be unreasonably withheld."

20.3 Delete paragraphs 3.6.3 and 3.6.4 in their entirety and replace them with "Intentionally Left Blank".

20.4 Add new paragraph 3.6.7 as follows:

"The responsibility as to which *Supplier* and/or *Subcontractor* provides the specific labour, *Products* and services for each item of work rests solely with the *Contractor*, within and in accordance with the requirements and limitations listed in the *Contract Documents* with respect to approval of *Suppliers* and/or *Subcontractors* permitted to perform work on the *Project*."

21. GC 3.7 LABOUR AND PRODUCTS

21.1 Amend paragraph 3.7.1 by adding the words, "..., agents, *Subcontractors* and *Suppliers* ..." after the word "employees".

21.2 Amend paragraph 3.7.2 by adding the following words at the beginning of the paragraph: "Except as otherwise provided in the Technical Specifications" and adding the following sentence at the end of that paragraph:

"The *Contractor* represents and warrants that the *Products* supplied by the *Contractor* 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*."

21.3 Add new paragraph 3.7.4 as follows:

"Upon receipt of a *Notice in Writing* from the *Owner*, the *Contractor* shall take action to rectify any situation involving its employee, agent, *Subcontractor* or *Supplier* whose work is unsatisfactory to the *Owner* or who are considered by the *Owner* to be unskilled or otherwise objectionable. If, after giving sufficient warning from the *Owner*, the *Contractor* is not able to reasonably rectify such situation, then such employee, agent, *Subcontractor* or *Supplier* shall be dismissed from the *Place of the Work* and the *Contractor* shall indemnify and hold the *Owner* harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by the *Owner* arising from the dismissal of such employee, agent, *Subcontractor* or *Supplier*."

21.4 Add new paragraph 3.7.5 as follows:

"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* identified by the *Contractor* and *Accepted* by the *Owner*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner* or *Other Contractors*."

21.5 Add new paragraph 3.7.6 as follows:

“The *Contractor* shall not employ any persons to perform *Work* whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. Any costs arising from labour disputes, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers* shall be at the sole expense of the *Contractor*.”

21.6 Add new paragraph 3.7.7 as follows:

“The *Contractor* and the *Owner* and its representatives shall cooperate and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid work stoppages, trade union jurisdictional disputes and other labour disputes.”

22. GC 3.8 SHOP DRAWINGS

22.1 Delete paragraph 3.8.7 and replace it with the following:

“3.8.7 The *Owner* will review and return *Shop Drawings* in accordance with the schedule agreed upon as described in paragraph 3.8.2, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Owner* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Owner* shall notify the *Contractor* and they shall meet to review and develop a revised schedule for processing such *Shop Drawings* that is *Acceptable* to the *Owner*. The *Contractor* shall update the *Shop Drawings* schedule to correspond to changes in the *Construction Schedule*. Changes in the *Contract Price* or *Contract Time* may be made only in accordance with GC 6.1, GC 6.2 and GC 6.3”

22.2 Add new paragraphs 3.8.8, 3.8.9, 3.8.10 and 3.8.11 as follows:

3.8.8 The *Contractor* shall provide *Shop Drawings* and *Submittals* in the form specified, or if not specified, as directed by the *Owner*. *Shop Drawings* provided by the *Contractor* to the *Owner* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them. Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.9 *Shop Drawings* which require approval of any *Authority Having Jurisdiction* shall be provided to such authority by the *Contractor* for the authority's approval.

3.8.10 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Owner* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Owner*. The *Contractor* shall notify the *Owner* in writing of any revisions to the *Shop Drawings* other than those requested by the *Owner*.

3.8.11 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.”

23. GC 3.9 USE OF THE WORK

23.1 Add new GC 3.9 – USE OF THE WORK as follows:

“GC 3.9 USE OF THE WORK

3.9.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

3.9.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

- 3.9.3 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 fittings and equipment, or for other use before *Ready-for-Takeover*, if such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as *Acceptance* of the *Work* by the *Owner* or in any way relieves the *Contractor* from its responsibility to complete the *Contract*."

24. GC 3.10 CUTTING AND REMEDIAL WORK

- 24.1 Add new GC 3.10 – CUTTING AND REMEDIAL WORK as follows:

"GC 3.10 CUTTING AND REMEDIAL WORK

- 3.10.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly. Such cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.
- 3.10.2 The *Contractor* shall coordinate the *Work* to ensure all cutting and remedial work required is kept to a minimum."

25. GC 3.11 CLEANUP

- 25.1 Add new GC 3.11 – CLEANUP as follows:

"GC 3.11 CLEANUP

- 3.11.1 The *Contractor* shall comply with all requirements for cleanup at the *Place of the Work* as specified in the *Contract Documents*. The *Contractor* shall provide to the *Owner* for *Acceptance* a *Waste Management Plan*, and a waste reduction plan if required by *Environmental Laws*, for the waste products, debris and any *Excess Soils* generated by the *Work*, which plan shall comply with all *Environmental Laws* and the *Specifications*. The costs of disposing of all waste products and debris, including products and debris containing *Environmental Contaminants*, and *Excess Soil* resulting from the *Work* is included in the *Contract Price*.
- 3.11.2 Before applying for *Substantial Performance of the Work*, the *Contractor* shall remove waste products and debris and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. All products, tools, *Construction Equipment* and *Temporary Work* not required for the performance of any remaining *Work* shall be removed by the *Contractor*.
- 3.11.3 As a condition precedent to final payment, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, waste products and debris from the *Place of the Work* to the satisfaction of the *Owner*.
- 3.11.4 In performing work to correct deficiencies or work under warranty following *Ready-for-Takeover* of the *Work*, the *Contractor* shall maintain the *Place of the Work* in a tidy condition and shall immediately remove waste products and debris.
- 3.11.5 The *Contractor* shall comply with all *Environmental Laws* in disposing of the waste products, debris and *Excess Soil* resulting from the *Work*. The *Contractor* shall assume all liability and responsibility for any waste products, debris and *Excess Soil*, including any such materials containing *Environmental Contaminants*, which are removed from the *Place of the Work* by the *Contractor* and during the transportation of the waste products, debris and *Excess Soils* to the appropriate waste disposal site. The *Contractor* shall submit landfill weigh bills from a waste disposal site as proof that all waste has been disposed of at a certified waste disposal site. The *Contractor* shall submit a *Waste Management Report* as part of the *Close-Out Documentation* described in paragraph 5.5.1.2 to be submitted with the application for verification of *Ready-for-Takeover*.
- 3.11.6 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.11, then the *Owner* may give the *Contractor* twenty-four (24) hours' *Notice in Writing* to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.11 within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and

deduct from payments otherwise due to the *Contractor*, the *Owner's* costs for such clean up, including a reasonable mark-up for *Administration Costs*."

26. GC 3.12 PERFORMANCE BY CONTRACTOR

26.1 Add new GC 3.12 – PERFORMANCE BY CONTRACTOR as follows:

"GC 3.12 PERFORMANCE BY CONTRACTOR

3.12.1 In performing its obligations, duties and responsibilities under this *Contract*, the *Contractor* shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor's* obligations, duties and responsibilities shall be judged, evaluated and interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may recommend to the *Owner* or employ on the *Project*.

3.12.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

- .1 The personnel and *Subcontractors* 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*."

3.12.3 The *Owner* has a Vendor Performance Policy which requires the *Owner* to complete an evaluation of the *Contractor's* performance of its obligations under this *Contract*. The performance evaluation of the *Contractor* for the supply of the *Work* will be used in the assessment of the *Contractor's* proposals in response to future procurements. The performance evaluation may also result in the *Contractor* being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>."

27. 3.13 EXCESS SOIL MANAGEMENT

27.1 Add new GC 3.13 – EXCESS SOIL MANAGEMENT as follows:

"GC 3.13 EXCESS SOIL MANAGEMENT

3.13.1 The *Contractor* shall be solely responsible for the proper management of all *Excess Soil* at the *Place of the Work* and for performance of the *Work* in compliance with the rules, regulations and practices required by the *Excess Soil Regulation* until such time as *Ready-for-Takeover* is achieved. Without restricting the generality of the previous sentence, the *Contractor's* responsibility under this GC 3.13 includes the testing, designation, transportation, tracking, temporary and/or final placement, record keeping, and reporting of all *Excess Soil* in connection with the *Work* all in compliance with the *Excess Soil Regulation*.

3.13.2 The *Contractor* shall indemnify and save harmless the *Owner*, their agents, officers, directors, administrators, governors, employees, consultants, successors and assigns from and against the consequences of any and all infractions committed by the *Contractor*, or those for whom it is responsible at law, under the *Excess Soil Regulation*, or any environmental protection legislation, including the payment of legal fees and disbursements on a substantial indemnity basis."

27A GC 4.1 CASH ALLOWANCES

27A.1 Add the following at the end of paragraph 4.1.2:

"The maximum markup for the *Contractor's* overhead and profit on a cash allowance shall be five percent (5%)."

27A.2 Delete the last sentence in paragraph 4.1.4.

27A.3 Delete paragraph 4.1.5 in its entirety and replace it with the following:

“The *Contract Price* shall be adjusted by *Change Order* to provide for any difference in the total value of all cash allowances and the actual cost of the *Work* performed under all cash allowances.”

28. GC 5.1 FINANCING INFORMATION REQUIRED OF THE *Owner*

28.1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE *OWNER* in its entirety including all paragraphs thereunder and replace it with “Intentionally left blank.”

28.2 GC 5.2 APPLICATIONS FOR PAYMENT

28.3 Delete paragraph 5.2.1 in its entirety and replace it with new paragraph 5.2.1:

“5.2.1 Subject to paragraph 5.2.11, applications for payment on account as provided in Article A-5 of the Contract – PAYMENT may be made monthly as the *Work* progresses and must be delivered to the *Owner* in the same manner as a *Notice in Writing*. Unless otherwise directed in writing by the *Owner*, the applications for payment shall be delivered by email to pay.inv@ontarionorthland.ca and to the *Owner's* representative listed in Article A-6 of the Contract – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING. If the *Contractor* fails to deliver its application for payment, at the interval prescribed in this GC 5.2.1, subject to written approval by the *Owner*, the *Contractor* shall not be entitled to submit its application for payment until the next prescribed interval. Should the *Owner* decide to accept an application for payment submitted after the applicable *Proper Invoice Submission Date* (which the *Owner* is under no obligation to do), such acceptance shall not be construed as a waiver of any of the *Owner's* rights, or as a waiver or release of the *Contractor's* obligations to strictly comply with the requirements prescribed in this GC 5.2 – APPLICATIONS FOR PAYMENT.”

28.4 Delete paragraph 5.2.2 in its entirety and replace it with new paragraph 5.2.2:

“5.2.2 Applications for payment shall be dated the last day of each *Payment Period* which is the last day of the month preceding the month in which the application for payment is submitted pursuant to GC 5.2.1.”

28.5 Amend paragraph 5.2.3 by adding the following to the end of that paragraph:

“but no amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties, subject to claims for lien pursuant to the *Construction Act*.”

28.6 Amend paragraph 5.2.4 by deleting the words “the Consultant, at least 15 calendar days” and replacing them with “the *Owner*, at least 30 calendar days”

- and -

add the words “in a form acceptable to the *Owner*,” after the words “*Contract Price*”.

28.7 Amend paragraph 5.2.5 by deleting the word “*Consultant*” and replacing it with “*Owner*”, in each instance it appears.

28.8 Delete paragraph 5.2.6 in its entirety and replace it with new paragraph 5.2.6:

“5.2.6 Each application for payment submitted pursuant to GC 5.2.1 shall:

- .1 be in a form prescribed, or otherwise approved in writing, by the *Owner*;
- .2 include a statement based on the schedule of values for the lump sum items of *Work*;
- .3 quantity measurements and other evidence as requested by the *Owner* for each *Unit Price* item;
- .4 include all of the requirements for a *Proper Invoice* prescribed by the *Construction Act* and the *Contract Documents*, including Schedule A to these Supplementary Conditions;

- .5 be delivered to the *Owner* and to the *Consultant* in the same manner as a *Notice in Writing*; and
- .6 unless otherwise directed in writing by the *Owner*, by email to pay.inv@ontarionorthland.ca and to the *Owner's* representative listed in Article A-6."

28.9 Amend paragraph 5.2.8 by deleting the words "using document CCDC 9A 'Statutory Declaration'.

28.10 Amend paragraph 5.2.9 by adding the following new sentence at the end of that paragraph:

"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 the title has passed to the *Owner* pursuant to GC 13.1 – OWNERSHIP OF MATERIALS."

28.11 Add new paragraph 5.2.10, 5.2.11, 5.2.12 and 5.2.13 as follows:

"5.2.10 The *Contractor* shall prepare and maintain current *As-Built Drawings* which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current *As-Built Drawings* shall be maintained by the *Contractor* and made available for review with each application for payment. The *Owner* reserves the right to retain a reasonable amount for the value of the *As-Built Drawings* not presented for review.

5.2.11 Notwithstanding any other provision of this Contract, the *Contractor* shall not deliver an application for payment, for consideration as a *Proper Invoice* by the *Owner* and the *Consultant*, during the *Restricted Period (Proper Invoice)*.

5.2.12 The *Owner* shall prepare an *Estimate* of the quantity of *Work* immediately upon the conclusion of each payment period. The first *Estimate* shall be for the quantity of *Work* performed since the *Contractor* commenced the Contract, and every subsequent *Estimate* shall be of the quantity of *Work* performed since the preceding *Estimate* was made. The *Owner* shall provide the *Estimate* to the *Contractor* within 10 calendar days after the end of the payment period, or at such other time agreed to by the *Owner* and the *Contractor* in writing. If the *Owner* has not delivered an *Estimate* to the *Contractor* within the 10 calendar days' period, the *Contractor* shall deliver a *Notice in Writing* to this effect to the *Owner*.

5.2.13 Within five (5) calendar days following the delivery of the *Estimate* to the *Contractor*, the *Contractor* shall deliver its application for payment to the *Owner* in accordance with GC 5.2.1 for *Work* performed during a *Payment Period* (the "*Proper Invoice Submission Date*"), provided that if the fifth (5th) calendar day following the delivery of the *Estimate* to which an invoice relates falls on a calendar day that is not a *Working Day*, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Working Day*. The parties hereby consent to the giving and receiving of *Proper Invoices* electronically and in accordance with the requirements of GC 5.2.1.

5.2.14 Upon receipt of an application for payment submitted for payment by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENT, the *Owner* will assess whether all of the requirements for a *Proper Invoice* are satisfied and, if the application for payment does not meet the requirements, the *Owner* will return the application for payment to the *Contractor* with reasons setting out why the application for payment does not meet the requirements for a *Proper Invoice* and the *Contractor* may resubmit the application for payment with all required information within 3 *Working Days* of the *Contractor's* receipt of the *Owner's* or *Consultant's* reasons. For clarity,

- .1 if an application for payment does not include all of the requirements for a *Proper Invoice* required by GC 5.2.6, it shall not be considered a "*Proper Invoice*" for the purposes of the *Construction Act* and the *Owner* shall have no obligation to make a payment and the time periods set out in GC 5.3 - PAYMENTS and in Section 6.4 of the *Construction Act* shall not apply until the *Contractor* has submitted an application for payment that includes all information required by GC 5.2.6;
- .2 if the *Contractor* fails, refuses, or neglects to resubmits its application for payment within 3 *Working Days* after it is returned in accordance with this GC 5.2.14, the *Contractor* shall be deemed to have failed to deliver its application for payment and GC 5.2.1 shall apply;
- .3 where the *Contractor* disagrees with the *Owner's* assessment that some of the of the requirements for a *Proper Invoice* required by GC 5.2.6 are missing from its application for payment, nothing in

this GC 5.2.14 shall prevent the *Contractor* from resubmitting the same application for payment without any additional or new information; and

- .4 the *Owner* reserves the right, in its sole, absolute and unfettered discretion, to waive an error or minor irregularity in any application for payment delivered by the *Contractor* for the purposes of deeming an application for payment a "Proper Invoice" within the meaning of the *Construction Act*, but the *Owner* shall be under no obligation to exercise this right."

29. GC 5.3 PAYMENT

29.1 Delete paragraph 5.3.1 in its entirety and replace it with new paragraph 5.3.1:

"5.3.1 After receipt by the *Owner* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:

.1 the *Owner* will either:

- (a) issue to the *Contractor*, a certificate for payment in the amount applied for in the *Proper Invoice*, or
- (b) issue to the *Contractor*, a certificate for payment for an amount determined by the *Owner* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs which the *Owner* has determined that the *Owner* is entitled to notwithstanding any notice of dispute or disagreement that the *Contractor* may have served, along with the *Owner's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor*, and the *Owner* shall issue a *Notice of Non-Payment*, if any, in accordance with GC 5.3.3;

.2 the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5,

- (a) in the amount stated in the certificate for payment, or
- (b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.3.3,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day."

29.2 Add new paragraph 5.3.3 as follows:

"5.3.3 In the event that the application for payment delivered by the *Contractor* pursuant to GC 5.2 – APPLICATIONS FOR PAYMENT does not include the requirements for a *Proper Invoice* or if the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment* (Form 1.1)."

29.3 Add new paragraph 5.3.4 as follows:

"5.3.4 Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under GC 5.3.3, the *Owner* and the *Contractor* shall first engage in good faith negotiations to resolve the *Dispute*. If within 10 calendar days following the issuance of a *Notice of Non-Payment*, the *Owner* and the *Contractor* cannot resolve the *Dispute*, either party may issue a notice of adjudication in the form prescribed under the *Construction Act*, in which case the *Owner* and the *Contractor* will agree to submit the *Dispute* to *Adjudication* as set out under PART 8 – DISPUTE RESOLUTION. The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed amounts of the relevant *Proper Invoice* have been resolved pursuant to PART 8 – DISPUTE RESOLUTION. Any portion of the *Proper Invoice* which is not the subject of the *Notice of Non-Payment* shall be payable within the time period set out in paragraph 5.3.1.2."

29.4 Add new paragraph 5.3.5 as follows:

"5.3.5 Without limitation, the *Owner* shall be entitled to deduct from or, set off against, any payment of the *Contract Price* and any other amounts payable by the *Owner* to the *Contractor* under the *Contract*:

- .1 any amount expended by the *Owner* in exercising the *Owner's* rights under this *Contract* to perform any of the *Contractor's* obligations that the *Contractor* has failed to perform;
- .2 any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by the *Owner* as a result of the failure of the *Contractor* to perform any of its obligations under the *Contract*; or
- .3 any other amount owing from the *Contractor* to the *Owner* under this *Contract*."

29.5 Add new paragraph 5.3.6 as follows:

"5.3.6 The *Contractor* represents, warrants, and covenants to the *Owner* that it is familiar with its prompt payment and trust obligations under the *Construction Act* and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the *Construction Act* including, without limitation, section 8.1 of the *Construction Act*. Evidence of the *Contractor's* compliance under this paragraph 5.3.6 will be made available to the *Owner* within 5 *Working Days* following receipt by the *Contractor* of a *Notice in Writing* making such request."

30. GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

30.1 Delete paragraph 5.4.1 in its entirety and replace it with the following:

"5.4.1 The *Owner* and the *Contractor* will review the *Work* to jointly certify or verify the validity of the application for *Substantial Performance of the Work* and jointly state the date of *Substantial Performance of the Work* in a certificate.

30.2 Delete paragraph 5.4.2 in its entirety and replace it with the following:

"5.4.2 After the date of *Substantial Performance of the Work* is established, the *Contractor* and all *Subcontractors* who have completed their subcontracts shall complete on a commercially reasonable efforts basis within 30 days all deficient work including providing the required *Close-Out Documentation*, unless the reasons for any delay is *Acceptable* to the *Owner*. All deficient work not completed within the above time may be completed by the *Owner* and the cost of this work may at the option of the *Owner* be deducted from the *Contractor's* next application for payment, or otherwise recoverable upon written demand by the *Owner* to the *Contractor*."

30.3 Delete paragraph 5.4.3 and replace it with the following:

"5.4.3 Immediately following the issuance of a certificate of *Substantial Performance of the Work*, the *Contractor* shall publish the certificate referred to in paragraph 5.4.1 in the manner provided in the *Construction Act*. Failing valid publication by the *Contractor* within 3 *Working Days* following the issuance of the certificate, the *Owner* shall be at liberty to publish the certificate and back-charge the *Contractor* for its reasonable costs for doing so."

30.4 Delete paragraph 5.4.4 and replace it with the following:

"5.4.4 After publication of the certificate of the *Substantial Performance of the Work*, the *Contractor* shall submit an application for payment of the outstanding *Construction Act* holdback amount, which application for payment shall:

- .1 include all of the requirements listed in Schedule A to these Supplementary Conditions, as applicable to the application for payment of the holdback amount; and
- .2 include a statement that the *Contractor* has not received any written notices of lien or any claims for liens from any *Subcontractor* or *Supplier*.

After the receipt of a complete application for payment of the holdback amount from the *Contractor*, the *Owner* will issue a certificate for payment of the holdback amount, provided that such amount is subject to and will only become due and payable in accordance with GC 5.4.5 and the *Construction Act*.”

30.5 Delete paragraph 5.4.5 and replace it with the following:

“5.4.5 The *Construction Act* holdback amount shall become due and payable the day immediately following the expiration of the holdback period prescribed by the *Construction Act*, subject to the occurrence of any of the following:

- .1 the preservation of a lien in respect of the *Project* that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*;
- .2 receipt by the *Owner* of a written notice of lien that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*; or
- .3 prior to the expiry of 40 calendar days following the publication of the certificate of *Substantial Performance of the Work*, the *Owner* publishes a *Notice of Non-Payment* of holdback in accordance with the *Construction Act*, setting out the amount of holdback that will not be paid, which may include non-payment to secure the correction of deficiencies and/or the completion of the *Work*.”

30.6 Add new paragraph 5.4.7 as follows:

“5.4.7 Where the *Construction Act* allows for release of *Construction Act* holdback on subcontract work which is 100% complete prior to the release of holdback contemplated under GC 5.4.5, the *Contractor* may make application to the *Owner* and the *Consultant* by written request for a review by the *Consultant* to determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may in its discretion require, including:

- .1 Description of the scope of *Work* included in the subcontract.
- .2 Declaration of Last Supply by the *Subcontractor* as prescribed in subsection 31(5) of the *Construction Act* (Form 7).
- .3 Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the *Construction Act* (Form 10).
- .4 Workplace Safety & Insurance Board Clearance Certificate for the *Contractor*, the *Subcontractor* concerned, and any other *Subcontractors* and *Suppliers* who have provided any services to the *Subcontractor*.
- .5 Statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B - 2018.
- .6 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the *Construction Act* holdback of the completed subcontracts.
- .7 Confirmation by the bonding company that it has been notified of the intent to claim early release of holdback and does not object.
- .8 Sufficient evidence to the *Owner's* reasonable satisfaction that, as of the date of the *Contractor's* application, no claims for lien have been preserved against the *Place of the Work* that have not been vacated by the posting of security, discharged, or otherwise addressed in accordance with GC 5.8 – CONSTRUCTION LIENS.”

31. GC 5.5 FINAL PAYMENT

31.1 Delete GC 5.5 – FINAL PAYMENT in its entirety and replace it with the following:

“5.5.1 When *Ready-for-Takeover* has been achieved in accordance with GC 12.1 – READY-FOR-TAKEOVER and the *Contractor* considers the *Work* is complete, the *Contractor* may submit an application for final payment to the *Owner* and the *Contractor* shall:

- .1 include all of the requirements set out in GC 5.2, including without limitation those requirements listed in Schedule A to these Supplementary Conditions that are specific to an application for final payment;
 - .2 ensure that all warranties, *Extended Warranties*, records, operation and maintenance manuals, data books, literature maintenance sheets, list of outstanding work and deficiency list, *Waste Management Report*, keys, Certificate of Clearance from WSIB, proof of publication of the certificate of *Substantial Performance of the Work* and the *As-Built Record Drawings* are submitted to the *Owner* (collectively, the "*Close-Out Documentation*"). Such submissions shall constitute requirements for the *Proper Invoice* for final payment; and
 - .3 if applicable, (a) written confirmation from the *Owner* that the deficiencies or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2 have been fully rectified as of the date of the *Contractor's* application for final payment, and/or (b) written confirmation, signed by the *Owner* and the *Contractor*, that the *Contract Price* has been reduced by a specified amount in exchange for the *Owner* releasing the *Contractor* of its obligation to rectify the certain outstanding deficiencies and/or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2, as detailed in such written confirmation."
- 5.5.2 After receipt by the *Owner* of an application for final payment submitted by the *Contractor* in accordance with paragraph 5.5.1:
- .1 the *Owner* will either:
 - (a) issue to the *Contractor*, a certificate for payment in the amount applied for in the *Proper Invoice*, or
 - (b) issue to the *Contractor*, a certificate for payment for an amount determined by the *Owner* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs that the *Owner* is entitled to notwithstanding any notice of dispute or disagreement that the *Contractor* may have served, along with the *Owner's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor* and issue a *Notice of Non-Payment*, if any, in accordance with GC 5.3.3;
 - .2 the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5,
 - (a) in the amount stated in the certificate for payment, or
 - (b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.3.3,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day."
- 5.5.3 In the event that the application for final payment delivered by the *Contractor* does not include the requirements of GC 5.5.1 (including the requirements for a *Proper Invoice*) or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment*. Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under this GC 5.5.3, the *Owner* and the *Contractor* shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a *Notice of Non-Payment*, the *Owner* and *Contractor* cannot resolve the dispute, either party may issue a notice of *Adjudication* in a form prescribed under the *Construction Act*. The *Owner* and *Contractor* will then submit the dispute to *Adjudication* as set out under PART 8 – DISPUTE RESOLUTION.
- 5.5.4 The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed portions of the *Proper Invoice* for final payment have been resolved in accordance with PART 8 – DISPUTE RESOLUTION. Any portion of the *Proper Invoice* which is not the subject of a *Notice of Non-Payment* shall be payable within the time period set out in paragraph 5.5.2.2.

- 5.5.5 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 make payment, to the *Contractor* in accordance with paragraph 5.5.2.2.
- 5.5.6 Notwithstanding anything else in this GC 5.5 – FINAL PAYMENT the *Owner* shall retain a finishing holdback as provided for in the *Construction Act*, which shall be released to the *Contractor* upon expiry of the lien period provided for under the *Construction Act*, provided no construction liens have been registered.
- 5.5.7 As additional requirements for release of finishing construction lien holdback, the *Contractor* shall submit the following documentation:
- .1 a written declaration that no claims for lien or written notices of lien have been received by it;
 - .2 a *Statutory Declaration* in the form set out in Schedule B that all accounts for labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous progress payment, except for amounts properly retained as a holdback or as an identified amount in dispute; and
 - .3 a *Workplace Safety & Insurance Board Clearance Certificate*.”

32. GC 5.8 WITHHOLDING OF PAYMENT

- 32.1 Add new paragraph GC 5.8 WITHHOLDING OF PAYMENT as follows:

“GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 Upon notice to the *Contractor*, the *Owner* may, subject to the *Owner’s* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, withhold or retain all or any portion of any payment due to the *Contractor* under this *Contract* to ensure the performance of the *Work* or to protect the *Owner’s* rights in respect of the events set out in this paragraph 5.8.1, but only such portion of any payment as is reasonably necessary for such purpose. The *Owner* may make such withholding or retention upon the occurrence and continuance of any of the following events:
- .1 the *Contractor* is in default of any of its material obligations under this *Contract*;
 - .2 all or any part of such payment is attributable to *Work* which is defective or not performed in accordance with the *Contract Documents*;
 - .3 the *Contractor* has improperly failed to make prompt payments to its *Subcontractors* and *Suppliers* respecting *Work* for which the *Owner* has made payment to the *Contractor*; or
 - .4 the amounts described in section 17(3) of the *Construction Act*.”
- 5.8.2 In the event of deficiencies or delays in the *Work* that the *Contractor* fails or refuses to address upon receiving notice of same in accordance with the requirements of the *Contract*, the *Owner* may, without limiting the remedies available to it under this *Contract* and subject to the *Owner’s* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, retain and set off as against any payments that would otherwise be owing to the *Contractor*, the reasonable costs of rectifying such deficiencies or delays as determined by the *Owner*.
- 5.8.3 In addition to any rights the *Owner* has pursuant to the *Construction Act* and subject to the *Owner’s* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, if a lien is registered against the *Place of the Work* or served upon the *Owner*, or an action commenced against the *Owner*, by any *Subcontractor*, the *Owner* having made all payments currently due in accordance with the payment terms of the *Contract Documents*, the *Owner* shall have the right to withhold from any money otherwise due to the *Contractor*, the full amount claimed in the lien action plus an additional amount sufficient to satisfy all of the *Owner* expenses relating to such lien action, including legal and consulting costs. These funds, less expenses incurred, shall be released to the *Contractor* upon the full discharge of all liens and dismissal of all actions against the *Owner*.”

33. GC 5.9 CONSTRUCTION LIENS

33.1 Add new GC 5.9 – CONSTRUCTION LIENS as follows:

“GC 5.9 – CONSTRUCTION LIENS

- 5.9.1 Notwithstanding anything else in this PART 5 – PAYMENT, in the event a claim for lien is registered against title to the *Place of the Work* by the *Contractor*, a *Subcontractor* or a *Supplier*, or served on the *Owner* with regard to the *Project* by a *Subcontractor* or a *Supplier*, or the *Owner* receives a written notice of or claim for lien from a *Subcontractor* or a *Supplier*, the *Owner* shall be entitled to withhold any payment otherwise due to the *Contractor* until such time as such claims have been dealt with as provided below.
- 5.9.2 In the event that a claim for lien or a written notice of a lien is received by the *Owner* in relation to the *Project*, the *Contractor* shall, within 10 calendar days, at its sole expense, arrange for the vacating or the discharge of the claim for lien and/or the withdrawal of the written notice of lien or have the lien vacated pursuant to the *Construction Act*. If the *Contractor* commences an application to the Court to have the lien vacated, the *Contractor* shall provide the *Owner* with copies of all court documents submitted by the *Contractor* and the Order issued by the Court. If the lien is only vacated, the *Contractor* shall, if requested, undertake the *Owner's* defence of any subsequent action commenced in the respect of the lien at the *Contractor's* expense.
- 5.9.3 If the *Contractor* fails or refuses to take such steps as required under paragraph 5.9.2, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the claim for lien or the withdrawal of the written notice of lien, and all costs incurred by the *Owner* in doing so (including, without limitation, legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be the responsibility of the *Contractor*, and the *Owner* may deduct such amounts from the amounts otherwise due or owing to the *Contractor*.
- 5.9.4 Without limiting any of the foregoing, the *Contractor* shall satisfy all judgments and pay all costs resulting from any liens or any actions brought by a *Subcontractor* or *Supplier* in connection with any liens, or in connection with any other claim or lawsuit brought against the *Owner* by any person that provided services or materials to the *Project* which constituted part of the *Work*, and the *Contractor* shall indemnify the *Owner* for any and all costs (including, without limitation, legal fees on a solicitor and client basis) the *Owner* may incur in connection with such claims or actions.
- 5.9.5 Section 20(1) of the Construction Act does not apply to this *Contract* and no general lien arises under or in respect of the *Work*, such that all liens shall arise and expire on a lot-by-lot basis.”

34. GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

34.1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall not be approved unless there has been compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by an alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, should be the basis for a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.”

34.2 Add new paragraph 6.1.3 as follows:

“The *Contractor* agrees that changes resulting from construction coordination, including but not limited to site surface conditions, site coordination, and *Subcontractor* and *Supplier* coordination, are included in the *Contract Price* and shall not entitle the *Contractor* to claim an addition to the *Contract Price* in relation to coordination.”

35. GC 6.2 CHANGE ORDER

35.1 Add new paragraph 6.2.4 as follows:

"The *Contractor* shall not be entitled to any additional compensation arising out of changes to the *Work* aside from the amounts determined and agreed to under this GC 6.2, or as provided in GC 6.3 – CHANGE DIRECTIVE. The *Contractor's* fee for overhead and profit related to a *Change Order* or *Change Directive* shall be as set out in the *Contract Documents*."

35.2 Add new paragraph 6.2.5 as follows:

"Change Orders are not valid and binding upon the *Owner* unless approved and executed in accordance with the *Owner's* internal approval processes."

36. GC 6.3 CHANGE DIRECTIVE

36.1 Amend paragraph 6.3.6 in the second line by adding the word "actual" before the word "cost".

36.2 Delete paragraph 6.3.6.3 in its entirety and replace it with the following:

".3 The *Contractor's* fee shall be as specified in paragraph 6.2.4 and the *Contractor's* fee for overhead and profit shall be as set out in the *Contract Documents*."

36.3 Amend paragraph 6.3.7 by adding the word "actual" before the word "cost" in line 1.

36.4 Amend paragraph 6.3.7.10 by adding the following to the end of the paragraph:

", provided that such amounts are not caused by negligent acts, omissions, or default of the *Contractor* or *Subcontractor*,"

36.5 Delete GC 6.3.7.17 in its entirety including all subparagraphs.

36.6 Amend paragraph 6.3.12 by deleting the words "the adjustment shall be referred to the Consultant for determination" and replacing them with "the *Dispute* shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION."

37. GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

37.1 Delete paragraph 6.4.2 in its entirety and replace it with the following:

"The *Owner* will promptly investigate such conditions. If the *Owner* determines that the conditions differ materially and would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Owner* will issue instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. If the *Owner* determines that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will provide its reasons for this determination to the *Contractor* in writing."

37.2 Delete paragraph 6.4.3 in its entirety and replace it with the following:

"If the *Contractor* disputes the *Owner's* determination in paragraph 6.4.2, the *Dispute* shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

37.3 Delete paragraph 6.4.4 in its entirety and replace it with the following:

"The *Contractor* confirms that, prior to submitting its response to the *RFP* for the *Project*, it had the opportunity to carefully investigate the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.12.1, given the amount of time provided between the issue of the *RFP* documents and the actual submission deadline for the *RFP*, the degree of access provided to the *Contractor* prior to submission of the response, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of its response."

37.4 Add new paragraph 6.4.5 as follows:

"The *Contractor* acknowledges that it has received the *Impact Assessment Reports* for the *Project* that are described in the *RFP* documents and that it has considered the mitigation measures described in the *Impact Assessment Reports* in the *Contract Price*. If the *Impact Assessment Reports* are not completed prior to the closing of the *RFP* submission deadline, any adjustments required to the *Contract Price* shall be determined in accordance with GC 9.6.2.3. The *Impact Assessment Reports* are provided for information only and the *Owner* shall not be liable for any errors or omissions in the reports."

37.5 Add new paragraph 6.4.6 as follows:

"If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2- TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS, GC 9.5 – MOULD and GC 9.6 – IMPACT ASSESSMENT."

38. GC 6.5 DELAYS

38.1 Delete paragraph 6.5.1 in its entirety and replace it with the following:

"If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner* or anyone employed or engaged by the *Owner* directly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Owner* determines. The *Contractor* shall be reimbursed by the *Owner* for its reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

38.2 Delete paragraph 6.5.2 in its entirety and replace it with the following:

"If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other *Authority Having Jurisdiction* on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes or the advice, recommendations and instructions of public health officials directly by the *Owner* or the *Owner's Other Contractor(s)* and relating to the *Work* or the *Place of the Work* and, providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, it results in the failure of the *Contractor* to attain *Ready-for Takeover* by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Owner* determines in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

38.3 Delete paragraph 6.5.3 in its entirety and replace it with the following:

"6.5.3.1 If the performance of the *Work* or the performance of any other obligation(s) of a party to this *Contract* is delayed by a *Force Majeure* event, then the *Contract Time* shall be extended for such reasonable time as the *Owner* and the *Contractor* shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* and the *Owner* agree to a shorter extension. Neither party shall be entitled to payment for its costs incurred by such delays. Upon reaching agreement on the extension of the *Contract Time* attributable to the *Force Majeure* event, the *Owner* and the *Contractor* shall execute a *Change Order* indicating the length of the extension to the *Contract Time* and confirming that there are no costs payable by either party to the other for the extension of *Contract Time*.

6.5.3.2 Notwithstanding the foregoing, the *Owner* may issue a *Change Directive* requiring the *Contractor* to undertake those specific actions identified in the *Change Directive* as the *Contractor* can reasonably and safely initiate to remove or relieve either the *Force Majeure* event or its direct or indirect effects on the *Project*, in which case the *Contract Price* will be adjusted in accordance with paragraph 6.3.7. If the *Contractor* fails within the time period specified in the *Change Directive* to take such action, then the *Owner* may, at its sole and absolute discretion and after it has given *Notice in Writing* to the *Contractor*, take some or all of such actions to partially or wholly remove or relieve such *Force Majeure* event or its direct or indirect effects, and thereafter require the *Contractor* to resume the performance of the *Work*."

38.4 Delete paragraph 6.5.4 in its entirety and replace it with the following:

"No extension of the *Contract Time* will be approved unless the *Contractor* provides *Notice in Writing* to the *Owner* within 3 *Working Days* of the date upon which the *Contractor* ought reasonably to have been aware of the delay

contemplated in paragraphs 6.5.1, 6.5.2 or 6.5.3. For the *Notice in Writing* to be valid under this paragraph 6.5.4 it must include specific details about:

- .1 the cause of the delay;
- .2 the likely impact the delay will have on the *Contract Time* and details of the extension of time being requested; and
- .3 mitigation efforts, if any, undertaken by the *Contractor* or, where no mitigation efforts have been undertaken by the *Contractor*, the reasons why mitigation is either not possible or has not been undertaken by the *Contractor*."

38.5 Add new paragraph 6.5.6 as follows:

"If the *Contractor* delays the performance of the *Work* and such delay is for a cause within the *Contractor's* control, the *Contractor* shall pay to the *Owner* the per diem rate for liquidated damages specified in Article A-10 of the *Contract* for each day of delay if *Ready-for-Takeover* is not achieved in accordance with the time specified in Article A-1.3 or the applicable *Renewal Contract*. If the per diem rate for liquidated damages is not specified in the *Contract Documents*, the *Contractor* shall pay to the *Owner* the *Administration Costs* incurred by the *Owner* as a result of the delay."

38.6 Add new paragraph 6.5.7 as follows:

"If the *Contractor* is delayed in the performance of the *Work* due to the replacement of a representative, worker, *Subcontractor* or *Supplier* pursuant to GC 3.5.4, 3.6.2 or 3.7.4, the *Contractor* shall pay to the *Owner* the per diem rate for liquidated damages specified in Article A-10 of the *Contract* for each day of delay if *Ready-for-Takeover* is not achieved in accordance with the time specified in Article A-1.3 or the applicable *Renewal Contract*. If the per diem rate for liquidated damages is not specified in the *Contract Documents*, the *Contractor* shall pay to the *Owner* the *Administration Costs* incurred by the *Owner* as a result of the delay."

38.7 Add new paragraph 6.5.8 as follows:

"If the *Contractor* disputes the determination by the *Owner* in paragraph 6.5.1 or paragraph 6.5.2, the *Dispute* shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

39. GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

39.1 Amend paragraph 6.6.1 by deleting the words "and to the Consultant."

39.2 Amend paragraphs 6.6.3 and 6.6.4 by deleting the word "Consultant" and replacing it with "other party."

38.3 Delete paragraphs 6.6.5 and 6.6.6 in their entirety and replace them with the following:

"The other party, with respect to a claim made by a party under paragraph 6.6.1, shall make a determination by providing *Notice in Writing* to the claiming party within 30 *Working Days* after receipt of the claim by the other party, or within such other time period as may be agreed by the parties. If such determination is not acceptable to the claiming party, the claim shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

40. GC 6.7 QUANTITY VARIATIONS

40.1 Delete paragraph 6.7.4 in its entirety and replace it with the following:

"The party that intends to request an adjustment to a *Unit Price* shall provide timely *Notice in Writing* to the other party. The parties shall make all reasonable efforts to agree on a revised *Unit Price*. The agreed revised *Unit Price* shall be recorded in a *Change Order*."

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

41.1 Amend paragraph 7.1.2 by adding the words "including failing or neglecting to comply with the requirements in GC 3.4 – CONSTRUCTION SCHEDULE..." immediately following the word "properly" in line one.

41.2 Amend paragraph 7.1.3.1 as follows:

Insert after the word “commences” the words “and is diligently proceeding with”.

41.3 Revise paragraph 7.1.3.2 by substituting the words “an acceptable schedule” with “a schedule Acceptable to the Owner”.

41.4 Amend paragraph 7.1.4.2 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

41.5 Delete paragraph 7.1.5.3 in its entirety and replace it with the following:

“charge the *Contractor* the amount by which the full costs of finishing the *Work* as determined by the *Owner*, including compensation to the *Owner* for *Administration Costs* and a reasonable allowance to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Contract Price*. If the cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* on the expiry of the warranty period specified in paragraph 12.3.1 for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT and GC 5.8 - WITHHOLDING FROM PAYMENT”.

41.6 Amend paragraph 7.1.5.4 by substituting the words “the difference” at the end of paragraph 7.1.5.4 with the words “for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT and GC 5.8 WITHHOLDING FROM PAYMENT.”

41.7 Add new paragraph 7.1.7 as follows:

“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* or terminate the *Contract* by giving *Notice in Writing* to that effect to the *Contractor* identifying the reason for the termination or the suspension and the expected length of the suspension. Such suspension or termination shall be effective in the manner specified in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.”

41.8 Add new paragraph 7.1.8 as follows:

“The *Contractor* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except work which, in the *Contractor's* opinion is necessary for the safety of personnel and for the care and preservation of the *Work*, the materials and plant. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such protection. 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.”

41.9 Add new paragraph 7.1.9 as follows:

“During the period of suspension, the *Contractor* shall not remove from the *Place of the Work* any part of the *Work*, or any *Product* or materials without the consent of the *Owner*.”

41.10 Add new paragraph 7.1.10 as follows:

“If the *Work* should be suspended for a period of 30 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 an omission of the *Contractor*, there shall be an equitable adjustment to the *Contract Time* and the *Contract Price* as agreed upon by the *Owner* and the *Contractor*.”

41.11 Add new paragraph 7.1.11 as follows:

“If, after 30 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 the terms and conditions agreed upon by the *Owner* and the *Contractor*.”

41.12 Add new paragraph 7.1.12 as follows:

“The *Owner* may terminate this *Contract* at any time for any or no reason. Such termination shall be effective upon the date specified in the *Owner’s Notice in Writing* advising of the termination of the *Contract* pursuant to this paragraph 7.1.12. In such event, the *Owner* shall pay for the actual and verifiable *Work* performed up to the effective date of termination, including demobilization costs, and for such additional costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, termination fees, penalties or levies, and any claims for loss of profit, lost deposits, or lost opportunity. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*. Within 3 *Working Days* of termination by the *Owner*, the *Contractor* shall deliver a *Notice in Writing* to each of its *Subcontractors and Suppliers* confirming the effective date of the termination.”

42. GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

42.1 Amend paragraph 7.2.1 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

42.2 Amend paragraph 7.2.2, by:

.1 adding the following after the words “public authority” in the second line:

“on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes of *Authorities Having Jurisdiction*, directly by the *Owner* or the *Owner’s Other Contractor(s)* and relating to the *Work* or the *Place of the Work*,”;

and,

.2 adding the following to the end of the paragraph:

“unless an acceptable arrangement for an extension of the *Contract Time* is agreed to by the *Contractor* and the *Owner*.”

42.3 Amend paragraph 7.2.3 by:

.1 deleting the words “with a copy to the Consultant” in the first line;

.2 deleting paragraph 7.2.3.1 in its entirety and replace it with “Intentionally left blank”;

.3 amending paragraph 7.2.3.2 by deleting the word “Consultant” and replacing it with “*Owner*”;

.4 deleting paragraph 7.2.3.3 in its entirety and replacing it with the following:

“the *Owner* fails to pay the *Contractor* when due the amount certified by the *Owner* or awarded by arbitration or a Court, except where the *Owner* has a bona fide claim for set off or otherwise under GC 5.8 – WITHHOLDING FROM PAYMENT; or”

and

.5 amending paragraph 7.2.3.4 by deleting all the words following the word “degree” and replacing them with “and the *Contractor* confirms by a detailed *Notice in Writing* to the *Owner* that sufficient cause exists. Such detailed *Notice in Writing* must contain particulars, including references to the *Contract Documents*, and supporting documentation demonstrating the alleged default by the *Owner*.”

42.4 Amend paragraph 7.2.4 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

42.5 Delete 7.2.5 in its entirety and replace it with the following:

“If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination. The *Contractor* shall also be entitled to recover

the costs associated with termination, including the costs of demobilization, losses sustained on *Products* and construction machinery and equipment. The *Contractor* shall not be entitled to any recovery for any indirect, special or consequential losses.”

43. GC 8.1 AUTHORITY OF THE CONSULTANT

- 43.1 Amend paragraph 8.1.1 by deleting the words “which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 – ROLE OF THE CONSULTANT”.
- 43.2 Delete paragraph 8.1.2 in its entirety and replace it with “Intentionally left blank”.
- 43.3 Amend paragraph 8.1.3 by deleting the word “*Consultant*” and replacing it with “*Owner*” in each instance where it occurs in the paragraph.

44. GC 8.2 ADJUDICATION

- 44.1 Delete GC 8.2 – ADJUDICATION in its entirety, including all subparagraphs thereunder.

45. GC 8.3 NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

- 45.1 Delete GC 8.3 – NEGOTIATION, MEDIATION, AND ARBITRATION, including all paragraphs thereunder and replace it with the following:

“GC 8.3 – NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

“8.3.1 Save and except where the *Contractor* has given an undertaking, in accordance with the *Construction Act*, to refer a *Dispute* to *Adjudication*, prior to delivering a notice of *Adjudication* in a form prescribed by the *Construction Act*, the parties agree to first address all *Disputes* in a tiered approach as follows:

- .1 A *Dispute* shall be referred to the *Owner’s* project manager for the *Project* and a representative of the *Contractor* of the equivalent seniority or position for resolution within a period not to exceed 30 days.
- .2 If unresolved, after following the process described in paragraph 8.3.1.1, the *Dispute* shall be referred to the *Owner’s* Director or Vice President who is responsible for the *Project* and an employee of the *Contractor* of the equivalent seniority or position for resolution within a period not to exceed 30 days.
- .3 If unresolved after following the process described in paragraph 8.3.1.2, and only at the election of the *Owner*, the *Dispute* shall be referred to the President and CEO of the *Owner* and the most senior executive employee of the *Contractor* for resolution within a period not to exceed 30 days. If the *Owner* does not elect, at its sole option, to proceed under this paragraph 8.3.1.3, the *Dispute* may proceed to under either step as described in paragraphs 8.3.2 or 8.3.3.

8.3.2 If the *Dispute* remains unresolved despite the parties’ attempting to resolve it following the process in paragraph 8.3.1, a party may elect to proceed with the *Dispute* by way of an *Adjudication*. If a party elects to proceed by way of an *Adjudication*, the other party shall not be bound to proceed by way of an *Adjudication*, save and except where the parties are obliged under the *Construction Act*. The following procedures shall apply to any *Adjudications* the parties engage in under the *Construction Act*:

- .1 any hearings shall be held in the offices of the *Owner*, or, if such offices are unavailable, another venue as the parties may agree and which is acceptable to the adjudicator;
- .2 the *Adjudication* shall be conducted in English;
- .3 each party may be represented by counsel throughout an *Adjudication*;
- .4 there shall not be any oral communications with respect to issues in dispute that are the subject of an *Adjudication* between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and

- .5 a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time.
- 8.3.3 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 the adjudicator.
- 8.3.4 In respect of any claim or dispute, if the *Contractor* fails to comply with any of the notice requirements set out in the *Contract Documents* then the *Contractor* shall be barred from advancing such claim(s) or dispute(s) and shall have no entitlement whatsoever in respect of such claim(s) or dispute(s) (including to an increase in payment under the *Contract*, or an extension of *Contract Time*) and by failing to comply with the notice requirements waives the right to make any such claim(s) or dispute(s) in an *Adjudication* or in any other form of dispute resolution available under this *Contract* or at law. This GC 8.3.4 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an *Adjudication* or other form of dispute resolution and the *Owner* may rely on this GC 8.3.4 as a complete defence to any such claims or disputes.
- 8.3.5 The parties hereby acknowledge and agree:
- .1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the *Owner* to withhold, deduct or retain from monies otherwise owed to the *Contractor* under the *Contract* may be referred to, and included as part of, *Adjudications* under the *Construction Act*;
 - .2 that disputes related to the termination or abandonment of the *Contract*, as well as any disputes that arise or are advanced following the termination or abandonment of the *Contract*, shall not be referred to *Adjudication* under the *Construction Act*;
 - .3 that notice(s) of *Adjudication*, with respect to any dispute or claim relating to the *Project*, shall not be given, and no *Adjudication* shall be commenced following *Ready-for-Takeover*, abandonment, or termination of the *Contract*;
 - .4 that any *Adjudication* between the *Contractor* and a *Subcontractor* or a *Supplier* that relates to an *Adjudication* between the *Owner* and the *Contractor* shall be joined together to be adjudicated by a single adjudicator, provided that the adjudicator agrees to do so, and the *Contractor* shall include a provision in each of its subcontracts that contain an equivalent obligation to this GC 8.3.5.4; and
 - .5 that, other than where the *Contractor* is obliged to commence an *Adjudication* pursuant to an undertaking under the *Construction Act*, neither the *Owner* nor the *Contractor* shall commence an *Adjudication* during the *Restricted Period (Adjudication)*.
- 8.3.6 If the *Dispute* remains unresolved despite the parties attempting to resolve it following the process in paragraph 8.3.1 or, following a determination of the *Dispute* pursuant to an *Adjudication* under paragraph 8.3.2, a party may elect to proceed with the *Dispute* under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than: (i) 10 days following the expiry of the timeline set out in paragraphs 8.3.1.2 or 8.3.1.3, whichever is the later, or (ii) 10 days following the rendering of the adjudicator's determination following an *Adjudication*. Where a party elects to proceed with mediation within the timelines prescribed in this paragraph 8.3.6, the other party shall be bound to proceed to mediation. No later than 10 days after a party makes an election to proceed to mediation, or such longer period as may be mutually agreed between the parties, the parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.
- 8.3.7 If neither party elects to proceed to mediation within the timelines outlined in paragraph 8.3.5 or 8.3.6, or the parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration by a single arbitrator in accordance with the *Arbitration Act* by an arbitration agreement to be executed by the parties and the arbitrator. The parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the *Arbitration Act*. The arbitration proceedings shall take place in Toronto, Ontario, Canada. The language of the arbitration shall be English. The parties agree that any arbitration award, including with respect to costs, shall be binding on the parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any

court of competent jurisdiction, except on errors of law. The parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.

8.3.8 The timelines in GC 8.3 may be amended by mutual agreement of the parties.”

46. GC 8.4 RETENTION OF RIGHTS

46.1 Amend paragraph 8.4.1 by deleting all the words after “the party has” and replacing them with “complied with the provisions of GC 8.3.”

46.2 Amend paragraph 8.4.2 by replacing “paragraph 8.3.6” with “paragraph 8.3.7”.

46.3 Add new paragraph 8.4.3 as follows:

“8.4.3 If the parties proceed with an arbitration as described in paragraph 8.3.7, the *Contractor* agrees that this paragraph 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute as otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.4.3 shall prevent the *Contractor* from taking the steps required by the *Construction Act* to preserve and/or perfect a lien to which it may be entitled.”

47. GC 9.1 PROTECTION OF WORK AND PROPERTY

Amend paragraph 9.1.1.1 by adding the following words at the end of that paragraph:

“...which the *Contractor* could not reasonably have discovered applying the degree of care and skill described in paragraph 3.4.1 to its review of the *Contract Documents*.”

47.1 Delete paragraph 9.1.2 in its entirety and replace it with new paragraph 9.1.2:

“Before commencing any work, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents* or that are discoverable by applying to an inspection of the *Place of Work* the degree of care and skill described in paragraph 3.12.1.”

47.2 Add new paragraph 9.1.5 as follows:

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

48. GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

48.1 Amend paragraph 9.2.7.3 by deleting the words “Consultant may recommend” and replacing them with the words “*Owner* may determine in consultation with”.

48.2 Add new paragraph 9.2.10 as follows:

“The *Contractor* shall indemnify and hold harmless the *Owner*, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the *Place of the Work* by the *Contractor*, or anyone for whom the *Contractor* is in law responsible, and mishandled or handled negligently or improperly or which are otherwise mishandled or handled negligently or improperly by the *Contractor*, or anyone for whom the *Contractor* is in law responsible, thereby creating exposure to toxic or hazardous substances or materials. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 13.1 – INDEMNIFICATION or elsewhere in the *Contract* or which otherwise exist respecting a person or party described in this paragraph.”

49. GC 9.4 CONSTRUCTION SAFETY

49.1 Delete paragraph 9.4.1 in its entirety and replace it with the following:

“9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* shall comply with the occupational health and safety laws and regulations and any orders, recommendations and restrictions made by the federal, provincial or municipal governments and the advice, recommendations and instructions of public health officials, as they apply to the *Place of the Work*. If the *Place of the Work* is located on the *Owner's* premises, the *Contractor* shall comply with all the *Owner's* policies and directions to ensure the health and safety of the *Owner's* employees and *Other Contractors* as well as the *Contractor's* employees, *Subcontractors* and *Suppliers*. The *Contractor* shall submit its Health and Safety Plan to the *Owner* for *Acceptance* prior to commencing the *Work*, which Plan shall include all the elements required by the *Specifications* for a Health and Safety Plan. The *Contractor* shall indemnify and hold harmless the *Owner* for any fines, penalties or other costs imposed or assessed on or incurred by the *Owner* arising from the *Contractor's* failure to comply with the applicable health and safety laws, any orders, recommendations and restrictions of the federal, provincial or municipal governments or the advice, recommendations and instructions of public health officials.”

49.2 Amend GC 9.4.2 by adding the following words after “and the *Contractor*”:

“, *Subcontractors* and *Suppliers*”.

49.3 Amend GC 9.4.3 by adding the following words after “and the *Contractor*”:

“, *Subcontractors* and *Suppliers*”.

49.4 Delete paragraph 9.4.4 in its entirety and replace it with the following:

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

- .1 a current WSIB clearance certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation of the *Contractor's* in-house safety-related programs; and
- .4 a copy of the Notice of *Project* filed with the Ministry of Labour naming itself as “Constructor” under the *Occupational Health and Safety Act*.”

49.5 Delete paragraph 9.4.5 in its entirety and replace it with the following:

“The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *Occupational Health and Safety Act* and any breaches of the *Emergency Management and Civil Protection Act* and related orders, recommendations or regulations, including the payment of legal fees and disbursements on a full indemnity basis.”

49.6 Add new paragraph 9.4.6 as follows:

9.4.6 The *Contractor* shall ensure that it and its employees, *Subcontractors* and *Suppliers* are aware of and, while being on the *Owner's* property, comply with the *Owner's* policies, including its Fit for Duty Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, C.R.O.R. 2022, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.

49.7 Add new paragraph 9.4.7 as follows:

- “9.4.7 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* of such emergency as promptly as is practical under the circumstances.”

50. GC 9.5 MOULD

- 50.1 Amend paragraph 9.5.3.3 by deleting the words “*Consultant* may recommend” and replacing them with the words “*Owner* may determine”.

51. GC 9.6 IMPACT ASSESSMENT

- 51.1 Add new GC 9.6 – IMPACT ASSESSMENT as follows:

“GC 9.6 IMPACT ASSESSMENT

- 9.6.1 The *Contractor* shall be responsible for:

- .1 ensuring that any potential impacts and areas of concern identified in the *Contract Documents* or Impact Assessment Reports, if provided, are mitigated during the *Work*; and,
- .2 identifying any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the *Work* and during the *Work*.

- 9.6.2 If the *Contractor* or *Owner* observes or reasonably suspects the presence of any impacts described in paragraph 9.6.1.2 that are not mentioned or accounted for in the *Contract Documents* or Impact Assessment Reports, if any, and related mitigation plans,

- .1 the observing party shall immediately report the circumstances to the other party;
- .2 the *Contractor* shall immediately take reasonable steps, including stopping the *Work* if necessary, to ensure that any potential impacts are mitigated; and,
- .3 if the *Owner* and *Contractor* do not agree on the existence, significance or mitigation measures for the impact, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine the issue and the parties will enter into a Change Order if the mitigation measures will cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*.

- 9.6.3 If the *Contractor* fails to comply with the requirements in paragraph 9.6.2, the *Contractor* shall:

- .1 be responsible for all costs incurred by the *Owner* or the *Contractor* to mitigate the damage caused due to the failure;
- .2 not be entitled to request a Change Order relating to the failure to comply; and
- .3 indemnify the *Owner* and hold it harmless from any claims, damages, costs, fines or other expenses, including reasonable legal fees and expenses, relating to or arising from the *Contractor's* failure to comply with paragraph 9.6.2.”

52. GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

- 52.1 Add new GC 9.7 – ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES as follows:

“GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

- 9.7.1 The *Contractor* shall comply with the environmental protection requirements and mitigation measures that apply to construction involving work in and around waterbodies and on waterbody banks as set out in OPSS.PROV 182.

- 9.7.2 Pursuant to section 38(4) of the *Fisheries Act*, the *Contractor* has an obligation to notify the Department of Fisheries & Oceans (“DFO”) when the *Work* results in the unauthorized death of fish or a harmful alteration, disruption or destruction (“HADD”) of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The notification shall be done using the form attached as Schedule D. The *Contractor* shall also notify the *Owner* of any such incidents. Failure to notify DFO of such incidents is a federal offence.
- 9.7.3 In accordance with the Fisheries Act, notification must be made without delay to DFO after the *Contractor* ensures the immediate health and safety risks are managed at the *Place of the Work*. Updates to DFO may be provided at a later time, if required.
- 9.7.4 All spills and sediment releases into a waterbody during the *Work* must be immediately reported by the *Contractor* to the *Owner* who must report the release to the Spills Action Centre (“SAC”) operated by the Ministry of Environment, Conservation and Parks (“MECP”) at 800-288-6060. If the *Owner* is not available, the *Contractor* shall report the incident to SAC. The *Contractor* shall take all reasonable measures to mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.”

53. GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

- 53.1 Add new GC 9.8 – ENVIRONMENTAL SPILLS AND RELEASES as follows:

“GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

- 9.8.1 All spills and releases of hazardous substances in the course of the *Work* must be immediately reported by the *Contractor* to the *Owner* who will report the spill or release to the MOECP SAC. If the *Owner* is not available, the *Contractor* shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 or Ext. 141.
- 9.8.2 The *Contractor* shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the *Contractor* does not take timely action or, if the *Contractor* is not available, the *Owner* may direct others to remedy the situation.
- 9.8.3 If the spill or release was the fault of the *Contractor*, the remedial work shall be completed at the cost of the *Contractor* and with no additional cost to the *Owner* and the *Owner* shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- 9.8.4 If the spill or release was not the fault of the *Contractor*, the *Owner* shall pay for the remedial work.

54. GC 10.1 TAXES AND DUTIES

- 54.1 Amend paragraph 10.1.2 by adding the following sentence at the end of that paragraph:

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

- 54.2 Add new paragraph 10.1.3 as follows:

“Where an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes*, rebates, or monies from incentive programs is applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist, join in, or make application for any exemption, recovery or refund of all such taxes, duties, rebates and incentives and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over the *Owner* any cheques received from the federal or provincial governments, or any other *Authority Having Jurisdiction*, as may be required to give effect to this paragraph 10.1.3.”

- 54.3 Add new paragraph 10.1.4 as follows:

“The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.”

54.4 Add new paragraph 10.1.5 as follows:

"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*."

54.5 Add new paragraph 10.1.6 as follows:

"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."

54.6 Add new paragraph 10.1.7 as follows:

"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."

55. GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

55.1 Delete paragraph 10.2.2 in its entirety and replace it with the following:

"The *Owner* has Crown immunity from the *Building Code Act* and the *Planning Act* and may not be obtaining building permits or development approvals. The *Owner* shall obtain and pay for any permanent easements over *Third Party Property* required for the completion of the *Work*. The *Contractor* shall be responsible for all other permissions for access to *Third Party Property*."

55.2 Add to the end of paragraph 10.2.4. the following:

"Whenever standards of law, ordinances, rules, regulations, codes and orders relating to the *Work* differ, the most stringent standards shall govern."

55.3 Amend paragraph 10.2.5 by:

.1 adding the words, "Subject to paragraph 3.4.1" to the beginning of the paragraph;

.2 replacing the word "Consultant" with the word "*Owner*"

- and

.3 adding the following to the end of the second sentence:

"...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 *Owner*."

55.4 Amend paragraph 10.2.6 by:

.1 replacing the word "*Consultant*" with the word "*Owner*";

and

.2 adding the following sentence at the end of the paragraph:

"In the event the *Owner* suffers loss or damage as a result of the *Contractor's* failure to comply with paragraph 10.2.5, and notwithstanding any limitations described in paragraph 13.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure by the *Contractor*."

55.5 Amend paragraph 10.2.7 by adding the words “which changes were not or could not have reasonably been known to the *Owner* or the *Contractor*, as applicable, at the time of deadline for submission of responses to the RFP and which changes did not arise as a result of a public emergency or other *Force Majeure* event” to the second line, after the words “authorities having jurisdiction”.

55.6 Add new paragraph 10.2.8 as follows:

“The *Contractor* shall furnish necessary certificates as evidence that the *Work* installed conforms with laws and regulations of authorities having jurisdiction, including certificates of compliance for *Owner's* occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance of the *Work*.”

56. GC 10.3 PATENT FEES

56.1 Delete paragraph 10.3.2 in its entirety.

57. GC 10.4 WORKERS' COMPENSATION

57.1 Add new paragraph 10.4.2 as follows:

“10.4.2 The *Contractor* shall be solely responsible for its employees and officers and for its *Subcontractors* and their officers and employees, including ensuring that all required employer filings, contributions, deductions, and payments are made or remitted, as the case may be, with respect to applicable employer health taxes and under the *Employment Insurance Act*, the Canada Pension Plan, the Ontario *Workplace Safety and Insurance Act, 1997*, and all equivalent legislation in any other applicable jurisdiction. Without limiting the generality of the foregoing, the *Contractor* shall indemnify, defend and hold harmless the *Owner*, its directors, officers, and employees from all claims, demands, actions, suits or proceedings arising from any health, medical, disability or similar claims which *Contractor's* employees or officers or any of its *Subcontractors* or their officers or employees may make against the *Owner*, its directors, officers, or employees during or after the *Contract Time*, whether or not such claims are attributable to the *Contractor's* or *Subcontractor's* performance of the *Work* or related to the *Contractor's* obligations under this *Contract*.”

58. PART 11 INSURANCE

58.1 Amend the title of PART 11 to add the words “AND CONTRACT SECURITY” at end of title.

59. GC 11.1 INSURANCE

59.1 Delete all references to “the *Consultant*” in GC 11.1.

59.2 Delete items .1 to .8 in paragraph 11.1.1 and in CCDC 41 and replace it with the following:

“1. General Liability insurance shall be with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$50,000. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts. The policy shall be endorsed to name the *Owner* as insureds and require the insurer to provide the *Owner* with Written Notice at least 30 days prior to the expiry or cancellation of the policy. 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 including but not limited to:

- .1 Bodily injury, death, and property damage including loss of use thereof.
- .2 Premises and operations liability.
- .3 *Products* and completed operations liability.
- .4 Blanket contractual liability.

- .5 Cross liability and severability of interest clauses.
- .6 Contingent employer's liability.
- .7 Personal injury liability.
- .8 *Owner's* and *Contractor's* protective coverage.
- .9 Broad form property damage.
- .10 Elevator and hoist liability, if applicable to the *Project*.
- .11 Liability for attached machinery, including loading and unloading.
- .12 Extension of coverage shoring; blasting; excavation; underpinning; demolition; on work; below ground surface work, including tunneling and grading, if applicable to the *Project*.

The General Liability Insurance shall not include any exclusion relating to working in the vicinity of railway operations

2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a *Contract* by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Contractor*.
3. Manned Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
4. Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.
5. *Contractors'* equipment insurance coverage written on an "all risks" basis covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form Acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
6. Professional liability Insurance. This policy shall cover risks of errors, omissions or negligent acts in the performance of professional services for the *Project*. The named insureds are to be approved and accepted for coverage by the Insurer. This policy shall provide for a limit of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate (inclusive of defence costs and expenses).
7. Technology Liability Insurance for financial loss arising out of an error, omission, or negligent act in the rendering of services in an amount not less than **\$5,000,000** per claim and **\$5,000,000** aggregate. Such policy shall be on a claims made basis and shall provide coverage for damages and defense costs. The Technology Professional Liability policy will also include an insuring agreement for cyber or network security and privacy liability insurance, covering financial loss arising out of actual or potential unauthorized access, unauthorized use, and a failure to protect confidential information which results in loss or misappropriation of such information in both electronic and non-electronic format. Such insurance will have a limit of an amount not less than \$5,000,000 per claim and \$5,000,000 aggregate. The *Contractor* shall maintain said liability coverage in place for a three-year period after termination of the *Contract* by way of annual policy renewal, or purchase of extended reporting period.
8. "All Risks" Builders Risk and Boiler & Machinery Insurance shall have limits of not less than the sum of 1.1 times *Contract Price*, plus any property, including design services, the *Owner* provides for incorporation into the *Work*. This policy shall cover all risks of direct physical loss or damage to the *Project*, including but not limited to the perils of earthquake and flood, subject to policy sub limits, warranties and exclusions and shall

not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. This insurance shall cover all property forming part of the *Project*, and goods and materials to be incorporated in the *Project* while at the *Place of the Work*, in transit, or while in off-site storage. It shall not provide coverage for the *Contractor's* or *Subcontractors'* equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the *Work*. The insurance shall not have a deductible greater than \$50,000.

9. Pollution Liability Insurance for an amount not less than \$5,000,000 per occurrence and in the aggregate and a deductible of not more than \$50,000. This policy shall be written on either an Occurrence or Claims Made Form and will provide coverage on a sudden and accidental, and gradual pollution events basis for on-site cleanup and remediation as well as on-site and off-site third party claims for bodily injury and property damage, cleanup and remediation."

60. GC 11.2 CONTRACT SECURITY

- 60.1 Add new GC 11.2 – CONTRACT SECURITY as follows:

"GC 11.2 CONTRACT SECURITY

- 11.2.1 If required by the RFP, the *Contractor* shall provide a performance bond and a labour and materials payment bond, each issued by a bonding company acceptable to *Owner* and licensed to issue such instruments in the *Place of the Work*, in the amounts and forms as follows:
 - .1 Amount of performance bond shall be equal to not less than 50% of the *Contract Price* in the form prescribed by the *Construction Act*.
 - .2 Amount of labour and material payment bond shall be equal to not less than 50% of the *Contract Price* in the form prescribed by the *Construction Act*.
- 11.2.2 The bonds provided in accordance with paragraph 11.2.1 shall guarantee the faithful performance of the *Contract* in accordance with the *Contract Documents*, including the requirements for warranties provided for the GC 12.3 – WARRANTY, and the payment of all obligations incurred in the event of the *Contractor's* default, including but not limited to the following:
 - .1 the payment of legal, accounting, architectural, engineering and other professional services expenses incurred by the *Owner* in determining the extent of *Work* executed and any additional *Work* required as a result of the interruption of the *Work*, and its completion; and
 - .2 the payment of additional expenses to the *Owner* in the form of security guard services, light, heat, power, loss of use of premises, and other related costs, payable over the period between the default of the *Contract* and completion of the *Work*.
- 11.2.3 Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the *Owner* for and against costs and expenses (including legal and other professional services and court costs) arising out of or as a consequence of any default of the *Contractor* under this *Contract*.
- 11.2.4 The *Contractor* shall be responsible for notifying the surety company of any changes made to the *Contract Documents* or the *Contract Price* during the course of the *Work*.
- 11.2.5 The premiums for bonds required by the *Contract Documents* shall be included in the *Contract Price*.
- 11.2.6 Should the *Owner* require additional bonds by the *Contractor* or any of its *Subcontractors*, after the receipt of bids for the *Work*, the *Contract Price* shall be increased by the actual costs attributable to providing such bonds. The *Contractor* shall promptly provide the *Owner* with any such bonds that may be required. For certainty, bonds required for *Renewal Terms* pursuant to the *Special Supplementary Conditions* are not "additional bonds" within the meaning of this paragraph, as the requirement for such bonds is disclosed in the *Contract Documents*.

61. GC 12.1 READY-FOR-TAKEOVER

61.1 Delete GC 12.1.1 in its entirety and replace it with the following:

“12.1.1 *Ready-for-Takeover* shall be achieved when all of the following has occurred, as verified and *Accepted* by the *Owner*:

- .1 *Substantial Performance of the Work* has been achieved, as jointly certified by the *Owner* and the *Contractor*;
- .2 the appropriate permits (if any) for the *Place of the Work* have been obtained from the Authorities Having Jurisdiction;
- .3 the *Work* to be performed under the *Contract* has satisfied the requirements for deemed completion in accordance with Section 2(3) of the *Construction Act*,
- .4 final cleaning and waste removal, as required by the *Contract Documents*;
- .5 the *Contractor* has delivered to the *Owner* all inspection certificates from authorities having jurisdiction with respect to any component of the *Work* which has been completed;
- .6 subject only to GC 12.1.2, the entire *Work* has been completed to the requirements of the *Contract Documents*, including completion of all items on the punch list prepared at the time of *Substantial Performance of the Work* and the *Work* is being used for its intended purpose, and is so certified by the *Consultant*;
- .7 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* in a collated and organized matter, all *Close-Out Documentation* and any other materials or documentation required by the *Contract Documents*;
- .8 subject only to GC 12.1.2, all *Products*, systems and components of the *Project* have been commissioned and certified for operation and accepted by the *Owner*, and
- .9 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* full and complete *As-built Drawings* and *Specifications* revised by the *Contractor* to reflect the as-built state of the *Work*, clearly showing changes to the *Drawings* and *Specifications* from the original *Contract Documents*, all of which have been *Accepted* by the *Owner* acting reasonably.”

61.2 Delete GC 12.1.2 in its entirety and replace it with the following:

“12.1.2 The *Owner* may, in its sole, absolute, and unfettered discretion, waive compliance with a requirement, or a part thereof, for achieving *Ready-for-Takeover* set out in GC 12.1.1.6 to 12.1.1.9 (inclusive). Where the *Owner* exercises the discretion afforded under this GC 12.1.2, the *Contractor* shall be required to comply with GC 5.5.1.3 as part of its application for final payment and the *Owner* and the *Contractor* shall establish a reasonable date for completing the *Work*.”

61.3 Delete GC 12.1.3 in its entirety and replace it with the following:

“12.1.3 When the *Contractor* considers the *Work* has attained *Ready-for-Takeover*, it shall submit a written application to the *Owner* for review.”

61.4 In GC 12.1.4, delete the words “list and” from the second line.

61.5 Delete GC 12.1.5 in its entirety and replace it with the following:

“12.1.5 Following the confirmation of the date of *Ready-for-Takeover* by the *Owner*, the *Contractor* may submit a final application for payment in accordance with GC 5.5 – FINAL PAYMENT.”

61.6 Delete GC 12.1.6 in its entirety.

62. GC 12.2 EARLY OCCUPANCY BY THE OWNER

62.1 Delete GC 12.2 – EARLY OCCUPANCY BY THE OWNER in its entirety.

63. GC 12.3 WARRANTY

63.1 Amend paragraph 12.3.2 by adding the words, “Subject to paragraph 1.1.3....” at the beginning of that paragraph.

63.2 Delete paragraphs 12.3.4 and 12.3.5 and replace them with the following paragraphs:

“12.3.4 The *Contractor* shall correct, at no additional cost to the *Owner*, defects or deficiencies in the *Work* that appear, prior to and during the *Warranty Period*. Any *Work* repaired or replaced during the *Warranty Period* shall be re-warranted for an additional 12 months from the date of completion of the repair or replacement. Notwithstanding the expiration of the *Warranty Period*, the *Contractor* shall not be relieved of its obligations to correct any defects or deficiencies in the *Work* of which *Notice in Writing* has been given to the *Contractor* prior to the expiration of the *Warranty Period*.

12.3.5 The *Owner* shall provide *Notice in Writing* to the *Contractor* of defects and deficiencies in the *Work* discovered during the *Warranty Period*. The *Contractor* shall submit a remediation plan for the permanent rectification of the defects and deficiencies within 2 *Working Days* after delivery of the *Notice in Writing*, including the schedule for the remediation work to be completed. Upon *Acceptance* by the *Owner* of the remediation plan, the *Contractor* shall remediate the defects and deficiencies in accordance with the schedule set out in the *Accepted* plan. *Acceptance* by the *Owner* of a remediation plan does not prohibit the *Owner* from pursuing other remedies it may have against the *Contractor* arising from the defects and deficiencies in the *Work*.

63.3 Amend paragraph 12.3.6 by adding at the end of the paragraph the following:

“The *Extended Warranty Period* for each *Extended Warranty* described in the *Specifications* shall commence on the expiry of the *Warranty Period* described in paragraph 12.3.1. The *Extended Warranties* shall be submitted to the *Owner* as part of the *Close-Out Documentation*.”

63.4 Add the following new paragraphs 12.3.7 to 12.3.12:

“12.3.7 The decision of the *Owner* shall be final as to the existence of such defects and deficiencies in the *Work*, the necessity of remedying same, and the remedial measures required.

12.3.8 If the *Contractor* fails to do the work to correct the defects or deficiencies, the *Owner* shall be entitled to carry out such work by its own forces or by *Other Contractors*. If such work is work which the *Contractor* should have carried out at the *Contractor's* own expense, the *Owner* shall be entitled to recover from the *Contractor* the cost thereof or may deduct the same from any monies due or that become due to the *Contractor*, including the warranty holdback, if any.

12.3.9 Any insurance, contract security, surety or deposit required by the *Contract Documents* shall remain in full effect at the expense of the *Contractor* during the *Warranty Period*.

12.3.10 The *Contractor* shall be responsible for the costs for inspection and testing for the correction of defects or deficiencies. The *Owner* shall have the right to deduct the cost of the inspection and testing from any monies owed to the *Contractor*.

12.3.11 The *Owner* may hold back, if set out in the *Contract Documents*, on each application for payment, advance payment or progress draw, 2.5% of the total amount payable under each such application for payment, advance payment or progress draw as security for the *Contractor's* performance of its warranty obligations. In the event the *Contractor* fails to correct a defect or deficiency during the warranty period within the required time and/or fails to pay for the redesign, reconstruction and other costs related to damages arising from a defect or deficiency, the *Owner* shall have the right to use the warranty holdback, or such part of it still being held by the *Owner* to pay for the costs of remedying the defect or deficiency and any redesign, reconstruction or other costs relating to the defect or deficiency. If the costs are greater than the amount of the warranty holdback, the *Contractor* shall pay the additional costs upon receipt of an invoice from the *Owner*. The *Contractor* shall have the right to invoice the *Owner* for the balance of

the warranty holdback at the end of the *Warranty Period* or *Extended Warranty Period* as described in paragraph 12.3.4.

12.3.12 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*.

12.3.13 The *Contractor's* obligations under this GC 12.3 shall continue notwithstanding any withholding of payment made by the *Owner* under GC 5.8 – WITHHOLDING OF PAYMENT or by performance by the *Owner* directly or through other forces of the *Contractor's* obligations under this *Contract*, where the *Contractor* is in default in the performance of such obligations.”

64. GC 13.1 INDEMNIFICATION

64.1 Delete GC 13.1 – INDEMNIFICATION in its entirety and replace it with the following:

“13.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and its directors, officers, employees, contractors and agents (collectively the “*Owner's Indemnitees*”) from and against all loss, liability, damage, fines, cost, legal cost and disbursement whatsoever arising out of or related to the *Work* or the *Contract Documents* (“*Loss*”), by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with, anything done or omitted to be done by the *Contractor* in the course of the performance of the *Contractor's* obligations under the *Contract Documents* or otherwise in connection with the *Work*. The *Contractor* shall, at the *Owner's* election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with the *Owner* in the defence, including providing *Owner* with prompt Notice of any possible Loss and providing the *Owner* with all information and material relevant to the possible Loss.

13.1.2 GC 13.1 – INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.

13.1.3 The *Contractor* shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to the *Owner's* or a third party's physical property by the *Contractor's* act or omission.

13.1.4 The *Contractor* shall be liable for any claims arising from any personal injuries to or death of any of the *Contractor's* employees, *Subcontractors* or *Suppliers* or from any loss of or damage to any property belonging to the *Contractor* or its employees, *Subcontractors* or *Suppliers* during the performance of the *Work* unless caused by the negligent act or omission of *Owner*.

13.1.5 Notwithstanding any other provision of the *Contract Documents*:

(a) The *Owner* shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether the *Owner* has been advised of the possibility of such damages; and,

(b) Any express or implied reference to the *Owner* providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the *Owner* or the Province of Ontario, whether at the time of execution of this *Contract* or at any time during the performance of the *Work* and the Warranty Period, shall be void and of no legal effect in accordance with s.28 of the Financial Administration Act, R.S.O. 1990, c. F.12.

13.1.6 The *Contractor* shall indemnify the *Owner* and the *Owner's Indemnitees* and save them harmless from and against all Loss incurred by the *Owner* arising from:

- (a) any decision or interpretation by any court or Authority Having Jurisdiction that: (i) any of the *Contractor's* employees are an employee of the *Owner*; or (ii) the *Owner* is liable to pay statutory contributions or deductions in respect of any of the *Contractor's* employees under any laws, including employment insurance, provincial health insurance, income tax or other employment matters;
- (b) any health, medical disability or similar claims which the *Contractor* or *Contractor's* employees may have during or after the term of this *Contract*;
- (c) a claim by any third party against the *Owner* alleging that the *Submittals* and their use by the *Owner*, infringes any *Intellectual Property* rights;
- (d) safety infractions committed by the *Contractor* under the Occupational Health and Safety Act or any other laws, guidelines or public health orders regulating health and safety at the *Work Site*;
- (e) any claims against the *Owner* for the failure of the *Contractor* to protect the confidentiality of *Confidential Information*;
- (f) exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the *Work Site* by the *Contractor* or the *Contractor* mishandled or handled negligently or improperly the substances or materials;
- (g) a claim from adjacent landowners or other third parties regarding damage to their property due to the *Work*; and
- (h) the release into the environment of materials resulting from the *Work* that contain *Environmental Contaminants* during the transportation of such materials from the *Work Site* to the approved waste disposal site.

65. GC 13.2 WAIVER OF CLAIMS

65.1 Delete GC 13.2 – WAIVER OF CLAIMS in its entirety and replace it with the following:

“13.2.1 WAIVER OF CLAIMS BY OWNER

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

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;
- .3 those arising from the provisions of paragraph 9.6.1 of GC 9.6 – IMPACT ASSESSMENTS and arising from the *Contractor* failing to comply with the mitigation plans in the *Impact Assessment Reports* or failing to assess impacts and implement mitigation plans for impacts that arise during the *Work*;
- .4 those arising from the provisions of paragraph 9.2.5 of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the *Contractor* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Contractor* commences the *Work*;
- .5 those arising from the provisions of paragraph 9.5.1 of GC 9.5 – MOULD and arising from the *Contractor* bringing or introducing mould to the *Place of the Work*; or
- .6 those made in writing within a period of 6 years from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, arising from the *Contractor's* performance of the *Contract* with respect to material defects or deficiencies in the *Work*.

13.2.2 WAIVER OF CLAIMS BY CONTRACTOR

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing prior to the *Contractor's* application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.5 – MOULD, or GC 10.3 – PATENT FEES.

13.2.3 GC 13.2 – WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.”

66. PART 14 OTHER PROVISIONS

66.1 Add new PART 14 as follows:

“PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

14.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. 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 as its property when notified in writing to do so by the *Owner*.

GC 14.2 CONTRACTOR DISCHARGE OF LIABILITIES

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

GC 14.3 DAILY REPORTS/DAILY LOGS

14.3.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day work force.

14.3.2 The *Contractor* shall also maintain records, either at its head office or at the *Place of the Work*, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.4 – CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.4 – CONSTRUCTION SCHEDULE.

GC 14.4 CONFIDENTIAL INFORMATION

14.4.1 The *Contractor* must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the *Work* or the *Owner's Confidential Information* without the prior written approval of the *Owner*.

14.4.2 The *Contractor* must not, and must ensure that the *Contractor's* personnel do not, without the prior written approval of ONTC:

- .1 use *Confidential Information* other than as necessary for the purposes of fulfilling the *Contractor's* obligations under this *Contract*; or

- .2 disclose the *Confidential Information*, other than to the *Contractor's* personnel who need the information to enable the *Contractor* to perform its obligations under this *Contract*, to the *Contractor's* legal advisors, accountants or auditors, or where disclosure is required by law (including disclosure to any stock exchange).
- 14.4.3 The *Contractor* must, within 10 *Working Days* (or any other period agreed in writing by ONTC) after a direction by the *Owner* to do so, return or destroy all *Confidential Information* in the *Contractor's* possession, custody or control.
- 14.4.4 If the *Owner* or the *Contractor* is required by law to disclose *Confidential Information*, it shall promptly notify the other party so that that party may intervene to prevent the disclosure.
- 14.4.5 The *Contractor* specifically acknowledges that *Owner* is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 4, and that the *Owner* may be compelled by law to disclose certain *Confidential Information*.
- 14.4.6 The rights and obligations under this Part continue after the termination of this *Contract*.

GC 14.5 CORRUPTION, FORCED LABOUR, SANCTIONS

14.5.1 The *Contractor* warrants that:

- .1 no bribe, gift or other inducement has been paid, promised or offered to any official or employee of the *Owner*, the Ministry of Transportation, the Government of Ontario or any other government official relating to the *Owner* entering into this *Contract* with the *Contractor*.
 - .2 it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the *Contractor* becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this *Contract*, the *Contractor* shall report the incident to the *Owner* immediately.
 - .3 it is unaware of any forced labour or child labour being used at any step of the production of goods produced, purchased or distributed by it in Canada or elsewhere or for the production of goods imported by the *Contractor*.
 - .4 it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the *Contractor* shall comply with the reporting requirements under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023 c.9.
- 14.5.2 In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the *United Nations Act*, the *Special Economic Measures Act (SEMA)*, or the *Export and Import Permits Act*. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The *Contractor* shall comply with any such regulations that are in force on the effective date of the *Contract* and will require such compliance by its first-tier *Subcontractors*. The *Owner* relies on such undertaking from the *Contractor* to enter into this *Contract*, and any breach of such undertaking shall entitle the *Owner* to terminate this *Contract* for default and to recover damages from the *Contractor*, including excess re-procurement costs.

GC 14.6 COMMUNICATIONS

- 14.6 The *Owner* or the Government of Ontario will lead and make any announcements relating to this *Contract* and the *Work*. The *Contractor* shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement, in relation to this

Contract or the *Work* unless prior written consent is given by the *Owner*. Should the *Contractor* be contacted by any media outlet or other person or entity wishing to make any form of publication or announcement, or seeking any information, in relation to this *Contract* or the *Work*, the *Contractor* shall provide no comment and shall immediately notify the *Owner*. The *Contractor* shall immediately notify the *Owner* if it becomes aware of any publication or announcement relating to the *Contract* or the *Work*

GC 14.7 AUDIT

- 14.7 The *Contractor* shall keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, and vouchers in respect of the *Project* for a least six (6) years after the date that *Ready-for-Takeover* of the *Project* was achieved (the "*Audit Period*"). The *Owner* has the right to audit all such financial accounts and records associated with the *Project* and the *Contract Documents*, including *Submittals*, timesheets, reimbursable out of pocket expenses, materials, goods and *Construction Equipment* claimed by the *Contractor*, at all reasonable times during the term of the *Contract* and the *Audit Period* by providing *Notice in Writing* of its intention to conduct the audit. The *Contractor* shall provide full access to the records to the *Owner* for the purpose of the audit.

GC 14.8 GENERAL

- 14.8.1 Nothing contained in this *Contract* shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
- 14.8.2 In addition to those provisions which are expressly stated to survive the termination or expiration of this *Contract*, the provisions of this *Contract* that are by their nature intended to survive termination or expiration of this *Contract* shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
- 14.8.3 This *Contract* may be executed with electronic signatures or may be executed and delivered by electronic transmission and the parties may rely upon all such signatures as though they were original signatures. This *Contract* may be executed in counterpart and all such counterparts shall, for all purposes, constitute one agreement binding on the parties."

Schedule A to the Supplementary Conditions

Requirements for a “*Proper Invoice*”

To satisfy the requirements for a *Proper Invoice*, the *Contractor's* application for payment must satisfy the following criteria:

- .1 is in the form of a written bill, invoice, application for payment, or request for payment;
- .2 is in writing;
- .3 contains the *Contractor's* name, telephone number and mailing address and contact information of the *Contractor's* project manager;
- .4 contains the title of the *Project* and the *Owner's* contract number or purchase order number under which the work was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- .5 contains the date the written bill, invoice, application for payment, or request for payment is being issued by the *Contractor*;
- .6 identifies the period of time in which the *Work*, labour, services, *Products* and/or materials were supplied to the *Owner*;
- .7 reference to the provisions of the *Contract* under which payment is being sought (e.g. progress payment / milestone, holdback, final payment, etc.);
- .8 a description, including quantities where appropriate, of the labour, services, *Products*, or materials, or a portion thereof, that were supplied and form the basis of the *Contractor's* request for payment;
- .9 the amount the *Contractor* is requesting to be paid by the *Owner*, set out in a statement, based on the schedule of values *Accepted* under paragraph 5.2.5, separating out any statutory or other holdbacks, set-offs and HST;
- .10 with each application for payment after the first, a written statement that all accounts for labour, services, subcontracts, materials, equipment, *Products*, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- .11 with the applications for payment of holdback and for final payment, a *Statutory Declaration* in the form provided by the *Owner* attached as Schedule B stating that all accounts for labour, services, subcontracts, materials, equipment, *Products*, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- .12 a current *Workplace Safety Insurance Board* clearance certificate;
- .13 the progress report required under GC 3.4 CONSTRUCTION SCHEDULE, in the form provided by the *Owner* attached as Schedule C;
- .14 an updated *Construction Schedule* in native and .pdf formats;
- .15 if requested by the *Owner*, a current and valid certificate(s) of insurance for the insurance required under GC 11.1 – INSURANCE;
- .16 the following statement: “Provided this *Proper Invoice* complies with the requirements of the *Contract* and provided no *Notice of Non-Payment* is issued by the *Owner*, payment is due within 28 days from the date this *Proper Invoice* is received by the *Owner*.”;
- .17 the name, title, telephone number and mailing address of the person at the place of business of the *Contractor* to whom payment is to be directed;
- .18 in the case of the *Contractor's* application for final payment;
 - (a) sufficient evidence that the *Contractor* has delivered all warranties to the *Owner*;

- (b) sufficient evidence that the *Place of the Work* has been left in a clean and tidy condition, including evidence that any remaining materials, tools, equipment, temporary work, and waste products and debris have been removed from the *Place of the Work*;
 - (c) landfill waybills for the disposal of the waste products, debris and excess soil removed from the *Place of Work* in accordance with the *Waste Management Plan*; and
 - (d) an executed, original, full and final release of all claims that may arise as a result of the *Work*, which full and final release executed by the *Contractor* shall be in a form approved by the *Owner*;
- .19 information identifying the authority, whether in the *Contract Documents* or otherwise, under which the services or materials were supplied;
- .20 any other information that is prescribed in Article A-3, if any, or identified by the *Owner* as required;
- .21 the amount invoiced to date;
- .22 the percentage of the *Contract Price* invoiced; and
- .23 the individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the *Project*.

Schedule “B” to the Supplementary Conditions



Statutory Declaration of Progress Payment Distribution by *Contractor*

To be made by the *Contractor* **prior to payment**
as a condition for release of holdback.

The last application for progress
payment for which the Declarant has
received payment is No. _____

dated _____.

Identification of *Contract* :

Name of *Contract* (Location and description of the *Work* as it appears in the *Contract Documents*)

Date of *Contract* : Day : _____ Month : _____ Year : _____

Name of *Owner* : Ontario Northland Transportation Commission

Name of *Contractor*:

Name of Declarant : _____ **Position or Title :** (of office held with *Contractor*)

Declaration

I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the *Contractor* named in the *Contract* identified above, and as such have the authority to bind the *Contractor*, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the *Contractor* in the performance of the work as required by the *Contract*, and for which the *Owner* might in any way be held responsible, have been paid in full as required by the *Contract* up to and including the latest progress payment received, as identified above, except for:

Holdback monies properly retained,

Payments deferred by agreement, or

Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from who payment has been withheld.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me in _____

City/Town Province

on _____.

Date

Signature of Declarant

A Commissioner for Oaths or Notary Public

Schedule “C” to the Supplementary Conditions

Project Status Report

Project Title:

Reporting Period:

Date:

Project Details:

Planned Budget: Indicate the original *Contract* value Current Approved Budget: Indicate the original *Contract* value plus approved change orders

Planned Completion: Indicate the *Contract* schedule completion date Current *Project* Completion: Fill in revised date if schedule extension approved through change order

Planned *Project* Percent Complete: How far should they have progressed by this date? Actual *Project* Percent Complete: What is their actual percent complete?

Executive Summary

Provide a summary of what happened during the period, any concerns, risks or wins and plans for the upcoming period.

Work Completed in the Period

List

List

List

List

List

Work Planned for Next Period

List

List

List

List

Issues and Concerns

Use this area to identify any concerns related to the project.

Status of Progress

Include a graph to show progress or eliminate this section.

SCHEDULE D

DUTY TO NOTIFY/EMERGENCY WORKS NOTIFICATION FORM

ONTC DUTY TO NOTIFY / EMERGENCY WORKS NOTIFICATION FORM

SUBMISSION REQUIREMENTS

Contact DFO By Phone 1-855-852-8320 **AND** submit this form to fisheriesprotection@dfo-mpo.gc.ca

Submit this form to the consultant and the ONTC *Project* Manager: Esmail Zougari, esmail.zougari@ontarionorthland.ca and to ONTC Legal : legal@ontarionorthland.ca

MNRF Office: Contact Area MNRF Office

PART 1: NOTIFICATION DETAILS

Type of Notification: ☐ DUTY TO NOTIFY ☐ EMERGENCY WORK

Date of Notification:

Time of Notification:

ONTC *Contract* #:

DFO PATH File # (if applicable):

PART 2: REPORTING INFORMATION

Name of Person Reporting:

Name of Field Contact:

Telephone #:

Telephone #:

Email:

Email:

PART 3: INCIDENT INFORMATION

Bank failure ☐ Culvert failure

Erosion and Sediment Control Measures Failure ☐ Beaver dam breach

Other (specify): ☐ Hwy shoulder failure

Date of Incident:

Time of Incident:

Location of Site:

Geographic Coordinates (Lat/Long):

Nearest Community (city/town):

Name of Waterbody(ies):

Type (watercourse, lake/pond, ditch):

Indicate if any of the following impacts have occurred or are about to occur:

Fish Kill (if yes, approximately how many):_____ ☐ Sediment deposition in channel

Bank failure ☐ Obstruction of fish passage through:

Modification of flows ☐ Channel ☐ Culvert

Other (specify):

<p>Immediate Actions Taken:</p> <p>(Describe the activities/works that are being / have been immediately implemented. e.g. mitigation measures, damming / pumping etc.)</p>	
<p>Photos: <input type="checkbox"/> Attached</p> <p>(Where feasible, it is recommended that the photos be submitted with the form or as follow up)</p>	
PART 4: EMERGENCY WORKS	
<p>Description of Proposed Emergency Works:</p> <p>(Be as specific as possible. Describe what work will be undertaken within the next two weeks.</p> <p>E.g. culvert replacement (include existing and new culvert diameter / length / type), slope restoration (include material / method),:</p>	
<p>Mitigation measures:</p> <p>(Describe what measures have been or will be implemented to address the immediate issue. E.g. sediment fence, turbidity curtain, check dam, fish salvage etc.):</p>	
<p>Indicate which of the works will be followed (if applicable):</p> <p>Beaver Dam Removal <input type="checkbox"/> Culvert Maintenance</p> <p>Bridge Maintenance <input type="checkbox"/> Like-for-like culvert replacement</p> <p>Ditch maintenance within 30 m of a <input type="checkbox"/> Temporary watercourse crossing waterbody</p> <p>Riparian vegetation maintenance in existing right-of-way</p>	
<p>The Emergency Works are (check one):</p> <p>Temporary (additional work will be required) <input type="checkbox"/> Final (no additional work required)</p>	
<p>Proposed Start Date: (YYYY/MM/DD)</p>	<p>Proposed End Date: (YYYY/MM/DD)</p>
PART 5: OTHER AGENCIES NOTIFIED	
<p>Other Agency(ies) Notified: Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>Agency(ies) Notified:</p>
<p>Date Notified:</p>	<p>Incident Report No. (if issued by notified Authority):</p>

END OF SUPPLEMENTARY CONDITIONS

ONTARIO NORTHLAND – SUPPLEMENTARY CONDITIONS – CCDC 4 – 2023 – REVISED 10 DECEMBER 2025
AMENDMENTS TO THE AGREEMENT BETWEEN OWNER AND CONTRACTOR

1. ARTICLE A-1 THE WORK

- 1.1 In paragraph 1.1, delete the words “and for which” and “is acting as and hereinafter called the “*Consultant*””.
- 1.2 Delete paragraph 1.3 in its entirety and replace it with the following:
- “1.3 commence the *Work* by the 1st day of November in the year 2026 and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work* by the 31st day of October in the year 2027, and *Ready-for-Takeover* by the 31st day of October in the year 2027.
- 1.3 Add a new paragraph 1.4 as follows:
- “1.4 The multi-year contract structure and renewal framework is set out in the Special Supplementary Conditions.

2. ARTICLE A-4 CONTRACT PRICE

- 2.1 Delete paragraph 4.4 and replace it with the following:
- “The *Contract Price* shall remain fixed for the duration of the *Contract Time*, subject only to adjustments as provided for in the *Contract Documents*. For certainty, the *Contractor* assumes all risks in connection with cost increases for *Products*, *Labour*, and *Construction Equipment* prescribed by the *Contract Documents* for the performance of the *Work*, and the *Contractor* assumes all responsibility for liabilities and additional costs that may arise as a result of the *Contractor’s* inclusion of any *Product*, *Construction Equipment*, *Supplier*, or *Subcontractor* in its calculation of the *Contract Price*.”

3. ARTICLE A-5 PAYMENT

- 3.1 Delete paragraph 5.1 in its entirety, including all subparagraphs thereunder and replace it with the following:
- “5.1 Subject to the provisions of the *Contract Documents* and the *Construction Act*, the *Owner* shall:
- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payments,
 - .2 upon *Substantial Performance of the Work* being achieved, as jointly certified by the *Owner* and the *Contractor*, and upon the expiry of the holdback period that follows the publication of the certificate of *Substantial Performance of the Work*, as stipulated in the *Construction Act*, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the holdback, together with such *Value Added Taxes* as may be applicable to such payment, less any amount stated in any *Notice of Non-Payment* that is published by the *Owner* in accordance with the *Construction Act*, and
 - .3 after *Ready-for-Takeover* has been achieved in accordance with the *Contract Documents* and the *Work* is complete, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the *Contract Price* in accordance with GC 5.5. – FINAL PAYMENT, together with such *Value Added Taxes* as may be applicable to such payment.”
- 3.2 Delete paragraph 5.2, including all subparagraphs thereunder in its entirety and replace it with the following:
- “5.2 Interest on late payments, if any, will be in accordance with the *Construction Act*.”

4. ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 4.1 Delete the text of ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING (retaining the provisions setting out the addresses of the *Owner* and the *Contractor*) and replace it with the following:

- “6.1 *Notices in Writing* between the parties or between them and the *Owner's* project manager shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier during normal business hours or if sent during normal business hours by e-mail during the transmission of which no indication of failure of receipt is communicated to the sender, and addressed as set out below. Such *Notices in Writing* will be deemed to be received by the addressee on the next *Working Day* if sent by e-mail 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 pre-paid registered post, when addressed as set out below. 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.”

5. ARTICLE A-9 CONFLICT OF INTEREST

- 5.1 Add new Article A-9 as follows:

“ARTICLE A-9 CONFLICT OF INTEREST

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a *Conflict of Interest* (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*.
- 9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a *Conflict of Interest* or a potential *Conflict of Interest*, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.”

6. ARTICLE A-10 TIME OF THE ESSENCE / LIQUIDATED DAMAGES

- 6.1 Add new ARTICLE A-10 TIME OF THE ESSENCE/LIQUIDATED DAMAGES as follows:

- 10.1 It is agreed that one of the reasons the *Contractor* was selected by the *Owner* for this *Contract* is the *Contractor's* representation and warranty that it will attain *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time* stated in Article A-1.3 of this *Contract*. The *Contractor* acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that *Substantial Performance of the Work* and *Ready-for-Takeover* is achieved within the *Contract Time*. The *Contractor* agrees that time is of the essence in the performance of the *Contractor's* obligations under this *Contract*.
- 10.2 The *Contractor* further acknowledges its understanding that the *Owner* is responsible and must account to the Government of Ontario, its customers and passengers and the residents of Northern Ontario. A failure by the *Contractor* to attain *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time* will result in damages to the *Owner* and to the Government of Ontario, its customers and passengers and the residents and businesses in Northern Ontario, which would be difficult or impractical to quantify but would nevertheless have a significant negative impact on the *Owner* and its ability to provide the services the *Owner* is obliged to provide to the residents and businesses in Northern Ontario.
- 10.3 Given the significance of the requirement for the *Contractor* to achieve *Substantial Performance of the Work* and *Ready-for-Takeover*, as described in Article A-10.2, the *Contractor* further acknowledges and agrees that, without limiting the *Owner's* entitlement to any additional or other damages, if it fails to achieve *Substantial Performance of the Work* and *Ready-for-Takeover* within the *Contract Time*, the *Owner* will incur substantial damages and the extent of such damages shall be incapable or very difficult of accurate measurement. Nonetheless, the parties acknowledge that as of the effective date of this *Contract*, the amount of liquidated damages set forth in subparagraph 10.4 below represents a good faith estimate on the part of the parties as to the actual potential damages that the *Owner* would suffer because of late completion of the *Project*. It is expressly acknowledged and agreed by and between the parties that the amount of such liquidated damages does not include any penalty. Notwithstanding the foregoing, where the *Project* is delayed beyond the *Contract Time*, the *Owner* shall be entitled to (i) the liquidated damages as calculated pursuant to Article A-10.4, or (ii) in the event that the *Contractor* claims that this liquidated damages provision is invalid or unenforceable and the *Contractor* prevails on such a defence, the damages arising from the delay suffered by the *Owner* including, without limitation, consequential, special, incidental, and indirect damages, costs and other expenses incurred or suffered by the *Owner*. Where the *Contract* comprises multiple contract periods (an *Initial Period* and *Renewal Terms*) pursuant to the *Special*

Supplementary Conditions, the provisions of this Article A-10 shall apply separately to each contract period, and references to *Contract Time* and *Substantial Performance of the Work* shall mean the *Contract Time* and *Substantial Performance of the Work* for the applicable contract period.

- 10.4 The Owner shall require that the Contractor pay to the Owner (or have deducted from Contract payments) liquidated damages at the per diem rate set out in the *Contract Documents* for each calendar day of delay beyond the prescribed date for *Ready-for-Takeover* until *Ready-for-Takeover* is achieved and certified, pursuant to the terms of the *Contract*. If there is no per diem rate set out in the *Contract Documents*, the Contractor shall pay to the Owner the *Administration Costs* incurred by the Owner as a result of the delay. Where the *Contract* comprises multiple contract periods (an *Initial Period* and *Renewal Terms*) pursuant to the *Special Supplementary Conditions*, liquidated damages shall apply separately to the prescribed completion date for each contract period and shall be calculated based on delay beyond the prescribed date for *Substantial Performance of the Work* and *Ready-for-Takeover* for that contract period. If there is no per diem rate set out in the *Contract Documents*, the Contractor shall pay to the Owner the *Administration Costs* incurred by the Owner as a result of the delay.
- 10.5 If the Contractor's performance of the *Work* necessitates deployment of a rescue train, the Contractor shall pay to Owner liquidated damages equal to Owner's actual documented costs directly caused by the rescue train deployment. Such costs may include crew costs for both affected and rescue trains, equipment costs, fuel costs, dispatch costs, passenger accommodation and compensation costs, freight delay penalties or claims, and other demonstrable operational costs directly attributable to the rescue train deployment.
- 10.6 For the purposes of this Article, rescue train deployment shall be deemed caused by the Contractor's performance of the *Work* where it results from the Contractor's failure to complete *Work* within agreed *Work Blocks* as set out in the *Train Service Plan* or as otherwise agreed in writing with Owner; the Contractor's failure to restore track to safe operating condition by the agreed time; incidents, accidents, or safety issues arising from the Contractor's operations; or the Contractor's equipment, materials, or personnel obstructing or interfering with train operations outside agreed *Work Blocks*. Rescue train deployment shall not be deemed caused by the Contractor's performance where it results from the Owner's scheduling changes, *Force Majeure* events, or other causes beyond the Contractor's reasonable control.
- 10.7 Owner shall provide the Contractor with *Notice in Writing* of any claim for liquidated damages under this Article within thirty (30) days of the incident, including particulars of the delay or rescue train deployment, the basis for attributing causation to the Contractor pursuant to Article A-10.6, and the calculation of actual costs. The Contractor shall have seven (7) days from receipt of such *Notice in Writing* to provide written objections or dispute the claim. If no objection is received within the seven (7) day period or following resolution of any dispute in accordance with Part 8 - DISPUTE RESOLUTION, Owner may deduct the liquidated damages from amounts due to the Contractor or recover them as a debt.
- 10.8 Liquidated damages will be assessed as incurred and reflected as deductions from amounts that may be due under any applications for payment pending at the time that such liquidated damages are assessed. All liquidated damages not deducted from payments prior to final payment shall be deducted from the final payment to be made by the Owner to the Contractor pursuant to GC 5.5 FINAL PAYMENT and any amount of liquidated damages in excess of the final payment amount, shall be paid by the Contractor to the Owner, within 30 days following a written demand by the Owner for such payment.
- 10.9 The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or any other alternative claim that may be available to the Owner.

AMENDMENTS TO THE DEFINITIONS

7. DEFINITIONS

7.1 Add the following new definitions:

Acceptance and *Accepted* means the Owner acknowledges that the work for a *Submittal* has been completed and that the *Submittal* on its face conforms to the requirements of the *Contract Documents*. *Acceptance* does not mean confirmation by the Owner that the *Submittal* does not contain errors or omissions, defects, deficiencies or deviations from the *Contract Documents*. Wherever the words "acceptance" and "accepted" are used in the *Contract Documents*, they shall have the meaning set out in this definition even if the words are not capitalized.

Administration Costs means those costs and expenses incurred by the *Owner* as a result of carrying out a process or activity due to a delay in the performance of the *Work* by the *Contractor* and include:

- (a) additional fees payable by the *Owner* to a professional service provider required for the *Project* on a per diem basis according to the professional service provider's personnel rates;
- (b) the *Owner's* personnel costs associated with the delay, in an amount solely determined by the *Owner*; and
- (c) any additional costs or loss of revenue incurred by the *Owner* due to the delay.

Adjudication means construction dispute interim adjudication as defined under the *Construction Act*.

Arbitration Act means the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended.

As-Built Drawings means a set of drawings that are marked-up during construction by the *Contractor* that show how the structures and other parts of the *Work* were actually constructed versus how the structures and other parts of the *Work* were originally designed and "*As-Built Record Drawings*" means the *As-Built Drawings* prepared by the *Contractor* following completion of the *Work* that are *Submitted* to the *Owner* with the *Close-Out Documentation*.

Authority Having Jurisdiction or AHJ means the federal, provincial or municipal entity that is responsible for enforcing codes, standards and regulations relating to building construction, has the power to pass regulations to direct, specify and govern elements or activities of construction projects such as codes, safety, health or standards of manufacture or installation.

Close-out Documentation has the meaning given in GC 5.5.1.2.

Confidential Information means all information of the *Owner* that is confidential by its nature or in the circumstances in which it is received, including without limitation Personal Information and all confidential information in the custody or control of the *Contractor*, regardless of whether it is identified as confidential or not, which comes into the knowledge, possession or control of the *Contractor* in connection with this *Contract*, but *Confidential Information* does not include information that:

- .1 is or becomes generally available to the public without fault or breach by the *Contractor*, but only after that information becomes generally available to the public;
- .2 the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* without any obligation of confidence from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- .3 the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor*, free of any obligation of confidence, when disclosed; or
- .4 is independently developed by the *Contractor* without the use of any of the *Owner's Confidential Information*.

Conflict of Interest includes, but is not limited to, any situation or circumstance where the interests, conduct, other commitments or relationships of a *Contractor*, a *Contractor's* family member or an officer, director or employee of the *Contractor* could or could be perceived to, directly or indirectly, compromise, impair or be in conflict with the interests of the *Owner*.

Construction Act means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, including all regulations passed under it that are enforceable as of the date of execution of this *Contract*. For certainty, the first procurement process for the *Project* (i.e., the "improvement" as that term is defined in the *Construction Act*) was commenced on or after October 1, 2019, and Parts I.1 (Prompt Payment) and II.1 (Construction *Dispute* Interim Adjudication) of the *Construction Act* apply to this *Contract*.

Construction Schedule or construction schedule means the schedule for the performance of the *Work Submitted* by the *Contractor* and *Accepted* by the *Owner* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.

Dispute means all unresolved claims, disputes or controversies of any kind arising out of or in connection with this *Contract* or the carrying out of the *Work*.

Environmental Contaminants means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws;

Environmental Laws means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any *Authority Having Jurisdiction* relating to *Environmental Contaminants* or the protection of human health, natural resources or the environment;

Estimate means a calculation of the quantity or cost of the *Work* or part of it depending on the context.

Excess Soil means “excess soil” as that term is defined under section 3 of the *Excess Soil Regulation*.

Excess Soil Regulation means O. Reg. 406/19: On-Site and Excess Soil Management to the Environmental Protection Act, R.S.O. 1990, c. E.19, as amended.

Extended Warranty means the extended warranties described in the *Specifications* and *Extended Warranty Period* means the period or periods described in the *Specifications*;

Force Majeure means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or priorities of any *Authority Having Jurisdiction*; provided such event is not caused by the affected party’s negligence, default, failure to exercise reasonable diligence, bankruptcy or insolvency. A *Force Majeure* event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the *Project*.

Impact Assessment Reports means the impact assessment reports, if any, listed in the *RFP* related to the Fisheries Act; Navigable Waters Act; Lakes and Rivers Improvement Act; heritage reviews; Endangered Species Act and Species at Risk Act; terrestrial resources (vegetation, wildlife, other features); socio-economic impacts and Indigenous consultations.

Initial Period means the initial one-year contract period from 1 November 2026 to 31 October 2027, as set out in the Special Supplementary Conditions.

Intellectual Property means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all *Intellectual Property* rights contained, embedded or disclosed in the *Work*.

Notice of Non-Payment means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the *Construction Act*, as applicable to the circumstances.

Payment Period or ‘payment period’ means the fixed segments of time for which the *Contractor* shall be entitled to claim payment for *Work* performed during such period, as set out in GC 5.2.2 or as otherwise agreed upon by the *Owner* and the *Contractor* at the first pre-construction meeting. To be effective, such agreement must be in writing or reflected in the final and approved pre-construction meeting minutes.

Personal Information means information that relates to an identifiable individual or that identifies or may identify an individual as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended.

Renewal Term means each additional one-year contract period following the *Initial Period* for which the *Owner* exercises its renewal rights pursuant to the Special Supplementary Conditions, being Renewal Term 1 (1 November 2027 to 31 October 2028), Renewal Term 2 (1 November 2028 to 31 October 2029), Renewal Term 3 (1 November 2029 to 31 October 2030), and Renewal Term 4 (1 November 2030 to 31 October 2031).

Proper Invoice means a “proper invoice” as that term is defined in Section 6.1 of the *Construction Act* that complies with the minimum requirements set out in Schedule A to the Supplementary Conditions.

Proper Invoice Submission Date is the date referenced in GC 5.2.13.

Restricted Period (Adjudication) means the (inclusive) period of time between November 15 in one calendar year to January 2 in the next calendar year, in any given year throughout the duration of the *Contract*.

Restricted Period (Proper Invoice) means the (inclusive) period of time between December 10 to December 28 in any given year throughout the duration of the *Contract*.

RFP means the procurement documents used by the *Owner* for the procurement of the *Contractor* for the *Project*.

Special Supplementary Conditions means the Ontario Northland Special Supplementary Conditions - Renewal - RFP 2025 101 - Rail and Tie Program 2026-2031, which set out the multi-year contract structure, renewal framework, and bonding requirements for Renewal Terms.

Statutory Declaration means the “Ontario Northland Statutory Declaration of Progress Payment Distribution by *Contractor*” form, attached to the Supplementary Conditions as Schedule “B”.

Train Service Plan means the plan setting out agreed work blocks and train operating schedules for the coordination of the Work with the Owner's train operations, as may be amended from time to time by agreement of the parties.

Submittal(s) means all documentation prepared by the *Contractor* and submitted to the *Owner* for review and *Acceptance* in accordance with the *Contract Documents*.

Third-Party Property Owner means the owner, tenant or other person having the right to use a property.

Warranty Period means the period during which the *Contractor* provides a warranty for the *Work* described in GC 12.3.

Work Block means a period of time during which the Owner suspends train operations on a specified section of track to permit the *Contractor* to perform the Work, as set out in the Train Service Plan.

Waste Management Plan means the plan to be submitted by the *Contractor* to the *Owner* described in GC 3.11.1 and *Waste Management Report* has the meaning described in the *Specifications*.”

7.2 Delete the definition of “*Consultant*” and replace it with the following:

“The *Consultant* is the *Owner*’s project manager designated by the *Owner* to be the *Owner*’s representative for the purposes of the *Contract*. All references to the *Consultant* in the *Contract Documents* shall mean the *Owner* and, unless otherwise provided in the *Contract Documents*, any requirement for a decision or opinion, in writing or otherwise, by the *Consultant* shall mean a decision of the *Owner*. References to the “Engineer” in the *Specifications* or to the “Contract Administrator” in OPSS shall mean the *Consultant* as defined herein.”

7.3 Delete the definition of “*Contract Price*” and replace it with the following:

“*Contract Price* is the amount payable by the *Owner* to the *Contractor* for *Work* to be completed under the *Contract* in accordance with the method and manner of payment stipulated in the *Contract Documents* and the lump sum *Price* submitted by the *Contractor* in its Proposal as stipulated in Article A-4.1 as amended by any Change Orders.”

7.4 At the end of the definition of “*Drawings*”, add the following words “and a *Waste Management Plan*.”

7.5 Delete the definition of “*Payment Legislation*”.

7.6 Amend the definition of *Ready-for-Takeover* by deleting all the words after “as verified” and replacing them with “and *Accepted* by the *Owner*.”

AMENDMENTS TO THE GENERAL CONDITIONS OF THE UNIT PRICE CONTRACT

8. GC 1.1 CONTRACT DOCUMENTS

8.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

8.2 Delete paragraph 1.1.3 and replace it with the following:

"1.1.3 "The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Owner* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.12.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in this paragraph 1.1.3 , the *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents* which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall immediately notify the *Owner* and shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Owner*. If the *Contractor* finds discrepancies in and/or omissions from the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* must immediately notify the *Owner* by means of a written Request for Information ("RFI") and the *Owner* will provide written instructions or explanations. The *Owner* will not be responsible for oral instructions."

8.3 Delete paragraph 1.1.4 and replace it with the following:

"1.1.4 Notwithstanding the foregoing, errors, inconsistencies and/or omissions shall not include lack of reference on the drawings or in the specifications to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use RFIs, issued during execution of the *Work*, in and of themselves to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE WORK. In the event an RFI or the cumulative effect of RFIs leads to what the *Contractor* considers to be a change in the *Work*, then the procedure under Part 6 – CHANGES IN THE WORK shall be followed."

8.4 Delete paragraph 1.1.5.1 in its entirety and replace it with new 1.1.5.1:

"the order of priority of *Documents*, from highest to lowest, shall be:

- Special Provisions, if any
- ONTC Special Supplementary Conditions, if any
- ONTC Supplementary Conditions to CCDC 4
- Agreement between the Owner and the Contractor
- Definitions
- General Conditions
- Addenda to the Request for Proposals ("RFP")
- Schedule 2-A to the RFP – RFP Data Sheet
- Schedule 3-A-1 to the RFP – Scope of Work
- Schedule 3-A-2 to the RFP – Technical Specifications – Surfacing
- Schedule 3-A-3 to the RFP – Sections of ONTC's Manual of Track Requirements (MTR)
- Schedule 3-A-4 to the RFP – Policies and Procedures
- Schedule 3-A-5 to the RFP – Work Block
- Contractor's Proposal in Part 4 of the RFP in response to the RFP"

8.5 Add a new subparagraph 1.1.5.6 as follows:

"6 Schedules of Division 01 - General Requirements of the Specifications shall form part of and be read in conjunction with the technical specification section."

8.6 Add a new sentence to the end of paragraph 1.1.9 as follows:

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

8.7 Delete paragraph 1.1.10 in its entirety and replace it with new paragraph 1.1.10:

"All *Submittals* and *Intellectual Property* rights produced by or resulting from the *Work*, including all *Specifications*, *Drawings*, models and copies thereof, shall vest in the *Owner* and are the sole and absolute property of the *Owner* as and when created. The *Contractor* hereby irrevocably assigns and conveys and agrees to assign and convey, without further consideration, all right, title and interest in and to the *Intellectual Property* rights produced or resulting from the *Work*, in perpetuity and throughout the world, to the *Owner* and its successors and assigns. This paragraph 1.1.10 shall survive termination of the *Contract*."

8.8 Add new paragraphs 1.1.12, 1.1.13, 1.1.14, 1.1.15, 1.1.16, and 1.1.17 as follows:

"1.1.12 The *Owner* shall provide the *Contractor*, without charge, an electronic version of the *Contract Documents*.

1.1.13 If an item is shown on one document, and it can be reasonably inferred that it was intended to include work not shown on other related *Documents*, the *Contract Price* shall nevertheless include for the cost of the item of work, unless the *Owner* agrees otherwise.

1.1.14 Where a provision in the *Contract* is made for the giving or issuing of any *Notice in Writing*, consent, *Acceptance*, approval, certificate or determination by any person, unless otherwise specified such *Notice in Writing*, consent, *Acceptance*, approval certificate or determination shall be in writing and shall not unreasonably be withheld or delayed.

1.1.15 The *Contractor* shall keep one copy of the current *Contract Documents*, Supplemental Instructions, Contemplated Change Orders, Change Orders, Change Directives, reviewed *Shop Drawings*, reports and records of meetings at the Place of *Work* in good order and available to the *Owner*.

1.1.16 The *Contractor* shall keep one copy of current standards and manufacturers' literature specified in the *Contract Documents* at the Place of *Work* in good order and available to the *Owner* for the duration of the *Work*.

1.1.17 The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangement and sizes of materials. The *Contractor* shall obtain more accurate information about the locations, arrangement and sizes from study and coordination of the drawings and shall become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*."

9. GC 1.2 LAW OF THE CONTRACT

9.1 Delete paragraph 1.2.1 in its entirety and replace it with new paragraph 1.2.1:

"This *Contract* shall be governed by and constituted in accordance with the laws in force in the Province of Ontario excluding any conflict of laws principles. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this *Contract* or the performance of the obligations hereunder."

10. GC 1.4 ASSIGNMENT

10.1 Delete paragraph 1.4.1 in its entirety and replace it with new paragraph 1.4.1:

"Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent, in the case of the *Owner*, is at the sole discretion of the *Owner*. In the event of an assignment of the *Contract* by the *Contractor*, such assignment shall require prior written consent of the *Owner* and shall not relieve the *Contractor* from its obligations and liabilities hereunder."

11. GC 2.1 AUTHORITY OF THE CONSULTANT

- 11.1 Delete GC 2.1 in its entirety and replace it with the following:

"The *Owner's* internal project manager shall have the authority to act on behalf of the *Owner* for all matters arising under the *Contract*."

- 11.2 Delete paragraph 2.2.2 in its entirety.

12. GC 2.2 ROLE OF THE CONSULTANT

- 12.1 Delete paragraph 2.2.3 in its entirety.

- 12.2 Amend paragraph 2.2.4 by adding the words "Within 7 calendar days of receipt of the *Contractor's Proper Invoice*," at the beginning of the paragraph.

- and -

Add to the end of the paragraph the following words "If the *Owner* determines that the amount payable to the *Contractor* differs from the amount stated in a *Proper Invoice*, the *Owner* shall prepare the applicable Notice of Non-Payment for the amount in dispute."

- 12.3 Delete paragraph 2.2.7 in its entirety and replace with the following:

"If there is a *Dispute* between the *Owner* and the *Contractor* regarding the performance of the *Work* or the interpretation of the Contract Documents, the parties shall resolve the *Dispute* in accordance with PART 8 – DISPUTE RESOLUTION."

- 12.4 Delete paragraph 2.2.8 in its entirety.

- 12.5 Delete paragraph 2.2.9 in its entirety.

- 12.6 Delete paragraph 2.2.10 in its entirety.

- 12.7 Delete paragraph 2.2.11 in its entirety.

- 12.8 Amend paragraph 2.2.12 by adding the following to the end of that paragraph:

"The Supplemental Instruction is not a change in the *Contract Documents*. If, in the opinion of the *Contractor*, the Supplemental Instruction requires an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within 3 *Working Days* after receipt of a Supplemental Instruction provide the *Owner* with *Notice in Writing* to that effect. Failure to provide the *Notice in Writing* within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the Supplemental Instruction by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*."

- 12.9 Delete paragraph 2.2.18 in its entirety and replace it with the following:

"The *Owner* will receive and review written warranties and related documents required by the Contract and provided by the *Contractor* and advise the *Contractor* of any deficiencies in such warranties or related documents, or that the warranties and related documents are acceptable."

13. GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 13.1 Add new paragraph 2.3.8 as follows:

"Where inspection and testing services are specified, the service provider employed for such services shall be the service provider named by the *Owner*."

- 13.2 Add new paragraph 2.3.9 as follows:

"Where standards of performance are specified and the *Work* does not comply with the specified standard of performance, the deficiency in the *Work* shall be corrected as directed by the *Owner*. Subsequent testing to ensure that the standard of performance has been attained (including re-testing by the *Owner*), shall be carried out at the *Contractor's* expense and shall not be paid from the cash allowances described in GC 4.1."

14. GC 2.4 DEFECTIVE WORK

14.1 Add new paragraphs 2.4.1.1, 2.4.1.2, 2.4.1.3 and 2.4.1.4 as follows:

- “.1 Without limiting the foregoing, the *Contractor* shall rectify, in a manner acceptable to the *Owner*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Owner*.
- .2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner*.
- .3 All such corrections of defective work and deficiencies shall be at the *Contractor's* expense.
- .4 If the *Contractor* fails to do the work to correct the defective *Work* or deficiencies, the *Owner* may carry out such remediation work by its own forces or by other *Contractors* and the *Owner* shall be entitled to recover from the *Contractor* the costs thereof or may deduct the same from any monies due or that become due to the *Contractor*."

14.2 Amend paragraph 2.4.3 by deleting the last sentence and replacing it with the following:

"If the *Owner* and the *Contractor* do not agree in the difference in value, they shall resolve the disagreement pursuant to Part 8 – DISPUTE RESOLUTION."

14.3 Add new paragraph 2.4.4 as follows:

"2.4.4 Neither the *Acceptance* of the *Work* by the *Owner*, nor any failure by the *Owner* to identify, observe or warn of defective *Work* or any deficiency in the *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost, even where such failure to identify, observe or warn is negligent."

15. GC 2.5 EMERGENCY SITUATIONS

15.1 Add new GC 2.5 EMERGENCY SITUATIONS as follows:

- “.1 The *Owner* has the right to determine the existence of an emergency situation and, when such an emergency situation is deemed to exist, the *Owner* may instruct the *Contractor* to take action to remedy the situation. If the *Contractor* does not take timely action or, if the *Contractor* is not available, the *Owner* may direct others to remedy the situation. Any such action or direction taken by the *Owner* shall not relieve the *Contractor* of its responsibilities as the "constructor" pursuant to the *Occupational Health and Safety Act (Ontario)*.
- .2 If the emergency situation was the fault of the *Contractor*, the remedial work shall be completed at the cost of the *Contractor* and with no additional cost to the *Owner* and the *Owner* shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- .3 If the emergency situation was not the fault of the *Contractor*, the *Owner* shall pay for the remedial work."

16. GC 3.1 CONTROL OF THE WORK

16.1 Add new paragraph 3.1.3 as follows:

"Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not

apparent, the *Contractor* shall immediately notify the *Owner* in writing and obtain written clarification from the *Owner* before proceeding with any part of the affected work.”

16.2 Add new paragraph 3.1.4 as follows:

“The *Contractor* shall perform the work in a good and workmanlike manner, using new materials, in accordance with all applicable laws and current best practices and standards in the construction industry at the Place of *Work*. The *Contractor* acknowledges that both time and quality are of the essence and the *Contractor* will perform the *Work* or cause the *Subcontractors* and *Suppliers* to perform the *Work* in accordance with the *Construction Schedule*, as amended from time to time, and in an expeditious and professional manner.

17. GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

17.1 Add new paragraph 3.2.3.5 as follows:

“Subject to GC 9.4 – CONSTRUCTION SAFETY, for the *Owner’s* own forces and for *Other Contractors*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation of the *Place of the Work*, including all of the responsibilities of the “Constructor” under the *Occupational Health and Safety Act* (Ontario).”

18.3 Add new paragraph 3.2.3.6 as follows:

“provide for the co-ordination of the activities and work of *Other Contractors* and *Owner’s* own forces with the *Work of the Contract*.”

18. GC 3.4 CONSTRUCTION SCHEDULE

18.1 Delete paragraph 3.4.1 in its entirety and replace it with the following:

“3.4.1 The *Contractor* shall:

.1 within 10 *Working Days* from the date of *Contract* award, prepare for the *Owner’s* review and *Acceptance*, a construction schedule, including identification of the critical path of the *Work*, the schedule of operations, the proposed methods of construction and sequence of *Work*, and the time the *Contractor* proposes to complete the various items of *Work* within the *Contract Time*. The schedule shall be designed to ensure conformity with the *Contract Time*. The schedule will be in a Gantt chart format in either .pdf or excel format and include:

- (a) activity sequences and durations;
- (b) process for obtaining any required permits;
- (c) work block planning and track protection requested;
- (d) special allocation of labour and *Products*;
- (e) processing of *Shop Drawings* and samples;
- (f) delivery of *Products* involving long lead time procurement;
- (g) usage and occupancy requirements of the *Owner* of those portions of the *Work* having usage or occupancy priority;
- (h) *Substantial Performance of the Work*, and *Ready-for-Takeover* for the applicable contract period reflecting that such milestones will be achieved by no later than the dates specified in Article A-1.3 or the applicable *Renewal Contract*; and
- (i) any other schedule requirements set out in the *Contract Documents*.

If the construction schedule submitted by the *Contractor* is not *Accepted* by the *Owner*, the *Contractor* shall make revisions to the construction schedule until it is accepted by the *Owner*. Once *Accepted* by the *Owner*, the schedule submitted by the *Contractor* shall become the "*Construction Schedule*." Notwithstanding any other terms of this *Contract*, the *Contractor* shall not be entitled to receive any payment from the *Owner* until a construction schedule has been submitted by the *Contractor* and *Accepted* by the *Owner*. The *Owner* may, at its sole discretion, not issue an order to commence work until the schedule has been received and *Accepted*.

- .2 during performance of the *Work* and in accordance with the controls and reporting requirements in the *Contract Documents*, provide for the *Owner's* review and *Acceptance*, progress reports updating the *Construction Schedule*, reporting on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted. If the schedule is affected by approved *Change Orders*, the *Contractor* shall submit an updated *Construction Schedule*, if requested by the *Owner* within 7 *Working Days* of the request. This updated schedule shall show how the *Contractor* proposes to perform the balance of the *Work*, so as to complete the *Work* within the *Contract Time*.
- .3 provide progress reports with each application for payment, in the form provided by the *Owner* attached as Schedule C, for review and *Acceptance*, including an update of the *Construction Schedule* referred to in paragraph 3.4.1."

18.2 Add new paragraphs 3.4.2 and 3.4.3 as follows:

"3.4.2 If,

- .1 at any time it should reasonably appear to the *Owner* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, based on critical path methodology, and *Notice in Writing* of such opinion is given to the *Contractor*; or
- .2 the *Contractor* becomes aware of or notices a slippage in the *Construction Schedule*,

then the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* and shall produce and present to the *Owner*, for its review and *Acceptance*, within 5 *Working Days* after becoming aware of the schedule slippage, a recovery plan demonstrating how the *Contractor* will achieve the recovery of the *Construction Schedule*.

3.4.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the *Accepted* baseline *Construction Schedule* or *Accepted* revised *Construction Schedule* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, during construction are deemed NOT to be approved extensions to the *Contract Time*. Revisions to the *Construction Schedule* shall not be made without the prior written *Acceptance* of the *Owner*. All requests by the *Contractor* for a revision to the *Construction Schedule* that includes an extension to the *Contract Time* or adjustment to the date(s) for *Substantial Performance of the Work* or *Ready-for-Takeover* must be approved by the *Owner* through an executed *Change Order*."

19. GC 3.5 SUPERVISION

19.1 Amend paragraph 3.5.1 by adding at the end of that paragraph:

"..., and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld."

19.2 Add new paragraph 3.5.3 as follows:

"Notwithstanding paragraph 3.5.2, the representative of the *Contractor* attending a meeting with the *Owner* shall be deemed to have authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to this *Contract*."

19.3 Add new paragraph 3.5.4 as follows:

"The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed *Contractor's* representative(s), where the grounds for the request involve conduct on the part of the *Contractor's* representative(s) which jeopardizes the safety of the *Owner's* operations or the *Work* or the proper progress of the *Work*. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an Acceptable replacement. The *Contractor* shall indemnify and hold the *Owner* harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by the *Owner* arising from the conduct of the representative that is being replaced."

20. GC 3.6 SUBCONTRACTORS AND SUPPLIERS

20.1 Add new paragraph 3.6.1.4:

"ensure the *Subcontractors* and *Suppliers*, while working on the *Owner's* property, are aware of and comply with the *Owner's* policies, including its Fit for Duty Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, the current Ontario Northland Time Table, C.R.O.R. 2022, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable."

20.2 Delete paragraph 3.6.2 in its entirety and replace it with new paragraph 3.6.2

"The *Contractor* shall not change *Subcontractors* or *Suppliers* identified in the *Contract Documents* without the prior written approval of the *Owner* which approval will not be unreasonably withheld."

20.3 Delete paragraphs 3.6.3 and 3.6.4 in their entirety and replace them with "Intentionally Left Blank".

20.4 Add new paragraph 3.6.7 as follows:

"The responsibility as to which *Supplier* and/or *Subcontractor* provides the specific labour, *Products* and services for each item of work rests solely with the *Contractor*, within and in accordance with the requirements and limitations listed in the *Contract Documents* with respect to approval of *Suppliers* and/or *Subcontractors* permitted to perform work on the *Project*."

21. GC 3.7 LABOUR AND PRODUCTS

21.1 Amend paragraph 3.7.1 by adding the words, "..., agents, *Subcontractors* and *Suppliers* ..." after the word "employees".

21.2 Amend paragraph 3.7.2 by adding the following words at the beginning of the paragraph: "Except as otherwise provided in the Technical Specifications" and adding the following sentence at the end of that paragraph:

"The *Contractor* represents and warrants that the *Products* supplied by the *Contractor* 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*."

21.3 Add new paragraph 3.7.4 as follows:

"Upon receipt of a *Notice in Writing* from the *Owner*, the *Contractor* shall take action to rectify any situation involving its employee, agent, *Subcontractor* or *Supplier* whose work is unsatisfactory to the *Owner* or who are considered by the *Owner* to be unskilled or otherwise objectionable. If, after giving sufficient warning from the *Owner*, the *Contractor* is not able to reasonably rectify such situation, then such employee, agent, *Subcontractor* or *Supplier* shall be dismissed from the *Place of the Work* and the *Contractor* shall indemnify and hold the *Owner* harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by the *Owner* arising from the dismissal of such employee, agent, *Subcontractor* or *Supplier*."

21.4 Add new paragraph 3.7.5 as follows:

"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* identified by the *Contractor* and *Accepted* by the *Owner*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner* or *Other Contractors*."

21.5 Add new paragraph 3.7.6 as follows:

“The *Contractor* shall not employ any persons to perform *Work* whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. Any costs arising from labour disputes, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers* shall be at the sole expense of the *Contractor*.”

21.6 Add new paragraph 3.7.7 as follows:

“The *Contractor* and the *Owner* and its representatives shall cooperate and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid work stoppages, trade union jurisdictional disputes and other labour disputes.”

22. GC 3.8 SHOP DRAWINGS

22.1 Delete paragraph 3.8.7 and replace it with the following:

“3.8.7 The *Owner* will review and return *Shop Drawings* in accordance with the schedule agreed upon as described in paragraph 3.8.2, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Owner* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Owner* shall notify the *Contractor* and they shall meet to review and develop a revised schedule for processing such *Shop Drawings* that is *Acceptable* to the *Owner*. The *Contractor* shall update the *Shop Drawings* schedule to correspond to changes in the *Construction Schedule*. Changes in the *Contract Price* or *Contract Time* may be made only in accordance with GC 6.1, GC 6.2 and GC 6.3”

22.2 Add new paragraphs 3.8.8, 3.8.9, 3.8.10 and 3.8.11 as follows:

3.8.8 The *Contractor* shall provide *Shop Drawings* and *Submittals* in the form specified, or if not specified, as directed by the *Owner*. *Shop Drawings* provided by the *Contractor* to the *Owner* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them. Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.9 *Shop Drawings* which require approval of any *Authority Having Jurisdiction* shall be provided to such authority by the *Contractor* for the authority's approval.

3.8.10 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Owner* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Owner*. The *Contractor* shall notify the *Owner* in writing of any revisions to the *Shop Drawings* other than those requested by the *Owner*.

3.8.11 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.”

23. GC 3.9 USE OF THE WORK

23.1 Add new GC 3.9 – USE OF THE WORK as follows:

“GC 3.9 USE OF THE WORK

3.9.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

3.9.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

- 3.9.3 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 fittings and equipment, or for other use before *Ready-for-Takeover*, if such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as *Acceptance* of the *Work* by the *Owner* or in any way relieves the *Contractor* from its responsibility to complete the *Contract*."

24. GC 3.10 CUTTING AND REMEDIAL WORK

- 24.1 Add new GC 3.10 – CUTTING AND REMEDIAL WORK as follows:

"GC 3.10 CUTTING AND REMEDIAL WORK

- 3.10.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly. Such cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.
- 3.10.2 The *Contractor* shall coordinate the *Work* to ensure all cutting and remedial work required is kept to a minimum."

25. GC 3.11 CLEANUP

- 25.1 Add new GC 3.11 – CLEANUP as follows:

"GC 3.11 CLEANUP

- 3.11.1 The *Contractor* shall comply with all requirements for cleanup at the *Place of the Work* as specified in the *Contract Documents*. The *Contractor* shall provide to the *Owner* for *Acceptance* a *Waste Management Plan*, and a waste reduction plan if required by *Environmental Laws*, for the waste products, debris and any *Excess Soils* generated by the *Work*, which plan shall comply with all *Environmental Laws* and the *Specifications*. The costs of disposing of all waste products and debris, including products and debris containing *Environmental Contaminants*, and *Excess Soil* resulting from the *Work* is included in the *Contract Price*.
- 3.11.2 Before applying for *Substantial Performance of the Work*, the *Contractor* shall remove waste products and debris and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. All products, tools, *Construction Equipment* and *Temporary Work* not required for the performance of any remaining *Work* shall be removed by the *Contractor*.
- 3.11.3 As a condition precedent to final payment, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, waste products and debris from the *Place of the Work* to the satisfaction of the *Owner*.
- 3.11.4 In performing work to correct deficiencies or work under warranty following *Ready-for-Takeover* of the *Work*, the *Contractor* shall maintain the *Place of the Work* in a tidy condition and shall immediately remove waste products and debris.
- 3.11.5 The *Contractor* shall comply with all *Environmental Laws* in disposing of the waste products, debris and *Excess Soil* resulting from the *Work*. The *Contractor* shall assume all liability and responsibility for any waste products, debris and *Excess Soil*, including any such materials containing *Environmental Contaminants*, which are removed from the *Place of the Work* by the *Contractor* and during the transportation of the waste products, debris and *Excess Soils* to the appropriate waste disposal site. The *Contractor* shall submit landfill weigh bills from a waste disposal site as proof that all waste has been disposed of at a certified waste disposal site. The *Contractor* shall submit a *Waste Management Report* as part of the *Close-Out Documentation* described in paragraph 5.5.1.2 to be submitted with the application for verification of *Ready-for-Takeover*.
- 3.11.6 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.11, then the *Owner* may give the *Contractor* twenty-four (24) hours' *Notice in Writing* to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.11 within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and

deduct from payments otherwise due to the *Contractor*, the *Owner's* costs for such clean up, including a reasonable mark-up for *Administration Costs*."

26. GC 3.12 PERFORMANCE BY CONTRACTOR

26.1 Add new GC 3.12 – PERFORMANCE BY CONTRACTOR as follows:

"GC 3.12 PERFORMANCE BY CONTRACTOR

3.12.1 In performing its obligations, duties and responsibilities under this *Contract*, the *Contractor* shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor's* obligations, duties and responsibilities shall be judged, evaluated and interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may recommend to the *Owner* or employ on the *Project*.

3.12.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

- .1 The personnel and *Subcontractors* 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*."

3.12.3 The *Owner* has a Vendor Performance Policy which requires the *Owner* to complete an evaluation of the *Contractor's* performance of its obligations under this *Contract*. The performance evaluation of the *Contractor* for the supply of the *Work* will be used in the assessment of the *Contractor's* proposals in response to future procurements. The performance evaluation may also result in the *Contractor* being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>."

27. 3.13 EXCESS SOIL MANAGEMENT

27.1 Add new GC 3.13 – EXCESS SOIL MANAGEMENT as follows:

"GC 3.13 EXCESS SOIL MANAGEMENT

3.13.1 The *Contractor* shall be solely responsible for the proper management of all *Excess Soil* at the *Place of the Work* and for performance of the *Work* in compliance with the rules, regulations and practices required by the *Excess Soil Regulation* until such time as *Ready-for-Takeover* is achieved. Without restricting the generality of the previous sentence, the *Contractor's* responsibility under this GC 3.13 includes the testing, designation, transportation, tracking, temporary and/or final placement, record keeping, and reporting of all *Excess Soil* in connection with the *Work* all in compliance with the *Excess Soil Regulation*.

3.13.2 The *Contractor* shall indemnify and save harmless the *Owner*, their agents, officers, directors, administrators, governors, employees, consultants, successors and assigns from and against the consequences of any and all infractions committed by the *Contractor*, or those for whom it is responsible at law, under the *Excess Soil Regulation*, or any environmental protection legislation, including the payment of legal fees and disbursements on a substantial indemnity basis."

27A GC 4.1 CASH ALLOWANCES

27A.1 Add the following at the end of paragraph 4.1.2:

"The maximum markup for the *Contractor's* overhead and profit on a cash allowance shall be five percent (5%)."

27A.2 Delete the last sentence in paragraph 4.1.4.

27A.3 Delete paragraph 4.1.5 in its entirety and replace it with the following:

“The *Contract Price* shall be adjusted by *Change Order* to provide for any difference in the total value of all cash allowances and the actual cost of the *Work* performed under all cash allowances.”

28. GC 5.1 FINANCING INFORMATION REQUIRED OF THE *Owner*

28.1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE *OWNER* in its entirety including all paragraphs thereunder and replace it with “Intentionally left blank.”

28.2 GC 5.2 APPLICATIONS FOR PAYMENT

28.3 Delete paragraph 5.2.1 in its entirety and replace it with new paragraph 5.2.1:

“5.2.1 Subject to paragraph 5.2.11, applications for payment on account as provided in Article A-5 of the Contract – PAYMENT may be made monthly as the *Work* progresses and must be delivered to the *Owner* in the same manner as a *Notice in Writing*. Unless otherwise directed in writing by the *Owner*, the applications for payment shall be delivered by email to pay.inv@ontarionorthland.ca and to the *Owner's* representative listed in Article A-6 of the Contract – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING. If the *Contractor* fails to deliver its application for payment, at the interval prescribed in this GC 5.2.1, subject to written approval by the *Owner*, the *Contractor* shall not be entitled to submit its application for payment until the next prescribed interval. Should the *Owner* decide to accept an application for payment submitted after the applicable *Proper Invoice Submission Date* (which the *Owner* is under no obligation to do), such acceptance shall not be construed as a waiver of any of the *Owner's* rights, or as a waiver or release of the *Contractor's* obligations to strictly comply with the requirements prescribed in this GC 5.2 – APPLICATIONS FOR PAYMENT.”

28.4 Delete paragraph 5.2.2 in its entirety and replace it with new paragraph 5.2.2:

“5.2.2 Applications for payment shall be dated the last day of each *Payment Period* which is the last day of the month preceding the month in which the application for payment is submitted pursuant to GC 5.2.1.”

28.5 Amend paragraph 5.2.3 by adding the following to the end of that paragraph:

“but no amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties, subject to claims for lien pursuant to the *Construction Act*.”

28.6 Amend paragraph 5.2.4 by deleting the words “the Consultant, at least 15 calendar days” and replacing them with “the *Owner*, at least 30 calendar days”

- and -

add the words “in a form acceptable to the *Owner*,” after the words “*Contract Price*”.

28.7 Amend paragraph 5.2.5 by deleting the word “*Consultant*” and replacing it with “*Owner*”, in each instance it appears.

28.8 Delete paragraph 5.2.6 in its entirety and replace it with new paragraph 5.2.6:

“5.2.6 Each application for payment submitted pursuant to GC 5.2.1 shall:

- .1 be in a form prescribed, or otherwise approved in writing, by the *Owner*;
- .2 include a statement based on the schedule of values for the lump sum items of *Work*;
- .3 quantity measurements and other evidence as requested by the *Owner* for each *Unit Price* item;
- .4 include all of the requirements for a *Proper Invoice* prescribed by the *Construction Act* and the *Contract Documents*, including Schedule A to these Supplementary Conditions;

- .5 be delivered to the *Owner* and to the *Consultant* in the same manner as a *Notice in Writing*; and
- .6 unless otherwise directed in writing by the *Owner*, by email to pay.inv@ontarionorthland.ca and to the *Owner's* representative listed in Article A-6."

28.9 Amend paragraph 5.2.8 by deleting the words "using document CCDC 9A 'Statutory Declaration'.

28.10 Amend paragraph 5.2.9 by adding the following new sentence at the end of that paragraph:

"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 the title has passed to the *Owner* pursuant to GC 13.1 – OWNERSHIP OF MATERIALS."

28.11 Add new paragraph 5.2.10, 5.2.11, 5.2.12 and 5.2.13 as follows:

"5.2.10 The *Contractor* shall prepare and maintain current *As-Built Drawings* which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current *As-Built Drawings* shall be maintained by the *Contractor* and made available for review with each application for payment. The *Owner* reserves the right to retain a reasonable amount for the value of the *As-Built Drawings* not presented for review.

5.2.11 Notwithstanding any other provision of this Contract, the *Contractor* shall not deliver an application for payment, for consideration as a *Proper Invoice* by the *Owner* and the *Consultant*, during the *Restricted Period (Proper Invoice)*.

5.2.12 The *Owner* shall prepare an *Estimate* of the quantity of *Work* immediately upon the conclusion of each payment period. The first *Estimate* shall be for the quantity of *Work* performed since the *Contractor* commenced the Contract, and every subsequent *Estimate* shall be of the quantity of *Work* performed since the preceding *Estimate* was made. The *Owner* shall provide the *Estimate* to the *Contractor* within 10 calendar days after the end of the payment period, or at such other time agreed to by the *Owner* and the *Contractor* in writing. If the *Owner* has not delivered an *Estimate* to the *Contractor* within the 10 calendar days' period, the *Contractor* shall deliver a *Notice in Writing* to this effect to the *Owner*.

5.2.13 Within five (5) calendar days following the delivery of the *Estimate* to the *Contractor*, the *Contractor* shall deliver its application for payment to the *Owner* in accordance with GC 5.2.1 for *Work* performed during a *Payment Period* (the "*Proper Invoice Submission Date*"), provided that if the fifth (5th) calendar day following the delivery of the *Estimate* to which an invoice relates falls on a calendar day that is not a *Working Day*, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Working Day*. The parties hereby consent to the giving and receiving of *Proper Invoices* electronically and in accordance with the requirements of GC 5.2.1.

5.2.14 Upon receipt of an application for payment submitted for payment by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENT, the *Owner* will assess whether all of the requirements for a *Proper Invoice* are satisfied and, if the application for payment does not meet the requirements, the *Owner* will return the application for payment to the *Contractor* with reasons setting out why the application for payment does not meet the requirements for a *Proper Invoice* and the *Contractor* may resubmit the application for payment with all required information within 3 *Working Days* of the *Contractor's* receipt of the *Owner's* or *Consultant's* reasons. For clarity,

- .1 if an application for payment does not include all of the requirements for a *Proper Invoice* required by GC 5.2.6, it shall not be considered a "*Proper Invoice*" for the purposes of the *Construction Act* and the *Owner* shall have no obligation to make a payment and the time periods set out in GC 5.3 - PAYMENTS and in Section 6.4 of the *Construction Act* shall not apply until the *Contractor* has submitted an application for payment that includes all information required by GC 5.2.6;
- .2 if the *Contractor* fails, refuses, or neglects to resubmits its application for payment within 3 *Working Days* after it is returned in accordance with this GC 5.2.14, the *Contractor* shall be deemed to have failed to deliver its application for payment and GC 5.2.1 shall apply;
- .3 where the *Contractor* disagrees with the *Owner's* assessment that some of the of the requirements for a *Proper Invoice* required by GC 5.2.6 are missing from its application for payment, nothing in

this GC 5.2.14 shall prevent the *Contractor* from resubmitting the same application for payment without any additional or new information; and

- .4 the *Owner* reserves the right, in its sole, absolute and unfettered discretion, to waive an error or minor irregularity in any application for payment delivered by the *Contractor* for the purposes of deeming an application for payment a "Proper Invoice" within the meaning of the *Construction Act*, but the *Owner* shall be under no obligation to exercise this right."

29. GC 5.3 PAYMENT

29.1 Delete paragraph 5.3.1 in its entirety and replace it with new paragraph 5.3.1:

"5.3.1 After receipt by the *Owner* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:

.1 the *Owner* will either:

- (a) issue to the *Contractor*, a certificate for payment in the amount applied for in the *Proper Invoice*, or
- (b) issue to the *Contractor*, a certificate for payment for an amount determined by the *Owner* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs which the *Owner* has determined that the *Owner* is entitled to notwithstanding any notice of dispute or disagreement that the *Contractor* may have served, along with the *Owner's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor*, and the *Owner* shall issue a *Notice of Non-Payment*, if any, in accordance with GC 5.3.3;

.2 the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5,

- (a) in the amount stated in the certificate for payment, or
- (b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.3.3,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day."

29.2 Add new paragraph 5.3.3 as follows:

"5.3.3 In the event that the application for payment delivered by the *Contractor* pursuant to GC 5.2 – APPLICATIONS FOR PAYMENT does not include the requirements for a *Proper Invoice* or if the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment* (Form 1.1)."

29.3 Add new paragraph 5.3.4 as follows:

"5.3.4 Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under GC 5.3.3, the *Owner* and the *Contractor* shall first engage in good faith negotiations to resolve the *Dispute*. If within 10 calendar days following the issuance of a *Notice of Non-Payment*, the *Owner* and the *Contractor* cannot resolve the *Dispute*, either party may issue a notice of adjudication in the form prescribed under the *Construction Act*, in which case the *Owner* and the *Contractor* will agree to submit the *Dispute* to *Adjudication* as set out under PART 8 – DISPUTE RESOLUTION. The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed amounts of the relevant *Proper Invoice* have been resolved pursuant to PART 8 – DISPUTE RESOLUTION. Any portion of the *Proper Invoice* which is not the subject of the *Notice of Non-Payment* shall be payable within the time period set out in paragraph 5.3.1.2."

29.4 Add new paragraph 5.3.5 as follows:

"5.3.5 Without limitation, the *Owner* shall be entitled to deduct from or, set off against, any payment of the *Contract Price* and any other amounts payable by the *Owner* to the *Contractor* under the *Contract*:

- .1 any amount expended by the *Owner* in exercising the *Owner's* rights under this *Contract* to perform any of the *Contractor's* obligations that the *Contractor* has failed to perform;
- .2 any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by the *Owner* as a result of the failure of the *Contractor* to perform any of its obligations under the *Contract*; or
- .3 any other amount owing from the *Contractor* to the *Owner* under this *Contract*."

29.5 Add new paragraph 5.3.6 as follows:

"5.3.6 The *Contractor* represents, warrants, and covenants to the *Owner* that it is familiar with its prompt payment and trust obligations under the *Construction Act* and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the *Construction Act* including, without limitation, section 8.1 of the *Construction Act*. Evidence of the *Contractor's* compliance under this paragraph 5.3.6 will be made available to the *Owner* within 5 *Working Days* following receipt by the *Contractor* of a *Notice in Writing* making such request."

30. GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

30.1 Delete paragraph 5.4.1 in its entirety and replace it with the following:

"5.4.1 The *Owner* and the *Contractor* will review the *Work* to jointly certify or verify the validity of the application for *Substantial Performance of the Work* and jointly state the date of *Substantial Performance of the Work* in a certificate.

30.2 Delete paragraph 5.4.2 in its entirety and replace it with the following:

"5.4.2 After the date of *Substantial Performance of the Work* is established, the *Contractor* and all *Subcontractors* who have completed their subcontracts shall complete on a commercially reasonable efforts basis within 30 days all deficient work including providing the required *Close-Out Documentation*, unless the reasons for any delay is *Acceptable* to the *Owner*. All deficient work not completed within the above time may be completed by the *Owner* and the cost of this work may at the option of the *Owner* be deducted from the *Contractor's* next application for payment, or otherwise recoverable upon written demand by the *Owner* to the *Contractor*."

30.3 Delete paragraph 5.4.3 and replace it with the following:

"5.4.3 Immediately following the issuance of a certificate of *Substantial Performance of the Work*, the *Contractor* shall publish the certificate referred to in paragraph 5.4.1 in the manner provided in the *Construction Act*. Failing valid publication by the *Contractor* within 3 *Working Days* following the issuance of the certificate, the *Owner* shall be at liberty to publish the certificate and back-charge the *Contractor* for its reasonable costs for doing so."

30.4 Delete paragraph 5.4.4 and replace it with the following:

"5.4.4 After publication of the certificate of the *Substantial Performance of the Work*, the *Contractor* shall submit an application for payment of the outstanding *Construction Act* holdback amount, which application for payment shall:

- .1 include all of the requirements listed in Schedule A to these Supplementary Conditions, as applicable to the application for payment of the holdback amount; and
- .2 include a statement that the *Contractor* has not received any written notices of lien or any claims for liens from any *Subcontractor* or *Supplier*.

After the receipt of a complete application for payment of the holdback amount from the *Contractor*, the *Owner* will issue a certificate for payment of the holdback amount, provided that such amount is subject to and will only become due and payable in accordance with GC 5.4.5 and the *Construction Act*.”

30.5 Delete paragraph 5.4.5 and replace it with the following:

“5.4.5 The *Construction Act* holdback amount shall become due and payable the day immediately following the expiration of the holdback period prescribed by the *Construction Act*, subject to the occurrence of any of the following:

- .1 the preservation of a lien in respect of the *Project* that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*;
- .2 receipt by the *Owner* of a written notice of lien that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*; or
- .3 prior to the expiry of 40 calendar days following the publication of the certificate of *Substantial Performance of the Work*, the *Owner* publishes a *Notice of Non-Payment* of holdback in accordance with the *Construction Act*, setting out the amount of holdback that will not be paid, which may include non-payment to secure the correction of deficiencies and/or the completion of the *Work*.”

30.6 Add new paragraph 5.4.7 as follows:

“5.4.7 Where the *Construction Act* allows for release of *Construction Act* holdback on subcontract work which is 100% complete prior to the release of holdback contemplated under GC 5.4.5, the *Contractor* may make application to the *Owner* and the *Consultant* by written request for a review by the *Consultant* to determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may in its discretion require, including:

- .1 Description of the scope of *Work* included in the subcontract.
- .2 Declaration of Last Supply by the *Subcontractor* as prescribed in subsection 31(5) of the *Construction Act* (Form 7).
- .3 Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the *Construction Act* (Form 10).
- .4 Workplace Safety & Insurance Board Clearance Certificate for the *Contractor*, the *Subcontractor* concerned, and any other *Subcontractors* and *Suppliers* who have provided any services to the *Subcontractor*.
- .5 Statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B - 2018.
- .6 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the *Construction Act* holdback of the completed subcontracts.
- .7 Confirmation by the bonding company that it has been notified of the intent to claim early release of holdback and does not object.
- .8 Sufficient evidence to the *Owner's* reasonable satisfaction that, as of the date of the *Contractor's* application, no claims for lien have been preserved against the *Place of the Work* that have not been vacated by the posting of security, discharged, or otherwise addressed in accordance with GC 5.8 – CONSTRUCTION LIENS.”

31. GC 5.5 FINAL PAYMENT

31.1 Delete GC 5.5 – FINAL PAYMENT in its entirety and replace it with the following:

“5.5.1 When *Ready-for-Takeover* has been achieved in accordance with GC 12.1 – READY-FOR-TAKEOVER and the *Contractor* considers the *Work* is complete, the *Contractor* may submit an application for final payment to the *Owner* and the *Contractor* shall:

- .1 include all of the requirements set out in GC 5.2, including without limitation those requirements listed in Schedule A to these Supplementary Conditions that are specific to an application for final payment;
 - .2 ensure that all warranties, *Extended Warranties*, records, operation and maintenance manuals, data books, literature maintenance sheets, list of outstanding work and deficiency list, *Waste Management Report*, keys, Certificate of Clearance from WSIB, proof of publication of the certificate of *Substantial Performance of the Work* and the *As-Built Record Drawings* are submitted to the *Owner* (collectively, the "*Close-Out Documentation*"). Such submissions shall constitute requirements for the *Proper Invoice* for final payment; and
 - .3 if applicable, (a) written confirmation from the *Owner* that the deficiencies or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2 have been fully rectified as of the date of the *Contractor's* application for final payment, and/or (b) written confirmation, signed by the *Owner* and the *Contractor*, that the *Contract Price* has been reduced by a specified amount in exchange for the *Owner* releasing the *Contractor* of its obligation to rectify the certain outstanding deficiencies and/or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2, as detailed in such written confirmation."
- 5.5.2 After receipt by the *Owner* of an application for final payment submitted by the *Contractor* in accordance with paragraph 5.5.1:
- .1 the *Owner* will either:
 - (a) issue to the *Contractor*, a certificate for payment in the amount applied for in the *Proper Invoice*, or
 - (b) issue to the *Contractor*, a certificate for payment for an amount determined by the *Owner* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs that the *Owner* is entitled to notwithstanding any notice of dispute or disagreement that the *Contractor* may have served, along with the *Owner's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor* and issue a *Notice of Non-Payment*, if any, in accordance with GC 5.3.3;
 - .2 the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5,
 - (a) in the amount stated in the certificate for payment, or
 - (b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.3.3,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day."
- 5.5.3 In the event that the application for final payment delivered by the *Contractor* does not include the requirements of GC 5.5.1 (including the requirements for a *Proper Invoice*) or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment*. Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under this GC 5.5.3, the *Owner* and the *Contractor* shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a *Notice of Non-Payment*, the *Owner* and *Contractor* cannot resolve the dispute, either party may issue a notice of *Adjudication* in a form prescribed under the *Construction Act*. The *Owner* and *Contractor* will then submit the dispute to *Adjudication* as set out under PART 8 – DISPUTE RESOLUTION.
- 5.5.4 The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed portions of the *Proper Invoice* for final payment have been resolved in accordance with PART 8 – DISPUTE RESOLUTION. Any portion of the *Proper Invoice* which is not the subject of a *Notice of Non-Payment* shall be payable within the time period set out in paragraph 5.5.2.2.

- 5.5.5 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 make payment, to the *Contractor* in accordance with paragraph 5.5.2.2.
- 5.5.6 Notwithstanding anything else in this GC 5.5 – FINAL PAYMENT the *Owner* shall retain a finishing holdback as provided for in the *Construction Act*, which shall be released to the *Contractor* upon expiry of the lien period provided for under the *Construction Act*, provided no construction liens have been registered.
- 5.5.7 As additional requirements for release of finishing construction lien holdback, the *Contractor* shall submit the following documentation:
- .1 a written declaration that no claims for lien or written notices of lien have been received by it;
 - .2 a *Statutory Declaration* in the form set out in Schedule B that all accounts for labour, subcontracts, *Products*, construction machinery and equipment, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous progress payment, except for amounts properly retained as a holdback or as an identified amount in dispute; and
 - .3 a *Workplace Safety & Insurance Board Clearance Certificate*."

32. GC 5.8 WITHHOLDING OF PAYMENT

- 32.1 Add new paragraph GC 5.8 WITHHOLDING OF PAYMENT as follows:

"GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 Upon notice to the *Contractor*, the *Owner* may, subject to the *Owner's* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, withhold or retain all or any portion of any payment due to the *Contractor* under this *Contract* to ensure the performance of the *Work* or to protect the *Owner's* rights in respect of the events set out in this paragraph 5.8.1, but only such portion of any payment as is reasonably necessary for such purpose. The *Owner* may make such withholding or retention upon the occurrence and continuance of any of the following events:
- .1 the *Contractor* is in default of any of its material obligations under this *Contract*;
 - .2 all or any part of such payment is attributable to *Work* which is defective or not performed in accordance with the *Contract Documents*;
 - .3 the *Contractor* has improperly failed to make prompt payments to its *Subcontractors* and *Suppliers* respecting *Work* for which the *Owner* has made payment to the *Contractor*; or
 - .4 the amounts described in section 17(3) of the *Construction Act*."
- 5.8.2 In the event of deficiencies or delays in the *Work* that the *Contractor* fails or refuses to address upon receiving notice of same in accordance with the requirements of the *Contract*, the *Owner* may, without limiting the remedies available to it under this *Contract* and subject to the *Owner's* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, retain and set off as against any payments that would otherwise be owing to the *Contractor*, the reasonable costs of rectifying such deficiencies or delays as determined by the *Owner*.
- 5.8.3 In addition to any rights the *Owner* has pursuant to the *Construction Act* and subject to the *Owner's* requirement to issue a *Notice of Non-Payment* under the *Construction Act*, if a lien is registered against the *Place of the Work* or served upon the *Owner*, or an action commenced against the *Owner*, by any *Subcontractor*, the *Owner* having made all payments currently due in accordance with the payment terms of the *Contract Documents*, the *Owner* shall have the right to withhold from any money otherwise due to the *Contractor*, the full amount claimed in the lien action plus an additional amount sufficient to satisfy all of the *Owner's* expenses relating to such lien action, including legal and consulting costs. These funds, less expenses incurred, shall be released to the *Contractor* upon the full discharge of all liens and dismissal of all actions against the *Owner*."

33. GC 5.9 CONSTRUCTION LIENS

33.1 Add new GC 5.9 – CONSTRUCTION LIENS as follows:

“GC 5.9 – CONSTRUCTION LIENS

- 5.9.1 Notwithstanding anything else in this PART 5 – PAYMENT, in the event a claim for lien is registered against title to the *Place of the Work* by the *Contractor*, a *Subcontractor* or a *Supplier*, or served on the *Owner* with regard to the *Project* by a *Subcontractor* or a *Supplier*, or the *Owner* receives a written notice of or claim for lien from a *Subcontractor* or a *Supplier*, the *Owner* shall be entitled to withhold any payment otherwise due to the *Contractor* until such time as such claims have been dealt with as provided below.
- 5.9.2 In the event that a claim for lien or a written notice of a lien is received by the *Owner* in relation to the *Project*, the *Contractor* shall, within 10 calendar days, at its sole expense, arrange for the vacating or the discharge of the claim for lien and/or the withdrawal of the written notice of lien or have the lien vacated pursuant to the *Construction Act*. If the *Contractor* commences an application to the Court to have the lien vacated, the *Contractor* shall provide the *Owner* with copies of all court documents submitted by the *Contractor* and the Order issued by the Court. If the lien is only vacated, the *Contractor* shall, if requested, undertake the *Owner's* defence of any subsequent action commenced in the respect of the lien at the *Contractor's* expense.
- 5.9.3 If the *Contractor* fails or refuses to take such steps as required under paragraph 5.9.2, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the claim for lien or the withdrawal of the written notice of lien, and all costs incurred by the *Owner* in doing so (including, without limitation, legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be the responsibility of the *Contractor*, and the *Owner* may deduct such amounts from the amounts otherwise due or owing to the *Contractor*.
- 5.9.4 Without limiting any of the foregoing, the *Contractor* shall satisfy all judgments and pay all costs resulting from any liens or any actions brought by a *Subcontractor* or *Supplier* in connection with any liens, or in connection with any other claim or lawsuit brought against the *Owner* by any person that provided services or materials to the *Project* which constituted part of the *Work*, and the *Contractor* shall indemnify the *Owner* for any and all costs (including, without limitation, legal fees on a solicitor and client basis) the *Owner* may incur in connection with such claims or actions.
- 5.9.5 Section 20(1) of the Construction Act does not apply to this *Contract* and no general lien arises under or in respect of the *Work*, such that all liens shall arise and expire on a lot-by-lot basis.”

34. GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

34.1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall not be approved unless there has been compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by an alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, should be the basis for a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.”

34.2 Add new paragraph 6.1.3 as follows:

“The *Contractor* agrees that changes resulting from construction coordination, including but not limited to site surface conditions, site coordination, and *Subcontractor* and *Supplier* coordination, are included in the *Contract Price* and shall not entitle the *Contractor* to claim an addition to the *Contract Price* in relation to coordination.”

35. GC 6.2 CHANGE ORDER

35.1 Add new paragraph 6.2.4 as follows:

"The *Contractor* shall not be entitled to any additional compensation arising out of changes to the *Work* aside from the amounts determined and agreed to under this GC 6.2, or as provided in GC 6.3 – CHANGE DIRECTIVE. The *Contractor's* fee for overhead and profit related to a *Change Order* or *Change Directive* shall be as set out in the *Contract Documents*."

35.2 Add new paragraph 6.2.5 as follows:

"Change Orders are not valid and binding upon the *Owner* unless approved and executed in accordance with the *Owner's* internal approval processes."

36. GC 6.3 CHANGE DIRECTIVE

36.1 Amend paragraph 6.3.6 in the second line by adding the word "actual" before the word "cost".

36.2 Delete paragraph 6.3.6.3 in its entirety and replace it with the following:

".3 The *Contractor's* fee shall be as specified in paragraph 6.2.4 and the *Contractor's* fee for overhead and profit shall be as set out in the *Contract Documents*."

36.3 Amend paragraph 6.3.7 by adding the word "actual" before the word "cost" in line 1.

36.4 Amend paragraph 6.3.7.10 by adding the following to the end of the paragraph:

", provided that such amounts are not caused by negligent acts, omissions, or default of the *Contractor* or *Subcontractor*,"

36.5 Delete GC 6.3.7.17 in its entirety including all subparagraphs.

36.6 Amend paragraph 6.3.12 by deleting the words "the adjustment shall be referred to the Consultant for determination" and replacing them with "the *Dispute* shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION."

37. GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

37.1 Delete paragraph 6.4.2 in its entirety and replace it with the following:

"The *Owner* will promptly investigate such conditions. If the *Owner* determines that the conditions differ materially and would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Owner* will issue instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. If the *Owner* determines that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will provide its reasons for this determination to the *Contractor* in writing."

37.2 Delete paragraph 6.4.3 in its entirety and replace it with the following:

"If the *Contractor* disputes the *Owner's* determination in paragraph 6.4.2, the *Dispute* shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

37.3 Delete paragraph 6.4.4 in its entirety and replace it with the following:

"The *Contractor* confirms that, prior to submitting its response to the *RFP* for the *Project*, it had the opportunity to carefully investigate the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.12.1, given the amount of time provided between the issue of the *RFP* documents and the actual submission deadline for the *RFP*, the degree of access provided to the *Contractor* prior to submission of the response, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of its response."

37.4 Add new paragraph 6.4.5 as follows:

"The *Contractor* acknowledges that it has received the *Impact Assessment Reports* for the *Project* that are described in the *RFP* documents and that it has considered the mitigation measures described in the *Impact Assessment Reports* in the *Contract Price*. If the *Impact Assessment Reports* are not completed prior to the closing of the *RFP* submission deadline, any adjustments required to the *Contract Price* shall be determined in accordance with GC 9.6.2.3. The *Impact Assessment Reports* are provided for information only and the *Owner* shall not be liable for any errors or omissions in the reports."

37.5 Add new paragraph 6.4.6 as follows:

"If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2- TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS, GC 9.5 – MOULD and GC 9.6 – IMPACT ASSESSMENT."

38. GC 6.5 DELAYS

38.1 Delete paragraph 6.5.1 in its entirety and replace it with the following:

"If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner* or anyone employed or engaged by the *Owner* directly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Owner* determines. The *Contractor* shall be reimbursed by the *Owner* for its reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

38.2 Delete paragraph 6.5.2 in its entirety and replace it with the following:

"If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other *Authority Having Jurisdiction* on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes or the advice, recommendations and instructions of public health officials directly by the *Owner* or the *Owner's Other Contractor(s)* and relating to the *Work* or the *Place of the Work* and, providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, it results in the failure of the *Contractor* to attain *Ready-for Takeover* by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Owner* determines in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages."

38.3 Delete paragraph 6.5.3 in its entirety and replace it with the following:

"6.5.3.1 If the performance of the *Work* or the performance of any other obligation(s) of a party to this *Contract* is delayed by a *Force Majeure* event, then the *Contract Time* shall be extended for such reasonable time as the *Owner* and the *Contractor* shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* and the *Owner* agree to a shorter extension. Neither party shall be entitled to payment for its costs incurred by such delays. Upon reaching agreement on the extension of the *Contract Time* attributable to the *Force Majeure* event, the *Owner* and the *Contractor* shall execute a *Change Order* indicating the length of the extension to the *Contract Time* and confirming that there are no costs payable by either party to the other for the extension of *Contract Time*.

6.5.3.2 Notwithstanding the foregoing, the *Owner* may issue a *Change Directive* requiring the *Contractor* to undertake those specific actions identified in the *Change Directive* as the *Contractor* can reasonably and safely initiate to remove or relieve either the *Force Majeure* event or its direct or indirect effects on the *Project*, in which case the *Contract Price* will be adjusted in accordance with paragraph 6.3.7. If the *Contractor* fails within the time period specified in the *Change Directive* to take such action, then the *Owner* may, at its sole and absolute discretion and after it has given *Notice in Writing* to the *Contractor*, take some or all of such actions to partially or wholly remove or relieve such *Force Majeure* event or its direct or indirect effects, and thereafter require the *Contractor* to resume the performance of the *Work*."

38.4 Delete paragraph 6.5.4 in its entirety and replace it with the following:

"No extension of the *Contract Time* will be approved unless the *Contractor* provides *Notice in Writing* to the *Owner* within 3 *Working Days* of the date upon which the *Contractor* ought reasonably to have been aware of the delay

contemplated in paragraphs 6.5.1, 6.5.2 or 6.5.3. For the *Notice in Writing* to be valid under this paragraph 6.5.4 it must include specific details about:

- .1 the cause of the delay;
- .2 the likely impact the delay will have on the *Contract Time* and details of the extension of time being requested; and
- .3 mitigation efforts, if any, undertaken by the *Contractor* or, where no mitigation efforts have been undertaken by the *Contractor*, the reasons why mitigation is either not possible or has not been undertaken by the *Contractor*."

38.5 Add new paragraph 6.5.6 as follows:

"If the *Contractor* delays the performance of the *Work* and such delay is for a cause within the *Contractor's* control, the *Contractor* shall pay to the *Owner* the per diem rate for liquidated damages specified in Article A-10 of the *Contract* for each day of delay if *Ready-for-Takeover* is not achieved in accordance with the time specified in Article A-1.3 or the applicable *Renewal Contract*. If the per diem rate for liquidated damages is not specified in the *Contract Documents*, the *Contractor* shall pay to the *Owner* the *Administration Costs* incurred by the *Owner* as a result of the delay."

38.6 Add new paragraph 6.5.7 as follows:

"If the *Contractor* is delayed in the performance of the *Work* due to the replacement of a representative, worker, *Subcontractor* or *Supplier* pursuant to GC 3.5.4, 3.6.2 or 3.7.4, the *Contractor* shall pay to the *Owner* the per diem rate for liquidated damages specified in Article A-10 of the *Contract* for each day of delay if *Ready-for-Takeover* is not achieved in accordance with the time specified in Article A-1.3 or the applicable *Renewal Contract*. If the per diem rate for liquidated damages is not specified in the *Contract Documents*, the *Contractor* shall pay to the *Owner* the *Administration Costs* incurred by the *Owner* as a result of the delay."

38.7 Add new paragraph 6.5.8 as follows:

"If the *Contractor* disputes the determination by the *Owner* in paragraph 6.5.1 or paragraph 6.5.2, the *Dispute* shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

39. GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

39.1 Amend paragraph 6.6.1 by deleting the words "and to the Consultant."

39.2 Amend paragraphs 6.6.3 and 6.6.4 by deleting the word "Consultant" and replacing it with "other party."

38.3 Delete paragraphs 6.6.5 and 6.6.6 in their entirety and replace them with the following:

"The other party, with respect to a claim made by a party under paragraph 6.6.1, shall make a determination by providing *Notice in Writing* to the claiming party within 30 *Working Days* after receipt of the claim by the other party, or within such other time period as may be agreed by the parties. If such determination is not acceptable to the claiming party, the claim shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

40. GC 6.7 QUANTITY VARIATIONS

40.1 Delete paragraph 6.7.4 in its entirety and replace it with the following:

"The party that intends to request an adjustment to a *Unit Price* shall provide timely *Notice in Writing* to the other party. The parties shall make all reasonable efforts to agree on a revised *Unit Price*. The agreed revised *Unit Price* shall be recorded in a *Change Order*."

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

41.1 Amend paragraph 7.1.2 by adding the words "including failing or neglecting to comply with the requirements in GC 3.4 – CONSTRUCTION SCHEDULE..." immediately following the word "properly" in line one.

41.2 Amend paragraph 7.1.3.1 as follows:

Insert after the word “commences” the words “and is diligently proceeding with”.

41.3 Revise paragraph 7.1.3.2 by substituting the words “an acceptable schedule” with “a schedule Acceptable to the Owner”.

41.4 Amend paragraph 7.1.4.2 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

41.5 Delete paragraph 7.1.5.3 in its entirety and replace it with the following:

“charge the *Contractor* the amount by which the full costs of finishing the *Work* as determined by the *Owner*, including compensation to the *Owner* for *Administration Costs* and a reasonable allowance to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Contract Price*. If the cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* on the expiry of the warranty period specified in paragraph 12.3.1 for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT and GC 5.8 - WITHHOLDING FROM PAYMENT”.

41.6 Amend paragraph 7.1.5.4 by substituting the words “the difference” at the end of paragraph 7.1.5.4 with the words “for that portion of the *Work* performed by the *Contractor*, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT and GC 5.8 WITHHOLDING FROM PAYMENT.”

41.7 Add new paragraph 7.1.7 as follows:

“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* or terminate the *Contract* by giving *Notice in Writing* to that effect to the *Contractor* identifying the reason for the termination or the suspension and the expected length of the suspension. Such suspension or termination shall be effective in the manner specified in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.”

41.8 Add new paragraph 7.1.8 as follows:

“The *Contractor* upon receiving notice of suspension or termination from the *Owner* shall suspend all operations as soon as reasonably possible except work which, in the *Contractor's* opinion is necessary for the safety of personnel and for the care and preservation of the *Work*, the materials and plant. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such protection. 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.”

41.9 Add new paragraph 7.1.9 as follows:

“During the period of suspension, the *Contractor* shall not remove from the *Place of the Work* any part of the *Work*, or any *Product* or materials without the consent of the *Owner*.”

41.10 Add new paragraph 7.1.10 as follows:

“If the *Work* should be suspended for a period of 30 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 an omission of the *Contractor*, there shall be an equitable adjustment to the *Contract Time* and the *Contract Price* as agreed upon by the *Owner* and the *Contractor*.”

41.11 Add new paragraph 7.1.11 as follows:

“If, after 30 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 the terms and conditions agreed upon by the *Owner* and the *Contractor*.”

41.12 Add new paragraph 7.1.12 as follows:

“The *Owner* may terminate this *Contract* at any time for any or no reason. Such termination shall be effective upon the date specified in the *Owner’s Notice in Writing* advising of the termination of the *Contract* pursuant to this paragraph 7.1.12. In such event, the *Owner* shall pay for the actual and verifiable *Work* performed up to the effective date of termination, including demobilization costs, and for such additional costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, termination fees, penalties or levies, and any claims for loss of profit, lost deposits, or lost opportunity. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*. Within 3 *Working Days* of termination by the *Owner*, the *Contractor* shall deliver a *Notice in Writing* to each of its *Subcontractors and Suppliers* confirming the effective date of the termination.”

42. GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

42.1 Amend paragraph 7.2.1 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

42.2 Amend paragraph 7.2.2, by:

.1 adding the following after the words “public authority” in the second line:

“on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes of *Authorities Having Jurisdiction*, directly by the *Owner* or the *Owner’s Other Contractor(s)* and relating to the *Work* or the *Place of the Work*,”;

and,

.2 adding the following to the end of the paragraph:

“unless an acceptable arrangement for an extension of the *Contract Time* is agreed to by the *Contractor* and the *Owner*.”

42.3 Amend paragraph 7.2.3 by:

.1 deleting the words “with a copy to the Consultant” in the first line;

.2 deleting paragraph 7.2.3.1 in its entirety and replace it with “Intentionally left blank”;

.3 amending paragraph 7.2.3.2 by deleting the word “Consultant” and replacing it with “*Owner*”;

.4 deleting paragraph 7.2.3.3 in its entirety and replacing it with the following:

“the *Owner* fails to pay the *Contractor* when due the amount certified by the *Owner* or awarded by arbitration or a Court, except where the *Owner* has a bona fide claim for set off or otherwise under GC 5.8 – WITHHOLDING FROM PAYMENT; or”

and

.5 amending paragraph 7.2.3.4 by deleting all the words following the word “degree” and replacing them with “and the *Contractor* confirms by a detailed *Notice in Writing* to the *Owner* that sufficient cause exists. Such detailed *Notice in Writing* must contain particulars, including references to the *Contract Documents*, and supporting documentation demonstrating the alleged default by the *Owner*.”

42.4 Amend paragraph 7.2.4 by adding to the end of the paragraph the words “and within 5 *Working Days* publish a notice of termination (form 8) in accordance with the *Construction Act*.”

42.5 Delete 7.2.5 in its entirety and replace it with the following:

“If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination. The *Contractor* shall also be entitled to recover

the costs associated with termination, including the costs of demobilization, losses sustained on *Products* and construction machinery and equipment. The *Contractor* shall not be entitled to any recovery for any indirect, special or consequential losses.”

43. GC 8.1 AUTHORITY OF THE CONSULTANT

- 43.1 Amend paragraph 8.1.1 by deleting the words “which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 – ROLE OF THE CONSULTANT”.
- 43.2 Delete paragraph 8.1.2 in its entirety and replace it with “Intentionally left blank”.
- 43.3 Amend paragraph 8.1.3 by deleting the word “*Consultant*” and replacing it with “*Owner*” in each instance where it occurs in the paragraph.

44. GC 8.2 ADJUDICATION

- 44.1 Delete GC 8.2 – ADJUDICATION in its entirety, including all subparagraphs thereunder.

45. GC 8.3 NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

- 45.1 Delete GC 8.3 – NEGOTIATION, MEDIATION, AND ARBITRATION, including all paragraphs thereunder and replace it with the following:

“GC 8.3 – NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

“8.3.1 Save and except where the *Contractor* has given an undertaking, in accordance with the *Construction Act*, to refer a *Dispute* to *Adjudication*, prior to delivering a notice of *Adjudication* in a form prescribed by the *Construction Act*, the parties agree to first address all *Disputes* in a tiered approach as follows:

- .1 A *Dispute* shall be referred to the *Owner’s* project manager for the *Project* and a representative of the *Contractor* of the equivalent seniority or position for resolution within a period not to exceed 30 days.
- .2 If unresolved, after following the process described in paragraph 8.3.1.1, the *Dispute* shall be referred to the *Owner’s* Director or Vice President who is responsible for the *Project* and an employee of the *Contractor* of the equivalent seniority or position for resolution within a period not to exceed 30 days.
- .3 If unresolved after following the process described in paragraph 8.3.1.2, and only at the election of the *Owner*, the *Dispute* shall be referred to the President and CEO of the *Owner* and the most senior executive employee of the *Contractor* for resolution within a period not to exceed 30 days. If the *Owner* does not elect, at its sole option, to proceed under this paragraph 8.3.1.3, the *Dispute* may proceed to under either step as described in paragraphs 8.3.2 or 8.3.3.

8.3.2 If the *Dispute* remains unresolved despite the parties’ attempting to resolve it following the process in paragraph 8.3.1, a party may elect to proceed with the *Dispute* by way of an *Adjudication*. If a party elects to proceed by way of an *Adjudication*, the other party shall not be bound to proceed by way of an *Adjudication*, save and except where the parties are obliged under the *Construction Act*. The following procedures shall apply to any *Adjudications* the parties engage in under the *Construction Act*:

- .1 any hearings shall be held in the offices of the *Owner*, or, if such offices are unavailable, another venue as the parties may agree and which is acceptable to the adjudicator;
- .2 the *Adjudication* shall be conducted in English;
- .3 each party may be represented by counsel throughout an *Adjudication*;
- .4 there shall not be any oral communications with respect to issues in dispute that are the subject of an *Adjudication* between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and

- .5 a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time.
- 8.3.3 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 the adjudicator.
- 8.3.4 In respect of any claim or dispute, if the *Contractor* fails to comply with any of the notice requirements set out in the *Contract Documents* then the *Contractor* shall be barred from advancing such claim(s) or dispute(s) and shall have no entitlement whatsoever in respect of such claim(s) or dispute(s) (including to an increase in payment under the *Contract*, or an extension of *Contract Time*) and by failing to comply with the notice requirements waives the right to make any such claim(s) or dispute(s) in an *Adjudication* or in any other form of dispute resolution available under this *Contract* or at law. This GC 8.3.4 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an *Adjudication* or other form of dispute resolution and the *Owner* may rely on this GC 8.3.4 as a complete defence to any such claims or disputes.
- 8.3.5 The parties hereby acknowledge and agree:
- .1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the *Owner* to withhold, deduct or retain from monies otherwise owed to the *Contractor* under the *Contract* may be referred to, and included as part of, *Adjudications* under the *Construction Act*;
 - .2 that disputes related to the termination or abandonment of the *Contract*, as well as any disputes that arise or are advanced following the termination or abandonment of the *Contract*, shall not be referred to *Adjudication* under the *Construction Act*;
 - .3 that notice(s) of *Adjudication*, with respect to any dispute or claim relating to the *Project*, shall not be given, and no *Adjudication* shall be commenced following *Ready-for-Takeover*, abandonment, or termination of the *Contract*;
 - .4 that any *Adjudication* between the *Contractor* and a *Subcontractor* or a *Supplier* that relates to an *Adjudication* between the *Owner* and the *Contractor* shall be joined together to be adjudicated by a single adjudicator, provided that the adjudicator agrees to do so, and the *Contractor* shall include a provision in each of its subcontracts that contain an equivalent obligation to this GC 8.3.5.4; and
 - .5 that, other than where the *Contractor* is obliged to commence an *Adjudication* pursuant to an undertaking under the *Construction Act*, neither the *Owner* nor the *Contractor* shall commence an *Adjudication* during the *Restricted Period (Adjudication)*.
- 8.3.6 If the *Dispute* remains unresolved despite the parties attempting to resolve it following the process in paragraph 8.3.1 or, following a determination of the *Dispute* pursuant to an *Adjudication* under paragraph 8.3.2, a party may elect to proceed with the *Dispute* under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than: (i) 10 days following the expiry of the timeline set out in paragraphs 8.3.1.2 or 8.3.1.3, whichever is the later, or (ii) 10 days following the rendering of the adjudicator's determination following an *Adjudication*. Where a party elects to proceed with mediation within the timelines prescribed in this paragraph 8.3.6, the other party shall be bound to proceed to mediation. No later than 10 days after a party makes an election to proceed to mediation, or such longer period as may be mutually agreed between the parties, the parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.
- 8.3.7 If neither party elects to proceed to mediation within the timelines outlined in paragraph 8.3.5 or 8.3.6, or the parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration by a single arbitrator in accordance with the *Arbitration Act* by an arbitration agreement to be executed by the parties and the arbitrator. The parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the *Arbitration Act*. The arbitration proceedings shall take place in Toronto, Ontario, Canada. The language of the arbitration shall be English. The parties agree that any arbitration award, including with respect to costs, shall be binding on the parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any

court of competent jurisdiction, except on errors of law. The parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.

8.3.8 The timelines in GC 8.3 may be amended by mutual agreement of the parties.”

46. GC 8.4 RETENTION OF RIGHTS

46.1 Amend paragraph 8.4.1 by deleting all the words after “the party has” and replacing them with “complied with the provisions of GC 8.3.”

46.2 Amend paragraph 8.4.2 by replacing “paragraph 8.3.6” with “paragraph 8.3.7”.

46.3 Add new paragraph 8.4.3 as follows:

“8.4.3 If the parties proceed with an arbitration as described in paragraph 8.3.7, the *Contractor* agrees that this paragraph 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute as otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.4.3 shall prevent the *Contractor* from taking the steps required by the *Construction Act* to preserve and/or perfect a lien to which it may be entitled.”

47. GC 9.1 PROTECTION OF WORK AND PROPERTY

Amend paragraph 9.1.1.1 by adding the following words at the end of that paragraph:

“...which the *Contractor* could not reasonably have discovered applying the degree of care and skill described in paragraph 3.4.1 to its review of the *Contract Documents*.”

47.1 Delete paragraph 9.1.2 in its entirety and replace it with new paragraph 9.1.2:

“Before commencing any work, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents* or that are discoverable by applying to an inspection of the *Place of Work* the degree of care and skill described in paragraph 3.12.1.”

47.2 Add new paragraph 9.1.5 as follows:

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

48. GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

48.1 Amend paragraph 9.2.7.3 by deleting the words “Consultant may recommend” and replacing them with the words “*Owner* may determine in consultation with”.

48.2 Add new paragraph 9.2.10 as follows:

“The *Contractor* shall indemnify and hold harmless the *Owner*, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the *Place of the Work* by the *Contractor*, or anyone for whom the *Contractor* is in law responsible, and mishandled or handled negligently or improperly or which are otherwise mishandled or handled negligently or improperly by the *Contractor*, or anyone for whom the *Contractor* is in law responsible, thereby creating exposure to toxic or hazardous substances or materials. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 13.1 – INDEMNIFICATION or elsewhere in the *Contract* or which otherwise exist respecting a person or party described in this paragraph.”

49. GC 9.4 CONSTRUCTION SAFETY

49.1 Delete paragraph 9.4.1 in its entirety and replace it with the following:

“9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* shall comply with the occupational health and safety laws and regulations and any orders, recommendations and restrictions made by the federal, provincial or municipal governments and the advice, recommendations and instructions of public health officials, as they apply to the *Place of the Work*. If the *Place of the Work* is located on the *Owner's* premises, the *Contractor* shall comply with all the *Owner's* policies and directions to ensure the health and safety of the *Owner's* employees and *Other Contractors* as well as the *Contractor's* employees, *Subcontractors* and *Suppliers*. The *Contractor* shall submit its Health and Safety Plan to the *Owner* for *Acceptance* prior to commencing the *Work*, which Plan shall include all the elements required by the *Specifications* for a Health and Safety Plan. The *Contractor* shall indemnify and hold harmless the *Owner* for any fines, penalties or other costs imposed or assessed on or incurred by the *Owner* arising from the *Contractor's* failure to comply with the applicable health and safety laws, any orders, recommendations and restrictions of the federal, provincial or municipal governments or the advice, recommendations and instructions of public health officials.”

49.2 Amend GC 9.4.2 by adding the following words after “and the *Contractor*”:

“, *Subcontractors* and *Suppliers*”.

49.3 Amend GC 9.4.3 by adding the following words after “and the *Contractor*”:

“, *Subcontractors* and *Suppliers*”.

49.4 Delete paragraph 9.4.4 in its entirety and replace it with the following:

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

- .1 a current WSIB clearance certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation of the *Contractor's* in-house safety-related programs; and
- .4 a copy of the Notice of *Project* filed with the Ministry of Labour naming itself as “Constructor” under the *Occupational Health and Safety Act*.”

49.5 Delete paragraph 9.4.5 in its entirety and replace it with the following:

“The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *Occupational Health and Safety Act* and any breaches of the *Emergency Management and Civil Protection Act* and related orders, recommendations or regulations, including the payment of legal fees and disbursements on a full indemnity basis.”

49.6 Add new paragraph 9.4.6 as follows:

9.4.6 The *Contractor* shall ensure that it and its employees, *Subcontractors* and *Suppliers* are aware of and, while being on the *Owner's* property, comply with the *Owner's* policies, including its Fit for Duty Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, C.R.O.R. 2022, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.

49.7 Add new paragraph 9.4.7 as follows:

- “9.4.7 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* of such emergency as promptly as is practical under the circumstances.”

50. GC 9.5 MOULD

- 50.1 Amend paragraph 9.5.3.3 by deleting the words “*Consultant* may recommend” and replacing them with the words “*Owner* may determine”.

51. GC 9.6 IMPACT ASSESSMENT

- 51.1 Add new GC 9.6 – IMPACT ASSESSMENT as follows:

“GC 9.6 IMPACT ASSESSMENT

- 9.6.1 The *Contractor* shall be responsible for:

- .1 ensuring that any potential impacts and areas of concern identified in the *Contract Documents* or Impact Assessment Reports, if provided, are mitigated during the *Work*; and,
- .2 identifying any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the *Work* and during the *Work*.

- 9.6.2 If the *Contractor* or *Owner* observes or reasonably suspects the presence of any impacts described in paragraph 9.6.1.2 that are not mentioned or accounted for in the *Contract Documents* or Impact Assessment Reports, if any, and related mitigation plans,

- .1 the observing party shall immediately report the circumstances to the other party;
- .2 the *Contractor* shall immediately take reasonable steps, including stopping the *Work* if necessary, to ensure that any potential impacts are mitigated; and,
- .3 if the *Owner* and *Contractor* do not agree on the existence, significance or mitigation measures for the impact, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine the issue and the parties will enter into a Change Order if the mitigation measures will cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*.

- 9.6.3 If the *Contractor* fails to comply with the requirements in paragraph 9.6.2, the *Contractor* shall:

- .1 be responsible for all costs incurred by the *Owner* or the *Contractor* to mitigate the damage caused due to the failure;
- .2 not be entitled to request a Change Order relating to the failure to comply; and
- .3 indemnify the *Owner* and hold it harmless from any claims, damages, costs, fines or other expenses, including reasonable legal fees and expenses, relating to or arising from the *Contractor's* failure to comply with paragraph 9.6.2.”

52. GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

- 52.1 Add new GC 9.7 – ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES as follows:

“GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

- 9.7.1 The *Contractor* shall comply with the environmental protection requirements and mitigation measures that apply to construction involving work in and around waterbodies and on waterbody banks as set out in OPSS.PROV 182.

- 9.7.2 Pursuant to section 38(4) of the *Fisheries Act*, the *Contractor* has an obligation to notify the Department of Fisheries & Oceans (“DFO”) when the *Work* results in the unauthorized death of fish or a harmful alteration, disruption or destruction (“HADD”) of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The notification shall be done using the form attached as Schedule D. The *Contractor* shall also notify the *Owner* of any such incidents. Failure to notify DFO of such incidents is a federal offence.
- 9.7.3 In accordance with the Fisheries Act, notification must be made without delay to DFO after the *Contractor* ensures the immediate health and safety risks are managed at the *Place of the Work*. Updates to DFO may be provided at a later time, if required.
- 9.7.4 All spills and sediment releases into a waterbody during the *Work* must be immediately reported by the *Contractor* to the *Owner* who must report the release to the Spills Action Centre (“SAC”) operated by the Ministry of Environment, Conservation and Parks (“MECP”) at 800-288-6060. If the *Owner* is not available, the *Contractor* shall report the incident to SAC. The *Contractor* shall take all reasonable measures to mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.”

53. GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

- 53.1 Add new GC 9.8 – ENVIRONMENTAL SPILLS AND RELEASES as follows:

“GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

- 9.8.1 All spills and releases of hazardous substances in the course of the *Work* must be immediately reported by the *Contractor* to the *Owner* who will report the spill or release to the MOECP SAC. If the *Owner* is not available, the *Contractor* shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 or Ext. 141.
- 9.8.2 The *Contractor* shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the *Contractor* does not take timely action or, if the *Contractor* is not available, the *Owner* may direct others to remedy the situation.
- 9.8.3 If the spill or release was the fault of the *Contractor*, the remedial work shall be completed at the cost of the *Contractor* and with no additional cost to the *Owner* and the *Owner* shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- 9.8.4 If the spill or release was not the fault of the *Contractor*, the *Owner* shall pay for the remedial work.

54. GC 10.1 TAXES AND DUTIES

- 54.1 Amend paragraph 10.1.2 by adding the following sentence at the end of that paragraph:

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

- 54.2 Add new paragraph 10.1.3 as follows:

“Where an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes*, rebates, or monies from incentive programs is applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist, join in, or make application for any exemption, recovery or refund of all such taxes, duties, rebates and incentives and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over the *Owner* any cheques received from the federal or provincial governments, or any other *Authority Having Jurisdiction*, as may be required to give effect to this paragraph 10.1.3.”

- 54.3 Add new paragraph 10.1.4 as follows:

“The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and *Value Added Taxes* paid.”

54.4 Add new paragraph 10.1.5 as follows:

"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*."

54.5 Add new paragraph 10.1.6 as follows:

"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."

54.6 Add new paragraph 10.1.7 as follows:

"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."

55. GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

55.1 Delete paragraph 10.2.2 in its entirety and replace it with the following:

"The *Owner* has Crown immunity from the *Building Code Act* and the *Planning Act* and may not be obtaining building permits or development approvals. The *Owner* shall obtain and pay for any permanent easements over *Third Party Property* required for the completion of the *Work*. The *Contractor* shall be responsible for all other permissions for access to *Third Party Property*."

55.2 Add to the end of paragraph 10.2.4. the following:

"Whenever standards of law, ordinances, rules, regulations, codes and orders relating to the *Work* differ, the most stringent standards shall govern."

55.3 Amend paragraph 10.2.5 by:

.1 adding the words, "Subject to paragraph 3.4.1" to the beginning of the paragraph;

.2 replacing the word "Consultant" with the word "Owner"

- and

.3 adding the following to the end of the second sentence:

"...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 *Owner*."

55.4 Amend paragraph 10.2.6 by:

.1 replacing the word "*Consultant*" with the word "Owner";

and

.2 adding the following sentence at the end of the paragraph:

"In the event the *Owner* suffers loss or damage as a result of the *Contractor's* failure to comply with paragraph 10.2.5, and notwithstanding any limitations described in paragraph 13.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure by the *Contractor*."

55.5 Amend paragraph 10.2.7 by adding the words “which changes were not or could not have reasonably been known to the *Owner* or the *Contractor*, as applicable, at the time of deadline for submission of responses to the RFP and which changes did not arise as a result of a public emergency or other *Force Majeure* event” to the second line, after the words “authorities having jurisdiction”.

55.6 Add new paragraph 10.2.8 as follows:

“The *Contractor* shall furnish necessary certificates as evidence that the *Work* installed conforms with laws and regulations of authorities having jurisdiction, including certificates of compliance for *Owner's* occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance of the *Work*.”

56. GC 10.3 PATENT FEES

56.1 Delete paragraph 10.3.2 in its entirety.

57. GC 10.4 WORKERS' COMPENSATION

57.1 Add new paragraph 10.4.2 as follows:

“10.4.2 The *Contractor* shall be solely responsible for its employees and officers and for its *Subcontractors* and their officers and employees, including ensuring that all required employer filings, contributions, deductions, and payments are made or remitted, as the case may be, with respect to applicable employer health taxes and under the *Employment Insurance Act*, the Canada Pension Plan, the Ontario *Workplace Safety and Insurance Act, 1997*, and all equivalent legislation in any other applicable jurisdiction. Without limiting the generality of the foregoing, the *Contractor* shall indemnify, defend and hold harmless the *Owner*, its directors, officers, and employees from all claims, demands, actions, suits or proceedings arising from any health, medical, disability or similar claims which *Contractor's* employees or officers or any of its *Subcontractors* or their officers or employees may make against the *Owner*, its directors, officers, or employees during or after the *Contract Time*, whether or not such claims are attributable to the *Contractor's* or *Subcontractor's* performance of the *Work* or related to the *Contractor's* obligations under this *Contract*.”

58. PART 11 INSURANCE

58.1 Amend the title of PART 11 to add the words “AND CONTRACT SECURITY” at end of title.

59. GC 11.1 INSURANCE

59.1 Delete all references to “the *Consultant*” in GC 11.1.

59.2 Delete items .1 to .8 in paragraph 11.1.1 and in CCDC 41 and replace it with the following:

“1. General Liability insurance shall be with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$50,000. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts. The policy shall be endorsed to name the *Owner* as insureds and require the insurer to provide the *Owner* with Written Notice at least 30 days prior to the expiry or cancellation of the policy. 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 including but not limited to:

- .1 Bodily injury, death, and property damage including loss of use thereof.
- .2 Premises and operations liability.
- .3 *Products* and completed operations liability.
- .4 Blanket contractual liability.

- .5 Cross liability and severability of interest clauses.
- .6 Contingent employer's liability.
- .7 Personal injury liability.
- .8 *Owner's* and *Contractor's* protective coverage.
- .9 Broad form property damage.
- .10 Elevator and hoist liability, if applicable to the *Project*.
- .11 Liability for attached machinery, including loading and unloading.
- .12 Extension of coverage shoring; blasting; excavation; underpinning; demolition; on work; below ground surface work, including tunneling and grading, if applicable to the *Project*.

The General Liability Insurance shall not include any exclusion relating to working in the vicinity of railway operations

2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a *Contract* by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Contractor*.
3. Manned Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
4. Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the *Work*), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation.
5. *Contractors'* equipment insurance coverage written on an "all risks" basis covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form Acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
6. Professional liability Insurance. This policy shall cover risks of errors, omissions or negligent acts in the performance of professional services for the *Project*. The named insureds are to be approved and accepted for coverage by the Insurer. This policy shall provide for a limit of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate (inclusive of defence costs and expenses).
7. Technology Liability Insurance for financial loss arising out of an error, omission, or negligent act in the rendering of services in an amount not less than **\$5,000,000** per claim and **\$5,000,000** aggregate. Such policy shall be on a claims made basis and shall provide coverage for damages and defense costs. The Technology Professional Liability policy will also include an insuring agreement for cyber or network security and privacy liability insurance, covering financial loss arising out of actual or potential unauthorized access, unauthorized use, and a failure to protect confidential information which results in loss or misappropriation of such information in both electronic and non-electronic format. Such insurance will have a limit of an amount not less than \$5,000,000 per claim and \$5,000,000 aggregate. The *Contractor* shall maintain said liability coverage in place for a three-year period after termination of the *Contract* by way of annual policy renewal, or purchase of extended reporting period.
8. "All Risks" Builders Risk and Boiler & Machinery Insurance shall have limits of not less than the sum of 1.1 times *Contract Price*, plus any property, including design services, the *Owner* provides for incorporation into the *Work*. This policy shall cover all risks of direct physical loss or damage to the *Project*, including but not limited to the perils of earthquake and flood, subject to policy sub limits, warranties and exclusions and shall

not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. This insurance shall cover all property forming part of the *Project*, and goods and materials to be incorporated in the *Project* while at the *Place of the Work*, in transit, or while in off-site storage. It shall not provide coverage for the *Contractor's* or *Subcontractors'* equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the *Work*. The insurance shall not have a deductible greater than \$50,000.

9. Pollution Liability Insurance for an amount not less than \$5,000,000 per occurrence and in the aggregate and a deductible of not more than \$50,000. This policy shall be written on either an Occurrence or Claims Made Form and will provide coverage on a sudden and accidental, and gradual pollution events basis for on-site cleanup and remediation as well as on-site and off-site third party claims for bodily injury and property damage, cleanup and remediation."

60. GC 11.2 CONTRACT SECURITY

60.1 Add new GC 11.2 – CONTRACT SECURITY as follows:

"GC 11.2 CONTRACT SECURITY

- 11.2.1 If required by the RFP, the *Contractor* shall provide a performance bond and a labour and materials payment bond, each issued by a bonding company acceptable to *Owner* and licensed to issue such instruments in the *Place of the Work*, in the amounts and forms as follows:
 - .1 Amount of performance bond shall be equal to not less than 50% of the *Contract Price* in the form prescribed by the *Construction Act*.
 - .2 Amount of labour and material payment bond shall be equal to not less than 50% of the *Contract Price* in the form prescribed by the *Construction Act*.
- 11.2.2 The bonds provided in accordance with paragraph 11.2.1 shall guarantee the faithful performance of the *Contract* in accordance with the *Contract Documents*, including the requirements for warranties provided for the GC 12.3 – WARRANTY, and the payment of all obligations incurred in the event of the *Contractor's* default, including but not limited to the following:
 - .1 the payment of legal, accounting, architectural, engineering and other professional services expenses incurred by the *Owner* in determining the extent of *Work* executed and any additional *Work* required as a result of the interruption of the *Work*, and its completion; and
 - .2 the payment of additional expenses to the *Owner* in the form of security guard services, light, heat, power, loss of use of premises, and other related costs, payable over the period between the default of the *Contract* and completion of the *Work*.
- 11.2.3 Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the *Owner* for and against costs and expenses (including legal and other professional services and court costs) arising out of or as a consequence of any default of the *Contractor* under this *Contract*.
- 11.2.4 The *Contractor* shall be responsible for notifying the surety company of any changes made to the *Contract Documents* or the *Contract Price* during the course of the *Work*.
- 11.2.5 The premiums for bonds required by the *Contract Documents* shall be included in the *Contract Price*.
- 11.2.6 Should the *Owner* require additional bonds by the *Contractor* or any of its *Subcontractors*, after the receipt of bids for the *Work*, the *Contract Price* shall be increased by the actual costs attributable to providing such bonds. The *Contractor* shall promptly provide the *Owner* with any such bonds that may be required. For certainty, bonds required for *Renewal Terms* pursuant to the *Special Supplementary Conditions* are not "additional bonds" within the meaning of this paragraph, as the requirement for such bonds is disclosed in the *Contract Documents*.

61. GC 12.1 READY-FOR-TAKEOVER

61.1 Delete GC 12.1.1 in its entirety and replace it with the following:

“12.1.1 *Ready-for-Takeover* shall be achieved when all of the following has occurred, as verified and *Accepted* by the *Owner*:

- .1 *Substantial Performance of the Work* has been achieved, as jointly certified by the *Owner* and the *Contractor*;
- .2 the appropriate permits (if any) for the *Place of the Work* have been obtained from the Authorities Having Jurisdiction;
- .3 the *Work* to be performed under the *Contract* has satisfied the requirements for deemed completion in accordance with Section 2(3) of the *Construction Act*,
- .4 final cleaning and waste removal, as required by the *Contract Documents*;
- .5 the *Contractor* has delivered to the *Owner* all inspection certificates from authorities having jurisdiction with respect to any component of the *Work* which has been completed;
- .6 subject only to GC 12.1.2, the entire *Work* has been completed to the requirements of the *Contract Documents*, including completion of all items on the punch list prepared at the time of *Substantial Performance of the Work* and the *Work* is being used for its intended purpose, and is so certified by the *Consultant*;
- .7 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* in a collated and organized matter, all *Close-Out Documentation* and any other materials or documentation required by the *Contract Documents*;
- .8 subject only to GC 12.1.2, all *Products*, systems and components of the *Project* have been commissioned and certified for operation and accepted by the *Owner*, and
- .9 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* full and complete *As-built Drawings* and *Specifications* revised by the *Contractor* to reflect the as-built state of the *Work*, clearly showing changes to the *Drawings* and *Specifications* from the original *Contract Documents*, all of which have been *Accepted* by the *Owner* acting reasonably.”

61.2 Delete GC 12.1.2 in its entirety and replace it with the following:

“12.1.2 The *Owner* may, in its sole, absolute, and unfettered discretion, waive compliance with a requirement, or a part thereof, for achieving *Ready-for-Takeover* set out in GC 12.1.1.6 to 12.1.1.9 (inclusive). Where the *Owner* exercises the discretion afforded under this GC 12.1.2, the *Contractor* shall be required to comply with GC 5.5.1.3 as part of its application for final payment and the *Owner* and the *Contractor* shall establish a reasonable date for completing the *Work*.”

61.3 Delete GC 12.1.3 in its entirety and replace it with the following:

“12.1.3 When the *Contractor* considers the *Work* has attained *Ready-for-Takeover*, it shall submit a written application to the *Owner* for review.”

61.4 In GC 12.1.4, delete the words “list and” from the second line.

61.5 Delete GC 12.1.5 in its entirety and replace it with the following:

“12.1.5 Following the confirmation of the date of *Ready-for-Takeover* by the *Owner*, the *Contractor* may submit a final application for payment in accordance with GC 5.5 – FINAL PAYMENT.”

61.6 Delete GC 12.1.6 in its entirety.

62. GC 12.2 EARLY OCCUPANCY BY THE OWNER

62.1 Delete GC 12.2 – EARLY OCCUPANCY BY THE OWNER in its entirety.

63. GC 12.3 WARRANTY

63.1 Amend paragraph 12.3.2 by adding the words, “Subject to paragraph 1.1.3....” at the beginning of that paragraph.

63.2 Delete paragraphs 12.3.4 and 12.3.5 and replace them with the following paragraphs:

“12.3.4 The *Contractor* shall correct, at no additional cost to the *Owner*, defects or deficiencies in the *Work* that appear, prior to and during the *Warranty Period*. Any *Work* repaired or replaced during the *Warranty Period* shall be re-warranted for an additional 12 months from the date of completion of the repair or replacement. Notwithstanding the expiration of the *Warranty Period*, the *Contractor* shall not be relieved of its obligations to correct any defects or deficiencies in the *Work* of which *Notice in Writing* has been given to the *Contractor* prior to the expiration of the *Warranty Period*.

12.3.5 The *Owner* shall provide *Notice in Writing* to the *Contractor* of defects and deficiencies in the *Work* discovered during the *Warranty Period*. The *Contractor* shall submit a remediation plan for the permanent rectification of the defects and deficiencies within 2 *Working Days* after delivery of the *Notice in Writing*, including the schedule for the remediation work to be completed. Upon *Acceptance* by the *Owner* of the remediation plan, the *Contractor* shall remediate the defects and deficiencies in accordance with the schedule set out in the *Accepted* plan. *Acceptance* by the *Owner* of a remediation plan does not prohibit the *Owner* from pursuing other remedies it may have against the *Contractor* arising from the defects and deficiencies in the *Work*.

63.3 Amend paragraph 12.3.6 by adding at the end of the paragraph the following:

“The *Extended Warranty Period* for each *Extended Warranty* described in the *Specifications* shall commence on the expiry of the *Warranty Period* described in paragraph 12.3.1. The *Extended Warranties* shall be submitted to the *Owner* as part of the *Close-Out Documentation*.”

63.4 Add the following new paragraphs 12.3.7 to 12.3.12:

“12.3.7 The decision of the *Owner* shall be final as to the existence of such defects and deficiencies in the *Work*, the necessity of remedying same, and the remedial measures required.

12.3.8 If the *Contractor* fails to do the work to correct the defects or deficiencies, the *Owner* shall be entitled to carry out such work by its own forces or by *Other Contractors*. If such work is work which the *Contractor* should have carried out at the *Contractor's* own expense, the *Owner* shall be entitled to recover from the *Contractor* the cost thereof or may deduct the same from any monies due or that become due to the *Contractor*, including the warranty holdback, if any.

12.3.9 Any insurance, contract security, surety or deposit required by the *Contract Documents* shall remain in full effect at the expense of the *Contractor* during the *Warranty Period*.

12.3.10 The *Contractor* shall be responsible for the costs for inspection and testing for the correction of defects or deficiencies. The *Owner* shall have the right to deduct the cost of the inspection and testing from any monies owed to the *Contractor*.

12.3.11 The *Owner* may hold back, if set out in the *Contract Documents*, on each application for payment, advance payment or progress draw, 2.5% of the total amount payable under each such application for payment, advance payment or progress draw as security for the *Contractor's* performance of its warranty obligations. In the event the *Contractor* fails to correct a defect or deficiency during the warranty period within the required time and/or fails to pay for the redesign, reconstruction and other costs related to damages arising from a defect or deficiency, the *Owner* shall have the right to use the warranty holdback, or such part of it still being held by the *Owner* to pay for the costs of remedying the defect or deficiency and any redesign, reconstruction or other costs relating to the defect or deficiency. If the costs are greater than the amount of the warranty holdback, the *Contractor* shall pay the additional costs upon receipt of an invoice from the *Owner*. The *Contractor* shall have the right to invoice the *Owner* for the balance of

the warranty holdback at the end of the *Warranty Period* or *Extended Warranty Period* as described in paragraph 12.3.4.

12.3.12 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*.

12.3.13 The *Contractor's* obligations under this GC 12.3 shall continue notwithstanding any withholding of payment made by the *Owner* under GC 5.8 – WITHOLDING OF PAYMENT or by performance by the *Owner* directly or through other forces of the *Contractor's* obligations under this *Contract*, where the *Contractor* is in default in the performance of such obligations.”

64. GC 13.1 INDEMNIFICATION

64.1 Delete GC 13.1 – INDEMNIFICATION in its entirety and replace it with the following:

“13.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and its directors, officers, employees, contractors and agents (collectively the “*Owner's* Indemnitees”) from and against all loss, liability, damage, fines, cost, legal cost and disbursement whatsoever arising out of or related to the *Work* or the *Contract Documents* (“*Loss*”), by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with, anything done or omitted to be done by the *Contractor* in the course of the performance of the *Contractor's* obligations under the *Contract Documents* or otherwise in connection with the *Work*. The *Contractor* shall, at the *Owner's* election, either assume the defence of every proceeding brought in respect of such *Loss*, or cooperate with the *Owner* in the defence, including providing *Owner* with prompt Notice of any possible *Loss* and providing the *Owner* with all information and material relevant to the possible *Loss*.

13.1.2 GC 13.1 – INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.

13.1.3 The *Contractor* shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to the *Owner's* or a third party's physical property by the *Contractor's* act or omission.

13.1.4 The *Contractor* shall be liable for any claims arising from any personal injuries to or death of any of the *Contractor's* employees, *Subcontractors* or *Suppliers* or from any loss of or damage to any property belonging to the *Contractor* or its employees, *Subcontractors* or *Suppliers* during the performance of the *Work* unless caused by the negligent act or omission of *Owner*.

13.1.5 Notwithstanding any other provision of the *Contract Documents*:

(a) The *Owner* shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether the *Owner* has been advised of the possibility of such damages; and,

(b) Any express or implied reference to the *Owner* providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the *Owner* or the Province of Ontario, whether at the time of execution of this *Contract* or at any time during the performance of the *Work* and the Warranty Period, shall be void and of no legal effect in accordance with s.28 of the Financial Administration Act, R.S.O. 1990, c. F.12.

13.1.6 The *Contractor* shall indemnify the *Owner* and the *Owner's* Indemnitees and save them harmless from and against all *Loss* incurred by the *Owner* arising from:

- (a) any decision or interpretation by any court or Authority Having Jurisdiction that: (i) any of the *Contractor's* employees are an employee of the *Owner*; or (ii) the *Owner* is liable to pay statutory contributions or deductions in respect of any of the *Contractor's* employees under any laws, including employment insurance, provincial health insurance, income tax or other employment matters;
- (b) any health, medical disability or similar claims which the *Contractor* or *Contractor's* employees may have during or after the term of this *Contract*;
- (c) a claim by any third party against the *Owner* alleging that the *Submittals* and their use by the *Owner*, infringes any *Intellectual Property* rights;
- (d) safety infractions committed by the *Contractor* under the Occupational Health and Safety Act or any other laws, guidelines or public health orders regulating health and safety at the *Work Site*;
- (e) any claims against the *Owner* for the failure of the *Contractor* to protect the confidentiality of *Confidential Information*;
- (f) exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the *Work Site* by the *Contractor* or the *Contractor* mishandled or handled negligently or improperly the substances or materials;
- (g) a claim from adjacent landowners or other third parties regarding damage to their property due to the *Work*; and
- (h) the release into the environment of materials resulting from the *Work* that contain *Environmental Contaminants* during the transportation of such materials from the *Work Site* to the approved waste disposal site.

65. GC 13.2 WAIVER OF CLAIMS

65.1 Delete GC 13.2 – WAIVER OF CLAIMS in its entirety and replace it with the following:

“13.2.1 WAIVER OF CLAIMS BY OWNER

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

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;
- .3 those arising from the provisions of paragraph 9.6.1 of GC 9.6 – IMPACT ASSESSMENTS and arising from the *Contractor* failing to comply with the mitigation plans in the *Impact Assessment Reports* or failing to assess impacts and implement mitigation plans for impacts that arise during the *Work*;
- .4 those arising from the provisions of paragraph 9.2.5 of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the *Contractor* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Contractor* commences the *Work*;
- .5 those arising from the provisions of paragraph 9.5.1 of GC 9.5 – MOULD and arising from the *Contractor* bringing or introducing mould to the *Place of the Work*; or
- .6 those made in writing within a period of 6 years from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, arising from the *Contractor's* performance of the *Contract* with respect to material defects or deficiencies in the *Work*.

13.2.2 WAIVER OF CLAIMS BY CONTRACTOR

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing prior to the *Contractor's* application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.5 – MOULD, or GC 10.3 – PATENT FEES.

13.2.3 GC 13.2 – WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.”

66. PART 14 OTHER PROVISIONS

66.1 Add new PART 14 as follows:

“PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

14.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. 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 as its property when notified in writing to do so by the *Owner*.

GC 14.2 CONTRACTOR DISCHARGE OF LIABILITIES

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

GC 14.3 DAILY REPORTS/DAILY LOGS

14.3.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day work force.

14.3.2 The *Contractor* shall also maintain records, either at its head office or at the *Place of the Work*, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.4 – CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.4 – CONSTRUCTION SCHEDULE.

GC 14.4 CONFIDENTIAL INFORMATION

14.4.1 The *Contractor* must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the *Work* or the *Owner's Confidential Information* without the prior written approval of the *Owner*.

14.4.2 The *Contractor* must not, and must ensure that the *Contractor's* personnel do not, without the prior written approval of ONTC:

- .1 use *Confidential Information* other than as necessary for the purposes of fulfilling the *Contractor's* obligations under this *Contract*; or

- .2 disclose the *Confidential Information*, other than to the *Contractor's* personnel who need the information to enable the *Contractor* to perform its obligations under this *Contract*, to the *Contractor's* legal advisors, accountants or auditors, or where disclosure is required by law (including disclosure to any stock exchange).
- 14.4.3 The *Contractor* must, within 10 *Working Days* (or any other period agreed in writing by ONTC) after a direction by the *Owner* to do so, return or destroy all *Confidential Information* in the *Contractor's* possession, custody or control.
- 14.4.4 If the *Owner* or the *Contractor* is required by law to disclose *Confidential Information*, it shall promptly notify the other party so that that party may intervene to prevent the disclosure.
- 14.4.5 The *Contractor* specifically acknowledges that *Owner* is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 4, and that the *Owner* may be compelled by law to disclose certain *Confidential Information*.
- 14.4.6 The rights and obligations under this Part continue after the termination of this *Contract*.

GC 14.5 CORRUPTION, FORCED LABOUR, SANCTIONS

14.5.1 The *Contractor* warrants that:

- .1 no bribe, gift or other inducement has been paid, promised or offered to any official or employee of the *Owner*, the Ministry of Transportation, the Government of Ontario or any other government official relating to the *Owner* entering into this *Contract* with the *Contractor*.
- .2 it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the *Contractor* becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this *Contract*, the *Contractor* shall report the incident to the *Owner* immediately.
- .3 it is unaware of any forced labour or child labour being used at any step of the production of goods produced, purchased or distributed by it in Canada or elsewhere or for the production of goods imported by the *Contractor*.
- .4 it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the *Contractor* shall comply with the reporting requirements under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023 c.9.
- 14.5.2 In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the *United Nations Act*, the *Special Economic Measures Act (SEMA)*, or the *Export and Import Permits Act*. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The *Contractor* shall comply with any such regulations that are in force on the effective date of the *Contract* and will require such compliance by its first-tier *Subcontractors*. The *Owner* relies on such undertaking from the *Contractor* to enter into this *Contract*, and any breach of such undertaking shall entitle the *Owner* to terminate this *Contract* for default and to recover damages from the *Contractor*, including excess re-procurement costs.

GC 14.6 COMMUNICATIONS

- 14.6 The *Owner* or the Government of Ontario will lead and make any announcements relating to this *Contract* and the *Work*. The *Contractor* shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement, in relation to this

Contract or the *Work* unless prior written consent is given by the *Owner*. Should the *Contractor* be contacted by any media outlet or other person or entity wishing to make any form of publication or announcement, or seeking any information, in relation to this *Contract* or the *Work*, the *Contractor* shall provide no comment and shall immediately notify the *Owner*. The *Contractor* shall immediately notify the *Owner* if it becomes aware of any publication or announcement relating to the *Contract* or the *Work*

GC 14.7 AUDIT

- 14.7 The *Contractor* shall keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, and vouchers in respect of the *Project* for a least six (6) years after the date that *Ready-for-Takeover* of the *Project* was achieved (the "*Audit Period*"). The *Owner* has the right to audit all such financial accounts and records associated with the *Project* and the *Contract Documents*, including *Submittals*, timesheets, reimbursable out of pocket expenses, materials, goods and *Construction Equipment* claimed by the *Contractor*, at all reasonable times during the term of the *Contract* and the *Audit Period* by providing *Notice in Writing* of its intention to conduct the audit. The *Contractor* shall provide full access to the records to the *Owner* for the purpose of the audit.

GC 14.8 GENERAL

- 14.8.1 Nothing contained in this *Contract* shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
- 14.8.2 In addition to those provisions which are expressly stated to survive the termination or expiration of this *Contract*, the provisions of this *Contract* that are by their nature intended to survive termination or expiration of this *Contract* shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
- 14.8.3 This *Contract* may be executed with electronic signatures or may be executed and delivered by electronic transmission and the parties may rely upon all such signatures as though they were original signatures. This *Contract* may be executed in counterpart and all such counterparts shall, for all purposes, constitute one agreement binding on the parties."

Schedule A to the Supplementary Conditions

Requirements for a “*Proper Invoice*”

To satisfy the requirements for a *Proper Invoice*, the *Contractor’s* application for payment must satisfy the following criteria:

- .1 is in the form of a written bill, invoice, application for payment, or request for payment;
- .2 is in writing;
- .3 contains the *Contractor’s* name, telephone number and mailing address and contact information of the *Contractor’s* project manager;
- .4 contains the title of the *Project* and the *Owner’s* contract number or purchase order number under which the work was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- .5 contains the date the written bill, invoice, application for payment, or request for payment is being issued by the *Contractor*;
- .6 identifies the period of time in which the *Work*, labour, services, *Products* and/or materials were supplied to the *Owner*;
- .7 reference to the provisions of the *Contract* under which payment is being sought (e.g. progress payment / milestone, holdback, final payment, etc.);
- .8 a description, including quantities where appropriate, of the labour, services, *Products*, or materials, or a portion thereof, that were supplied and form the basis of the *Contractor’s* request for payment;
- .9 the amount the *Contractor* is requesting to be paid by the *Owner*, set out in a statement, based on the schedule of values *Accepted* under paragraph 5.2.5, separating out any statutory or other holdbacks, set-offs and HST;
- .10 with each application for payment after the first, a written statement that all accounts for labour, services, subcontracts, materials, equipment, *Products*, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- .11 with the applications for payment of holdback and for final payment, a *Statutory Declaration* in the form provided by the *Owner* attached as Schedule B stating that all accounts for labour, services, subcontracts, materials, equipment, *Products*, and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- .12 a current *Workplace Safety Insurance Board* clearance certificate;
- .13 the progress report required under GC 3.4 CONSTRUCTION SCHEDULE, in the form provided by the *Owner* attached as Schedule C;
- .14 an updated *Construction Schedule* in native and .pdf formats;
- .15 if requested by the *Owner*, a current and valid certificate(s) of insurance for the insurance required under GC 11.1 – INSURANCE;
- .16 the following statement: “Provided this *Proper Invoice* complies with the requirements of the *Contract* and provided no *Notice of Non-Payment* is issued by the *Owner*, payment is due within 28 days from the date this *Proper Invoice* is received by the *Owner*.”;
- .17 the name, title, telephone number and mailing address of the person at the place of business of the *Contractor* to whom payment is to be directed;
- .18 in the case of the *Contractor’s* application for final payment;
 - (a) sufficient evidence that the *Contractor* has delivered all warranties to the *Owner*;

- (b) sufficient evidence that the *Place of the Work* has been left in a clean and tidy condition, including evidence that any remaining materials, tools, equipment, temporary work, and waste products and debris have been removed from the *Place of the Work*;
 - (c) landfill waybills for the disposal of the waste products, debris and excess soil removed from the *Place of Work* in accordance with the *Waste Management Plan*; and
 - (d) an executed, original, full and final release of all claims that may arise as a result of the *Work*, which full and final release executed by the *Contractor* shall be in a form approved by the *Owner*;
- .19 information identifying the authority, whether in the *Contract Documents* or otherwise, under which the services or materials were supplied;
- .20 any other information that is prescribed in Article A-3, if any, or identified by the *Owner* as required;
- .21 the amount invoiced to date;
- .22 the percentage of the *Contract Price* invoiced; and
- .23 the individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the *Project*.

Schedule “B” to the Supplementary Conditions



Statutory Declaration of Progress Payment Distribution by *Contractor*

To be made by the *Contractor* **prior to payment**
as a condition for release of holdback.

The last application for progress
payment for which the Declarant has
received payment is No. _____

dated _____.

Identification of *Contract* :

Name of *Contract* (Location and description of the *Work* as it appears in the *Contract Documents*)

Date of *Contract* : Day : _____ Month : _____ Year : _____

Name of *Owner* : Ontario Northland Transportation Commission

Name of *Contractor*:

Name of Declarant : _____ **Position or Title :** (of office held with *Contractor*)

Declaration

I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the *Contractor* named in the *Contract* identified above, and as such have the authority to bind the *Contractor*, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the *Contractor* in the performance of the work as required by the *Contract*, and for which the *Owner* might in any way be held responsible, have been paid in full as required by the *Contract* up to and including the latest progress payment received, as identified above, except for:

Holdback monies properly retained,

Payments deferred by agreement, or

Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from who payment has been withheld.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me in _____

City/Town Province

on _____.

Date

Signature of Declarant

A Commissioner for Oaths or Notary Public

Schedule “C” to the Supplementary Conditions

Project Status Report

Project Title:

Reporting Period:

Date:

Project Details:

Planned Budget: Indicate the original *Contract* value Current Approved Budget: Indicate the original *Contract* value plus approved change orders

Planned Completion: Indicate the *Contract* schedule completion date Current *Project* Completion: Fill in revised date if schedule extension approved through change order

Planned *Project* Percent Complete: How far should they have progressed by this date? Actual *Project* Percent Complete: What is their actual percent complete?

Executive Summary

Provide a summary of what happened during the period, any concerns, risks or wins and plans for the upcoming period.

Work Completed in the Period

List

List

List

List

List

Work Planned for Next Period

List

List

List

List

Issues and Concerns

Use this area to identify any concerns related to the project.

Status of Progress

Include a graph to show progress or eliminate this section.

SCHEDULE D

DUTY TO NOTIFY/EMERGENCY WORKS NOTIFICATION FORM

ONTC DUTY TO NOTIFY / EMERGENCY WORKS NOTIFICATION FORM

SUBMISSION REQUIREMENTS

Contact DFO By Phone 1-855-852-8320 **AND** submit this form to fisheriesprotection@dfo-mpo.gc.ca

Submit this form to the consultant and the ONTC *Project* Manager: Esmail Zougari, esmail.zougari@ontarionorthland.ca and to ONTC Legal : legal@ontarionorthland.ca

MNRF Office: Contact Area MNRF Office

PART 1: NOTIFICATION DETAILS

Type of Notification: ☐ DUTY TO NOTIFY ☐ EMERGENCY WORK

Date of Notification:

Time of Notification:

ONTC *Contract* #:

DFO PATH File # (if applicable):

PART 2: REPORTING INFORMATION

Name of Person Reporting:

Name of Field Contact:

Telephone #:

Telephone #:

Email:

Email:

PART 3: INCIDENT INFORMATION

Bank failure ☐ Culvert failure

Erosion and Sediment Control Measures Failure ☐ Beaver dam breach

Other (specify): ☐ Hwy shoulder failure

Date of Incident:

Time of Incident:

Location of Site:

Geographic Coordinates (Lat/Long):

Nearest Community (city/town):

Name of Waterbody(ies):

Type (watercourse, lake/pond, ditch):

Indicate if any of the following impacts have occurred or are about to occur:

Fish Kill (if yes, approximately how many):_____ ☐ Sediment deposition in channel

Bank failure ☐ Obstruction of fish passage through:

Modification of flows ☐ Channel ☐ Culvert

Other (specify):

<p>Immediate Actions Taken:</p> <p>(Describe the activities/works that are being / have been immediately implemented. e.g. mitigation measures, damming / pumping etc.)</p>	
<p>Photos: <input type="checkbox"/> Attached</p> <p>(Where feasible, it is recommended that the photos be submitted with the form or as follow up)</p>	
PART 4: EMERGENCY WORKS	
<p>Description of Proposed Emergency Works:</p> <p>(Be as specific as possible. Describe what work will be undertaken within the next two weeks.</p> <p>E.g. culvert replacement (include existing and new culvert diameter / length / type), slope restoration (include material / method),:</p>	
<p>Mitigation measures:</p> <p>(Describe what measures have been or will be implemented to address the immediate issue. E.g. sediment fence, turbidity curtain, check dam, fish salvage etc.):</p>	
<p>Indicate which of the works will be followed (if applicable):</p> <p>Beaver Dam Removal <input type="checkbox"/> Culvert Maintenance</p> <p>Bridge Maintenance <input type="checkbox"/> Like-for-like culvert replacement</p> <p>Ditch maintenance within 30 m of a <input type="checkbox"/> Temporary watercourse crossing waterbody</p> <p>Riparian vegetation maintenance in existing right-of-way</p>	
<p>The Emergency Works are (check one):</p> <p>Temporary (additional work will be required) <input type="checkbox"/> Final (no additional work required)</p>	
<p>Proposed Start Date: (YYYY/MM/DD)</p>	<p>Proposed End Date: (YYYY/MM/DD)</p>
PART 5: OTHER AGENCIES NOTIFIED	
<p>Other Agency(ies) Notified: Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>Agency(ies) Notified:</p>
<p>Date Notified:</p>	<p>Incident Report No. (if issued by notified Authority):</p>

END OF SUPPLEMENTARY CONDITIONS