



SUPPLEMENTARY CONDITIONS

AMENDMENTS TO CCDC 2 – 2020 STIPULATED PRICE CONTRACT

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

SC1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC1.1 ARTICLE A-4 CONTRACT PRICE

- 1.1.1 Amend paragraph 4.4 by adding the following to the end:

“For certainty, the *Contract Price* shall not be increased and the *Contractor* shall not be entitled to claim or recover any additional amounts as a result of any increases in the prices and costs of labour, materials, *Products* or anything else required for the performance of the *Work*, except and only to the extent as may be provided in the *Contract Documents*.”

SC1.2 ARTICLE A-5 PAYMENT

- 1.2.1 Delete paragraph 5.2 and replace it with the following:

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

SC1.3 ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 1.3.1 Amend paragraph 6.2 by adding the following to the end:

“, provided that a *Notice in Writing* shall not be delivered by facsimile (fax) transmission.”

SC1.4 ARTICLE A-9 TIME IS OF THE ESSENCE

- 1.4.1 Add a new Article A-9 as follows:

“ARTICLE A-9 TIME IS OF THE ESSENCE

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

SC2. DEFINITIONS

SC2.1 Definitions

- 2.1.1 Amend the Definition of “*Consultant*” by adding the following to the end:

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

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

- 2.1.3 Delete the Definition of “*Payment Legislation*” and replace it with the following:

“*Payment Legislation* means the Construction Act (Ontario) and all regulations made thereunder, each as amended.”

- 2.1.4 Add the following new Definitions:



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As-Built Drawings

As-Built Drawings means the drawings prepared by the *Contractor* by marking on a copy of the *Drawings* the as-built conditions and changes from the *Drawings* which occur during the course of the *Work* including, but not limited to, the exact location of major building components and structures that were shown generally on the *Drawings*. For certainty, *As-Built Drawings* shall be in computer-aided design (CAD) format, as well as in paper and PDF formats.

Blackout Period

Blackout Period means the following dates in each calendar year:

- (a) January 1 to January 7, inclusive; and
- (b) the week during the month of March identified as “March Break” by the *Owner*; and
- (c) the last week of July and the first week of August; and
- (d) December 15 to December 31, inclusive.

Key Personnel

Key Personnel has the meaning assigned to such term in paragraph 3.5.3 of GC 3.5 – SUPERVISION.

OHSA

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

Proper Invoice

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

Subject Item

Subject Item has the meaning assigned to such term in paragraph 10.1.3.1 of GC 10.1 – TAXES AND DUTIES.

Subject Tariff

Subject Tariff has the meaning assigned to such term in paragraph 10.1.3.1 of GC 10.1 – TAXES AND DUTIES.

Unrecoverable Costs

Unrecoverable Costs means:

- .1 all costs of head office personnel and overhead costs,
 - .2 standby time or impact costs,
 - .3 any consequential, punitive, exemplary, indirect or special damages, and
 - .4 any loss of profit or loss of opportunity costs and damages,
- whether incurred or suffered by the *Contractor* or any *Subcontractor* or *Supplier*.

Warranty Security Retention

Warranty Security Retention means the amount to be deducted from each progress payment and retained by the *Owner* as provided in paragraph 5.3.3 of GC 5.3 – PAYMENT.

WSIB

WSIB means the Ontario Workplace Safety & Insurance Board.

SC3. GENERAL CONDITIONS

SC3.1 GC 1.1 CONTRACT DOCUMENTS

3.1.1 Delete paragraph 1.1.1 and replace it with the following:

- “1.1.1 The intent of the *Contract Documents* is to include all labour, *Products*, materials, *Construction Equipment* and services necessary or normally considered necessary for the performance of the *Work*. Any item of *Work* mentioned in the *Contract Documents* or reasonably inferable from the *Contract Documents* but not otherwise shown or described, shall be provided by the *Contractor* as if shown or otherwise described or inferable. Any items omitted from the *Contract Documents*



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which are reasonably necessary or inferable for the completion of the *Work* shall be considered a portion of the *Work* and included in the scope of *Work* to be performed under this *Contract*."

- 3.1.2 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 *Consultant* any error, inconsistency or omission the *Contractor* may discover."
- 3.1.3 Amend paragraph 1.1.4 by adding the following to the end:
- "Neither the *Owner* nor the *Consultant* will be responsible for oral instructions."
- 3.1.4 Add a new paragraph 1.1.4A as follows:
- "1.1.4A Notwithstanding paragraphs 1.1.3 and 1.1.4, errors, inconsistencies and/or omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or *Products* that are normally required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*."
- 3.1.5 Amend paragraph 1.1.5.1 by changing the order of the first four bullet points so that, as reordered, the bullet points read as follows:
- Supplementary Conditions,
 - the Agreement between *Owner* and *Contractor*,
 - the Definitions,
 - the General Conditions,"
- 3.1.6 Add a new paragraph 1.1.5A as follows:
- "1.1.5A Notwithstanding paragraph 1.1.5, if there is a conflict or discrepancy between *Drawings* or between *Drawings* and *Specifications* or any other *Contract Documents* in relation to the *Products* to be supplied or the amount of labour or materials required to complete a particular item of *Work*, the *Contractor* shall supply and shall include in the *Work* the *Products*, labour and materials which would provide the greatest benefit to the *Owner*, as determined by the *Owner*."
- 3.1.7 Amend paragraph 1.1.9 by adding new paragraphs 1.1.9.1 and 1.1.9.2 as follows:
- "1.1.9.1 The *Specifications* shall be read as a whole and are the minimum construction requirements. Neither the organization nor the division of the *Specifications* nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* in respect to such organization or division.
- 1.1.9.2 The *Drawings* are intended to convey the scope of the *Work* and indicate elevations and general and approximate locations, arrangement and sizes of fixtures, equipment, outlets, utilities and underground services. The *Contractor* shall obtain more accurate information and shall satisfy itself as to the conditions of the pre-grade elevations and the locations, arrangements and sizes of fixtures, equipment, outlets, utilities and underground services from study and coordination of the *Drawings*, including *Shop Drawings*, and shall satisfy itself and become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require reasonable minor changes to indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work* at no additional cost to the *Owner*. The *Contractor* shall arrange and install fixtures and equipment so they are easily accessible for maintenance and replacement, and in such a way as to conserve as much headroom and space as possible."
- 3.1.8 Add a new paragraph 1.1.12 as follows:
- "1.1.12 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, proposed or contemplated change notices, *Change Orders*, *Change Directives*, record drawings marked up with any changes to be included in *As-Built Drawings*, cash



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allowance disbursement authorizations, reviewed *Shop Drawings*, reports and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and *Consultant* in either paper or electronic format.”

SC3.2 GC 1.3 RIGHTS AND REMEDIES

3.2.1 Add a new paragraph 1.3.3 as follows:

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

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

SC3.3 GC 2.1 AUTHORITY OF THE CONSULTANT

3.3.1 Delete paragraph 2.1.2.

SC3.4 GC 2.2 ROLE OF THE CONSULTANT

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

“If the *Contractor* believes a *Supplemental Instruction* will result in either a change to the *Contract Price* or *Contract Time*, the *Contractor* shall, within five (5) *Working Days* of receipt of such *Supplemental Instruction*, provide the *Consultant* with a *Notice in Writing* to that effect and shall await further instructions. If the *Contractor* does not provide such *Notice in Writing* within the time stipulated in this paragraph, the *Contractor* shall be deemed to have accepted the *Supplemental Instruction* without adjustment to the *Contract Price* or *Contract Time*.”

3.4.2 Amend paragraph 2.2.18 by deleting the words “against whom the *Contractor* makes no reasonable objection and”.

SC3.5 GC 2.3 REVIEW AND INSPECTION OF THE WORK

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

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

SC3.6 GC 2.4 DEFECTIVE WORK

3.6.1 Amend paragraph 2.4.1 by adding the following to the end:

“The *Contractor* shall correct any defective work identified as a priority by the *Owner* or the *Consultant* before correcting other defective work.”

SC3.7 GC 3.0 PRE-CONSTRUCTION SUBMITTALS

3.7.1 Add a new GC 3.0 as follows:

“GC 3.0 PRE-CONSTRUCTION SUBMITTALS

3.0.1 Prior to site mobilization, the *Contractor* shall submit to the *Owner*:

- .1 evidence that the supervisor appointed for the *Project* has completed the required training and has been designated a “competent person” under the *OHSA*;
- .2 the bonds described in GC 14.7 – CONTRACT SECURITY;



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- .3 true copies of the certificates of insurance confirming the insurance policies required by this *Contract* are in place;
- .4 the construction schedule referred to in paragraph 3.4.1.1 of GC 3.4 – CONSTRUCTION SCHEDULE;
- .5 a current *WSIB* clearance certificate;
- .6 a copy of the *Contractor's* safety program to be implemented for the *Project*. Such safety program must be specific to the *Project* and must have been prepared no more than 6 months before the date of this *Contract*;
- .7 a copy of the Notice of Project filed by the *Contractor* with the appropriate government agency or ministry naming the *Contractor* as the “constructor” under the *OHSA*.”

SC3.8 GC 3.1 CONTROL OF THE WORK

3.8.1 Add new paragraphs 3.1.3 to 3.1.7 as follows:

- “3.1.3 Notwithstanding paragraphs 3.1.1 and 3.1.2, the *Contractor* agrees that it shall fully incorporate and comply with all policies and procedures of the *Owner* which are relevant to any activity to be performed under the *Contract*. The *Contractor* shall inquire from the *Owner* if such policies or procedures exist and the *Owner* agrees to use reasonable efforts to communicate to the *Contractor* all relevant policies or procedures.
- 3.1.4 Prior to commencing the *Work*, the *Contractor* shall verify all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and shall obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*. Failure to do so shall be at the sole risk and cost of the *Contractor*.
- 3.1.5 The *Contractor* shall be responsible for the proper laying out of the whole of the *Work*. The *Contractor* shall employ an experienced and licensed land surveyor to establish and check grades, benchmarks, references, elevations, points and lines as from time to time may be required for the purposes of the *Work*, or layout of same, and the *Contractor* shall at every appropriate stage of the *Work* take all proper steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the *Project* site and in the exact position (or respective positions) established for such *Work*, and shall assume full responsibility for the correctness of all such lines, levels and measurements.
- 3.1.6 The *Contractor* is solely responsible for the quality of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality. The *Contractor* shall perform the *Work* in accordance with modern practice and in accordance with applicable laws, ordinances, rules, regulations and codes relating to the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* shall coordinate the *Work* so that no part shall be left in an unfinished or incomplete condition.
- 3.1.7 The *Contractor*, without in any way limiting its responsibilities under this *Contract*:
 - .1 shall perform the *Work* so as to avoid disturbing the occupants of neighbouring facilities, premises, or the public in general,
 - .2 shall respect and comply with local regulations and all *Owner's* requirements regarding permitted work hours, noise levels and work conditions,
 - .3 shall abide by and enforce *Owner* directives and policies regarding signs, advertisements, fires, smoking and vaping at the *Place of the Work*,
 - .4 shall take all reasonable steps to avoid interference with fire exits, building or site access and egress, continuity of electric power and all other utilities, to suppress dust and noise, to avoid conditions likely to propagate mould or fungus of any kind, and shall take all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of neighbouring facilities, premises and the public in general, and to maintain access to and the operation of any existing facilities at the *Place of the Work*,



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- .5 shall take precautions not to allow any unauthorized visitors entry to the *Place of the Work*;
- .6 shall not permit any workers, *Subcontractors* or *Suppliers* to use any existing facilities including, without limitation, elevators, lavatories, toilets, entrances and parking areas, other than those designated by the *Owner*.”

SC3.9 GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS

3.9.1 Delete paragraph 3.2.2.

3.9.2 Amend paragraph 3.2.3.4 by adding the following to the end:

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

3.9.3 Add a new paragraph 3.2.3.5 as follows:

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

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

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

3.9.5 Add a new paragraph 3.2.7 as follows:

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

SC3.10 GC 3.4 CONSTRUCTION SCHEDULE

3.10.1 Delete paragraph 3.4.1 and replace it with the following:

“3.4.1 The *Contractor* shall:

- .1 within ten (10) *Working Days* of entering into this *Contract* submit to the *Owner* and the *Consultant*, for the *Owner’s* approval, a construction schedule that indicates the timing of major activities and critical milestone dates for the *Project*, demonstrating that the *Work* will be performed in conformity with the *Contract Time*. Such schedule:
 - (a) shall be prepared using scheduling software approved by the *Owner*; and
 - (b) shall be provided in both a native editable electronic format that includes and shows all logic links between activities, and in paper format, and
 - (c) shall be prepared in collaboration with, and supported by, the *Subcontractors* and *Suppliers* whose activities affect the critical path of the *Work*, and
 - (d) shall include and make provision for statutory holidays, weather conditions that are normally experienced at the *Place of the Work*, and the rectification of defects and deficiencies, and
 - (e) shall provide sufficient detail of the critical events and their inter-relationship and shall include a baseline schedule indicating the critical path for the *Work*; and

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- .2 provide the expertise and resources, including labour and *Construction Equipment*, as are necessary to maintain progress under the construction schedule; and
 - .3 monitor the adequacy of *Subcontractor* and *Supplier* personnel and equipment and the availability of *Products* to meet the construction schedule, and take appropriate action when requirements of a contract with a *Subcontractor* or *Supplier* are not being met; and
 - .4 monitor the progress of the *Work* relative to the construction schedule and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule within two (2) *Working Days* of such variation or slippage becoming apparent; and
 - .5 prepare an updated construction schedule on a monthly basis and include the updated schedule as part of each *Proper Invoice*; and
 - .6 at each site meeting, provide to the *Owner* and the *Consultant* a look-ahead schedule indicating the major activities planned to be undertaken in the next month.
- 3.4.2 If the *Contractor* does not include an updated construction schedule as part of a *Proper Invoice*, as provided in paragraph 3.4.1.5, the *Contractor* will be deemed to represent and warrant to the *Owner* that there is no change in the construction schedule and that the last schedule which the *Contractor* provided remains current and valid.
- 3.4.3 If at any time it should appear that the actual progress of the *Work* is behind schedule or is likely to fall behind schedule, or if the *Contractor* has so advised the *Consultant* and the *Owner*, then, except in the case of delays described in paragraphs 6.5.1, 6.5.2 or 6.5.3 of GC 6.5 – DELAYS, the *Contractor* shall take appropriate steps, at the *Contractor's* own expense, to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Consultant*, for review and approval, a recovery plan demonstrating how the *Contractor* will achieve recovery of the schedule.
- 3.4.4 The *Contractor* shall not change the scheduled *Ready-for-Takeover* date."

SC3.11 GC 3.5 SUPERVISION

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

"3.5.1 The *Contractor* shall provide all necessary supervision and shall appoint competent representatives, including a full-time supervisor who has completed the required training and has been designated a "competent person" under the *OHS*, who shall be dedicated to the *Project* and who shall be in full time attendance at the *Place of the Work* while the *Work* is being performed. The *Contractor* shall not change, substitute, replace or reassign the supervisor without the prior written approval of the *Owner*. If the *Owner* approves a change in *Contractor* personnel, the *Contractor* shall promptly arrange for an appointment of a replacement person of comparable or greater experience, subject to the *Owner's* written approval. The *Contractor* shall provide to the *Owner* all relevant information on the proposed replacement person, including a current resume and synopsis of the individual's roles on previous projects. All costs associated with the transition of replacement personnel onto the *Project* shall be at the sole cost and expense of the *Contractor*.

- 3.11.2 Add a new paragraph 3.5.3 as follows:

"3.5.3 The *Contractor* shall ensure that the employees listed in the Schedule attached to the Supplementary Conditions ("**Key Personnel**") are assigned and dedicated to the *Project* for the duration of the *Project*. The *Contractor* shall not change, substitute, replace or reassign any **Key Personnel** without the prior written approval of the *Owner*. If the *Owner* approves a change in **Key Personnel**, the *Contractor* shall promptly appoint a replacement person of comparable or greater experience, subject to the *Owner's* written approval. The *Contractor* shall provide to the *Owner* all relevant information about the proposed replacement person, including a current resume and synopsis of the person's roles on previous projects. All costs associated with the transition of replacement personnel onto the *Project* shall be at the sole cost and expense of the *Contractor*."

SC3.12 GC 3.6 SUBCONTRACTORS AND SUPPLIERS

- 3.12.1 Add a new paragraph 3.6.1.4 as follows:



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

3.12.2 Amend paragraph 3.6.2 by adding the following to the end:

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

3.12.3 Add new paragraphs 3.6.7 and 3.6.8 as follows:

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

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

SC3.13 GC 3.7 LABOUR AND PRODUCTS

3.13.1 Amend paragraph 3.7.1 by inserting the words “, agents, *Subcontractors* and *Suppliers*” after the word “employees” in the first line.

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

“The *Contractor* shall ensure that all materials and *Products* are delivered to the *Project* site in original containers and packages with labels and seals intact and that they are protected from the elements and visible for inspection by the *Owner* and the *Consultant*.”

3.13.3 Add new paragraphs 3.7.4 to 3.7.8 as follows:

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

3.7.5 The *Contractor* shall not, and shall ensure that *Subcontractors* and *Suppliers* do not, employ any persons on the *Project* whose labour affiliation, or lack thereof, is incompatible with other labour employed by the *Contractor* in connection with the *Work*. All costs arising from labour disputes arising from the *Contractor's* failure to comply with this paragraph shall be the sole expense of the *Contractor*.

3.7.6 Without in any way limiting the *Contractor's* obligations under this *Contract*, the *Contractor* shall prepare and implement job site rules which shall govern work on the *Project*. Such job site rules shall be consistent with the *Contractor's* duties and obligations under the *OHSA*, shall include and incorporate all *Owner's* policies and protocols relating to construction and working in *Owner* facilities, and shall include provisions making smoking, vaping and the consumption of alcohol or non-prescription drugs at the *Place of the Work* the subject of discipline proceedings and/or termination of employment.

3.7.7 The *Owner* or the *Consultant*, acting reasonably, shall have the right to order the *Contractor* to remove from the *Project*, without cost to the *Owner*, any representative or employee of the *Contractor* or any representative or employee of any *Subcontractor* or *Supplier* whose conduct, in the opinion of the *Owner* or the *Consultant*, presents a risk to staff or students attending at the *Place of the Work*, jeopardizes the safety or security of the *Project*, any person, the *Owner's* operations, is a detriment to the *Project*, or whose behaviour may be considered as harassment in the workplace or may harm the *Owner's* image or reputation. Immediately upon receipt of such order the *Contractor* shall arrange for the appointment of a replacement representative or



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employee acceptable to the *Owner*. All costs associated with the transition of replacement staff onto the *Project* shall be at the sole cost and expense of the *Contractor*.

- 3.7.8 The *Owner* is required by provincial legislation to obtain police record checks from all contractors and other individuals who potentially have direct and regular contact with students. Before commencing the *Work*, the *Contractor* shall provide to the *Owner* a satisfactory criminal record and judicial matters check for all persons, including the *Contractor's* employees and *Subcontractors* who, in the course of performing the *Work*, may come in direct and regular contact with students."

SC3.14 GC 3.8 SHOP DRAWINGS

- 3.14.1 Amend paragraph 3.8.3 as follows:

- (a) add the following after the first sentence:

"Each *Shop Drawing* submitted to the *Consultant* shall bear the stamp, date and signature of the person responsible for the review of that *Shop Drawing* on behalf of the *Contractor*."

- (b) add a new paragraph 3.8.3.3 as follows:

"3.8.3.3 that the *Contractor* has reviewed each *Shop Drawing* for accuracy, completeness and coordination."

- 3.14.2 Add new paragraphs 3.8.8 to 3.8.11 as follows:

- "3.8.8 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* or the *Contract Time*.
- 3.8.9 The *Contractor* shall not use the term "by others" on *Shop Drawings* but shall identify the responsible *Subcontractor* or *Supplier* where such work is within the scope of the *Work*.
- 3.8.10 Where *Specifications* require the *Shop Drawings* to bear the seal and signature of a professional, such professional shall be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.
- 3.8.11 The *Consultant's* review of the *Shop Drawings* shall not relieve the *Contractor* from responsibility for defective *Work* and shall not constitute authorization to the *Contractor* to perform additional *Work* or changed *Work*. The *Contractor* is solely responsible for dimensions to be confirmed and correlated at the job site, for information that pertains solely to fabrication processes, and for techniques of construction and installation."

SC3.15 GC 3.9 USE OF THE WORK

- 3.15.1 Add a new GC 3.9 as follows:

"GC 3.9 USE OF THE WORK

- 3.9.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees, *Subcontractors* and *Suppliers* 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*."

SC3.16 GC 3.10 CLEANUP

- 3.16.1 Add a new GC 3.10 as follows:

"GC 3.10 CLEANUP

- 3.10.1 The *Contractor* shall maintain the *Work* and the *Place of the Work* in a safe and tidy condition and free from the accumulation of waste products and debris. The *Contractor* shall ensure the *Place of the Work* is cleaned and left in a tidy condition on a daily basis, failing which the *Owner*

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may remove the said waste products and debris and charge the cost of doing so to the *Contractor*.

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

SC3.17 GC 3.11 CONTRACTOR’S STANDARD OF CARE

- 3.17.1 Add a new GC 3.11 as follows:

“GC 3.11 CONTRACTOR’S STANDARD OF CARE

- 3.11.1 In performing this *Contract* the *Contractor* shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent contractor performing similar work for similar projects. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor’s* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care, skill, judgment and diligence in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may use or employ on the *Project*.
- 3.11.2 The *Contractor* represents, covenants and warrants to the *Owner* that:
- .1 the personnel assigned to the *Project* are appropriately experienced and trained;
 - .2 it has sufficient qualified and competent personnel to replace its designated supervisor, superintendent and project manager, subject to the *Owner’s* approval, in the event of incapacity, removal or resignation; and
 - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform this *Contract*.”

SC3.18 GC 3.12 CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS

- 3.18.1 Add a new GC 3.12 as follows:

“GC 3.12 CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS

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



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- .3 before applying for *Ready-for-Takeover*, clean and make good, to the satisfaction of the *Consultant*, all such systems and equipment as it had been permitted to use; and
- .4 pay any and all costs associated with such use, operation, preventative maintenance services, cleaning and making good, at no cost or charge to the *Owner*.”

SC3.19 GC 4.1 CASH ALLOWANCES

3.19.1 Add new paragraphs 4.1.8 and 4.1.9 as follows:

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

SC3.20 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

3.20.1 Delete GC 5.1.

SC3.21 GC 5.1A PROPER INVOICE

3.21.1 Add a new GC 5.1A as follows:

“GC 5.1A PROPER INVOICE

- 5.1A.1 In this *Contract*, a *Proper Invoice* shall mean an application for payment made by the *Contractor* that:
 - .1 is given to the *Owner* by e-mail sent to the e-mail address specified by the *Owner* and is concurrently sent by e-mail to the *Consultant*, and is also submitted through the *Owner*’s enterprise resource planning (ERP) system; and
 - .2 includes all of the following:
 - .1 the *Contractor*’s name, address and HST registration number;
 - .2 the date of the application for payment and the period to which the application relates;
 - .3 information identifying the contract or other authorization under which the services or materials were supplied;
 - .4 a description, including quantities where appropriate, of the services and materials that were supplied;
 - .5 the amount payable for the services or materials that were supplied;
 - .6 the name, title, telephone number and mailing address of the person to whom payment is to be sent or, if payment is to be sent to an office or department, its name, mailing address and telephone number;
 - .7 any other information that is necessary for the proper functioning of the *Owner*’s accounts payable system that the *Owner* reasonably requests;
 - .8 a statement based on the schedule of values for the *Work*;
 - .9 where the application includes amounts charged on the basis of hourly rates, documentation in support of the amount claimed, including dates that the *Work* was performed, identity of the person(s) involved, the hours spent, and a description of the *Work* performed;
 - .10 where the application is for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, evidence to establish the value and delivery of such *Products*;
 - .11 where the application includes amounts expended under a cash allowance, documentation in support of the amount claimed, including copies of all invoices and charges incurred;

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- .12 copies of any *Change Orders* and *Change Directives* for which the *Contractor* is claiming payment, together with copies of invoices and other documents in support of the amounts claimed on account of changes in the *Work*;
- .13 the amount deducted on account of the lien holdback;
- .14 the amount deducted on account of the *Warranty Security Retention*;
- .15 for all applications for payment except the final payment, an updated construction schedule that complies with the requirements of paragraph 3.4.1.1 of GC 3.4 – CONSTRUCTION SCHEDULE;
- .16 a current valid clearance certificate issued by the *WSIB*;
- .17 for the second and all subsequent applications for payment, a signed CCDC 9A Statutory Declaration; and
- .18 if the *Contractor* had previously not paid any *Subcontractor* or *Supplier*, a written explanation for such non-payment.

5.1A.2 If the *Owner* notifies the *Contractor* in writing of a deficiency with a *Proper Invoice* within 7 days after receiving the same, then, the *Owner's* obligation to make payment shall not arise unless and until the *Contractor* has addressed the deficiency."

SC3.22 GC 5.2 APPLICATIONS FOR PAYMENT

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

"5.2.1 *Proper Invoices* for progress payment shall be given monthly to the *Owner* and the *Consultant* simultaneously as the *Work* progresses on a day of the month agreed to by the parties. Provided that the *Contractor* shall not give a *Proper Invoice* on any of the following:

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

5.2.2 At least 5 *Working Days* before submitting a *Proper Invoice* the *Contractor* shall convene a meeting with the *Owner*, the *Consultant*, and those *Subcontractors* whose *Work* is to be included in the *Proper Invoice*, for the purpose of reviewing the progress of the *Work* and to review a draft *Proper Invoice*. For certainty, the purpose of such meeting is not to pre-certify or pre-approve the *Proper Invoice*."

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

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

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

"Such schedule of values shall include line items which assign an appropriate portion of the *Contract Price* for the preparation and delivery of *As-Built Drawings*, quality control, cleanup, and closeout of the *Work*."

3.22.4 Amend paragraph 5.2.5 by inserting the words ", or as directed by the *Consultant*" after the words "as specified in the *Contract*".

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

", as modified by paragraph 5.1A.1 of GC 5.1A – PROPER INVOICE."

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

"Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to GC 14.1 – OWNERSHIP OF MATERIALS."



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SC3.23 GC 5.3 PAYMENT

3.23.1 Delete paragraph 5.3.1 and replace it with the following:

- “5.3.1 After receipt by the *Consultant* and the *Owner* of an application for progress payment given by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, the *Consultant* will issue to the *Owner* and copy to the *Contractor* a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due.
- 5.3.2 Subject to the *Owner's* right to give notice of non-payment in accordance with the *Payment Legislation*, and subject to the applicable holdback provisions, the *Owner* will pay the amount payable under a *Proper Invoice* for progress payment no later than 28 calendar days after the date the *Owner* receives the *Proper Invoice*. However, if the *Owner* has given notice of a deficiency as provided in paragraph 5.1A.2 of GC 5.1A – PROPER INVOICE, the *Owner's* obligation to make payment shall not arise until the *Contractor* has addressed the deficiency.
- 5.3.3 Notwithstanding paragraphs 5.3.1 and 5.3.2, the *Owner* shall deduct from each payment to be made to the *Contractor* a *Warranty Security Retention* calculated as follows:
- .1 where the *Contract Price* at the time the *Contract* is signed is \$1.0 million or less, the amount equivalent to three percent (3%) of the value of the *Work* performed and *Products* delivered to the *Place of the Work*, as such value is stated in each certificate for payment issued pursuant to paragraph 5.3.1 or as may be determined in an award by adjudication, arbitration or court;
 - .2 where the *Contract Price* at the time the *Contract* is signed is more than \$1.0 million but is equal to or less than \$5.0 million, the amount equivalent to two percent (2%) of the value of the *Work* performed and *Products* delivered to the *Place of the Work*, as such value is stated in each certificate for payment issued pursuant to paragraph 5.3.1 or as may be determined in an award by adjudication, arbitration or court;
 - .3 where the *Contract Price* at the time the *Contract* is signed is more than \$5.0 million but is less than \$10 million, the amount equivalent to one and a half percent (1.5%) of the value of the *Work* performed and *Products* delivered to the *Place of the Work*, as such value is stated in each certificate for payment issued pursuant to paragraph 5.3.1 or as may be determined in an award by adjudication, arbitration or court;
 - .4 where the *Contract Price* at the time the *Contract* is signed is more than \$10 million but is less than \$30 million, the amount equivalent to one percent (1%) of the value of the *Work* performed and *Products* delivered to the *Place of the Work*, as such value is stated in each certificate for payment issued pursuant to paragraph 5.3.1 or as may be determined in an award by adjudication, arbitration or court;
 - .5 where the *Contract Price* at the time the *Contract* is signed is more than \$30 million, the amount equivalent to three-quarters of a percent (0.75%) of the value of the *Work* performed and *Products* delivered to the *Place of the Work*, as such value is stated in each certificate for payment issued pursuant to paragraph 5.3.1 or as may be determined in an award by adjudication, arbitration or court.

Example #1: If the *Contract Price* is \$4.0 million and if the amount certified to be the value of *Work* performed and *Products* delivered to the *Place of the Work* is \$200,000, then, the holdback deduction will be \$20,000 (10% of \$200,000), the *Warranty Security Retention* will be \$4,000 (2% of \$200,000), and the amount payable to the *Contractor* will be \$176,000 (plus Value Added Taxes).

Example #2: If the *Contract Price* is \$12.0 million and if the amount certified to be the value of *Work* performed and *Products* delivered to the *Place of the Work* is \$200,000, then, the holdback deduction will be \$20,000 (10% of \$200,000), the *Warranty Security Retention* will be \$2,000 (1% of \$200,000), and the amount payable to the *Contractor* will be \$178,000 (plus Value Added Taxes).

- 5.3.4 The *Owner* will use the *Warranty Security Retention* to cover the costs of completing and correcting defects, deficiencies, non-compliant and/or incomplete items of *Work* which appear prior to and during the warranty period, as described in paragraph 12.3.5A of GC 12.3 – WARRANTY.”



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SC3.24 GC 5.3A ANNUAL RELEASE OF HOLDBACK

3.24.1 Add a new GC 5.3A as follows:

“GC 5.3A ANNUAL RELEASE OF HOLDBACK

- 5.3A.1 The *Owner* will publish a notice of annual release of holdback in accordance with the *Payment Legislation*.
- 5.3A.2 The *Owner* will pay to the *Contractor* the total amount of holdback retained by the *Owner* from payments that the *Owner* made to the *Contractor* during the year immediately preceding the anniversary of the date of this *Contract*, and that had not been previously released, subject to and in accordance with the *Payment Legislation*.
- 5.3A.3 Within 14 calendar days of receiving the holdback paid pursuant to paragraph 5.3A.2, the *Contractor* shall pay to all *Subcontractors* and *Suppliers* all of the accrued holdback in respect of the *Work*, services or materials supplied by each *Subcontractor* and *Supplier* during the year to which the payment made pursuant to paragraph 5.3A.2 relates, subject to and in accordance with the *Payment Legislation*. Upon the *Owner's* request the *Contractor* shall provide to the *Owner* an accounting and statement showing the amount of holdback paid to each *Subcontractor* and *Supplier*.”

SC3.25 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

3.25.1 Delete paragraphs 5.4.2 to 5.4.4 and replace them with the following:

- “5.4.2 Immediately after the issuance of the certificate of *Substantial Performance of the Work* the *Contractor* shall:
- .1 in consultation with the *Owner* and the *Consultant*, establish reasonable dates for *Ready-for-Takeover* and for finishing the *Work* and correcting deficiencies; and
 - .2 cause the certificate to be published in the manner prescribed by the *Payment Legislation* and shall immediately thereafter deliver a copy of the published certificate to the *Owner*.
- 5.4.3 The *Contractor* shall submit an application for payment of the unpaid balance of the lien holdback amount that was not previously paid, which shall include all of the following:
- .1 a written request for the release of the holdback amount;
 - .2 a declaration that no written notices of lien have been received by the *Contractor*;
 - .3 a copy of the published certificate of *Substantial Performance of the Work*;
 - .4 a current valid clearance certificate issued by the *WSIB*; and
 - .5 a signed CCDC 9A Statutory Declaration.
- 5.4.4 The *Owner* will pay the unpaid balance of the lien holdback that was not previously paid in the amount authorized by the *Consultant* and in accordance with the *Payment Legislation*.”

3.25.2 Delete paragraph 5.4.5.

SC3.26 GC 5.5 FINAL PAYMENT

3.26.1 Delete paragraph 5.5.1 and replace it with the following:

- “5.5.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall deliver to the *Owner* and the *Consultant* a *Proper Invoice* for final payment; provided that the *Contractor* shall not give such *Proper Invoice* for final payment on any of the dates specified in paragraph 5.2.1 of GC 5.2 – APPLICATIONS FOR PAYMENT.”

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

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



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Documents, and all documents specified in the *Contract Documents* to be delivered by the *Contractor* have been received and accepted by the *Consultant*.”

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

“5.5.3 Subject to the *Owner’s* right to give notice of non-payment in accordance with the *Payment Legislation*, and subject to deducting the *Warranty Security Retention*, the *Owner* will pay the amount payable under a *Proper Invoice* for final payment no later than 28 calendar days after the date the *Owner* receives the *Proper Invoice*. However, if the *Owner* has given notice of a deficiency as provided in paragraph 5.1A.2 of GC 5.1A – PROPER INVOICE, the *Owner’s* obligation to make payment shall not arise until the *Contractor* has addressed the deficiency.”

SC3.27 GC 5.8 WITHHOLDING OF PAYMENT

3.27.1 Add a new GC 5.8 as follows:

“GC 5.8 WITHHOLDING OF PAYMENT

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

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

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

SC3.28 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

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

“This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there is strict compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the *Contract* or the *Work*, and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Contract* or the *Work*, whether or not there is any such unjust enrichment, shall be the basis of a claim for damages or additional payment or for a change in the *Contract Price* or *Contract Time*. Without limiting the generality of the foregoing, under circumstances of expediency the *Contractor* shall proceed with a change in the *Work* without first obtaining a *Change Order* or a *Change Directive* where it has received from the *Owner* or the *Owner’s* authorized representative some form of written or e-mail direction agreeing to the change, in



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which case the value of such change will be determined pursuant to GC 6.2 or GC 6.3, at the option of the *Owner*.”

SC3.29 GC 6.2 CHANGE ORDER

3.29.1 Amend paragraph 6.2.1 by adding the following to the end:

“, along with all relevant documents in support of the proposed adjustments. All of the material prepared by the *Contractor* in connection with the proposed change in the *Work* must be submitted to the *Consultant* in sufficient time to prevent interruption of the orderly progress of the *Work* and, in any event, no later than ten (10) days from the *Contractor*’s receipt of the written description of the proposed change in the *Work*.”

3.29.2 Add new paragraphs 6.2.3 to 6.2.6 as follows:

“6.2.3 The adjustment in the *Contract Price* resulting from a change in the *Work* shall be determined by actual credits and cost to the *Owner*. The cost to the *Owner* may, at the *Owner*’s direction, be based on unit prices established in the *Contract Documents* or the actual cost of labour and materials utilized in performing the change, or a combination of unit prices and actual costs. There shall be no mark-up on any items of *Work* included in a *Change Order* and for which unit prices are established in the *Contract Documents*. The *Contractor* shall be entitled to the following percentage fee mark-ups on the costs included in a change (excluding the costs based on unit prices) after all credits included in the change have been deducted:

- .1 on *Work* performed by the *Contractor*’s own forces, the *Contractor* may charge a maximum mark-up of 5%;
- .2 on *Work* performed by *Subcontractors*:
 - (a) the *Subcontractors* may charge a maximum mark-up of 10%; and
 - (b) the *Contractor* may charge a maximum mark-up of 5% on the aggregate of the *Work* performed by *Subcontractors* (excluding on the *Subcontractor*’s mark-up).

For certainty, no mark-ups or other charges shall be permitted where the change results in a net decrease (credit) to the *Contract Price*.

6.2.4 The percentage fee mark-ups in paragraph 6.2.3 shall constitute the only compensation the *Contractor* shall be entitled to for any and all overhead, profit, general expenses, incidental and administrative costs whatsoever related to the change including, but not limited to, costs relating to superintendence and supervision, general cleanup, *Shop Drawing* production, estimating, site office and head or home office expenses and personnel, travel / accommodation / meals administration costs, workers tools, temporary facilities and controls, record drawings, *As-Built Drawings*, use of scheduling and modelling software, warranty, insurance, bonding, job safety costs, and coordination of any and all *Work*-related activities.

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

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

SC3.30 GC 6.3 CHANGE DIRECTIVE

3.30.1 Delete paragraph 6.3.6.3 and replace it with the following:



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“6.3.6.3 The *Contractor's* fee shall be 5%, but the fee shall not apply to any items of *Work* performed pursuant to a *Change Directive* and for which unit prices are established in the *Contract Documents*.”

3.30.2 Amend paragraph 6.3.7 as follows:

- (a) insert the words “Subject to paragraph 6.3.14,” at the beginning of that paragraph; and
- (b) delete paragraphs 6.3.7.5, 6.3.7.12 to and including 6.3.7.15, and 6.3.7.17 to and including 6.3.7.19.

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

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

3.30.4 Add a new paragraph 6.3.14 as follows:

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

- .1 head office salaries and benefits and all other overhead or general expenses, except only for the amounts described in paragraph 6.3.7.1;
- .2 capital expenses and interest on capital;
- .3 general cleanup, except where the performance of the work attributed to the *Change Directive* causes specific additional cleanup requirements;
- .4 wages paid for field supervision of *Subcontractors* and for project managers, superintendents, assistants, watch persons and administrative personnel;
- .5 wages, salaries, rentals or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* or that are otherwise deemed unreasonable by the *Consultant*;
- .6 costs or expenses attributable to the negligence, improper work, deficiencies or breaches of contract by the *Contractor* or any *Subcontractor* or *Supplier*;
- .7 costs of quality assurance, such as inspection and testing services, charges levied by authorities having jurisdiction, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*; and
- .8 the costs of the items listed in paragraph 6.2.4 of GC 6.2 – CHANGE ORDER.”

SC3.31 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

3.31.1 Add a new paragraph 6.4.0 as follows:

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

- .1 the nature and location of the *Work*, including the availability / restrictions of access to the *Place of the Work*;
- .2 the character and content of the *Work*;
- .3 the character and scope of work to be done by *Other Contractors* and *Owner's* own forces (if any);
- .4 the availability of labour, equipment, material, *Products* and facilities needed for the on-time performance and completion of the *Work*;

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- .5 all labour restrictions, including availability of skilled trades;
- .6 safety hazards and labour contract negotiations which may have an impact on the performance of the *Work*;
- .7 the location of any required utility services;
- .8 without limiting the generality of the foregoing, any contingency and/or circumstances which may affect the *Work*.

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

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

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

- 3.31.3 Amend paragraph 6.4.2 by inserting the words "and were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0" after the word "materially" in the second line.

SC3.32 GC 6.5 DELAYS

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

"The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding all *Unrecoverable Costs*."

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

"The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding all *Unrecoverable Costs*. Provided that this paragraph 6.5.2 shall not apply where the stop work order is issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic, in which case any resulting delay shall be governed by paragraph 6.5.3."

- 3.32.3 Add a new paragraph 6.5.3.0 as follows:

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

- 3.32.4 Add a new paragraph 6.5.3A as follows:

"6.5.3A For certainty, paragraph 6.5.3 shall not apply to changes in laws, including changes in taxes, duties and the imposition of tariffs on goods or services to be provided by the *Contractor* under this *Contract*."

- 3.32.5 Amend paragraph 6.5.4 as follows:

- (a) by inserting the words "and to the *Owner*" after the words "to the *Consultant*" in the first line; and
- (b) by adding the following to the end:
"For certainty:

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

3.32.6 Add new paragraphs 6.5.6 and 6.5.7 as follows:

“6.5.6 The *Contractor* acknowledges and agrees that the *Owner* shall not be liable for any delay or part thereof that occurs concurrently with an independent cause of delay for which the *Owner* is not responsible. In addition, in the event the *Owner* is responsible for two or more separate causes of delay that run in whole or in part parallel to each other, those two or more events shall be considered as one for the purpose of determining the duration of the extension of the *Contract Time* and/or any amount payable to the *Contractor*.

6.5.7 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor's* control, then:

- .1 the *Contractor* shall, at the *Contractor's* own expense, make best efforts to minimize the delay, including working extended shifts or weekends; and
- .2 the *Contract Time* may be extended for such reasonable time as the *Consultant* may decide in consultation with the *Owner*.

In addition, the *Contractor* shall reimburse the *Owner* for all reasonable costs and expenses incurred by the *Owner* as a result of the delay including, but not limited to, the costs of additional services required by the *Owner* from the *Consultant* or any other consultants, project managers, contractors, or others employed or engaged by the *Owner*.”

SC3.33 GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

3.33.1 Delete paragraph 7.1.2 and replace it with the following:

“7.1.2 If the *Contractor* neglects to perform the *Work* properly, or fails or neglects to maintain the construction schedule, or otherwise fails to comply with the requirements of this *Contract* to a material extent, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the five (5) *Working Days* immediately following the receipt of such notice, but without affecting in any respect the liability of the *Contractor* in respect of earlier defaults.”

3.33.2 Add a new paragraph 7.1.5A as follows:

“7.1.5A If the *Owner* terminates the *Contractor's* right to continue with the *Work* in whole or in part or terminates the *Contract* as provided in this GC 7.1, the *Contractor* shall deliver to the *Owner*, within five (5) calendar days of the effective date of the termination, all of the materials listed in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER in the possession of or available to the *Contractor*.”

SC3.34 GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

3.34.1 Delete paragraph 7.2.2.

3.34.2 Amend paragraph 7.2.3 as follows:

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



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

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

3.34.3 Delete paragraph 7.2.5 and replace it with the following:

“7.2.5 If the default cannot be corrected within the five (5) *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it:

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

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall ensure the *Work* and the *Place of the Work* are left in a safe and secure condition as required by authorities having jurisdiction and the *Contract Documents*, and shall be entitled to be paid for all *Work* performed to the date of termination. Subject to the *Contractor's* obligation to mitigate costs, the *Contractor* is also entitled to recover the costs directly flowing from and which are a reasonable consequence of the termination, but excluding all *Unrecoverable Costs*. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*.”

SC3.35 GC 8.2 ADJUDICATION

3.35.1 Amend paragraph 8.2.1 by adding the following to the end:

“Provided that the parties agree that no adjudication notices, steps or proceedings shall be served, taken, scheduled or held on any day that is within the *Blackout Period*.”

SC3.36 GC 9.1 PROTECTION OF WORK AND PROPERTY

3.36.1 Amend paragraph 9.1.1.1 by adding the following to the end:

“, which the *Contractor* could not reasonably have discovered applying the degree of care and skill described in this *Contract*; or”

3.36.2 Amend paragraph 9.1.2 by deleting the words “reasonably apparent in” and replacing them with “reasonably discoverable from” in the second line.

3.36.3 Add a new paragraph 9.1.5 as follows:

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

SC3.37 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

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

3.37.2 Add a new paragraph 9.2.5.5 as follows:

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



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- 3.37.3 Amend paragraph 9.2.7.3 by adding the words “, but excluding all *Unrecoverable Costs*” after the words “as a result of the delay” at the end of the second line.
- 3.37.4 Delete paragraph 9.2.7.4.
- 3.37.5 Amend paragraph 9.2.8 by adding the following after the word “responsible” in the second line:
- “, or that any toxic or hazardous substances already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”
- 3.37.6 Add a new paragraph 9.2.10 as follows:
- “9.2.10 The *Contractor* shall indemnify the *Owner* and its agents, board members, trustees, officers, directors, employees, consultants, successors and assigns in respect of any loss, costs, expense or fine which might be imposed in respect of any failure by the *Contractor* to satisfy its obligations under this GC 9.2 and, without limiting the general nature of this indemnity, the *Contractor* shall indemnify the *Owner*, its agents, board members, trustees, officers, directors, employees, consultants, successors and assigns in respect of any loss, costs, expense or fine if the *Project* is made subject to an order from a court or government agency requiring remediation of any contamination caused as a result of the *Work* performed by the *Contractor* or any *Subcontractors* or *Suppliers*.”

SC3.38 GC 9.4 CONSTRUCTION SAFETY

- 3.38.1 Add new paragraphs 9.4.6 to 9.4.11 as follows:
- “9.4.6 The *Contractor* represents and warrants that it is an experienced contractor and has extensive experience and expertise with respect to compliance with the requirements and obligations of the *OHS*A in performing the *Work*, and acknowledges that the *Owner* relied on such representation and warranty in selecting the *Contractor* to perform the *Work* and in entering into this *Contract*.
- 9.4.7 Without limiting the generality of paragraph 9.4.1, the *Contractor* shall be and shall assume all of the responsibilities of the “constructor” under the *OHS*A for the *Project* and shall file the “Notice of Project” with the appropriate government agency naming the *Contractor* as the “constructor” for the *Project*.
- 9.4.8 The *Contractor* shall be solely and exclusively responsible for controlling the workplace and the *Place of the Work* and shall take all steps to effectively direct and supervise the *Work* in order to ensure conformity and compliance with *OHS*A and all other applicable construction health and safety requirements, regulations, industry standards and guidelines, including COVID-19 and any other active health, safety and security protocols for construction sites, and any applicable *Owner* handbooks, guides, protocols or requirements. Nothing said or done, and no comments, suggestions or instructions given, by the *Owner*, the *Consultant* or any other representative of the *Owner* are to be relied upon or assumed to reduce or replace the *Contractor*’s designation as the “constructor” under *OHS*A or the *Contractor*’s responsibility for construction safety on the *Project*.
- 9.4.9 The *Contractor* represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Contractor*’s employees, *Subcontractors*, *Suppliers* and all others attending at the *Place of the Work*, including the *Owner*’s representatives, the *Owner*’s own forces, and *Other Contractors*.
- 9.4.10 The *Contractor* shall indemnify and save harmless the *Owner* and its agents, board members, trustees, officers, directors, employees, consultants, successors and assigns from and against any and all liability, costs, expenses, charges, fines, damages and all other consequences arising from any and all safety infractions on the *Project*, including the payment of legal fees and disbursements on a full indemnity basis.”



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SC3.39 GC 9.5 MOULD

- 3.39.1 Amend paragraph 9.5.2.3 by inserting the words “and for any delay” immediately before the comma near the end.
- 3.39.2 Amend paragraph 9.5.3.3 by adding the words “, but excluding all *Unrecoverable Costs*” after the words “as a result of the delay”.

SC3.40 GC 10.1 TAXES AND DUTIES

- 3.40.1 Delete paragraph 10.1.2 and replace it with the following:
- “10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties, excluding tariffs, imposed by the Province of Ontario or by the Government of Canada after the time of bid closing shall increase or decrease the *Contract Price* accordingly. The *Contractor* shall not be entitled to any fee or mark-up on any increase in the *Contract Price* due to changes in taxes and duties.”
- 3.40.2 Add new paragraphs 10.1.3 to 10.1.7 as follows:
- “10.1.3 Increases or decreases in the *Contractor's* costs as a result of tariffs shall be dealt with as set out in this paragraph 10.1.3:
- .1 The *Contractor* will only be entitled to claim an increase in the *Contract Price* if a tariff or surtax is imposed or an existing tariff or surtax is increased by the Government of Canada after the time of bid closing (each a “**Subject Tariff**”), on materials, goods, *Products* or anything else that is specified in the *Contract Documents* or that is used in the manufacture or production of goods, *Products* or anything else that is specified in the *Contract Documents* (each a “**Subject Item**”). For certainty, the *Contractor* shall not be entitled to an increase in the *Contract Price* due to any increase in costs as a result of tariffs, taxes or other charges imposed by the government of the United States of America or any other government, state or province.
 - .2 If, as a result of a *Subject Tariff*, and after taking into account any applicable remission order issued by the Government of Canada, there will be or there is an increase in costs to the *Contractor*, the *Contractor* shall immediately give *Notice in Writing* to the *Owner* and the *Consultant* that includes the following:
 - (a) a description of the *Subject Item* to which the *Subject Tariff* applies and, if the *Subject Tariff* does not yet apply, the date on which the *Subject Tariff* will be applied;
 - (b) an estimate of the increase of the costs to the *Contractor* and an estimate of the increase to the *Contract Price* as a result of the imposition of the *Subject Tariff*, having regard to and after applying any applicable remission order issued by the Government of Canada;
 - (c) a list of suggested product or supplier alternatives for the *Subject Item*, and the estimated change in the *Contract Price* and the *Contract Time* if any of the suggested alternatives are implemented;
 - (d) other mitigation steps that may be taken to reduce costs, such as bulk purchasing or advance purchase and storage of *Subject Items* ahead of the imposition of the *Subject Tariff*.
 - .3 Any increase to the *Contract Price* resulting from the imposition of a *Subject Tariff* shall be limited to the actual amount that the *Contractor* paid to Canada Customs on account of the imposition of the *Subject Tariff* on the *Subject Item*, as stated in and as evidenced by a copy of the Commercial Invoice and a printout of the Commercial Accounting Declaration to be provided by the *Contractor* to the *Owner* and the *Consultant*. For certainty, and notwithstanding any other provision in this *Contract*:
 - (a) the *Contractor* shall not be entitled to any fee or mark-up on any increase to the *Contract Price* due to tariffs;
 - (b) the *Contractor* is not entitled to recover any amount paid on account of tariffs for which a remission order was in place, or any tariffs that were in effect at the time of bid closing.



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- .4 If any tariff or surtax imposed by the Government of Canada which existed at the time of bid closing is reduced or removed after the time of bid closing, the *Contract Price* shall be reduced accordingly. The *Contractor* shall provide to the *Owner*, upon request, copies of invoices, quotations, estimates, Canada Customs documents, and any other relevant documents which the *Owner* may request, for the purpose of determining the reduction in the *Contract Price*.
- 10.1.4 If the *Owner* is entitled to an exemption, remission or a recovery of sales taxes, customs duties, excise taxes, tariffs, *Subject Tariffs* or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with the application for such exemption, remission, recovery or refund, and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.
- 10.1.5 The *Contractor* shall maintain accurate records of equipment, material and component costs reflecting the sales taxes, customs duties, excise taxes, tariffs, *Subject Tariffs* and *Value Added Taxes* paid.
- 10.1.6 Any remission or refund of taxes including, without limitation, any government sales tax, customs duty, excise tax, tariff, *Subject Tariff* or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption or remission may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to cooperate with the *Owner* and to cause all *Subcontractors* and *Suppliers* to cooperate with the *Owner* in the application for any refund of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such remission, 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, remissions, exemptions or refunds. All such remissions and refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.
- 10.1.7 Customs 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."

SC3.41 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 3.41.1 Amend paragraph 10.2.5 by deleting the word "The" in the first line and replacing it with the words "Subject to paragraph 1.1.3 of GC 1.1 – CONTRACT DOCUMENTS, the".
- 3.41.2 Amend paragraph 10.2.6 as follows:
- (a) delete the words "performs work knowing it to be" and replace them with "performs work when it knew or ought to have known that such work is"; and
 - (b) delete the words "bear the" in the third line and replace them with "indemnify and save the *Owner* harmless against all".
- 3.41.3 Amend paragraph 10.2.7 by adding the following to the end:
- " , provided that any claims arising from:
- .1 the imposition of tariffs will be governed by and dealt with in accordance with paragraph 10.1.3 of GC 10.1 – TAXES AND DUTIES; and
 - .2 any delays due to such changes will be governed by and dealt with in accordance with GC 6.5 – DELAYS."

SC3.42 GC 11.1 INSURANCE

- 3.42.1 Amend paragraph 11.1.2 by adding the following to the end:
- "The *Owner's* acceptance or the *Contractor's* delivery of any document evidencing the required policies of insurance does not constitute approval or agreement by the *Owner* that the insurance requirements have been met or that the insurance policies comply with the requirements of this *Contract*. Failure of the

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Owner to demand evidence of full compliance with the insurance requirements or failure of the *Owner* to identify a deficiency from evidence provided will not be construed as a waiver of the *Contractor's* obligation to maintain the insurance policies required by this *Contract*."

3.42.2 Delete paragraph 11.1.3 and replace it with the following:

"11.1.3 In all of the policies described in paragraph 11.1.1 all deductible amounts shall be the responsibility of the *Contractor*."

3.42.3 Add new paragraphs 11.1.9 through 11.1.11 as follows:

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

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

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

SC3.43 GC 12.1 READY-FOR-TAKEOVER

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

"12.1.1.4 The delivery to the *Owner* of guarantees, warranties, certificates, testing and balancing reports and spare parts, distribution system diagrams, *Shop Drawings*, maintenance and operating manuals, instructions, samples, existing reports and correspondence from authorities having jurisdiction, and all other close-out materials or documents specified in the *Contract Documents*.

12.1.1.5 The delivery to the *Owner* of the *As-Built Drawings* acceptable to the *Consultant* showing the *Work* completed to date."

3.43.2 Delete paragraph 12.1.2.

3.43.3 Amend paragraph 12.1.3 by adding the following to the beginning:

"Commencing no later than 3 months before the scheduled *Ready-for-Takeover* date the *Contractor* shall, at each site meeting, report the status of each of the prerequisites to attaining *Ready-for-Takeover*, which shall be recorded in the minutes of meeting."

3.43.4 Delete paragraph 12.1.6.

SC3.44 GC 12.2 EARLY OCCUPANCY BY THE OWNER

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

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

12.2.2 The *Contractor* shall, as directed by the *Consultant*, give priority to certain parts of the *Work* and bring such parts to a "ready for use" status. Such instructions may require installation of



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temporary stairs and exits and temporary services, all of which shall be provided and subsequently removed.

- 12.2.3 The *Contractor* shall maintain full access to the *Work* for the *Owner's* use, as required. The *Contractor* shall maintain or restore heat and power to areas when necessary or as scheduled and keep existing utilities and services functional.
- 12.2.4 The entry, occupation, taking of possession or use of any portion of the *Project* by the *Owner*, its agents or *Other Contractors* pursuant to this GC 12.2 – EARLY OCCUPANCY BY THE OWNER shall not relieve the *Contractor* of any of its obligations under the *Contract*, including the *Contractor's* designation and obligations as “constructor” under *OHSA* and the *Contractor's* obligations respecting construction health and safety and all of the *Contractor's* other obligations, rules, regulations and practices shall continue to apply notwithstanding such entry, occupation, taking of possession or use.”

SC3.45 GC 12.3 WARRANTY

- 3.45.1 Amend paragraph 12.3.1 by adding the following to the end:

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

- 3.45.2 Amend paragraph 12.3.2 by adding the following to the end:

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

- 3.45.3 Amend paragraph 12.3.3 by adding the following to the end:

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

- 3.45.4 Amend paragraph 12.3.4 by adding the following to the end:

“The *Contractor* shall perform all remedial and warranty work including, for certainty, remedial and warranty work related to all equipment installed as part of the *Work*, at its own cost and expense and at a time convenient to the *Owner*, which may be outside of normal working hours. Before performing the remedial and warranty work the *Contractor* shall provide, for the *Owner's* review and approval, a proposed schedule for the performance of such work. Except for any extended warranties provided for in the *Contract Documents*, the warranty period for any corrective work performed by the *Contractor* pursuant to GC 12.3 – WARRANTY shall commence on the date that such corrective *Work* was completed.”

- 3.45.5 Add new paragraphs 12.3.5A and 12.3.5B immediately after paragraph 12.3.5 as follows:

“12.3.5A If the *Contractor* fails to perform the remedial and warranty work and/or fails to correct the defects, deficiencies or items of non-compliant *Work* or is not diligently working towards completion of the same to the satisfaction of the *Consultant*, or if the *Contractor* fails to correct or pay for damage resulting from corrections made as required in paragraph 12.3.5, the *Owner* may engage others to perform the work necessary to complete the remedial and warranty work and to correct the outstanding defects, deficiencies or items of non-compliant *Work* and to correct damage resulting from corrections made, all at the risk and cost of the *Contractor*, and the *Owner* may deduct all costs and may pay for all damage incurred from the *Warranty Security Retention*. If the costs and damages incurred by the *Owner* exceed the amount of the *Warranty Security Retention*, the *Contractor* shall reimburse the *Owner* for all excess costs and damages. The *Owner's* rights under this paragraph are in addition to any other rights the *Owner* may have pursuant to the *Contract* and/or at law.



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- 12.3.5B Provided that the *Contractor* has completed all outstanding remedial and warranty work and has corrected all defects and deficiencies and has completed all items of non-compliant *Work* and has corrected or paid for all damage resulting from corrections made, all to the satisfaction of the *Consultant*, the *Owner* shall return to the *Contractor* the remaining balance of the *Warranty Security Retention*, if any, without interest, forty-five (45) days after the date that is the later of (a) the date of total completion of the *Contract*, and (b) the date on which the warranty period ends.”

SC3.46 GC 13.1 INDEMNIFICATION

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

- “13.1.1 The *Contractor* shall defend, indemnify and hold harmless the *Owner* and its agents, board members, trustees, officers, directors, employees, consultants, successors and assigns from and against all claims, demands, damages, losses, expenses, costs including legal fees, actions, causes of action, suits, charges or any other proceedings (collectively “**Claims**”) by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to, directly or indirectly, the *Contractor’s* or any *Subcontractor’s* performance or non-performance of the *Work* or the *Contract*, including *Claims* arising out of the condition of the *Work*, the *Project* site, adjoining land, driveways, streets or alleys used in connection with the performance of the *Work*, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the *Owner* from all *Claims* made by any person other than the *Contractor* itself, financial or otherwise, relating to or arising from the *Work*.
- 13.1.2 The *Owner* shall indemnify and hold harmless the *Contractor* and its agents and employees from and against all *Claims* arising out of the *Contractor’s* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.”

SC3.47 GC 13.2 WAIVER OF CLAIMS

- 3.47.1 Delete paragraphs 13.2.1 through 13.2.9 and replace them with the following:

- “13.2.1 As of the date on which the *Owner* makes final payment to the *Contractor*, the *Owner* expressly waives and releases the *Contractor* from all claims against the *Contractor* including, without limitation, those that might arise from negligence or breach of contract by the *Contractor* except for one or more of the following:
- .1 those made in writing prior to the date of the final payment and still unsettled;
 - .2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;
 - .3 those arising from GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES;
 - .4 those made by *Notice in Writing* within a period of six years from *Ready-for-Takeover*, or within such shorter period as may be prescribed in any limitation statute of the province or territory of the *Place of the Work*, and arising from any liability of the *Contractor* for damages resulting from the *Contractor’s* performance of the *Contract* or substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible.
- 13.2.2 As of the date of *Ready-for-Takeover*, the *Contractor* expressly waives and releases the *Owner* from all claims which it has or reasonably ought to have knowledge of that could be advanced against the *Owner* including, without limitation, those that might arise from the negligence or breach of contract by the *Owner* except:
- .1 those for which *Notice in Writing* was given prior to the *Contractor’s* application for *Ready-for-Takeover* and still unsettled; and
 - .2 claims for payment for *Work* completed after the *Contractor’s* application for *Ready-for-Takeover*.”

SC3.48 PART 14 – OTHER PROVISIONS

- 3.48.1 Add a new Part 14 as follows:

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“PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

- 14.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time this *Contract* is entered into shall remain the property of the *Owner*. All *Products* delivered to the *Place of the Work*, or to a pre-approved off site storage area, shall be the property of the *Owner*, and shall be free of any encumbrances. The *Contractor* shall remove all surplus or rejected materials from the *Place of the Work*.

GC 14.2 LIENS AND ACTIONS

- 14.2.1 The *Contractor* shall save and keep the *Owner* and the *Place of the Work* free from all construction liens and all other liens whatsoever arising out of the *Work*. If any lien is claimed, filed or registered or any written notice of a lien is received by reason of any *Work* supplied or claimed to have been supplied by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly due under this *Contract*, the *Contractor* shall, at its own expense, within ten (10) *Working Days* of being notified of the lien or written notice of a lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of a lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the *Owner* may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or written notice of a lien.
- 14.2.2 If a lien action is commenced arising out of or in connection with a lien described in paragraph 14.2.1, the *Contractor* shall take all reasonable steps to remove the *Owner* from such action, and shall indemnify the *Owner* and hold it harmless in such action.
- 14.2.3 All amounts, including legal costs on a full indemnity basis, disbursements, interest, borrowing, premium or other bonding costs and/or charges incurred by the *Owner* in releasing, vacating, discharging and/or otherwise dealing with a lien or written notice of a lien described in paragraph 14.2.1 and/or defending or otherwise dealing with a lien action, shall be charged to the *Contractor* and shall be set off and deducted from any amount owing to the *Contractor*. If there is no amount owing by the *Owner* to the *Contractor* at that time, then the *Contractor* shall reimburse the *Owner* for all costs and amounts incurred by the *Owner*.

GC 14.3 CONTRACTOR LIABILITY FOR DAMAGES

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

GC 14.4 DAILY REPORTS / DAILY LOGS

- 14.4.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare and maintain a daily site log or diary recording, at least, the following: (a) daily weather conditions and temperatures at the *Place of the Work*, (b) the number of workers of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces at the *Place of the Work*, (c) the *Construction Equipment* at the *Place of the Work*, (d) the descriptions and quantities of *Products* delivered and utilized, and (e) the general nature of *Project* activities. Such log or diary shall also record any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day workforce. The *Contractor* shall also take or arrange for the taking of *Project* photographs to record the progress of the *Work*.
- 14.4.2 The *Contractor* shall maintain, either at its head office or at the *Project* site, records recording labour and material resourcing on the *Project*, including the records identified in paragraph 14.4.1 and other records which document the activities of the *Contractor*.

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- 14.4.3 Upon request of the *Owner* or the *Consultant*, the *Contractor* shall make available for inspection and copying all of the records generated pursuant to this GC 14.4, along with any other routine *Project* records ordinarily maintained by the *Contractor*.

GC 14.5 ADVERTISING AND PUBLIC STATEMENTS

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

GC 14.6 AMENDMENTS TO THE CONTRACT

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

GC 14.7 CONTRACT SECURITY

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

[Schedule of Key Personnel follows]



SUPPLEMENTARY CONDITIONS

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SCHEDULE – KEY PERSONNEL

The following are the *Key Personnel* assigned to the *Project*:

Name	Position / Title

The *Contractor* represents that the *Key Personnel* will be assigned to and will be dedicated to the *Project* on a full-time basis and for the duration of the *Project*.