

**Supplementary Conditions
to the Stipulated Price Contract (CCDC 2 – 2008)**

SUPPLEMENTARY CONDITIONS

1. These Supplementary Conditions (the “**Supplementary Conditions**”) of the *Stipulated Price Contract* (CCDC 2 – 2008) (“**CCDC 2-2008**”) shall modify, delete and/or add to the CCDC 2 – 2008 (the *CCDC 2 – 2008*, as amended by the *Supplementary Conditions*, the “**Contract**”). The *Supplementary Conditions* constitute a *Contract Document* and shall apply to all the *Work*.
2. The *Contractor* represents and warrants that: (a) it is competent to perform the *Work*; (b) it has the necessary qualifications, including knowledge, skill and experience to perform the *Work*, together with the ability to use those qualifications effectively for that purpose; and (c) it has, or will arrange for those *Subcontractors* used by it to have, the necessary licenses and insurances as so required.
3. The *Contractor* shall: (a) carry out the *Work* in a diligent and efficient manner to the highest industry standard applicable in the circumstances; (b) select and employ on the *Work* a sufficient number of properly qualified personnel, provide efficient and effective inspection and quality control procedures and provide administration and other support to its employees to the extent necessary to properly carry out the *Work*; (c) perform the *Work* in accordance with standards of quality acceptable to the *Owner* acting reasonably and in full conformity with all the requirements of the *Contract*; and (d) provide effective and efficient supervision to ensure that the quality of workmanship is as stated in the *Contract*.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-1 – THE WORK

4. **Add** the following at the beginning of paragraph 1.3:

“Subject to obtaining the approval to commence the Work from the applicable Governmental Authority, and subject to any delay in the commencement of the Work to the extent the Work cannot be performed as a result of an order of a Governmental Authority related to COVID-19, the Owner determines that the commencement date should be delayed for any reason, or cannot be completed during the duration of the closure of the school.”

5. **Add** the following new paragraph 1.4:

“1.4 and attain *Total Performance of the Work* by the *Scheduled Completion Date*, as amended by *Change Orders* or *Change Directives*.”

ARTICLE A-3 – CONTRACT DOCUMENTS

6. **Add** the following new paragraphs 3.2 and 3.3:

“3.2 The Supplementary Conditions are incorporated into, and form part of the *Contract*, and all *Contract Documents* are amended or replaced as set out, and interpreted in accordance with, in the Supplementary Conditions.

3.3 All terms and conditions set out in the *Contract Documents* are subject to applicable *Special Conditions* included in the *Procurement Documents*, if any.”

ARTICLE A-5 – PAYMENT

7. **Delete** paragraph 5.2 in its entirety.

8. **Replace** sub-paragraphs (1) and (2) from paragraph 5.3.1 with “1% per annum above the prime rate, subject to any greater rate required under the *Construction Act*.”

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

9. **Replace** paragraph 6.1 by the new following paragraph:

“6.1 All *Notices in Writing*, including but not limited to, application for payment, notice of non-payment and notice of adjudication must be sent by email only. All *Notices in Writing* sent after 4pm, or on weekends and/or statutory holidays will be deemed having been received the following *Working Day*. The *Contractor* shall send *Notices in Writing* to the *Owner* at, and the *Contractor*’s

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Notices in Writing shall only be considered to have been received by the Owner if sent to: the following email addresses:

- Invoices must be sent to Owner's payable department: payables@cepeo.on.ca
- Notices of adjudication must be sent to: marc-andre.hogue@cepeo.on.ca

ARTICLE A-9 – CONFLICT OF INTEREST

10. Add new Article A-9 — Conflict of Interest:

- “9.1 The *Contractor* shall disclose and must continue to be under an obligation to disclose any potential, perceived or actual Conflict of Interest of the *Contractor* or *Subcontractor* to the *Owner*, in accordance with this Article.
- 9.2 For the purposes of this *Contract*, “*Conflict of Interest*” includes any situation or circumstance where the *Contractor*, any *Subcontractor* or any of their respective employees:
- .1 has other commitments, relationships, financial interests or involvement in ongoing litigation that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the *Owner's* independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under this *Contract*, or
 - .2 has contractual or other obligations to the *Owner* that could or could be seen to have been compromised or impaired as a result of entering into the *Contract* or performing its obligations under the *Contract*.
- 9.3 Without limiting Article A-9 of this *Agreement* and in addition to all contractual or other rights or rights available at law or in equity or legislation, the *Owner* may, in its sole discretion, waive any *Conflict of Interest* or may impose conditions on the *Contractor* or a *Subcontractor* that require the management, mitigation and/or minimization of the *Conflict of Interest*.
- 9.4 If the *Contractor* or a *Subcontractor* is determined to have a Conflict of Interest that, in the *Owner's* sole discretion, cannot be managed, mitigated or minimized, the *Owner* may, in addition to any other remedies available at law or in equity, terminate the *Contract* or require the *Contractor* to terminate the relevant subcontract upon thirty (30) days written notice.”

DEFINITIONS

11. Add the following new definitions:

Agreement

The *Agreement* is the signed agreement between the *Parties* set out in Articles A-1 to Article A-9.

Applicable Law

Applicable Law means all public laws, statutes, ordinances, codes, acts, orders, by-laws, rules, regulations, *Governmental Consents*, binding policies and guidelines, and requirements of all *Governmental Authorities*, which now or hereafter, may be applicable to and enforceable against the *Contractor*, or the performance of the *Work* or any part thereof, including those relating to employment, zoning, building, life/safety, environment and health.

AODA

AODA means the *Accessibility for Ontarians with Disabilities Act* (Ontario).

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Base Warranty Period

Base Warranty Period means the base warranty period for the *Work* and *Products* set out in the *Key Information Table* in the *Procurement Documents*.

Construction Act

Construction Act means the *Construction Act* (Ontario), RSO 1990 c. C-30, as it may be renamed, amended or replaced.

Constructor

Constructor means, for purposes of *OHSA*, the *Contractor*, who is designated the *Constructor* for this *Project*, and who shall assume all responsibilities of the “constructor” as set out and defined in the *OHSA*.

Contract Price Breakdown

Contract Price Breakdown is the line item breakdown of the *Contract Price* required by the *Owner* for its reporting purposes, including a breakdown of all cost items specified by the *Owner* in the *Contract Documents* or in writing after the signing of the *Agreement*.

Governmental Authority

Governmental Authority means any federal, provincial, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature and having jurisdiction over the *Owner* or the *Project*.

Governmental Consent

Governmental Consent means any license, right, permit, franchise, privilege, registration, direction, decree, consent, order, permission, approval, or authority to be issued or provided by, or written Contract between the *Owner* and a *Governmental Authority*.

Losses

Losses means any losses, liabilities, damages, costs, expenses, charges, fines, penalties, including the costs and expenses of any action, claim, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, fines, penalties and professional fees and disbursements.

Key Information Table

The *Key Information Table* means the *Key Information Table* as defined in the *Procurement Documents*.

Milestones

Milestones, if any, are set out in the *Special Conditions*.

OHSA

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

Owner’s Representative

Owner’s Representative means any firm or individual engaged by the *Owner* to monitor the *Project* on its behalf or to represent it in any other capacity during the construction of the *Project*. Unless the *Owner* notifies the *Contractor* of a change in the *Owner’s Representative*, the *Owner’s Representative* for the *Project* is set out in the *Owner’s Notice in Writing* made in accordance GC 1.6 – OWNER’S REPRESENTATIVE.

Parties

The *Parties* are the parties to the *Agreement*, namely the *Owner* and the *Contractor*, and “party” means either of the *Parties*.

Person

Person will be broadly interpreted and includes:

- (a) a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person;

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- (b) a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and
- (c) a *Governmental Authority*.

Procurement Documents

The *Procurement Documents* are the documents issued by or on behalf of the *Owner* for the procurement of a contractor to perform the *Work*, which are listed in Article A-3 as a *Contract Document*.

Proper Invoice

Proper Invoice means an application for payment containing all of the information and documents that are required under this Contract and for the application for payment to constitute a “proper invoice” under the *Construction Act*, including the following:

- a) All of the information specified to be included in a proper invoice as set out in section 6.1 of the *Construction Act*, namely:
 - 1. the Preferred Bidder’s name and address;
 - 2. the date of the application for payment and the period during which the *Work* was performed;
 - 3. information identifying the authority, whether in the contract or otherwise, under which the *Work* was performed;
 - 4. a description, including quantity where appropriate, of the *Work* performed and products supplied;
 - 5. the amount payable for the *Work* performed, and the payment terms; and
 - 6. the name, title, telephone number and mailing address of the person to whom payment is to be sent;
- b) for each application for payment after the first, a scanned true copy of the Statutory Declaration (in the form of the most current CCDC 9A statutory declaration) certifying that all accounts of the Contractor and all Subcontractors and Suppliers relative to the Project have been paid in full, less only the amounts of holdback due to them for the relevant dates, that all liabilities incurred by the Contractor and its Subcontractors in carrying out the Contract have been discharged and that all liens in respect of the Contract have expired or have been satisfied, discharged or provided for by payment. Original Statutory Declaration must be retained for examination by the Owner on request at any time;
- c) the total amount of expenditures to date and the total estimated expenditures to be made for the remaining balance of the *Work*; broken out in accordance with the Contract Price Breakdown if requested by the Consultant;
- d) satisfactory evidence in the form of a Certificate of Clearance issued by the Workplace Safety and Insurance Board that the Contractor has made suitable provision for meeting any liability under the WSIA, prior to the release of any monthly progress payment; and
- e) purchase order number, project contract reference number and name of the Owner’s project manager.

Scheduled Completion Date

Scheduled Completion Date means the date on which the *Contractor* is to attain *Total Performance of the Work*, as set out in the *Procurement Documents*.

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Special Conditions

The *Special Conditions*, if any, are the special terms and conditions attached to Appendix A to the *Procurement Documents*.

Statutory Declaration

The form of the *Statutory Declaration* to be delivered by the *Contractor* upon applications for progress payment, release of holdback and final payment is the current version of the CCDC Document 9A, as applicable.

Total Performance of the Work

Total Performance of the Work means when the entire *Work*, except those items arising from the provisions of GC 12.3 – WARRANTY, but including all *Completion List* items, has been fully performed and provided to the requirements of the *Contract Documents* and is so certified by the *Consultant*.

WSIA

WSIA means the *Workplace Safety and Insurance Act (Ontario)*.

12. Replace the definition of “Consultant” with the following:

“The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the *Agreement*, or, if no such person or entity is identified, is the *Owner*. The *Consultant* is the Architect, the Engineer or entity licensed to practice in the province or territory of the *Place of the Work*, or is the *Owner*. The term *Consultant* means the *Consultant* or the *Consultant’s* authorized representative.”

13. Add the following interpretation provisions to the Definitions:

“This *Contract* and all Schedules thereto will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this *Contract* or any Schedules thereto otherwise requires:

1. The table of contents, headings and sub-headings, marginal notes and references to them in this *Contract* are for convenience of reference only, do not constitute a part of this *Contract*, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this *Contract*.
2. All references to paragraphs, Articles, Sections and Schedules are references to paragraphs, Articles, Sections of and Schedules to this *Contract* and all references to parts, paragraphs or appendices are references to parts and paragraphs contained in and appendices to the Schedules.
3. All references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this *Contract* expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
4. All references to time of day are references to Eastern Standard time or Eastern Daylight Saving time, as the case may be.
5. The words “herein”, “hereto”, “hereof” and “hereunder” and other words of like import refer to this *Contract* as a whole and not to the particular Section, Schedule, part, paragraph or appendix in which such word may be used.
6. Words importing the singular include the plural and vice versa.
7. Words importing a particular gender include all genders.
8. Any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.
9. All monetary amounts are expressed in Canadian Dollars.
10. The words “include” or “including” are to be construed as meaning “includes without limitation” or “including without limitation”, respectively.

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11. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances, including, where appropriate and applicable, taking into consideration, good development industry practice and good construction industry practice, but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrue solely to that person’s own benefit.
12. All capitalized terms used in a Schedule have the meanings given to such terms in the Definitions, unless stated otherwise in a particular Schedule, in which case such term will have the meaning given to it in that Schedule solely for the purposes of that Schedule.
13. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.
14. The words of this *Contract* are to be given their natural meaning. The *Parties* have had the opportunity to take legal advice on this *Contract* and no term is, therefore, to be construed against the drafter of the *Contract* (*contra proferentem*).
15. A reference to persons for whom a party is in law responsible includes that party’s employees, agents, contractors and subcontractors of any tier, advisors and any other persons for whom that party is in law responsible or over whom that party could reasonably be expected to exercise control.
16. If the time for doing an act falls or expires on a day that is not a *Working Day*, the time for doing such act will be extended to the next following *Working Day*.
17. Each provision of this *Contract* will be valid and enforceable to the fullest extent permitted by law. If any provision of this *Contract* is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this *Contract*. If any such provision of this *Contract* is held to be invalid, unenforceable or illegal, the *Parties* will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this *Contract* as nearly as possible to its original intent and effect.

GENERAL CONDITIONS

PART 1 – GENERAL PROVISIONS

GC 1.1 – CONTRACT DOCUMENTS

14. Replace paragraph 1.1.7.1 with the following:

- “.1 the order of priority of documents, from highest to lowest, shall be:
- *Special Conditions*, if any,
 - Supplementary Conditions,
 - the *Agreement* between the *Owner* and the *Contractor*,
 - the Definitions,
 - the General Conditions,
 - the *Procurement Documents*,
 - Division 1 of the *Specifications*,
 - technical specifications,
 - material and finishing schedules,
 - the *Drawings*.”

15. Replace paragraphs 1.1.9 to 1.1.10 with the following paragraphs and add paragraph 1.1.11:

- “1.1.9 All *Drawings and Specifications*, computations, sketches, test data, survey results, models, photographs, renderings and other materials prepared by the *Contractor* in connection with the

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performance of its obligations under this *Agreement* (the “**Project Materials**”) shall be the property of the *Contractor*, provided that the *Contractor* grants to the *Owner* an irrevocable and royalty-free license to use all such *Project Materials*.

- 1.1.10 If this *Agreement* is terminated, the *Contractor* shall promptly deliver to the *Owner* a complete set of all *Project Materials* in the *Contractor*’s possession, including all design documents prepared or obtained by the *Contractor* together with any predesign, conceptual design or other studies prepared by the *Contractor*. If the *Contractor* fails to comply with its obligations under this paragraph, the *Owner* shall be entitled, in addition to any other remedies to which it may be entitled, to appropriate equitable relief, including the remedy of specific performance as money damages will be an inadequate remedy with respect to the receipt of such *Project Materials* by the *Owner*.
- 1.1.11 The *Contract Documents* are organized by Division for clarity and to identify the expected standard of trade competence in the finished work. No claims will be considered relating to the division of *Work* between the *Contractor* and/or *Subcontractors*, including tie in of the work of different trades, spatial interferences, cutting and patching and the like.”

GC 1.3 – RIGHT AND REMEDIES

16. Add the following as new paragraph 1.3.3:

“1.3.3 Nothing in the *Contract Documents* shall constitute, or be construed as creating, a joint venture, partnership, principal-agent or employment relationship between the *Owner* and *Contractor*, or between the *Owner* and any employees of the *Contractor*. For greater clarification, it is acknowledged and agreed that no employees of the *Contractor* shall in any sense be considered employees or agents of the *Owner*, nor shall any employees of the *Contractor* be entitled to any compensation, benefits, privileges or perquisites given or extended to any *Owner* employees.”

GC 1.4 – ASSIGNMENT

17. Replace paragraph 1.4.1 with the following:

“1.4.1 The *Owner* may assign the *Contract* or a portion thereof without the written consent of the *Contractor*. The *Contractor* shall not assign the *Contract* or a portion thereof without the written consent of the *Owner*, which consent may be arbitrarily withheld for any reason that the *Owner*, in its sole discretion, considers sufficient. No assignment of the *Contract* or a portion thereof will relieve the *Contractor* from any obligation under the *Contract*.”

GC 1.5 – CONFIDENTIALITY, GC 1.6 – OWNER’S REPRESENTATIVE, GC 1.7 – TIME OF ESSENCE & GC 1.8 – EXAMINATION OF DOCUMENTS AND SITE

18. Add new GC 1.5 – CONFIDENTIALITY, GC 1.6 – OWNER’S REPRESENTATIVE, GC 1.7 – TIME OF ESSENCE and GC 1.8 – EXAMINATION OF DOCUMENTS AND SITE as follows:

“GC 1.5 – CONFIDENTIALITY

- 1.5.1 Subject to Paragraph 1.5.2, the *Owner* and the *Contractor* shall keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of the *Work* or the performance of the *Contract* (“*Confidential Information*”) and shall not, without the prior written consent of the other party, disclose such *Confidential Information*, except in strict confidence, to its professional advisors or *Subcontractors* as needed.
- 1.5.2 *Confidential Information* shall not include information that: (i) has become generally available to the public other than as a result of a disclosure by the other party or any of its representatives or by the *Owner* as part of the procurement process leading to this *Contract*; (ii) was available to the other party or its representatives on a non-confidential basis before the date of this *Agreement*; or (iii) becomes available to the other party or its representatives on a non-confidential basis from a *Person* (other than the first-mentioned party or any of its representatives) who is not bound by confidentiality obligations or otherwise prohibited from transmitting the *Confidential Information*.

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GC 1.6 – OWNER'S REPRESENTATIVE

- 1.6.1 If an *Owner Representative* is not identified in the *Procurement Documents*, the *Owner* shall designate an *Owner's Representative* authorized to act on the *Owner's* behalf. For the purposes of this *Contract* and the administration of the *Work*, the *Owner's Representative* may be the *Consultant*.
- 1.6.2 The *Owner's Representative* shall take all reasonable steps to be accessible to the *Contractor* during performance of the *Contract* and shall render any necessary decisions or instructions reasonably promptly to avoid delay in the performance of the *Contract*.

GC 1.7 – TIME OF ESSENCE

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

GC 1.8 – EXAMINATION OF DOCUMENTS AND SITE

- 1.8.1 The *Contractor* is required, and, where applicable, the *Contractor* shall require of its *Subcontractors*, to investigate all existing site and/or building features visible at the time of tender that may affect the *Work*, and the *Contractor* has acknowledged that it has done so or, in the case of *Subcontractors*, will do so prior to entering into a subcontract with such *Subcontractors*. The *Contractor* shall account for all associated work required to accommodate the existing site and/or building and to achieve the design as shown in the *Drawings* and *Specifications* regardless of whether such work is specifically indicated in the *Contract Documents*."

PART 2 – ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSULTANT

19. In the first line of paragraph 2.1.3, delete the words "against whom the *Contractor* makes no reasonable objection and", and add the words "The *Contractor* will provide the *Owner* with a *Notice in Writing* of any perceived conflicts of interest with such replacement *Consultant*."

GC 2.2 – ROLE OF THE CONSULTANT

20. In paragraph 2.2.7, delete the words "Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE *OWNER*,".

21. Add the following at the end of paragraph 2.2.13:

"Should the *Contractor* be of the opinion that a change in *Contract Price* or *Contract Time* is required, the *Contractor* shall notify the *Consultant* in writing within the earliest to occur of (1) the commencement of the *Work* resulting from the date of the issuance of such *Supplemental Instruction* and (2) 14 days from the issuance of such *Supplemental Instruction* by the *Consultant*. Should the *Consultant* be in agreement to a change in *Contract Price* or *Contract Time*, the *Consultant* will prepare a *Change Order* or *Change Directive* for approval and signature by the *Owner* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE."

22. Delete the comma after the word "submittals" and add the words "which are provided" before the words "in accordance" in paragraph 2.2.14.

23. Add the following as new paragraph 2.2.19:

"2.2.19 In any *Notice in Writing* to the *Contractor* in respect of general, special, or other repairs, or of any *Work* of any nature required to be done under any of the provisions of the *Contract*, or of any other matter, it shall not be obligatory upon the *Consultant* to specify minutely or in detail everything required, nor to specify by measurement the exact extent thereof, or the precise area or areas where the *Work* or material may be defective or faulty or where any of the requirements of the *Specifications* have not been observed; but a reference in such *Notice in Writing* to the clause or clauses bearing upon the matter, and a description of the locality in general terms (which is sufficiently clear, in the opinion of the *Consultant*, to indicate where the defect or trouble

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exists) shall be deemed to be sufficient and ample notice of such matter for the purposes of this paragraph.”

GC 2.3 – REVIEW AND INSPECTION OF THE WORK

24. Add to end of paragraph 2.3.2:

“Unless agreed otherwise, the *Contractor* shall give the *Consultant* and the *Owner* at least two (2) *Working Days*’ notice of the date and time fixed for all required tests, and shall supply all labour, material, fuel, etc., and shall carry out such tests (unless otherwise specified). Should a designated test or inspection fail, the *Contractor* shall promptly correct and retest the work using the designated testing/inspection agency. The *Contractor* shall give the *Consultant* and the *Owner* a further notice of at least two (2) *Working Days* and shall be responsible for all costs associated with retesting.”

25. At end of the second sentence of paragraph 2.3.5, add the following:

“Where standards of performance are specified or implied and the *Work* does not comply with the specified or implied standard of performance, the deficiency in the *Work* shall be corrected as directed by the *Consultant*. Subsequent testing to ensure that the standard of performance has been attained (including retesting by *Owner*) shall be carried out at the *Contractor*’s expense.”

26. Add a new paragraph 2.3.8 as follows:

“2.3.8 On a bi-weekly basis, or as otherwise requested by the *Owner*, acting reasonably, the *Contractor*, the *Consultant*, and the *Owner* shall meet to discuss progress of the *Work*.”

GC 2.4 – DEFECTIVE WORK

27. Add new subparagraphs 2.4.1.1 and 2.4.1.2:

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

2.4.1.2 The correction of any defective *Work* that is to take place after the *Owner* has taken occupancy must be completed after 6:00pm during the school week or on weekends, unless otherwise agreed to between the *Owner* and *Contractor*.”

28. Add the following as new paragraphs 2.4.4 through 2.4.6 inclusive:

“2.4.4 Incorrectly fabricated, misplaced or omitted components will be considered defective *Work*. Where the *Consultant* or *Owner* finds defective *Work* or otherwise unacceptable *Work*, the *Contractor* shall pay for all costs of retesting, redesign, corrective measures, and all reasonable expenses and costs of the *Owner* related to the deficiency, including extra or extended periods of security, fire watch, maintenance and protection of the *Place of the Work*, supervision and review of the work for the correction of the deficiency.

2.4.5 The *Contractor* shall prioritize the correction of any defective work that, in the sole discretion of the *Owner*, adversely affects the day-to-day operations of the *Owner*.

2.4.6 The *Owner* shall be entitled to withhold from any payment owing to the *Contractor* an amount equal to 200% of the *Consultant*’s reasonable estimate of the cost to rectify any defective or deficient *Work* (the “**Deficiency Holdback**”) until such rectification is completed by the *Contractor*, less any amount of the *Deficiency Holdback* paid to another contractor, if the *Contractor* has not completed the rectification within 30 days of the *Owner*’s *Notice in Writing*.”

PART 3 – EXECUTION OF THE WORK

GC 3.1 – CONTROL OF THE WORK

29. Add the following as new paragraphs 3.1.3 to 3.1.6:

- “3.1.3 The *Contractor* shall keep the *Owner* and the *Consultant* informed of the progress of the *Work*, on a regular bi-weekly basis (or more frequently as the *Owner* requests, acting reasonably) by way of site meetings, site meeting notes, and an updated construction schedule in the form acceptable to the *Owner*, and at any reasonable time the *Owner* may request, and in all cases where the achievement of the completed *Work* by the *Scheduled Completion Date* may be affected. At or prior to the first such site meeting, the *Contractor* provides, and the *Owner* and *Contractor* discuss, the *Contractor*'s site management plans, including its health and safety plans to ensure compliance with all orders of all authorities having jurisdiction at the *Place of the Work*, which for clarity this includes all health and safety requirements and restrictions imposed in relation to the COVID-19 pandemic.
- 3.1.4 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 at its expense.
- 3.1.5 The *Contractor* agrees that, notwithstanding anything to the contrary contained in the *Contract*, it shall fully comply with any policies or procedures of any *Governmental Authority* and of the *Owner* which are relevant to any activity of the *Contractor* to be performed under the *Contract*. The *Contractor* further agrees that it will use reasonable efforts to inquire from the *Owner* if such policies or procedures exist for any activity of the *Contractor* to be performed under the *Contract*. The *Owner* agrees that it will use reasonable efforts to communicate to the *Contractor* policies or procedures it may have, relevant to any such activity.
- 3.1.6 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.”

GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

30. Delete paragraph 3.2.2.2 in its entirety.

31. Add the following wording at the end of paragraph 3.2.3.3:

“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;”.

32. Add new paragraph 3.2.3.4 as follows:

- ”.4 for the *Owner*'s own forces and for other contractors, assume overall responsibility for compliance with all aspects of health and safety at the *Place of the Work*, including all of the responsibilities of the *Constructor*, pursuant to the *Occupational Health and Safety Act* (Ontario), provided that the *Owner* will require its own forces and such other contractors to follow the directions, instructions, rules and regulations of the *Contractor* in respect of all matters relating to health and safety.”

33. Replace paragraph 3.4.1 in its entirety with new paragraph 3.4.1:

- “3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract*

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Documents that it did not prepare. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered in accordance with industry practices. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.”

GC 3.5 – CONSTRUCTION SCHEDULE

34. Replace paragraph 3.5.1 in its entirety with the following and add new paragraphs 3.5.2 and 3.5.3:

“3.5.1 The *Contractor* shall:

- .1 within five (5) calendar days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule in the format indicated below that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Such schedule is to include a delivery schedule for *Products* whose delivery is critical to the schedule for the *Work* or are required by the *Contract* to be included in a *Products* delivery schedule. The *Contractor* shall employ construction scheduling software, being the latest version of "Microsoft Project" or equivalent that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule form or software acceptable to the *Owner*. The *Contractor* shall provide the schedule and any successor or revised schedules in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule;
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, update and submit to the *Consultant* and *Owner* the electronic and hard copy schedule on a bi-weekly basis, at a minimum, or as required by the *Consultant* and advise the *Consultant* and the *Owner* weekly in writing of any variation from the baseline or slippage in the schedule;
- .4 advise the *Owner*, and obtain the *Owner's* approval of, any change in the construction schedule or *Contract Time* in accordance with the change procedures set out in Part 6 CHANGES IN THE WORK or as otherwise agreed by the *Owner*;
- .5 commence work immediately after award of contract as indicated in Article A-1.3, and provide sufficient labour and provide overtime work without change to the *Contract Price* if such work is deemed necessary to meet the schedule; and
- .6 ensure that the *Contract Price* shall include all costs required to phase or stage the *Work*.

3.5.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Contractor* shall, either at the request of the *Owner* or the *Consultant*, or following giving notice pursuant to subparagraph 3.5.1.3, take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay. Within five (5) calendar days of the request by the *Owner* or the *Consultant* or the notice being given pursuant to subparagraph

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3.5.1.3, the *Contractor* shall produce and present to the *Owner* and the *Consultant* a plan demonstrating how the *Contractor* will achieve the recovery of the last accepted schedule.

- 3.5.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.5 - CONSTRUCTION SCHEDULE, during construction are not deemed to be approved extensions to the *Contract Time*. All extensions to the *Contract Time* must be made in accordance with the *Contract Documents*."

GC 3.6 – SUPERVISION

35. Replace paragraph 3.6.1 with the following:

"3.6.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be removed or replaced without the approval of the *Owner*, such approval not to be unreasonably withheld, provided that the appointed representative is replaced with an appointed representative of similar qualifications. The *Contractor* shall give the *Owner* and the *Consultant* ten (10) days written *Notice in Writing* prior to changing the appointed representative."

GC 3.7 – SUBCONTRACTORS AND SUPPLIERS

36. Replace paragraph 3.7.2. in its entirety with the following:

"3.7.2 Substitution of any *Subcontractor* and/or *Suppliers* after submission of the *Contractor's* bid will not be accepted unless a valid reason is given in writing to and approved by the *Owner*, whose approval may be arbitrarily withheld. The reason for substitution must be provided to the *Owner* and to the original *Subcontractor* and/or *Supplier* and the *Subcontractor* and/or *Supplier* shall be given the opportunity to reply to the *Contractor* and *Owner*. The *Contractor* shall be fully aware of the capability of each *Subcontractor* and/or *Supplier* included in its bid, including but not limited to technical ability, financial stability and ability to maintain the proposed construction schedule."

37. Add the following as new paragraphs 3.7.7 to 3.7.10:

- "3.7.7 The *Contractor* shall, when requested to do so by the *Owner*, cause any and all construction liens registered by any *Subcontractor* or *Supplier*, to be discharged or vacated by the *Contractor* posting appropriate security and the *Contractor* shall do so within ten (10) calendar days of that request at its sole expense.
- 3.7.8 The *Contractor* shall, when requested to do so by the *Owner*, cause any and all written notices of lien given to any *Person* by any *Subcontractor* or *Supplier*, to be withdrawn and the *Contractor* shall do so within ten (10) calendar days of that request at its sole expense.
- 3.7.9 Should the *Contractor* fail to discharge, vacate or otherwise remove any such lien, or to have any such written notices of lien withdrawn, then the *Owner*, may at its option, do so and set off and deduct from any amount owing to the *Contractor*, all costs and expenses of so doing including legal fees and disbursements and the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and expenses etc. of so doing.
- 3.7.10 Subcontracting by the *Contractor* shall not be construed as relieving the *Contractor* from any obligations under the *Contract* or imposing any liability upon the *Owner*, including for warranties."

GC 3.8 – LABOUR AND PRODUCTS

38. Change paragraph 3.8.3 to read:

“3.8.3 The *Contractor* shall maintain good order and discipline among workers engaged on the *Work* and shall not employ or permit to be employed anyone not skilled in the tasks assigned.”

39. Add the following as new paragraphs 3.8.4 to 3.8.15:

“3.8.4 If, pursuant to a *Change Directive*, the *Owner* expressly requests the *Contractor* to have *Work* performed at overtime rates in order to complete the *Work* (or any change in the *Work*) or any part thereof earlier than the *Contractor* would otherwise be obliged to finish such *Work* (or change in the *Work*) or any part thereof under the *Contract Documents*, the additional net cost of such overtime (less any savings realized by the *Contractor* through the earlier completion of the *Work*) shall be chargeable to the *Owner*.

3.8.5 The *Contractor* shall ensure that all *Persons* employed on the *Work* shall be fully qualified to perform the work required. The *Owner* shall also have the right, acting reasonably, without charge at any time to request that the *Contractor* remove any of its employees or any of its *Subcontractors* from the performance of the *Work* and the *Contractor* shall comply, provided that such request is lawful, reasonably justified in writing and the *Contractor* is given an opportunity to respond and address such issues consistent with the *Contract* and its obligations under *Applicable Laws*.

3.8.6 The *Contractor* shall not employ or hire any employees who are employed by the *Owner*.

3.8.7 All *Products* and materials brought onto the *Place of the Work* by the *Contractor* shall be deemed to be property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said *Products* and materials shall be at the sole risk of the *Contractor*.

3.8.8 Prior to the commencement of the *Work*, the *Contractor* shall furnish evidence of compliance with requirements of the AODA, including training for staff.

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

3.8.10 *Products* which are specified by their proprietary names, or by parts or catalogue number, shall form the basis for the *Specification* and *Contract*. No substitutes for these may be used without the *Consultant's* approval in writing.

3.8.11 The *Contractor* shall use all *Products* in strict accordance with the manufacturer's directions except where specified otherwise. Whenever specific reference to manufacturer's directions or instructions is made in *Specifications*, the *Contractor* shall submit copies of said instructions or directions, or both, for approval by the *Consultant* before commencing such *Work* and will provide the *Consultant* with *Notice in Writing* if it proposes to use alternate *Products* (if permitted in the *Contract Documents*).

3.8.12 *Products* are sometimes specified by reference to brand names, propriety names, trade marks or catalogue number or catalogue designation or symbols. In such cases, the name of a manufacturer, distributor, supplier or dealer is sometimes given to assist the *Contractor* to find a source of supply. This does not relieve the *Contractor* from its responsibility for finding its own source of supply even if the source named no longer supplies the *Products* specified. If the *Contractor* is unable to obtain the specified product, it shall supply a substitute product equal to or better than the specified product, as approved by the *Consultant*, with no extra compensation. Should the *Contractor* be unable to obtain a substitute product equal or superior to the specified product and the *Owner* accepts an inferior product, the *Contract Price* shall be adjusted accordingly, as approved by the *Consultant*.

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- 3.8.13 All workmanship shall be of the highest quality performed by persons trained and skilled in accordance with best practices for each particular element of the *Work* and trade.
- 3.8.14 The foreperson of each trade engaged on the *Work* must be able to speak, read and understand the English language well enough to comprehend and carry out all instructions issued and to *Work* in complete co-ordination with other trades.
- 3.8.15 All deficiencies identified by the *Owner* and/or the *Consultant* shall be corrected promptly, and in any event within fifteen (15) days of being notified in writing of such deficiency unless otherwise agreed to. If the *Contractor* has not corrected any such deficiency within such fifteen days, the *Owner* may, directly or indirectly using another contractor, correct such deficiency and set-off the cost of such correction against other amounts owing to the *Contractor* or claim such costs from the *Contractor*. The *Contractor* shall remain bound by the terms of this *Contract* in respect of such corrected work as if such corrections were performed by it.”

GC 3.10 – SHOP DRAWINGS

40. **Add the words “AND OTHER SUBMITTALS” to the title of GC 3.10.**
41. **Add the following to the end of the paragraph 3.10.1:**
“or as the *Consultant* may reasonably request. The *Contractor* shall submit all *Drawings* and other submittals electronically and in reproducible form, or as reasonably requested by the *Consultant*.”
42. **Replace paragraph 3.10.3 with the following:**
“3.10.3 The *Contractor* shall prepare a schedule of dates for provision, review and return of *Shop Drawings* and submit it to the *Consultant* for review prior to the *Contractor*’s first application for payment.”
43. **In paragraph 3.10.7, add the words “in a timely manner” after the words “provided to such authority”. At the end of the paragraph, add the words “to ensure no delays in the Project Schedule”**
44. **In the first line of paragraph 3.10.8.1, delete the word “applicable”.**

GC 3.11 – USE OF THE WORK

45. **Add the following as new paragraphs 3.11.3 to 3.11.5:**
“3.11.3 Areas of the *Work* in occupied buildings or site shall be carried on at all times so that there will be a minimum of interference with the normal function of the facility and in accordance with a plan agreed to by the *Consultant* and the *Owner*.
- 3.11.4 The *Owner* shall have the right to enter and occupy the *Place of the Work* in whole or in part for the purpose of placing materials and/or equipment, or for other use before the date of *Substantial Performance of the Work* if, in the reasonable opinion of the *Owner*, such entry and occupation does not prevent or interfere with the *Contract Time* stipulated in the *Contract*, provided, however, if it does so prevent or interfere (individually or in the aggregate by at least a day), then the *Contract Time* shall be extended by the period of such delay.
- 3.11.5 Such entry or occupation shall neither constitute nor be considered as acceptance of the *Work*, or in any way relieve the *Contractor* of its responsibility to complete the *Work* or of its responsibility to act as *Constructor* for the whole of the Project, and shall not affect the warranty period and shall not imply acknowledgment of the fulfillment of any part of the *Contract*.”

GC 3.12 – CUTTING AND REMEDIAL WORK

46. **Add the following as new paragraphs 3.12.5 to 3.12.7:**
“3.12.5 The *Contractor* shall, or shall cause any *Subcontractor* to, correct all *Work* which is, in whole or in part, defective, at its own expense.

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- 3.12.6 If the *Contractor* and/or any *Subcontractor* damages the work of other *Subcontractor(s)*, the *Contractor* shall be responsible to repair, or shall cause the *Subcontractor* to repair, such work at its own expense.
- 3.12.7 All cutting, patching, finishing, refinishing or restoring required and costs of such work shall be considered part of the *Specifications* for the *Work* which created the requirement.”

GC 3.14 – OPERATIONAL RISKS

47. Add new GC 3.14 – OPERATIONAL RISKS as follows:

“GC 3.14 – OPERATIONAL RISKS

- 3.14.1 The *Contractor* acknowledges and understands that the *Place of the Work* is a school or property relating to school operations, and will ensure that the *Place of the Work* is at all times safe and secure, and that the *Work* does not interfere with the day-to-day operations of the school at the *Place of the Work* without prior *Notice in Writing* to the *Owner* and the *Owner's* consent. If, at any time, the *Contractor* needs to shut down power or other utilities, or otherwise close off part of the *Place of the Work* in order to perform the *Work*, the *Contractor* must provide the *Owner* with a *Notice in Writing* which, except in the case of an emergency, must be delivered at least five (5) *Working Days* prior to such shut down or closing off. The *Contractor* will only perform any shut down of power or other utilities, or otherwise close off part of the *Place of the Work* after 6 p.m. during the school week or on weekends, unless otherwise agreed to between the *Owner* and *Contractor*
- 3.14.2 Before starting *Work*, the *Contractor* shall inform itself of the exact locations of all utilities and structures, and once the utilities are located, by the applicable utility company, or once the *Contractor* discovers, or once a reasonably prudent *Contractor* ought to have discovered, the actual location of the utilities, the *Contractor* shall be liable for damages to them as a result of any act or omission, whether or not the result of negligence, by those for whom it is responsible, except to the extent that such damages are caused by the *Owner's* negligence or wilful misconduct. Unless otherwise specified, the *Contractor* shall temporarily support or relocate such utilities and structures, or temporarily remove them, and restore them, to the satisfaction of the owners of the utilities and structures at the cost of the *Contractor*.”

GC 3.15 – CONTRACTOR STANDARD OF CARE

48. Add a new GC 3.15 – CONTRACTOR STANDARD OF CARE as follows:

“GC 3.15 – CONTRACTOR STANDARD OF CARE

- 3.15.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor's* obligations, duties and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care, skill and diligence in respect of any *Products*, personnel or procedures which it may recommend to the *Owner*.”

GC 3.16 – OCCUPANCY OF THE WORK

49. Add a new GC 3.16 – OCCUPANCY OF THE WORK as follows:

“GC 3.16 – OCCUPANCY OF THE WORK

- 3.16.1 The *Owner* reserves the right to take possession of and use for any intended purpose any portion or all of the undelivered portion of the *Project* even though the *Work* may not be substantially performed, provided that such taking possession and use will not interfere, in any material way, with the progress of the *Work*, including (without limitation) the right to store and cover materials and equipment at the *Place of Work*. The taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner's* acknowledgement or

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acceptance of the *Work* or the *Project*, nor shall it relieve the *Contractor* of any of its obligations under the *Contract*.

- 3.16.2 Whether the *Project* contemplates *Work* by way of renovations in buildings which will be in use or be occupied during the course of the *Work* or where the *Project* involves *Work* that is adjacent to a structure which is in use or is occupied, the *Contractor*, without in any way limiting its responsibilities under the *Contract*, shall take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise and to avoid conditions likely to propagate mould or fungus of any kind and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures.
- 3.16.3 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” or “ready to occupy” status. Such instructions may require installation of temporary stairs and exits and temporary services, all of which shall be provided and subsequently removed.
- 3.16.4 The *Contractor* shall maintain full access to the building for the *Owner’s* use, as required. The *Contractor* shall maintain or restore heat and power to the above areas when necessary or as scheduled and keep existing utilities and services functional.
- 3.16.5 The *Contractor* shall keep all insurance or surety company or companies which have issued performance bonds, liability insurance and property insurance for this *Contract* informed of the extent of the occupancy. If the occupancy by the *Owner* requires adjustments of the bonds, or insurances, the *Contractor* shall, subject to the *Owner’s* approval, initiate and pay for such adjustments on behalf of the *Owner* and a *Change Order* will be issued.
- 3.16.6 Once the building is occupied, if the *Owner* permits any *Work* (including correction of deficiencies and warranty work) to be performed during regular hours of operation, the *Contractor* may be required by the *Owner*, from time to time, to suspend or alter noisy or otherwise objectionable operations should such operations cause undue interference with the *Owner’s* operations, business or activities. The *Contractor* will not be entitled to any increase in the *Contract Price* as a result of any such suspension.”

PART 4 – ALLOWANCES

GC 4.1 – CASH ALLOWANCES

50. Replace paragraph 4.1.2 in its entirety with the following:

“4.1.2 The *Contract Price*, and not the cash allowances, includes the *Contractor’s* overhead and profit in connection with such cash allowances. Cash allowances cover the net cost to the *Contractor* of services, *Products*, construction machinery and equipment, freight, unloading, handling, storage, installation and labour but do not include any Value Added Taxes (HST) payable by the *Owner* to the *Contractor*.”

51. Replace paragraph 4.1.5 in its entirety with the following:

“4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order*.”

52. Add new paragraph 4.1.8 as follows:

“4.1.8 If directed by the *Consultant* or the *Owner*, the *Contractor* will competitively bid *Work* for which payment is made from a cash allowance in accordance with such direction.”

PART 5 – PAYMENT

53. Replace GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER in its entirety with the following:

GC 5.1 – DRAFT APPLICATION FOR PAYMENT

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- “5.1.1 On the 25th day of each month during the *Contract Time*, the *Contractor* will deliver to the *Consultant* a draft of the *Contractor’s* proposed application for payment for all of the *Work* performed by the *Contractor* in that month, in order to facilitate and expedite payments under GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.8 – FINAL PAYMENT, including an estimate of the *Work* to be performed and *Products* to be delivered at the date of such application for payment but before the end of that month, and including any reports or certificates confirming the satisfactory completion of any commissioning and testing required by the *Contract Documents* for any completed part of the *Work* that the *Contractor* will include in its application for payment. The *Contractor* shall not include *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* in its application for payment.
- “5.1.2 Upon request, the *Contractor* shall review with the *Consultant* and the *Owner*, at a scheduled time, the draft application for payment and the percentage of the *Work* completed for each item indicated in the schedule of values. This procedure shall be complied with for each draft application for payment.”
- “5.1.3 Nothing in GC 5.1 – DRAFT APPLICATION FOR PAYMENT is intended to condition, pre-condition, prevent or delay the *Contractor’s* right to submit its applications for payment in accordance with this *Contract* and the *Construction Act*.”

GC 5.2 – APPLICATION FOR PROGRESS PAYMENT

54. Replace paragraph 5.2.1 and 5.2.2 with the following:

- “5.2.1 Notwithstanding GC 5.1 – DRAFT APPLICATION FOR PAYMENT, the *Contractor* shall submit its applications for payment to the *Consultant* and the *Owner* monthly as the *Work* progresses no earlier than the first *Working Day* after the end of the month to which the application for payment relates.
- “5.2.2 The *Contractor* shall ensure that each application for payment for *Work* complies with the requirements set out in this *Contract*, and will include as part of it application for payment of all the documents and information required in this Part 5 – PAYMENT and required for a *Proper Invoice*, including any reports or certificates confirming the satisfactory completion of any commissioning and testing required under the *Contract Documents* for any completed part of the *Work*. The *Contractor’s* application for payment will indicate any and all changes, updates or revisions made to the draft application for payment submitted under paragraph 5.1.1. The *Owner* may, in its discretion, reject any application for payment that does not comply with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT or GC 5.3 – PROGRESS PAYMENT, or the *Owner* may withhold up to 100% of the amounts otherwise payable in relation to that application for payment until such application for payment includes all of the documents and information required under this Part 5 – PAYMENT and for a *Proper Invoice*.”

55. Replace paragraphs 5.2.4 to 5.2.7 with the following:

- “5.2.4 Subject to paragraph 5.2.5, each *Contractor’s* application for payment shall be in a form agreed to by the *Owner* and the *Contractor*, and shall contain all of the information and documents required for a *Proper Invoice* under *Applicable Laws* and under the *Contract*, and as requested by the *Owner* or *Consultant*.
- 5.2.5 The *Contractor* shall submit to the *Owner* and *Consultant* by email to the *Owner’s* accounts payable department email address in accordance with paragraph 6.1 of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING and to the *Consultant* at least ten (10) days before the first application for payment, a schedule of values of the various parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment, and the *Contract Price Breakdown* if not already provided to the *Owner* in the *Contractor’s* bid documents.

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- 5.2.6 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and, when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.7 The *Contractor* must provide with each application, an up to date cash flow projection detailing the timing and amount of anticipated cash disbursements required by the *Owner* for the remainder of the *Work*.”

56. Add new paragraph 5.2.8 as follows: GC 5.2 - APPLICATION FOR PROGRESS PAYMENT

- “5.2.8 The *Contractor* shall not include *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work in its* application for payment.”

GC 5.3 – PROGRESS PAYMENT

57. Replace paragraph 5.3.1.3 with the following:

- “5.3.1.3 Subject to any *Milestones* or other payment process set out in the *Special Conditions*, the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 28 Days after the date the *Contractor’s* application for payment, that complies with the obligations of this Contract is received by the *Owner* from the *Contractor*.”

58. Add the following as new paragraphs 5.3.2 through 5.3.6 inclusive:

- “5.3.2 The application by the *Contractor* for a certificate of payment will constitute a representation by the *Contractor* to the *Owner* that: (1) the *Work* has progressed to the point indicated; (2) the quality of the *Work* is in accordance with the *Contract Documents*; (3) the application for payment is a “Proper Invoice” under *Applicable Laws*; and (4) the *Contractor* is entitled to payment under the *Contract Documents* in the amount certified.
- 5.3.3 The *Consultant* or the *Owner* may decline to approve an application for payment and may withhold a certificate for payment in whole or in part, to the extent necessary to protect the *Owner*, if in the *Consultant’s* opinion the *Contractor* is unable to make representations to the *Owner* as provided in paragraph 5.3.2 of this GC 5.3. The *Consultant* or the *Owner* may also decline to approve any application for payment or, because of subsequently discovered evidence, testing or subsequent inspections, the *Consultant* or the *Owner* may provide for a withholding of funds to offset a previous payment made pursuant to any certificate for payment previously issued, the *Owner* shall be entitled to deduct from or set off against any payment of the *Contract Price* and any other amounts payable by the *Owner* to the *Contractor* pursuant to GC 13 – SET-OFF, or the *Owner* may refuse to make payment, to such extent as may be necessary in his opinion to protect the *Owner* from loss because of:
- .1 defective *Work* not remedied;
 - .2 third party claims filed or reasonable evidence indicating possible filing of such claims;
 - .3 failure of the *Contractor* to make undisputed payments promptly to *Subcontractors*, *Suppliers* or for labour, *Products* or equipment;
 - .4 damage to *Work* of other contractors; or
 - .5 unsatisfactory prosecution of the *Work* by the *Contractor* or any *Subcontractor*.
- 5.3.4 If the *Owner* has reasonable grounds for believing that any amount included in previous applications for payment of the *Contractor* or paid to the *Contractor* by the *Owner* has not been paid to *Subcontractors*, *Suppliers* or other third parties to whom such amounts are due, then the *Owner* may withhold payment in respect of such amount from the current application until satisfactory evidence of payment is provided to the *Owner* by the *Contractor*.
- 5.3.5 All progress payments are not conclusive as to the value or quality of services provided and are subject to further evaluation and readjustment on future and final progress payments. The submission of monthly draw amounts by the *Contractor* and *Subcontractors* must reflect accurate valuations for *Work* completed and installed. The *Contractor* shall review and evaluate

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all *Work* performed by *Subcontractors* and be responsible for verifying the monthly draw amounts claimed.

- 5.3.6 Once *Substantial Performance of the Work* has been achieved, the *Contractor* shall not submit, and the *Owner* shall not be obliged to pay, any further applications for payment until the *Contractor's* final application for payment under GC 5.7 – FINAL PAYMENT, and the *Consultant* will not be required to certify the completion of any *Work* or application for payment unless and until *Total Performance of the Work* has been achieved and all deficiencies corrected.”

GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK

59. Replace paragraphs 5.4.2 to 5.4.7 with the following:

- “5.4.2 The *Contractor* shall provide the *Owner* with *Notice in Writing* of the expected date for *Substantial Performance of the Work* at least 30 days, and not more than 60 days, in advance of attaining *Substantial Performance of the Work*. Such *Notice in Writing* will include a final checklist of items to be completed in order to attain *Substantial Performance of the Work* (the “**Substantial Performance Checklist**”) setting out all required *Work* remaining in order to attain *Substantial Performance of the Work*, including the correction of all deficiencies and delivery of all deliverables required under the *Contract Documents*.
- 5.4.3 When the *Contractor* considers that the *Work* has attained *Substantial Performance of the Work*, the *Contractor* shall, within 1 *Working Day*, deliver to the *Consultant* and to the *Owner*, for their approval, a final *Contract Price Breakdown*, and a comprehensive list of items to be completed or corrected (the “**Completion List**”), including all uncompleted items of work set out on the *Substantial Performance Checklist*, together with (1) a schedule of the estimated value and cost to complete all of the *Work* and items identified in the *Completion List* in order to attain *Total Performance of the Work* (the “**Completion List Costs**”), and (2) a written application for a review by the *Consultant* to establish and certify *Substantial Performance of the Work*. Failure to include an item on the *Completion List* does not alter the responsibility of the *Contractor* to complete all of the *Work* required by the *Contract Documents*.
- 5.4.4 In addition to the requirements of *Construction Act* and for a *Proper Invoice* under this *Contract*, the *Contractor* shall submit, with the written application for a certificate of *Substantial Performance of the Work*, all guarantees, warranties, and certificates, distribution system diagrams, any spare parts or materials required by the *Contract Documents* or left over from the *Work* by the *Contractor* and wanted by *Owner*, “as built” drawings, testing and balancing reports, maintenance manuals, reports from authorities having jurisdiction, shop drawings, inspection certificates, keys, maintenance materials, Form 6 under the *Construction Act*, confirmation of all require training having been performed to the *Owner's* satisfaction, and any other materials or documentation required to be submitted under the *Contract*, in acceptable manner and condition, together with written proof, acceptable to *Owner* and *Consultant*, that the *Work* has been substantially performed in conformity with the requirements of the municipal or governmental authorities and utilities having jurisdiction. For clarity, the *Consultant* shall be at liberty to refuse to certify *Substantial Performance of the Work* in the event that the *Contractor* refuses or neglects to provide any of the items listed in this paragraph.
- 5.4.5 Immediately following the issuance of the Certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.
- 5.4.6 The acceptance by the *Contractor* of the certificate of *Substantial Performance of the Work*, or the acceptance of a certificate by a *Subcontractor* or for any payment due thereunder shall constitute a waiver by either the *Contractor*, or the *Subcontractor*, as the case may be, of all claims whatsoever against the *Owner* under this *Contract* or any trade subcontract whether for a change in the *Contract Price*, extension of *Contract Time*, or otherwise, except those made in writing prior to the *Contractor's* application for payment upon *Substantial Performance of the Work* and still unsettled, those relating solely to *Work* performed after the date of *Substantial Performance of the Work*, and those not permitted to be waived under *Applicable Laws*.

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- 5.4.7 The *Owner* may withhold additional funds from any payment owing to the *Contractor* up to an amount equal to 200% of the *Completion List Costs*. With respect to any manuals, operations instructions or other deliverables required to be delivered under the *Contract Documents* but which have not been delivered, the *Owner* may include in the *Completion List Costs* an amount equal to the greater of the *Owner's* reasonable estimate of the actual cost of the *Owner* producing such deliverables itself and 1% of the *Contract Price*. The *Owner* will pay the *Contractor* such withheld amounts on the later to occur of: (1) the date the *Contractor* completes all of the *Work* under the *Contract* (including correction of all deficiencies) as certified by the *Consultant*, (2) the date of the final calculation of all costs (including the costs of the *Owner* correcting any deficiencies and subtracting such costs from amounts owing to the *Contractor*), and (3) the date specified in a binding decision of an arbitrator or order of a court.”

GC 5.5 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

60. Delete paragraph 5.5.1 and replace it with the following:

- “5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall, within 30 days of the date of the certificate, deliver to the *Owner* all of the documents and information required for a *Proper Invoice*, and the following additional documents:
- .1 a declaration that no notices of adjudication have been received by the *Contractor* from any *Subcontractor* or *Supplier* in relation to the *Work* that could extend the date of the expiration of any applicable lien period under the *Construction Act*; and
 - .2 a declaration that no written notices of lien have been received, or, if received, the underlying lien has been discharged, vacated or otherwise removed.”

61. In the first line in paragraph 5.5.2, replace the words “statement as provided in paragraph 5.5.1” with “the documents required by the *Owner* to be provided pursuant to paragraph 5.5.1”.

62. Delete paragraph 5.5.3 in its entirety.

GC 5.7 – FINAL PAYMENT

63. Replace paragraph 5.7.4 with the following:

- “5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS’ COMPENSATION and the *Construction Act*, and subject to any *Milestones* or other payment process set out in the *Special Conditions*, the *Owner* shall, on the earlier of 10 *Days* after the issuance of a final certificate for payment by the *Consultant* and the 28th *Day* following receipt by the *Consultant* of the final application for payment from the *Contractor* that includes all of the documents and information required for a *Proper Invoice*, pay the *Contractor* as provided in Article A-5.”

64. Add the following as new paragraph 5.7.5:

- “5.7.5 The *Contractor* shall submit, with the application for final payment upon *Total Performance of the Work*, in the form attached as Schedule 1, a *Statutory Declaration* and a written statement that the *Work* has been performed to the requirements of the *Contract Documents* and all *Completion List* items have been completed. The *Consultant* may refuse to approve the *Contractor's* application for final payment if the *Contractor* is not able to provide such documents or, acting reasonably, believes them to not be accurate. The *Contractor's* application for final payment may include a claim for all outstanding *Deficiency Holdbacks* and *Performance Holdbacks* that the *Owner* continues to retain.”

GG 5.10 – LIENS

65. Add new GC 5.10 - LIENS as follows:

“GG 5.10 – LIENS

- 5.10.1 Notwithstanding anything else in this GC 5, but subject to the *Construction Act*, the *Owner* or the *Consultant* shall not be obligated to issue a certificate for payment in accordance with the

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Contract, and the *Owner* shall not be obligated to make payment to the *Contractor*, if, and to the extent, at the time such certificate or payment was otherwise due:

- .1 a claim for lien has been registered against the *Project* site, the *Owner* has received a written notice of lien by the *Contractor* or any *Subcontractor* or *Supplier*;
- .2 the *Owner* is not permitted to make payment under *Applicable Laws*; or
- .3 the *Owner* reasonably believes that any party may retain or has retained any right, title or interest to *Products* or materials in respect of which an application for payment has been made including, *without limitation*, a claim under the *Personal Property Security Act (Ontario)* or similar legislation applicable to the *Place of the Work*, a lien, attachment or secured claim.

For clarity, the *Owner's* entitlement to withhold payment to the *Contractor* pursuant to this paragraph 5.10 shall be limited to claims for liens and written notices of lien by *Subcontractors*, *Suppliers* and those for whom the *Contractor* is otherwise responsible.”

PART 6 – CHANGES IN THE WORK

GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES

66. Replace paragraph 6.1.2 with the following:

“6.1.2 No changes in the *Work* shall proceed without a written *Change Order* or *Change Directive* signed by the *Owner* and no claim for any change in the *Contract Price* or for any extension or alteration of the *Contract Time* shall be valid except as shown on the *Change Order* or *Change Directive*, as the case may be. This requirement is of the essence and it is the express intention of the *Parties* hereto that any claims for a change in the *Contract Price* shall be based, and that the *Contract Time* shall be altered, only upon strict compliance with the requirements of Part 6 of the General Conditions – CHANGES IN THE WORK. Accordingly, no course of conduct or dealing between the *Parties*, no express or implied acceptance of alterations or additions to the *Work* and no claim that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for payment under this *Contract* or any extension of the *Contract Time* without a *Change Order* or *Change Directive*.”

67. Add the following as new paragraphs 6.1.3 to 6.1.6:

- 6.1.3 If any change is approved for which a cash allowance or contingency allowance has been established in the budget for the *Project*, the costs of such change *Work* and any mark-up shall be drawn from such allowance first before any increase in the *Contract Price*, and shall be subject to the limitations set out in paragraph 6.1.5.
- 6.1.4 If any change or deviation in, or omission from the *Work* is made by which the amount of *Work* to be done is decreased, or if the whole or a portion of the *Work* is dispensed with, no compensation is claimable by the *Contractor* or any *Subcontractor* for any loss of anticipated profit in respect thereof.
- 6.1.5 Subject to first drawing from an allowance in accordance with paragraph 6.1.3, when the valuation of a change in the *Work* is to be determined either by estimate and acceptance in a lump sum, or by cost and fixed, or, percentage fee, the valuation shall be in accordance with the following:
 - .1 Mark Up – Cost of net increases or decreases to the *Contract Price* due to changes in the *Work* shall be marked-up as follows:
 - (a) for *Work* performed by *Contractor's* own forces, *Contractor* shall be entitled to 10% on actual costs of materials and labour for all overhead and profit;
 - (b) for *Work* performed by *Subcontractors*, *Subcontractors* shall be entitled to 10% on actual costs of material and labour for all overhead and profit, and the

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- Contractor* shall be entitled to 5% of *Subcontractor's* actual costs of material and labour (excluding overhead and profits); and
- (c) in all cases, overhead and profit shall be deemed to include all costs, including additional supervision, coordination, bonding, insurance, taxes, hoisting, clean-up, office administration, and photocopying.
- .2 The costs for the following items shall be considered to be included in the allowance for overhead and profit:
- (a) *Contractor's* head office expenses,
 - (b) Wages of project managers, superintendents, assistants, watchpersons and administrative personnel,
 - (c) Temporary site office expenses, including costs for telephone and facsimile machine,
 - (d) Small tools,
 - (e) Insurance and bonding premiums,
 - (f) As built drawings, and
 - (g) Time for estimating changes in the Work
- .3 Substantiation – When requested, the *Contractor* shall submit details, quantities, prices, and fees together with substantiating documentation for all *Change Orders*.
- .4 Time for submission and acceptance of quotations – The *Contractor* shall co-operate in the pricing of changes by submitting quotations within 10 calendar days of the *Consultant's* request. Quotations shall remain open for acceptance for 21 *Working Days* from the date of submission.
- 6.1.6 If changes to the *Contract* become in excess of 10% of the *Contract Price*, the *Contractor* shall inform insurance or surety company or companies who have applicable performance bonds, liability insurance and property insurance for this *Contract*, of these changes. Where required by the above-noted sureties, the *Contractor* shall initiate and pay such adjustments on behalf of the *Owner* and a *Change Order* will be issued by the *Consultant*, to reimburse the *Contractor*. Where the sureties do not require such adjustments, the *Owner* may waive the requirement to such adjustment.”

GC 6.2 – CHANGE ORDER

68. Replace paragraph 6.2.1 with the following:

- “6.2.1 When a change in the *Work* is proposed or required, subject to first drawing from an allowance in accordance with paragraph 6.1.3, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly present, in a form acceptable to the *Consultant*, the proposed amount of adjustment for the *Contract Price* (which amount shall be determined in the same manner as the adjustment in the *Contract Price* is determined pursuant to GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES and GC 6.3 – CHANGE DIRECTIVE), if any, and any adjustment in the *Contract Time*, if any, for the proposed change in the *Work*. The *Contractor* may only propose a change in the *Work* together with any resulting claim for a change in the *Contract Price* or *Contract Time* if the *Contractor* demonstrates (a) a reasonable and justifiable increased cost to the *Contractor*; and/or (b) a reasonable and justifiable claim for extension of the *Contract Time* which ultimately, as determined by critical path methodology, delays the *Contract Time*; (c) the *Contractor* has submitted a *Notice in Writing* of its intention to submit a proposal to the *Owner* for a change in the *Work* within ten (10) *Working Days* of the date the *Contractor* knew or ought to have known that the circumstances giving rise to increased costs or delays occurred; and, (d) the *Contractor* has exercised reasonable due diligence, without incurring material extra costs, in time and effort in order to mitigate the circumstances giving rise to the increased cost or delay.”

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GC 6.3 – CHANGE DIRECTIVE

69. **Delete** paragraphs 6.3.2 and 6.3.3.
70. In the second line of paragraph 6.3.6.2, **replace** the word “without” with the word “with.”
71. **Replace** paragraph 6.3.6.3 with the following:
- ”.3 The *Contractor’s* fee for changes shall be calculated as set out in paragraph 6.1.5.1 or as otherwise agreed by the *Parties*; and
- .4 Upon receipt of a *Change Directive*, the *Contractor* shall provide the *Owner* a non-binding written estimate of the costs associated with the related change in the *Work* within five (5) Working Days of receiving any such *Change Directive*.”
72. **Replace** the first line of paragraph 6.3.7 with the following:
- “6.3.7 The cost of performing the *Work* attributable to the *Change Directive* shall mean only the actual costs, without duplication and without any mark-up by the *Contractor* (other than the percentage fee described in paragraph 6.1.4 of GC 6.1 OWNER’S RIGHT TO MAKE CHANGES and paragraph 6.3.6), described in this paragraph 6.3.7 which are paid or payable by the *Contractor* and necessarily incurred by the *Contractor* in the proper performance of the *Work* attributable to the *Change Directive* or described as a cost to be paid or payable by the *Owner* to the *Contractor* pursuant to the *Contract*. All amounts charged as cost of performing the work attributable to the *Change Directive* shall be subject to review and verification by audit at the request of the *Owner*. No cost of performing the work attributable to the *Change Directive* shall be at rates higher than the prevailing market rates for the *Place of the Work* unless authorized through the prior written consent of the *Owner*, which consent may be withheld by the *Owner* in its sole discretion. The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:”
73. **Replace** paragraph 6.3.7.1 with the following:
- ”.1 salaries, wages and benefits paid for labour in the direct employ of the *Contractor* under applicable collective bargaining agreements, or under a salary schedule agreed upon by the *Owner* and the *Contractor*, while engaged on the *Work* at the *Place of the Work*, other than salaries, wages and benefits paid in relation to the work required to correct mistakes, deficiencies or damage attributable to the *Contractor*;
74. In the first line of paragraph 6.3.7.6, **add** the word “rental” prior to the words “tools and *Construction Equipment*”.
75. At the end of paragraph 6.3.7.11, **add** the words “unless such charges result from the failure of the *Contractor* to perform its obligations under this Agreement or in accordance with *PLAA* or *Applicable Laws*”.
76. **Add** the following as new paragraphs 6.3.14 and 6.3.15:
- “6.3.14 Notwithstanding anything in this *Contract* to the contrary, the *Owner*, without invalidating the *Contract*, may make minor adjustments in the *Work* consistent with the intent of the *Contract Documents* by delivering a *Change Directive*. Such adjustments in the *Work* shall not involve adjustment to the *Contract Price* or the *Contract Time* if they are within the general scope of the *Work*, if the *Change Directive* indicates that no adjustment shall be made to the *Contract Price* or the *Contract Time* as a result thereof and if such minor adjustments are reasonably inferable in the *Contract Documents* even though not expressly included.
- 6.3.15 Upon receipt of a *Change Directive*, the *Contractor* may be directed by either the *Owner* or the *Consultant* to proceed with extra work on the basis of daily force account sheets (also referred to as “daily extra work order sheet”, “daily work records”, or “daily time sheet”) provided:
- .1 pre-approved. all inclusive, labour, material, and equipment rental charge out unit rates are on file with the *Consultant*.

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- .2 whenever extra work is being performed in accordance with paragraph 6.3.15, the *Contractor* shall submit daily force account sheets for approval to/by the *Consultant* showing the quantities of labour, materials and equipment used directly in carrying out each order for work on the preceding day, together with substantiating documentation. No claim for compensation for extra work will be considered in absence of such force account sheets. The *Consultant* will not allow any compensation for the cost of repairs to equipment or for damage to anything used in performing such extra work, and
- .3 the *Contractor* shall not be entitled to interest on any bill for extra work on account of delay in the approval of such extra work by the *Consultant*, or the *Owner*.”

GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS

77. Replace paragraphs 6.4.1, 6.4.2, 6.4.3 and 6.4.4. with the following:

- “6.4.1 The *Contractor* confirms that, prior to entering into the *Contract*, it has carefully investigated the *Place of the Work*, the character of the *Work* and of all local conditions which might affect its obligations and has satisfied itself as to the nature and extent of the *Work* to be done under the *Contract Documents* and as to the facilities and difficulties attending the execution of the *Work*, including subsurface conditions. The *Contractor* confirms that it applied to that investigation the degree of skill and care described in paragraph 3.1.7 of GC 3.1 – CONTROL OF THE WORK.
- 6.4.2 Notwithstanding anything in the *Contract* to the contrary, to the extent the *Contractor* has not so investigated, it is willing to assume and does hereby assume responsibility for all loss and damage from any cause whatsoever which such an investigation might have avoided and agrees to indemnify the *Owner* from all risk thereof and of conditions arising and developing in the course of the *Work* which might make it more onerous and more expensive to fulfil or perform than was contemplated or known when this *Contract* was signed. For greater clarity, the *Contractor* is not entitled to any additional compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the execution of the *Contract* and as described in GC 1.8 - EXAMINATION OF DOCUMENTS AND SITE.
- 6.4.3 Notwithstanding anything in the *Contract* to the contrary, the *Contractor* acknowledges and declares that in entering into this *Contract* it did not and does not rely upon the information furnished by the *Owner*, its officers and employees and the *Contractor* confirms its understanding and awareness that any information from such source or sources was approximate and speculative only and was and is not in any manner guaranteed by the *Owner*.”

GC 6.5 – DELAYS

78. Replace paragraph 6.5.1 with the following:

- “6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, or anyone directly employed or engaged by the *Owner*, contrary to the provisions of the *Contract Documents*, then provided:
- .1 the delay impacts the critical path of the *Project* as determined by the construction schedule; and
 - .2 the *Contractor* uses commercially reasonable efforts to mitigate its *Losses* suffered as a result of such delay, the *Contract Time* shall be extended for such reasonable time as the *Owner* may agree in consultation with the *Contractor* and the *Contractor* shall be reimbursed by the *Owner* for reasonable costs (except any indirect or consequential costs or *Losses*) incurred by the *Contractor* as a result of such delay.

For greater certainty, the *Parties* acknowledge and agree 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

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determining the duration of the extension of the *Contract Time* to be provided to the *Contractor*.

Where the *Contractor* is delayed or otherwise hindered in the performance of the *Work* in a manner for which it is not responsible under the provisions of this *Contract*, a change to the *Contract Time* may be determined by the *Owner* in accordance with the provisions of Part 6 – Changes in the *Work* of the General Conditions of the *Contract*, as amended by these Supplementary Conditions. Such change shall be considered only where the *Contractor* experiences repeated and significant impediments to its accomplishment of the construction schedule that:

1. could not have been foreseen by the *Contractor* through its inspection and examination of all existing conditions affecting the *Work* and its ways and means of accomplishment, as required by the *Contract Documents*;
2. substantially affects the construction schedule as determined by critical path method evaluation;
3. have been adequately demonstrated to the satisfaction of the *Owner*; and
4. that other means of attaining the required performance have been exhausted.”

79. Amend paragraph 6.5.2 by deleting the last sentence of the paragraph and replacing with the following:

“As compensation for the delay described in this paragraph, the Contractor shall be entitled to a reasonable amount for the actual and reasonable costs incurred by the Contractor relating directly to the delay and approved by the Owner in accordance with the Change Order or Change Directive procedures of the Contract. The parties agree that such reasonable amount shall include measures taken by the Contractor to reflect mitigation of the impacts of the delay and costs of the delay (including appropriate re-scheduling or re-sequencing of the Work or other measures approved by the Owner). Notwithstanding any other provision in the Contract, the Contractor’s sole and entire compensation for a delay under this paragraph is set out in this paragraph.”

80. Immediately after the words “labour disputes” at the beginning of paragraph 6.5.3.1, replace the words “, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors’ association, of which the Contractor is a member or to which the Contractor is otherwise bound)” with the following:

“that do not involve the *Contractor*, or that are decreed for its members by a recognized *Contractor’s* association of which the *Contractor* is a member or to which the *Contractor* is otherwise bound, or that could not have been foreseen by the *Contractor* prior to the date of this *Contract*.”

81. Immediately after the words “abnormally adverse weather conditions” in paragraph 6.5.3.3, add the words “, provided that the Contractor has taken commercially reasonable efforts to avoid and mitigate any delay, damage to property, or both that could arise from such conditions”.

82. At the end of paragraph 6.5.3, delete the end of the last sentence “, Consultant, or anyone employed or engaged by them directly or indirectly.

83. Following the words “given to the Consultant” in the first line of paragraph 6.5.4, add the words “and the Owner”. Add the following at the end of this paragraph:

“The *Contractor’s Notice in Writing* must expressly include an estimate of any extension of time, in order to be entitled to an extension of the *Contract Time*, and an estimate of any increase in the *Contract Price* in order to be entitled to an increase in the *Contract Price*.”

84. Add the following new paragraph 6.5.6:

“6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor’s* control, then the *Contractor* will make all reasonable efforts to

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eliminate or reduce any delay or mitigate the consequences of such delay, including working overtime and weekend, and, in any event, will not be entitled to any extension in the *Contract Time* without the express written approval of the *Owner*. If the *Owner* approves any such extension, the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor* and expressly approved in writing by the *Owner*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the *Contractor*.”

85. Add the following new paragraph 6.5.7:

“6.5.7 For the purposes of paragraphs 6.5.2 and 6.5.3, the parties acknowledge the occurrence of the COVID-19 virus pandemic and related declarations of a state of emergency by the Province of Ontario, the local authorities having jurisdiction over the Place of the Work prior to the effective date of this Contract, and agree that the construction schedule, the Contract Time, the scheduled date of Substantial Performance of the Work and the Contract Price have been updated to incorporate impacts and changes known at the time of the Contract, including resulting delays, costs and other impacts. For greater certainty, nothing in this paragraph prevents the Contractor from claiming under paragraphs 6.5.2 or 6.5.3 as a result of events that arise after the date of the Contract, including continuing delays that first arose prior to the date of this Contract. If any change to the Contract Time or Contract Price is agreed by the parties, it will be reflected in a Change Order.”

86. Add the following new paragraph 6.5.8:

“6.5.8 If the Owner is delayed in the performance of any of its obligations under this Contract or by third parties on which the Owner relies, including:

- 6.5.8.1 labour disputes, strikes, lock-outs;
- 6.5.8.2 fire, unusual delay by common carriers or unavoidable casualties,
- 6.5.8.3 abnormally adverse weather conditions,
- 6.5.8.4 an order, shut down or closure of a court or other public authority, or
- 6.5.8.5 any cause beyond the Owner's control, including, other than one resulting from a default or breach of Contract by the Owner,

Then, upon the Owner's Notice in Writing, such Owner's obligations shall be suspended for a duration of not less than the time the Owner was prevented or delayed in performing its obligation, unless the Owner agrees to a shorter extension, and the Contract Time shall be extended for a corresponding amount of time. Neither the Owner nor the Contractor shall be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner, Consultant or anyone employed or engaged by them directly or indirectly

GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE

87. In the second line of paragraph 6.6.5, add the words “as noted in paragraph 6.6.3”, after the words “of the claim”.

88. At the end of paragraph 6.6.5, delete the period and add the words “and the *Consultant*”.

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89. Add new paragraph 6.6.7

“6.6.7 The *Owner* may make claims arising out of the costs incurred for additional services provided by the *Consultant* resulting directly from the *Contractor*’s failure to reasonably perform the Work in accordance with the terms and conditions of the Contract, including the *Contractor*’s issuance of unnecessary requests for information, including any additional *Consultant*’s fees.”

PART 7 – DEFAULT NOTICE

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

90. In the second line of paragraph 7.1.2, replace the words “and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action” with the words “including, but not limited to, the failure of the *Contractor* to pay its *Subcontractors*, *Suppliers* or workmen on a timely basis”.

91. In paragraph 7.1.3.1, add the words “acceptable to the *Owner*” after the words “specified time” and add the words “in a manner acceptable to the *Owner*” after the word “correction”.

92. Add the following sentence at the end of paragraph 7.1.3.2:

“An “acceptable schedule” as referred in this paragraph means a schedule accepted by the *Owner* wherein the default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the work of other contractors, and in no event shall it be deemed to give a right to extend the *Contract Time*.”

93. At the end of paragraph 7.1.3.3, add the words “to the satisfaction of the *Owner*”.

94. In the first line of paragraph 7.1.4, after the words “subsequently agreed in writing by the parties,” add the words “or if the *Contractor* is delayed for 180 days or longer in the performance of the *Work* and notwithstanding anything else herein provided,”.

95. At the end of the first sentence in paragraph 7.1.4.1, delete the words “provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*”.

96. Add the following as new paragraphs 7.1.7 to 7.1.10:

“7.1.7 The *Consultant* or the *Owner* in consultation with the *Consultant* may stop any portion of the *Work*, if, in its judgement, the weather is such as to prevent the *Work* being properly done. In such circumstances, the *Contractor* shall take commercial reasonable efforts to protect the *Work*, and *Products* and *Equipment*, including covering and heating if applicable. No compensation of any kind will be made for such stoppage except an extension of time for the completion of the *Work* as provided in paragraph 6.5.3 of GC 6.5 – DELAYS.

7.1.8 In addition to the rights set out in this GC 7.1, if the *Owner* has reasonable grounds for believing and does believe that the *Contractor* will not fulfil his contractual obligations hereunder, then the *Owner* shall also be entitled, on the giving of seven (7) days’ *Notice in Writing*, to terminate the *Contractor*’s right to continue with the *Work* in whole or in part or terminate the *Contract*, and in such event the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination and the *Contractor* shall, at the request of the *Owner*, assign to the *Owner* all of its rights under any subcontractors that the *Owner* may specify and the *Owner* shall thereafter assume all obligations under such subcontracts. The *Owner* shall not be liable to the *Contractor* for any other costs or damages whatsoever arising from such early termination of the *Contract*, including, *without limitation*, any amount on account of lost profit or unabsorbed overhead.

7.1.9 Termination pursuant to paragraph 7.1.8 shall not relieve the *Contractor* of its obligations related to the *Work* performed to the date of termination.

7.1.10 The *Owner* may suspend the Contract, terminate the Contract or terminate the right of the *Contractor* to continue performing the *Work* for the *Owner*’s convenience at any time for any reason or no reason. Such suspension or termination will be effective on the date set out in the

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Owner's Notice in Writing. The Owner may concurrently provide the Contractor with a Notice in Writing terminating the Contract or the right of the Contractor to continue performing the Work for any other reason permitted in this GC 7.1, if applicable, in which case such other notice will have priority. If the Owner suspends or terminates under this paragraph:

7.1.10.1 in the case of a suspension under this paragraph, the Contractor shall be entitled to an extension of the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor, and to be reimbursed by the Owner for the reasonable costs incurred by the Contractor as the direct result of such delay;

7.1.10.2 in the case of a termination of the Contract or the right of the Contractor to continue with the Work, the Contractor shall be entitled to payment by the Owner for all work performed including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the termination of the Contract;

The Contractor shall, as a condition of receiving the payments set out in this paragraph, execute and deliver such releases and assignments and take such reasonable action as the Owner may require for the purpose of giving effect to this paragraph without further jeopardy to the Owner, including the legal assignment in the Contractor's subcontracts."

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

97. **Add the following to paragraph 7.2.1: "A duplicate of this notice shall be sent concurrently to the Consultant."**
98. **Delete paragraph 7.2.3.1.**
99. **Replace paragraph 7.2.3.3 with the following:**
- "3 the Owner fails to pay the Contractor when due undisputed amounts certified by the Consultant or awarded by adjudication, arbitration or court within a reasonable time, or"
100. **In the middle of paragraph 7.2.3.4, delete the words " , except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,".**
101. **Add the following at the end of paragraph 7.2.3.4:**
- " ; provided that, if any default referred to in the Contractor's Notice in Writing is the subject of an adjudication, mediation, arbitration or court proceedings, the Contractor shall be estopped from suspending the Work or terminating the Contract until resolution or termination of such proceedings."
102. **Add the following as new paragraph 7.2.3.5:**
- "5 The foregoing defaults in contractual obligations shall not apply to the withholding of certificates or payments, or both, in accordance with the General Conditions, because of the Contractor's failure to pay all claims promptly, nor because of the registration of liens against the Owner's property, until such claims and liens are discharged."
103. **In the middle of paragraph 7.2.4, replace the words "5 Working Days" with "30 Working Days".**
104. **Add paragraphs 7.2.6 and 7.2.7 as follows:**
- "7.2.6 If the Contractor stops the Work or terminates the Contract in accordance with the paragraphs above, it shall leave the Place of the Work and the Work in a secure condition as required by jurisdictional authorities and the Contract Documents.
- 7.2.7 The provisions of this GC7.2 shall not apply in the case of, and a non-payment by the Owner will not be considered a default if resulting from, the withholding of certificates and/or payments because of the Contractor's failure to pay all just claims promptly, or because of the registration of a lien against the Place of the Work, nor shall they apply to the Owner's withholding, set-off,

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or deduction of monies to cover costs incurred in correcting deficiencies as provided or permitted under the *Contract*.”

PART 8 – DISPUTE RESOLUTION

GC 8.1 – AUTHORITY OF THE CONSULTANT

105. Add the following new paragraph 8.1.4:

“8.1.4 The provisions of Part 8 – DISPUTE RESOLUTION shall apply to all disputes, and a party may commence the dispute resolution process set out in this Part, notwithstanding the commencement of any adjudication proceedings required by *Applicable Law*.”

GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION

106. In the second line of paragraph 8.2.6, replace the word “refer” with “propose to the other party for”.

107. Add the following new paragraphs 8.2.9 to 8.2.12:

“8.2.9 Notwithstanding anything in Part 8 of the General Conditions – DISPUTE RESOLUTION to the contrary, if any person that is not a party to this *Contract* brings a claim against the *Owner* by way of an application, notice of adjudication, action, counterclaim, third party claim or any other manner which also involves or relates in any way to a dispute or an issue in dispute between the *Owner* and the *Contractor*, then the *Parties* shall cause all such claims and disputes to be resolved in the court having jurisdiction over the claim brought against the *Owner* by such third party.

8.2.10 Notwithstanding anything else in this *Contract*, in the event of a dispute relating to payment arising prior to the completion of the *Work*, the *Parties* may adjudicate such dispute in accordance with the *Construction Act*. If the *Contractor* issues a notice of adjudication to the *Owner*, it will include with such notice a description of the reasons for its dispute that includes a reference to the applicable application for payment and *Proper Invoice*, all *Notices in Writing* demanding payment, authority for the claim under the *Contract* (including copies of any applicable *Change Order*, *Change Directive*, requests for any related change, and written approval of any related change).

8.2.11 The *Parties* acknowledge and agree that the adjudication of a payment dispute in accordance with the *Construction Act* will not stay, pause, withdraw, terminate, discontinue, or prejudice any mediation, arbitration, or court proceeding that relates to the same matter and that was commenced prior to the delivery of a notice of adjudication under the *Construction Act*, unless the *Parties* otherwise agree in writing.

8.2.12 For the purposes of Part II.1 of the *Construction Act*, the *Parties* consent to exchange notices of adjudication by email in accordance with paragraph 6.1 of Article A-6 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.”

GC 8.3 – RETENTION OF RIGHTS

108. Add the following as new paragraph 8.3.3:

“8.3.3 Notwithstanding any dispute, neither party may suspend the performance of its obligations under the *Contract*, including remedying any material breach under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT, while the *Parties* are following for that dispute the dispute resolution procedures contemplated under the *Contract*. Notwithstanding the preceding sentence, and without prejudice to paragraph 2.4.3 of GC 2.4 – DEFECTIVE WORK, the *Owner* may, acting reasonably, withhold payment of disputed amounts in invoices while the *Parties* are making efforts to resolve the dispute over those amounts. The *Owner* will pay these

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amounts promptly after the dispute is resolved, to the extent it is resolved in the *Contractor's* favour.”

PART 9 – PROTECTION OF PERSONS AND PROPERTY

GC 9.1 – PROTECTION OF WORK AND PROPERTY

109. Replace paragraph 9.1.1.1 with the following:

”.1 Errors in the *Contract Documents* which the *Contractor* could not have discovered applying a reasonable standard of care described in the *Contract*.”

110. Add the following as new paragraphs 9.1.5 to 9.1.8:

“9.1.5 When carrying out excavation work and the *Work*, the *Contractor* may encounter utilities. The *Contractor* shall be fully responsible for any breakage or damage to such utilities, and the *Contractor* shall pay the full cost of repairing such damages and making good any *Losses* caused as a result of its operations in carrying out this *Contract*.

9.1.6 It shall be the *Contractor's* responsibility to obtain written permission from any *Person* and to make any arrangements with the owners of any adjacent properties which the *Contractor* may need to encroach.

9.1.7 The *Contractor* shall furnish and bear the cost of any security or other supervisory personnel it may require for protection to perform this *Contract*.

9.1.8 If the *Contractor* has caused damage to the *Work* of another contractor on the *Project*, the *Contractor* agrees upon due *Notice in Writing* to settle with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action.”

GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES

111. Delete paragraphs 9.2.1.

112. Delete paragraph 9.2.4.

113. In the third line of paragraph 9.2.5.2, delete the words “or which were disclosed but have not been dealt with as required under paragraph 9.2.4”.

114. Add to paragraph 9.2.6 after the word "responsible", the following new words:

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

115. Replace paragraphs 9.2.6, 9.2.7, 9.2.8 and 9.2.9 in their entirety, with the following:

“9.2.6 The *Contractor* shall indemnify and hold harmless the *Owner*, *Consultant*, other consultants, *Subcontractors*, *Suppliers* and their agents and employees, from *Losses* arising out of or resulting from exposure to, or the presence of, toxic or Hazardous Substances or materials which were brought onto or made at the *Place of the Work* after the *Contractor* commenced the *Work*. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a *Person* or party described in this paragraph.

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- 9.2.7 In this Contract, the term “toxic and hazardous substances” means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, organic or inorganic matter which is or is deemed to be, alone or in any combination, hazardous, hazardous waste, solid or liquid waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination, regulated by any *Applicable Law* relating to the environment and the *OHSA*.”

GC 9.4 – CONSTRUCTION SAFETY

116. Replace paragraph 9.4.1 with the following paragraphs:

- “9.4.1 The *Contractor* agrees, in addition to the obligations set forth elsewhere in the *Contract*, to comply with all applicable legislation, rules, regulations and practices pertaining to employment standards, human rights, occupational health and safety, labour relations, workers’ compensation, pay equity and employment equity and all other legislation applicable to its employees. The *Contractor* will ensure that all of its employees and all of the employees of any *Subcontractor* and any agent of the *Contractor* are covered by worker’s compensation insurance or other similar legislative compensation scheme in force at the *Place of the Work*.
- 9.4.2 The *Contractor* shall be solely responsible for construction health and safety within the *Place of the Work* and for compliance with the *OHSA* and shall be responsible for maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. So as to avoid any misunderstanding as to the extent of the *Contractor’s* responsibility, the *Contractor*, by executing the *Contract*, unequivocally acknowledges that the *Contractor* is the *Constructor*.
- 9.4.3 The *Contractor* shall also comply at a minimum in accordance with any health and safety policies and procedures provided by the *Owner* prior to the commencement of the *Work*.
- 9.4.4 The *Contractor* agrees to submit to the *Owner* prior to the commencement of *Work*:
- .1 a current Workplace Safety & Insurance Board Clearance Certificate;
 - .2 copies of the *Contractor’s* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
 - .3 copies of the performance bond and labour and material payment bond required under the *Contract Documents*, the *Procurement Documents* and/or the *Construction Act* in accordance with GC 11.2 – CONTRACT SECURITY;
 - .4 documentation setting out the *Contractor’s* in-house safety programs; and
 - .5 a copy of the Notice of Project filed with the Ministry of Labour naming itself as *Constructor*.
- 9.4.5 The *Contractor* shall indemnify, save harmless, and defend the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the relevant *OHSA*, including the payment of legal fees and disbursements on a solicitor and client basis.”

GC 9.5 – MOULD

117. **Following the word “*Owner*” in paragraph 9.5.2.4, add the words “and the Consultant, their agents and employees,”.**
118. **Delete paragraph 9.5.3.4.**

PART 10 – GOVERNING REGULATIONS

GC 10.1 – TAXES AND DUTIES

119. **Replace** paragraph 10.1.2 with the following:

“10.1.2 Any increase or decrease in cost to the *Contractor* due to changes in government sales taxes, custom duties or excise taxes occurring after the date of the tender shall increase or decrease the *Contract Price* accordingly. For greater certainty, the *Parties* agree that the *Contractor* is not entitled to any mark up for profit, overhead or otherwise in connection with any increase in taxes or duties and that the *Contract Price* will be increased only by the actual amount of increased taxes or duties actually paid to the government. If any such taxes or duties be retroactively reduced, the *Owner* shall be entitled to withhold payment to the *Contractor* of a sum equal to the amount of such tax or duty reduction but only after the *Contractor* has received the benefit of such tax or duty reduction.”

120. **Add** the following as new paragraph 10.1.3:

“10.1.3 When an exemption from or recovery of, government sales taxes, customs duties or excise taxes is applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner* (or his agent) assist, join in, or make application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from governmental authorities as may be required to implement the foregoing.”

GC 10.2 – LAWS, NOTICES, PERMITS, AND FEES

121. **Replace** paragraph 10.2.2 with the following:

“10.2.2 Unless otherwise stated, the *Contractor* shall obtain and pay for all of the approvals, permits, licenses, inspections, authorizations, and agreements necessary for the performance of the *Work* which were in force at the time of the proposal or bid closing. The *Owner* shall only be responsible to obtain and pay for the permanent easements and rights of servitude. The *Contractor* shall, in the case of its *Subcontractors*, be held responsible for and shall ensure that they obtain all necessary approvals, permits, licenses, inspections, authorizations, and agreements and all insurance in connection with the *Work* as may be required by the *Applicable Laws*.”

122. **At the end of paragraph 10.2.4, add** the following new sentence: “Whenever standards of the *Applicable Laws*, relating to the *Work* differ, the most stringent standards shall govern.”.

123. **In the first line of paragraph 10.2.5, replace** the word “not” with “, to the extent only of the *Contractor’s* expertise, experience and knowledge,”.

124. **In the second line of paragraph 10.2.6, replace** the words “knowing it to be” with the words “that is”.

PART 11 – INSURANCE AND CONTRACT SECURITY

GC 11.2 – CONTRACT SECURITY

125. **Replace** paragraphs 11.2.1 and 11.2.2 with the following new paragraphs:

“11.2.1 The *Contractor* shall, within five (5) *Days* of their notification of award of *Contract* and prior to *Contract* signing, provide any contract security specified in the *Contract Documents* or as required for “public contracts” as defined in the *Construction Act*, including without limitation, the performance bond and labour and material bonds described in paragraphs 11.2.2 and 11.2.3. Each of the bonds shall be properly executed by a surety or by an agent or attorney in fact for the surety, in which latter case, the *Contractor* shall submit with such bonds a power of attorney executed by the surety to evidence the authority of the agent or the attorney in fact.

11.2.2 If required in the *Contract Documents*, the *Procurement Documents*, or the *Construction Act*, the *Contractor*, together with a surety company approved by the *Owner* and authorised by

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Applicable Laws to carry on business in the Province in Ontario, shall furnish a Labour and Materials Payment Bond to the *Owner* using the form prescribed in the *Construction Act* in the amount of 50% of the *Contract Price*. The bond shall remain in effect until twelve (12) months after the date of *Substantial Performance of the Work*.

- 11.2.3 If required in the *Contract Documents*, the *Procurement Documents*, or the *Construction Act*, the *Contractor*, together with a surety company approved by the *Owner* and authorised by *Applicable Law* to carry on business in the Province of Ontario, shall furnish a Performance Bond to the *Owner* using the form prescribed in the *Construction Act* in the amount of 50% of the *Contract Price*.
- 11.2.4 In lieu of the bonds specified in paragraphs 11.2.1 and 11.2.2, the *Contractor* may provide unconditional and irrevocable letters of credit, in a form acceptable to the *Owner* and/or a certified cheque made out to the *Owner*, but only if permitted under the *Construction Act*.
- 11.2.5 Each bond shall have an endorsement reading: “*This bond will not be cancelled, transferred, or allowed to lapse without notifying the Owner in writing not less than 30 days before cancellation or lapsing.*”

PART 12 – INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 – INDEMNIFICATION

126. **Replace** “\$2,000,000” with “\$5,000,000” in paragraph 12.1.2.2.

GC 12.2 – WAIVER OF CLAIMS

127. **Delete** paragraphs 12.2.3, 12.2.4 and 12.2.5 in their entirety.

GC 12.3 – WARRANTY

128. **Replace** paragraph 12.3.1 with the following:

“12.3.1 The *Contractor* warrants that the *Work* is free from any defect in workmanship and materials and complies in all respects with the provisions of the *Contract Documents*. Except for the extended warranties referenced in paragraph 12.3.6, the warranty period under the *Contract* shall expire on the later of the *Base Warranty Period* set out in the *Procurement Documents* or those periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*. For work undertaken during the *Base Warranty Period*, the *Contractor* shall extend the guarantee on replaced parts and workmanship for a period equal to the later to occur of one (1) year from the date when the defect is corrected and the end of the original *Base Warranty Period*, and if such defect be corrected more than once the time period for warranty applicable shall begin again from the latest date when such defect is corrected.”

129. **Add the following at the end of paragraph 12.3.2:**

“The *Contractor* expressly warrants and guarantees to the *Owner* that the *Work* performed by the *Contractor* and by all workers, *Suppliers* and *Subcontractors* conforms to the requirements of the *Contract Documents* and is performed in a safe and careful manner.”

130. **In paragraph 12.3.3, delete the words “, through the Consultant,” and “one year”.**

131. **At the beginning of paragraph 12.3.4, add the words “Except for the provisions of paragraph 12.3.6 and”.**

132. **At the end of paragraph 12.3.4, replace the words “one-year warranty period” with the words “warranty periods specified in the *Contract Documents*.”**

133. **Replace** paragraph 12.3.6 with the following:

“12.3.6 The *Contractor* shall be responsible for obtaining *Product* warranties in excess of one year on behalf of the *Owner* from the manufacturer if required in the *Procurement Documents*. The *Product* warranties shall be issued by the manufacturer in favour of the *Owner* or if not issued to the *Owner* extended warranties beyond the *Base Warranty Period* after the date of

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acceptance of the *Work* will be assigned to the *Owner*. The *Contractor* shall ensure that such warranties commence on the date of completion of the *Work* as approved of by the Consultant and the *Owner*. The *Contractor* shall remain jointly liable with the manufacturer to the *Owner* with respect to such *Products* warranties to the extent required in the *Contract Documents*, notwithstanding any limitation in the manufacturer's warranty (which, for greater certainty, will not extend past the *Base Warranty Period*)."

134. Add the following as new paragraphs 12.3.7 to 12.3.10:

- “12.3.7 The *Contractor* shall commence to correct any warranty item, defect or deficiency within two (2) *Working Days* after receiving a *Notice in Writing* from the *Owner*, and complete the warranty item, defect or deficiency work as expeditiously as possible, except that in case the warranty item, defect or deficiency would prevent maintaining security or keep basic systems essential to the ongoing business of the *Owner*, operational as designed, all necessary corrections and/or installation of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within two (2) hours of a request made during normal business hours of the *Contractor*, the *Owner* is authorized, regardless of paragraph 3.1.1 to carry out all necessary repairs or replacements at the *Contractor's* expense.
- 12.3.8 The carrying out of replacement work and the making good of defects shall be at the sole cost of the *Contractor* and shall be executed at times convenient to the *Owner*. Additional charges for overtime *Work* in this regard shall be borne by the *Contractor* at his expense.
- 12.3.9 The *Contractor* shall also pay at his own expense for any damage to other *Work* or *property* or to *Persons* resulting from any defects or deficiencies in the *Work* which appear during the warranty period.
- 12.3.10 The *Contractor* further acknowledges that, if the *Owner* is unable to contact the *Contractor* and/or obtain the corrective work within such time period required by the *Owner*, the *Owner's* own forces may take such emergency steps as are reasonable and appropriate to correct such warranty items, defects, deficiencies or non-compliant items in the *Work*, at the *Contractor's* sole cost and expense and, except in the case of damage caused by the *Owner's* own forces, such emergency steps taken by the *Owner's* own forces shall not invalidate any warranties in respect of such portion of the *Work* affected by such corrective actions of the *Owner's* own forces. The *Contractor* shall remain bound by the terms of this *Contract* in respect of the *Work*, including such corrected *Work*, as if such corrective actions were performed by it.”

GC 13 – SET OFF

135. Add new GC 13 – SET OFF as follows:

“GC 13 – SET OFF

- 13.1.1 The *Owner* shall be entitled to deduct from or set off against any payment of the *Contract Price* and any other amounts payable by the *Owner* to the *Contractor* under this *Agreement*:
- .1 any amount expended by the *Owner* in exercising the *Owner's* rights under this *Agreement* to perform any of the *Contractor's* obligations that the *Contractor* has failed to perform;
 - .2 any amount paid by the *Owner* directly to *Subcontractors* in respect of *Work* for which the *Owner* previously paid the *Contractor*;
 - .3 any damages, costs or expenses (including, *without limitation*, reasonable legal fees and expenses) incurred by the *Owner* as a result of the failure of the *Contractor* to perform any of its obligations under this *Agreement*;
 - .4 a reasonable amount on account of any outstanding *Work* or any outstanding deficiencies, including the deficiency holdback described in paragraph 2.4.7 of GC 2.4 – DEFECTIVE WORK and the *Completion List Costs* holdback described in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK; and

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.5 any other amount owing from the *Contractor* to the *Owner* under this *Agreement*.”

END OF SUPPLEMENTARY CONDITIONS
