**Request for Tenders**

**for**

**SW149 Interior Research Lab Renovation**

**RFT No. DCM2019-02**

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[Section 1 - INTRODUCTION 3](#_Toc522867498)

[1.1 General 3](#_Toc522867499)

[1.2 The University of Toronto 3](#_Toc522867500)

[1.3 Contact Person 3](#_Toc522867501)

[1.4 Tenderer Representatives 3](#_Toc522867502)

[1.5 Conflict of Interest 3](#_Toc522867503)

[1.6 University Policies 3](#_Toc522867504)

[Section 2 - THE RFT DOCUMENTS 3](#_Toc522867505)

[2.1 Request for Tenders Documents 3](#_Toc522867506)

[2.2 Conflicts or Inconsistencies in Documents 3](#_Toc522867507)

[2.3 Distribution of Documents to Tenderers 3](#_Toc522867508)

[2.4 MERX and Background Information 3](#_Toc522867509)

[2.5 Tenderer Investigations 3](#_Toc522867510)

[Section 3 - THE RFT PROCESS 3](#_Toc522867511)

[3.1 RFT Process Timetable 3](#_Toc522867512)

[3.2 Questions and Requests for Clarifications or Information 3](#_Toc522867513)

[3.3 Notices 3](#_Toc522867514)

[3.4 Addenda/Changes to the RFT Documents 3](#_Toc522867515)

[3.5 Site Visit and Pre-Tender Meeting 3](#_Toc522867516)

[3.6 Prohibited Contacts 3](#_Toc522867517)

[3.7 Ineligible Persons 3](#_Toc522867518)

[3.8 Media Releases, Public Disclosures and Public Announcements 3](#_Toc522867519)

[3.9 Restrictions on Communications between Tenderers – No Collusion 3](#_Toc522867520)

[3.10 Disclosure of Tender Information 3](#_Toc522867521)

[3.11 Confidential Information 3](#_Toc522867522)

[3.12 Confidentiality Agreements 3](#_Toc522867523)

[3.13 Copyright and Use of Information in Tenders 3](#_Toc522867524)

[3.14 Governing Law and Attornment 3](#_Toc522867525)

[3.15 Licences and Permits 3](#_Toc522867526)

[3.16 Entities Permitted to Submit Tenders 3](#_Toc522867527)

[3.17 Tenderers’ Costs 3](#_Toc522867528)

[3.18 Changes to Tenderers 3](#_Toc522867529)

[3.19 Insurance and Workplace Safety during the RFT Process 3](#_Toc522867530)

[Section 4 - TENDER CONTENT AND FORMAT 3](#_Toc522867531)

[4.1 Format and Content of Tender 3](#_Toc522867532)

[4.2 Tender Submission Form 3](#_Toc522867533)

[4.3 Bonding 3](#_Toc522867534)

[4.4 Tender Pricing 3](#_Toc522867535)

[4.5 Joint Ventures and Parental Indemnities 3](#_Toc522867536)

[Section 5 - TENDER SUBMISSION, WITHDRAWAL, MODIFICATION 3](#_Toc522867537)

[5.1 Submission of Tenders and Late Tenders 3](#_Toc522867538)

[5.2 Late Tenders 3](#_Toc522867539)

[5.3 Withdrawal of Tenders 3](#_Toc522867540)

[5.4 Amendment of Tenders 3](#_Toc522867541)

[5.5 Tender Irrevocability 3](#_Toc522867542)

[5.6 Tenders to be Retained by University 3](#_Toc522867543)

[Section 6 - TENDER EVALUATION 3](#_Toc522867544)

[6.1 Evaluation Team 3](#_Toc522867545)

[6.2 Compliance 3](#_Toc522867546)

[6.3 Evaluation of Tenders 3](#_Toc522867547)

[6.4 The University’s Discretion 3](#_Toc522867548)

[6.5 Disqualification 3](#_Toc522867549)

[6.6 The University’s Right to Accept, Reject and Cancel 3](#_Toc522867550)

[Section 7 TENDER AWARD AND AGREEMENT SUBMISSION AND EXECUTION 3](#_Toc522867551)

[7.1 Tender Award 3](#_Toc522867552)

[7.2 Execution and Submission of Agreement Documents 3](#_Toc522867553)

[7.3 Failure to Execute the Agreement and Provide Documents 3](#_Toc522867554)

[Section 8 - LEGAL MATTERS AND RIGHTS OF THE UNIVERSITY 3](#_Toc522867555)

[8.1 Notification If Successful Or Not 3](#_Toc522867556)

[8.2 Debriefing 3](#_Toc522867557)

[8.3 Dispute Resolution 3](#_Toc522867558)

[8.4 Limit on Liability 3](#_Toc522867559)

[Section 9 - DEFINITIONS 3](#_Toc522867560)

[9.1 General 3](#_Toc522867561)

[9.2 RFT Definitions 3](#_Toc522867562)

[SCHEDULE A RFT DATA SHEET 3](#_Toc522867563)

[Attachment 1 to Schedule A Joint Venture Requirements 3](#_Toc522867564)

[SCHEDULE B TENDER SUBMISSION FORM 3](#_Toc522867565)

[Attachment 1 to Schedule B Subcontractors 3](#_Toc522867566)

[SCHEDULE C CONFLICT OF INTEREST DECLARATION 3](#_Toc522867567)

[Attachment 1 to Schedule C Exceptions 3](#_Toc522867568)

[SCHEDULE D PRICE SCHEDULES 3](#_Toc522867569)

[SCHEDULE E DRAFT AGREEMENT AND SCHEDULES TO THE DRAFT AGREEMENT 3](#_Toc522867570)

**REQUEST FOR TENDERS**

1. - INTRODUCTION
   1. General
      1. The Governing Council of the University of Toronto (the “**University**”) is issuing the RFT Documents to retain a supplier to provide the work briefly described in the RFT Data Sheet and set out in the Draft Agreement (the “**Work**”) at the location described in the RFT Data Sheet (the “**Site**”). The Tender number is set out in the RFT Data Sheet (the “**RFT Number**”)
      2. The University intends to award the final agreement that will be entered into pursuant to the RFT Process (the “**Final Agreement**”) through an open, fair and competitive RFT Process. The RFT Process is open either to,
         1. any entity described in RFT Section 3.16(2);
         2. if a prequalification has taken place, only those entities that are prequalified to submit a Tender as specified in the RFT Data Sheet (the “**Prequalified Parties**”); or
         3. only those entities that have been invited to submit a Tender as specified in the RFT Data Sheet,

as applicable. In the RFT Documents, individuals or firms that submit a tender (the “**Tender**”) in response to the RFT Process are referred to as “**Tenderers**”. The entity or entities that are selected to be awarded the Work are referred to as the “**Successful Tenderer(s)**”. For ease of reference, prospective tenderers, whether or not they submit a response to the RFT Process, are also referred to as “Tenderers”.

* + 1. The process to select the Successful Tenderers to carry out the Work will commence with the issuance of the RFT Documents (as defined in RFT Section 2.1(1)) and will terminate when the University selects the Successful Tenderer or Successful Tenderers (the “**RFT Process**”).
  1. The University of Toronto
     1. The University of Toronto was established in 1827 and is Canada’s largest university, recognized as a global leader in research and teaching. The University has over 90,000 full-time and part-time students (79,262 full-time equivalents), making it one of the largest universities in North American in terms of enrolment. The University’s size and academic resources provide its students with a wide range of academic programs and courses, while its unique college system offers learning experiences enriched by individual cultures in a smaller community. The University consistently ranks among the top 25 universities in the world. Its distinguished faculty, institutional records of ground-breaking scholarship and wealth of innovative academic opportunities continually attract outstanding academics and students from around the world. The University is located on three campuses: St. George (downtown Toronto), Scarborough (UTSC) and Mississauga (UTM).
  2. Contact Person
     1. Except as set out in RFT Section 3.5,the Tenderers are required to submit all questions and other communications regarding the RFT Documents, the RFT Process and their Tenders by e-mail to the contact person named in the RFT Data Sheet (the “**Contact Person**”) at the e­mail address set out in the RFT Data Sheet. During this RFT Process, Tenderers may only contact the University through the Contact Person.
  3. Tenderer Representatives
     1. All correspondence from the University to a specific Tenderer will be sent to the person identified by the Tenderer to receive information and notices on behalf of the Tenderer (the “**Tenderer Representative**”). Each Tenderer will identify the Tenderer’s Tenderer Representative on the confidentiality agreement delivered to the University by the Tenderer in accordance with RFT Section 3.12, if applicable. Each Tenderer is solely responsible to ensure that all contact information of the Tenderer Representative is accurate and updated at all times during the RFT Process. Tenderers may update or revise their Tenderer Representatives’ information by notifying the Contact Person, in writing by e-mail.
  4. Conflict of Interest
     1. For the purposes of this RFT Process “**Conflict of Interest**” includes any situation or circumstance where a Tenderer or any of its Advisors, or any of the employees of a Tenderer or Tenderer Advisor engaged in the development or oversight of development of the Tenderer’s Tender (including for such employees in their personal capacities):
        1. has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
           1. could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the University or its Advisors; or
           2. could or could be seen to compromise, impair or be incompatible with the effective performance of a Tenderer’s obligations under the Draft Agreement if that Tenderer was determined to be a Successful Tenderer under the RFT Process;
        2. has contractual or other obligations to the University that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFT Process; or
        3. has knowledge of confidential information (other than Confidential Information) that,
           1. has been made available to the Tenderer or any of its Advisors;
           2. is of strategic and/or material relevance to the RFT Process or to the Work; and
           3. is not available to other Tenderers and that could or could be seen to give the Tenderer an unfair competitive advantage.
     2. If a Tenderer believes that a Tenderer or a person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of the Tender may have a perceived, potential or actual Conflict of Interest prior to the submission of a Tender, then that Tenderer is required to deliver to the Contact Person through e-mail and no later than the deadline set out in the Timetable a completed and executed Schedule C of this RFT – Conflict of Interest Declaration, which will be used by the University in its assessment of the presence of a perceived, potential or actual Conflict of Interest involving any Tenderer or any employee or Advisor of the University in respect of the Work. For clarity, all Tenderers are also required to submit updated, completed and executed versions of Schedule C of this RFT – Conflict of Interest Declaration as part of their Tenders. Following submission of its Tender, if a Tenderer discovers any perceived, potential or actual Conflict of Interest, the Tenderer will promptly disclose such Conflict of Interest to the Contact Person.
     3. Tenderers are advised to review the University of Toronto Code of Ethics and to ensure that the Tenderer and its Advisors have complied with these policies and with any instructions from the University arising from the application of these policies. For clarity, Tenderers have an ongoing obligation to comply with this RFT Section 1.5(3) in addition to complying with the foregoing policies.
     4. At the request of the University, the Tenderer will provide the University with the Tenderer’s proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Tenderer will submit any additional information to the University that the University considers necessary to properly assess the perceived, potential or actual Conflict of Interest.
     5. The final determination of whether a perceived, potential or actual Conflict of Interest exists will be made by the University in its sole discretion. The University may, in its sole discretion,
        1. exclude any Tenderer or Tenderer’s Advisor on the grounds of Conflict of Interest;
        2. require the Tenderer or a Tenderer’s Advisor to substitute a new person or entity with similar qualifications for the person or entity giving rise to the Conflict of Interest; and/or
        3. waive any and all perceived, potential or actual Conflicts of Interest of Tenderers or any of their respective Advisors, upon such terms and conditions as the University, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Tenderer to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the University, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
     6. Without limitation to any other rights of the University hereunder, in order to ensure the integrity, openness and transparency of the RFT Process, the University may, in its sole discretion
        1. impose at any time on all Tenderers additional conditions, requirements or measures, with respect to bidding practices or ethical behaviour of the Tenderers; and
        2. require that any or all Tenderers at any time during the RFT Process provide the University with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Tenderer with such policies, processes and controls.
  5. University Policies
     1. Tenderers are required to adhere to and comply with the commitments set out in all University policies which are available on the University’s website, including the following and any other policies set out in the RFT Data Sheet:
        1. *Accessibility for Ontarians with Disabilities Act*:
           1. The University is bound by the *Accessibility for Ontarians with Disabilities Act* (the “AODA”) and will require that Successful Tenderers comply with all relevant AODA Standards applicable to the Work being provided. Tenderers acknowledge that Successful Tenderers will also be required to confirm that they have reviewed the University’s training document for volunteers and other services providers available at the AODA website prior to providing the Work.
        2. Sexual Violence and Sexual Harassment Training:
           1. Provincial legislation mandates that the University make sexual violence and sexual harassment training available to all members of its community. The University strongly encourages Successful Tenderers to complete the online training module to help create a campus environment in which all members of the University community can study, live and work free from sexual violence. To learn more about the University’s Policy on Sexual Violence and Harassment, including how to gain access to the training, please contact [ed.thesvpcentre@utoronto.ca](mailto:ed.thesvpcentre@utoronto.ca).

1. - THE RFT DOCUMENTS
   1. Request for Tenders Documents
      1. The Request for Tenders documents (the “**RFT Documents**”) are:
         1. the Request for Tenders (the “**RFT**”);
         2. Schedule A – RFT Data Sheet;
         3. Schedule B – Tender Submission Form;
         4. Schedule C – Conflict of Interest Declaration;
         5. Schedule D – Price Schedules; and
         6. Schedule E – Draft Agreement and Schedules to the Draft Agreement (including all related appendices and attachments thereto) (the “**Draft Agreement**”); and
         7. Addenda to the RFT Documents, if any.
      2. The Tenderers are instructed to read the RFT Documents as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFT and are incorporated by reference.
      3. The University may also provide Tenderers with background information (the “**Background Information**”). Whether or not Background Information will be provided to the Tenderers is noted in the RFT Data Sheet. No document containing Background Information shall form part of the RFT Documents. Background Information is provided only for the convenience of Tenderers.
   2. Conflicts or Inconsistencies in Documents
      1. For the purpose of the RFT Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFT Documents, the following will apply:
         1. in respect of matters of interpretation related to the RFT Process and all competitive procurement process matters, this RFT will prevail over the Schedules to this RFT during the RFT Process;
         2. in respect of all matters of interpretation of the Work and the Draft Agreement during the RFT Process, the Draft Agreement will prevail over this RFT and all other Schedules to this RFT; and
         3. for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Draft Agreement, the provisions of the Draft Agreement dealing with conflicts or inconsistencies will govern.
      2. Despite RFT Section 2.2(1), if a Tenderer believes that there is any term or condition in any RFT Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFT Documents, the Tenderer is required to notify the University of that ambiguity, conflict or inconsistency in accordance with RFT Section 3.2 and, for clarity, by the deadline set out in the Timetable (as defined in RFT Section 3.1) for the submission ofQuestions.
      3. If there is a conflict or inconsistency between:
         1. the University’s electronic version of an RFT Document as contained on MERX; and
         2. any other version of the same RFT Document (whether in electronic or hard copy),

the University’s electronic version as contained on MERX will govern.

* + 1. If there is any conflict or inconsistency between documents, including RFT Documents contained on MERX and documents that are downloaded by the Tenderer, the documents contained on MERX will govern.
    2. If there is any conflict or inconsistency between two versions of the same RFT Document contained on MERX, the RFT Document of the later date or version number will prevail over the same RFT Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFT Section 2.2(5), the date of each RFT Document will be determined by the date and time when that document was placed on MERX by the University.
  1. Distribution of Documents to Tenderers
     1. Except as provided in RFT Section 2.3(2), the University will circulate this RFT and all other RFT Documents, including Addenda, by placing them on MERX. If the University chooses to notify Tenderer Representatives that documents have been added on MERX, such notification is a courtesy only and Tenderers are solely responsible to ensure that they have reviewed all documents on MERX in accordance with RFT Section 2.4(2) and, in particular, have reviewed all documents on MERX immediately prior to submitting Tenders.
     2. If a Tenderer requires the RFT Documents in paper copy, the Tenderer may submit a request to the Contact Person, along with a reason for why the Tenderer requires the RFT Documents in paper copy. Following consideration of the Tenderer’s request, the University may, in its sole discretion, choose to circulate RFT Documents in paper copy to the Tenderer who made the request.
  2. MERX and Background Information
     1. The University will use MERX to,
        1. distribute RFT Documents, Notices and Addenda;
        2. provide various types of Background Information for the Tenderers’ review; and
        3. provide Questions and Answers Documents for the Tenderers’ review.

The University may add, delete or amend documents on MERX at any time.

* + 1. Each Tenderer is solely responsible to ensure that it:
       1. notifies the Contact Person if the Tenderer is having difficulty viewing the RFT Documents, Addenda, Background Information, Notices or any Questions and Answers Document on MERX;
       2. has the appropriate software which allows the Tenderer to access and download RFT Documents, Notices, Addenda, Background Information and the Questions and Answers Documents from MERX; and
       3. checks MERX frequently for the addition, deletion or amendment of RFT Documents, Notices, Addenda, Background Information and any Questions and Answers Document and, at all times during the RFT Process, keeps itself informed of and takes into account the most current RFT Documents, Notices, Addenda, Background Information and Questions and Answers Documents.
  1. Tenderer Investigations
     1. Each Tenderer is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Tenderer to satisfy itself as to all existing conditions affecting the Work or the Draft Agreement. The Tenderers’ obligations set out in this RFT Section 2.5 apply irrespective of any Background Information on MERX or information contained in the RFT Documents or in any Questions and Answers Documents. The Tenderers’ obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the University is more particularly set out in the Draft Agreement.
     2. Except as may be expressly provided in the Draft Agreement, the University does not represent or warrant the accuracy or completeness of any information that is set out in the RFT Documents or that is made available to Tenderers on MERX as Background Information or of any other background or reference information or documents prepared by the University or by third parties and which may be made available to Tenderers by or through the University. Tenderers will make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Tenderers on any and all such information will be at the Tenderers’ sole risk and without recourse against the University.

1. - THE RFT PROCESS
   1. RFT Process Timetable
      1. The deadline for the submission of Tenders (the “**Submission Deadline**”) and the general timetable for the RFT Process (the “**Timetable**”) are set out in the RFT Data Sheet.
      2. The University may, without liability, cost or penalty and in its sole discretion amend the Timetable,
         1. for matters that are to take place on or before the Submission Deadline, at any time prior to the Submission Deadline; and
         2. for matters that are to take place after the Submission Deadline, at any time during the RFT Process.
      3. If the University extends the Submission Deadline, all obligations of Tenderers will thereafter be subject to the extended deadline.
      4. In the event of any conflict, inconsistency or ambiguity between the deadlines set out in the Timetable and any deadline set out or displayed on Bonfire or MERX, the deadlines set out in the Timetable will govern.
   2. Questions and Requests for Clarifications or Information
      1. In addition to the requirement set out in RFT Section 1.3, the following rules will apply to Tenderers when submitting questions or requests for clarifications or information (“**Questions**”) to the University during the RFT Process:
         1. Tenderers are required to submit all Questions to the Contact Person electronically by e-mail and in accordance with the deadlines set out in the Timetable. Tenderers are required to clearly identify in each Question,
            1. whether or not the Tenderer considers the Question to be a “General Question” or a “Commercially Confidential Question”;
            2. the RFT Number, as set out in the RFT Data Sheet; and
            3. if the Tenderer is referencing a document and section of the RFT Documents in the Question, the document and section that the Tenderer is referencing.
         2. Tenderers are permitted to submit Questions categorized as follows:
            1. Questions that are of general application and that would apply to other Tenderers (“**General Questions**”); and
            2. Questions that the Tenderer considers to be commercially sensitive or confidential to that particular Tenderer (“**Commercially Confidential Questions**”);
         3. If the University disagrees with the Tenderer’s categorization of a Question as a Commercially Confidential Question, the University will give the Tenderer an opportunity to either categorize the Question as a General Question or to withdraw the Question;
         4. If the University determines, in its sole discretion, that a Commercially Confidential Question, even if it is withdrawn by a Tenderer, is of general application or would provide a significant clarification of the RFT Documents or RFT Process to Tenderers, the University may provide a clarification to Tenderers in a Questions and Answers Document that deals with the same subject matter as the withdrawn Commercially Confidential Question; and
         5. If the University agrees with the Tenderer’s categorization of a Commercially Confidential Question, then the University will provide a response to that Question to only the Tenderer that submitted the Question.
      2. The University will respond to General Questions by posting a “**Questions and Answers Document**” or a series of “**Questions and Answers Documents**” to MERX in accordance with the schedule set out in the Timetable. The University may, in its sole discretion, distribute responses to Questions of a minor or administrative nature to only the Tenderer who submitted the minor or administrative Question.
      3. The Questions and Answers Documents prepared and posted or circulated by the University are not RFT Documents and do not amend the RFT Documents. If, in the University’s sole discretion, responses to Questions require an amendment to the RFT Documents, such amendment will be prepared and circulated by Addendum in accordance with RFT Section 3.4. Only a response to a Question that has been incorporated into or issued as an Addendum will modify or amend the RFT Documents and, otherwise, the Questions and Answers Documents will have no force or effect whatsoever and will not be relied upon by any Tenderer.
      4. It is the Tenderer’s obligation to seek clarification from the University of any matter it considers to be unclear in accordance with this RFT Section 3.2. The University is not responsible in any way whatsoever for any misunderstanding by the Tenderer of the RFT Documents, Background Information, the Questions and Answers Documents, any documents placed on MERX or any other type of information provided by or communication made by the University or any third party.
   3. Notices
      1. The University may, in its sole discretion, issue Notices on MERX to Tenderers for the purpose of communicating on issues of importance to the RFT Process. Such Notices are not RFT Documents and do not amend the RFT Documents.
   4. Addenda/Changes to the RFT Documents
      1. The University may, in its sole discretion, amend or supplement the RFT Documents prior to the Submission Deadline. The University will issue changes to the RFT Documents by Addenda only by placing them on MERX. No other statement, whether spoken or written, made by the University or the University’s Advisors, including, for clarity, the Contact Person, or any other person, will amend the RFT Documents. The approximate final date that the University will issue an Addendum is set out in the Timetable, however, the University may issue Addenda at any time.
      2. The Tenderer is solely responsible to ensure that it has received all Addenda issued by the University. Tenderers may, in writing, seek confirmation of the number of Addenda issued pursuant to the RFT Documents from the Contact Person.
   5. Site Visit and Pre-Tender Meeting
      1. The University may, in its sole discretion, conduct either a visit to the applicable Site or Sites of the Work (“**Site Visit**”) or a pre-Tender information meeting (“**Pre-Tender Meeting**”), or both, prior to the Submission Deadline.
      2. Whether the Site Visit and Pre-Tender Meeting will be held is set out in the RFT Data Sheet. If the University holds a Site Visit or a Pre-Tender Meeting, attendance at such Site Visit or Pre-Tender Meeting is required and failure to attend will result in disqualification from further consideration in the RFT Process. The University will not conduct additional Site Visits for Tenderers that fail to attend the planned Site Visit or additional Pre-Tender Meetings for Tenderers that fail to attend the Pre-Tender Meeting.
      3. Unless otherwise set out in the RFT Data Sheet, detailed information with respect to the time, date and location for the Site Visit and Pre-Tender Meeting will be communicated to Tenderers by Notice.
      4. Tenderers will observe all health and safety requirements during Site Visits. The minimum health and safety requirements for Tenderers attending the Site Visit are set out in the RFT Data Sheet. Tenderers acknowledge that the Tenderer, its employees and its representatives attend Site Visits at their own risk.
      5. No statement, consent, waiver, acceptance, approval or anything else said or done in any Site Visit or Pre-Tender Meeting by the University or its Advisors will amend or waive any provision of the RFT Documents, or be binding on the University or be relied upon in any way by Tenderers or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFT Documents issued in accordance with RFT Section 3.4, provided that the University will not be under any obligation to confirm any information by Addendum.
   6. Prohibited Contacts
      1. Tenderers and their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFT Process.
      2. Without limiting the generality of RFT Section 3.6(1), neither Tenderers nor any of their respective Advisors, employees or representatives will contact or attempt to contact, either directly or indirectly, at any time during the RFT Process, any of the following persons or organizations on matters related to the RFT Process, the RFT Documents, or their Tenders:
         1. any member of the Evaluation Team;
         2. any Advisor to the University or the Evaluation Team;
         3. any employee or representative of,
            1. the University; or
            2. any other person or entity listed in the RFT Data Sheet; or
         4. any directors, officers, employees, agents, representatives or consultants of any entity listed in RFT Sections 3.6(2)(a) to 3.6(2)(c), including any member of the Governing Council of the University of Toronto.
      3. If a Tenderer or any of its respective Advisors, employees or representatives, in the opinion of the University, contravenes RFT Section 3.6(1) or RFT Section 3.6(2), the University may, in its sole discretion,
         1. take any action in accordance with RFT Section 6.5; or
         2. impose conditions on the Tenderer’s continued participation in the RFT Process that the University considers, in its sole discretion, to be appropriate.

For clarity, the University is not obliged to take the actions set out in this RFT Section 3.6(3).

* + 1. The Tenderer and its respective Advisors will,
       1. no later than the date set out in the Timetable, disclose all information in respect of Work which the Tenderer or its respective Advisors have generated or have available to them as a result of work carried out by the Tenderer or its respective Advisors, for the University in respect of, or in anticipation of the Work; and
       2. at the request of the University, provide a director’s or officer’s certificate confirming that the requirements of RFT Section 3.6(4)(a) have been complied with by the Tenderer.

For clarity, the University may, in its sole discretion, circulate the information provided pursuant to RFT Section 3.6(4)(a) to other Tenderers and their respective Advisors. If any Tenderer becomes aware of relevant information of the type set out in RFT Section 3.6(4)(a) that has not been made available to all Tenderers, that Tenderer will disclose such information promptly to the Contact Person.

* 1. Ineligible Persons
     1. As a result of their involvement with respect to the Work, the persons named as “**Ineligible Persons**” in the RFT Data Sheet, (collectively, “**Ineligible Persons**”) and their respective Advisors engaged in respect of the Work and, subject to RFT Sections 3.7(2), any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “**Ineligible Person’s Affiliate**”) are not eligible to participate as a Tenderer or Advisor to the Tenderer. The University may amend the Ineligible Persons list in the RFT Data Sheet from time to time during the RFT Process.
     2. An Ineligible Person’s Affiliate may be eligible to participate as a Tenderer or Advisor to a Tenderer only after it has obtained written consent from the University permitting it to participate as a Tenderer or Advisor to the Tenderer. The University will, in its sole discretion, make a determination as to whether the University considers there to be a perceived, potential or actual Conflict of Interest (as defined in RFT Section 1.5(1)) and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized.
  2. Media Releases, Public Disclosures and Public Announcements
     1. Tenderers are prohibited from, and will ensure that their Advisors are prohibited from issuing or disseminating any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFT Process, the RFT Documents or the Work or any matters related thereto, without the prior written consent of the University, which consent may be withheld in the University’s sole discretion.
     2. Neither the Tenderers nor any of their respective Advisors, will make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Tenderer or Tender or to publicly promote or advertise their own qualifications, interest in or participation in the RFT Process without the University’s prior written consent, which consent may be withheld in the University’s sole discretion.
     3. For the purpose of greater clarity, RFT Section 3.8(2) does not prohibit disclosures necessary to permit the Tenderer to discuss the Work with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors’ participation with respect to the Work.
  3. Restrictions on Communications between Tenderers – No Collusion
     1. Neither a Tenderer nor its respective Advisors or representatives will discuss or communicate, directly or indirectly, with any other Tenderer (or such Tenderer’s Advisors or representatives), any information whatsoever regarding the preparation of its own Tender or the Tender of any other Tenderer in a fashion that would contravene Governing Law. Tenderers are required to prepare and submit Tenders independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Tenderer.
  4. Disclosure of Tender Information
     1. The Tenderer agrees that the University may, in its sole discretion, disclose to the public,
        1. the name and address of the Tenderer;
        2. the Tenderer’s Total Tender Price;
        3. the ranking of the Tenderer after evaluation of its Tender; and
        4. whether the Tenderer’s Tender was compliant in accordance with RFT Section 6.2 and the basis for any failure to comply.
     2. Tenderers are advised that the University may be required to disclose the RFT Documents and a part or parts of any Tender pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time (“**FIPPA**”) or in order to comply with the University’s policies or other Governing Law.
     3. Subject to the provisions of FIPPA, the University will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Tenderer as confidential but will not be liable in any way whatsoever to any Tenderer if such information is disclosed based on an order or decision of the Information and Privacy Commissioner, or otherwise as required under Governing Law. Tenderers are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Tenders.
  5. Confidential Information
     1. For the purpose of this RFT Process, “**Confidential Information**” means all material, data, information or any item in any form, whether spoken or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the University or the University’s Advisors, in connection with the RFT Process, the RFT Documents or the Work, whether supplied, obtained from or provided before or after the RFT Process.
     2. The Tenderer agrees that all Confidential Information:
        1. will remain the sole property of the University and the Tenderer will treat it as confidential;
        2. will not be used by the Tenderer for any purpose other than developing and submitting a Tender in response to this RFT Process, or the performance of any subsequent agreement relating to the Work with the University;
        3. will not be disclosed by the Tenderer to any person who is not involved in the Tenderer’s preparation of its Tender, or the performance of any subsequent agreement relating to the Work with the University, without prior written consent of the University, in its sole discretion;
        4. will not be used in any way detrimental to the University; and
        5. if requested by the University, all Confidential Information will be destroyed by the Tenderers no later than 10 Business Days after that request.
     3. Each Tenderer will be responsible for any breach of the provisions of this RFT Section 3.11 by any person to whom it discloses the Confidential Information including, for clarity, the Tenderer’s Advisors. Each Tenderer will indemnify the University and each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFT Section 3.11 by the Tenderer or by any person to whom the Tenderer has disclosed the Confidential Information. Each Tenderer agrees that the University acts as trustee for each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of an Advisor, a related entity or any of their respective directors, officers, consultants, employees, agents or representatives and that the University has agreed to accept such trust and hold and enforce such rights on behalf of each such Advisor or related entity and each of their respective directors, officers, consultants, employees, agents and representatives.
     4. Each Tenderer acknowledges and agrees that a breach of the provisions of this RFT Section 3.11 would cause the University, its Advisors, and its related entities to suffer loss that could not be adequately compensated by damages, and that the University and its Advisors and related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFT Section 3.11 upon application to a court of competent jurisdiction without proof of actual damage to the University, its Advisors, or its related entities.
     5. Notwithstanding anything else to the contrary in the RFT Documents, the provisions of this RFT Section 3.11 will survive any cancellation of this RFT Process and the conclusion of the RFT Process and, for greater clarity, will be legally binding on all Tenderers, whether or not a Tenderer submits a Tender.
     6. The confidentiality obligations of the Tenderer will not apply to any information which falls within the following exceptions:
        1. information that is lawfully in the public domain at the time of first disclosure to the Tenderer, or which, after disclosure to the Tenderer, becomes part of the public domain other than by a breach of the Tenderer’s confidentiality obligations or by any act or fault of the Tenderer;
        2. information which was in the Tenderer’s possession prior to its disclosure to the Tenderer by the University, and provided that it was not acquired by the Tenderer under an obligation of confidence; or
        3. information which was lawfully obtained by the Tenderer from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.
  6. Confidentiality Agreements
     1. No later than five Business Days after a request by the University, the Tenderer will cause each of its representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the University a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the University, in its sole discretion. Tenderers are advised that they will not be provided with Background Information or any Questions and Answers Documents, and that they will not be permitted to attend a Pre-Tender Meeting or Site Visit, unless and until they comply with this RFT Section 3.12(1).
  7. Copyright and Use of Information in Tenders
     1. The University’s rights, as set out in this RFT Section 3.13, to the Tender and all Tender Information submitted by the Tenderer during the RFT Process will be granted to the University as follows upon submission of the Tender.
     2. Tenderers will not use or incorporate into their Tenders any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Tenderers have, or will procure through licensing without cost to the University, the right to use and employ such concepts, products and processes in and for the Work.
     3. All requirements, designs, documents, plans and information supplied by the University to the Tenderers in connection with this RFT Process are and will remain the property of the University. Upon request of the University, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Tenderer) must be destroyed.
     4. The Tenderer will grant to the University a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Tenderer and with the right to sub-licence without the consent of the Tenderer) to use the Tender Information for the purposes of evaluation of Tenders and the negotiation and execution of any Final Agreement (the “**Tender Information Licence**”). Under no circumstances will the Tenderer, except the counterparty to the University in the Final Agreement in relation to the Work, be liable to the University or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Tender Information pursuant to the Tender Information Licence.
     5. For the purposes of this RFT Section 3.13, “**Tender Information**” includes all information contained in a Tender or which is disclosed by or through a Tenderer to the University during the evaluation of Tenders or during the process of executing any Final Agreement and any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Tenderer and revealed to or discovered by the University, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Tender or the Draft Agreement.
     6. Tenderers will ensure that all intellectual property rights associated with any and all of the Tender Information (including copyright and moral rights but excluding patent rights) provide for and give the University the rights set out in this RFT Section 3.13. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the University to use any of the Tender Information as contemplated in this RFT Section 3.13, or anything else obtained by or through Tenderers, will be unenforceable as against the University and each of their respective Advisors, and that the provisions of this RFT Section 3.13 will take precedence and govern.
  8. Governing Law and Attornment
     1. The RFT Documents and any Final Agreement will be governed and construed in accordance with Governing Law.
     2. The Tenderer agrees that,
        1. any action or proceeding relating to this RFT Process will be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose each Tenderer and the University irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
        2. it irrevocably waives any right to and will not oppose any Ontario action or proceeding relating to this RFT Process on any jurisdictional basis, including *forum non conveniens*; and
        3. it will not oppose the enforcement against it, in any other jurisdiction, of any judgment or order duly obtained from an Ontario court as contemplated by this RFT Section 3.14(2).
  9. Licences and Permits
     1. If a Tenderer is required by the Governing Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Tender, neither acceptance of the Tender nor execution of the Final Agreement will be considered to be approved by the University to carry on such activity without the requisite licence, permit, consent or authorization.
  10. Entities Permitted to Submit Tenders
      1. If a prequalification process has preceded the RFT Process, subject to RFT Section 3.18, only the Prequalified Parties are eligible to participate in the RFT Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded the RFT Process are referred to as a Prequalified Party’s “**Prequalification Submission**”.
      2. If a prequalification process has not preceded the RFT Process, a Tender may be submitted by:
         1. a single person or entity as the Tenderer;
         2. a collection of entities or individuals as the Tenderer (a “**Joint Venture Tenderer**” and each entity or individual being a “**Joint Venture Participant**”); or
         3. a prime contractor and subcontractors.
      3. Where a Tender is submitted by a prime contractor and subcontractors, the prime contractor shall submit a Tender on its own behalf and on behalf of its subcontractors and the prime contractor shall be responsible for ensuring its subcontractors perform their obligations under the Final Agreement.
  11. Tenderers’ Costs
      1. The Tenderer will bear all costs and expenses incurred by the Tenderer relating to any aspect of its participation in this RFT Process, including, without limitation, all costs and expenses related to the Tenderer’s involvement in,
         1. the preparation, presentation and submission of its Tender;
         2. due diligence and information gathering processes;
         3. attendance at any Pre-Tender Meeting or any other meeting with the University;
         4. preparation of responses to questions or requests for clarification from the University;
         5. Site Visits;
         6. preparation of the Tenderers’ Questions during the RFT Process;
         7. review of the University’s Questions and Answers Documents, Background Information, Addenda and Notices;
         8. preparation of samples, proof of concept and/or demonstrations; and
         9. any discussions or negotiations with the University regarding the Draft Agreement.
      2. In no event will the University be liable to pay any costs or expenses or to reimburse or compensate a Tenderer under any circumstances, regardless of the conduct or outcome of the RFT Process.
  12. Changes to Tenderers
      1. If a prequalification process has preceded the RFT Process, during the RFT Process, a Tenderer will not permit a Prequalified Tenderer Change to the Tenderer or any Identified Tenderer Party without the prior written consent of the University. For the purposes of this RFT Section 3.18(1), a change of control will exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange.
      2. If, prior to the Submission Deadline, there is a Prequalified Tenderer Change, the Tenderer will request the consent of the University by notifying the Contact Person in writing through e-mail as soon as possible and, in any event, no later than seven days prior to the Submission Deadline. That notification will clearly identify the Prequalified Tenderer Change and provide details regarding the impact of the Prequalified Tenderer Change on the Tenderer or Identified Tenderer Party, as applicable. In addition, if the Prequalified Tenderer Change involves the proposed substitution of an Identified Tenderer Party, the Tenderer will include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded the RFT Process.
      3. In response to a notification in accordance with RFT Section 3.18(2), the University may, in its sole discretion, provide the Tenderer with instructions as to the type of information required by the University to consider the Prequalified Tenderer Change as well as the deadlines for submission of information that the Tenderer must meet in order to have its request considered by the University. The Tenderer will provide any further documentation as may be reasonably requested by the University to assess the impact of the Prequalified Tenderer Change on the Tenderer and any Identified Tenderer Party, including, in the case of a proposed substitution, the acceptability of the proposed substitute. If the University, in its sole discretion, considers the Prequalified Tenderer Change to be acceptable, the University may consent to the Prequalified Tenderer Change. The University’s consent to the Prequalified Tenderer Change, however, may be subject to such terms and conditions as the University may require. In the case of a proposed substitution of an Identified Tenderer Party, if a Prequalified Tenderer Change is not acceptable to the University, the Tenderer may propose an alternate substitute for review by the University in the same manner as the first proposed substitute. The University may, in its sole discretion, accept a Prequalified Tenderer Change, subject to such terms and conditions as the University, in its sole discretion, may require, disallow any Prequalified Tenderer Change and may disqualify a Tenderer from further consideration in the RFT Process.
      4. In the case of a Prequalified Tenderer Change made by the Tenderer without consent by the University or a Prequalified Tenderer Change after the Submission Deadline, the University may, in its sole discretion, disqualify the Tenderer and terminate the Tenderer’s continued involvement in the RFT Process or allow the Tenderer to continue under such terms and conditions as the University, in its sole discretion, may require.
      5. Irrespective of whether a prequalification process has preceded the RFT Process,if, on or after the Submission Deadline and prior to execution of the Final Agreement, there is a Post-Submission Tenderer Change, then the Tenderer will promptly notify the University in writing to the Contact Person through e-mail. In response to a notification in accordance with this RFT Section 3.18(5), the University may, in its sole discretion, provide the Tenderer with instructions as to the type of information required by the University to consider the Post-Submission Tenderer Change as well as the deadlines for submission of information that the Tenderer must meet in order to have its request considered by the University. The Tenderer will provide any further documentation as may be reasonably requested by the University to assess the impact of the Post-Submission Tenderer Change on the Tenderer, including in the case of a proposed substitution of a Joint Venture Participant, the acceptability of the proposed substitute. In the case of a proposed substitution, if a Post-Submission Tenderer Change is not acceptable to the University, the Tenderer may propose an alternate substitute for review by the University in the same manner as the first proposed substitute. The University may, in its sole discretion, refuse to accept a Post-Submission Tenderer Change that occurs or is requested by the Tenderer after the Submission Deadline and may, in its sole discretion, disqualify the Tenderer from continuing in the RFT Process.
      6. If, at any time prior to the execution of the Final Agreement, and notwithstanding any other provision in the RFT Documents, there is a change of Control of a Tenderer (the "**Acquiree**") by one of the other Tenderers (the "**Acquirer**"):
         1. the Acquiree will be immediately disqualified from further participation in this RFT Process; and
         2. the University may, in its sole discretion, allow the Acquirer to continue in the RFT Process, however, the University’s consent to continue may be subject to such terms and conditions as the University may require.
  13. Insurance and Workplace Safety during the RFT Process
      1. If, during the RFT Process, a Tenderer attends a Site Visit or Pre-Tender Meeting contemplated in the RFT Documents, such Tenderer represents and warrants that it has obtained and maintained sufficient insurance and has fulfilled any requirements with respect to workplace safety as required by Governing Law in order to attend such Site Visit or Pre-Tender Meeting.

1. - TENDER CONTENT AND FORMAT
   1. Format and Content of Tender
      1. Tenderers must prepare their Tenders in accordance with and in the content and format requirements set out as follows:
         1. a completed Tender Submission Form (prepared in accordance with the requirements set out in Schedule B to the RFT);
         2. an updated, completed and executed Conflict of Interest Declaration (prepared in accordance with the requirements set out in Schedule C to the RFT);
         3. a completed Price Schedule (prepared in accordance with the requirements set out in Schedule D to the RFT); and
         4. any additional documents that the Tenderer is obliged to submit as part of its Tender as set out in the RFT Data Sheet.
      2. Unless otherwise specified in the RFT Data Sheet,
         1. Tenderers are not permitted to submit pre-printed literature with their Tenders, other than any financial statements that may be explicitly requested by the University in the RFT Documents; and
         2. any pre-printed literature submitted (other than any financial statements that may be explicitly requested by the University in the RFT Documents) will not be reviewed by the Evaluation Team.
      3. Each Tenderer will,
         1. examine all instructions, terms and conditions, forms and information in the RFT Documents and the Questions and Answers Documents; and
         2. in a clear, concise and legible manner, complete and submit all documentation and information required by the RFT Documents.
      4. If applicable, the maximum length of the Tender is set out in the RFT Data Sheet. The University may, in its sole discretion, not evaluate any pages of a Tender in excess of the page limit set out in the RFT Data Sheet, which may adversely affect the scoring of the Tender by the Evaluation Team.
      5. Tenderers are cautioned to review the provisions of the Draft Agreement with respect to pricing and compensation and will take all provisions into account when completing the Price Schedule.
      6. The entire content of a Tenderer’s Tender must be submitted in fixed form, and the content of websites or other external documents referred to in the Tenderer’s submission will not be considered to form part of its Tender.
   2. Tender Submission Form
      1. Each Tenderer will complete and execute the Tender Submission Form attached as Schedule B of this RFT.
      2. Each Tenderer will complete and submit any additional forms attached as Appendices to Schedule B – Tender Submission Form.
      3. Tenderers are required to execute the Tender Submission Form as follows:
         1. in the case of an individual, the individual will sign the Tender Submission Form and have the signature witnessed;
         2. in the case of a sole proprietorship, the sole proprietor will sign the Tender Submission Form and have the signature witnessed;
         3. in the case of a company or corporation, an authorized signing officer will sign the Tender Submission Form;
         4. in the case of a partnership, a partner or partners authorized to bind the partnership will sign the Tender Submission Form and have their signatures witnessed; and
         5. in the case of a joint venture, each Joint Venture Participant in the Joint Venture Tenderer will sign the Tender Submission Form in accordance with the requirements of RFT Section 4.2(3)(a), 4.2(3)(b) or 4.2(3)(c) as applicable.
   3. Bonding
      1. If the Tenderer is required to deliver any form of bid security, the requirements will be set out in the RFT Data Sheet.
   4. Tender Pricing
      1. The Tenderer will include, in the price of its Tender (the “**Total Tender Price**”),
         1. all applicable federal, provincial and municipal taxes and duties in force or announced prior to the Submission Deadline, even if the effective date of those taxes or duties is after the Submission Deadline; and
         2. all costs and expenses as set out in the Draft Agreement, if set out in the RFT Data Sheet.
      2. All prices submitted by Tenderers will be in Canadian Dollars
   5. Joint Ventures and Parental Indemnities
      1. If the Tenderer is a joint venture, it must meet the additional requirements set out in Attachment 1 to the RFT Data Sheet.
      2. The University may, in its discretion, require a Tenderer that is a joint venture or a subsidiary company to submit a guarantee from its parent company (a “**Parental Guarantee**”) as a condition of award. If the University requires a Tenderer to submit a Parental Guarantee, the Tenderer will submit such Parental Guarantee in a form and substance acceptable to the University. The University may, in its sole discretion, also require parent companies of the entities forming the Joint Venture Tenderer to be parties to the Final Agreement.
2. - TENDER SUBMISSION, WITHDRAWAL, MODIFICATION
   1. Submission of Tenders and Late Tenders
      1. Each Tenderer is required to submit its Tender on Bonfire at the link that is set out in the RFT Data Sheet before the Submission Deadline and in accordance with the requirements set out in this RFT Section 5.1.
      2. For the purpose of this RFT Process, the determination of whether a Tender is submitted on or before the Submission Deadline will be based on the electronic time and date set out in the Bonfire portal without consideration as to the time and date it was sent by the Tenderer.
      3. It is the sole responsibility of the Tenderer to ensure that its Tender is received by the University on or before the Submission Deadline. It is the sole responsibility of the Tenderer when submitting a Tender to ensure that it is submitted correctly and in accordance with Bonfire’s rules and requirements. For assistance with registration, login credentials, subscription information, fees and general use of Bonfire, Tenderers are advised to contact Bonfire directly at [Support@GoBonfire.com](mailto:Support@GoBonfire.com). Tenderers can also visit the Bonfire help forum at <https://Bonfirehub.zendesk.com/hc>.
      4. With respect to submission of Tenders, Tenderers are advised as follows:
         1. Only Tenders received from Tenderers who have obtained the documents directly from MERX or from the University pursuant to RFT Section 2.3(2) will be considered for the purposes of this RFT Process.
         2. The University will not accept responsibility for the delivery of any Tender that is delivered other than by submitting in Bonfire, and will not accept, acknowledge, or return hard copy, facsimile or electronically emailed Tenders. For greater certainty, Tenderers should not send the Contact Person an e-mail containing any Tender or portion thereof.
         3. Each Tenderer must submit, electronically in Bonfire, an electronic copy of the complete Tender on or before the Submission Deadline.
         4. Each Tenderer is required to submit its Tender electronically in Bonfire in accordance with the requirements set out in Bonfire. Each Tenderer should submit separately, in the file format specified in Bonfire, each of the following portions of its Tender in the dedicated section of Bonfire that is labeled to correspond with the applicable portion of the Tender:
            1. a completed Tender Submission Form;
            2. a completed Conflict of Interest Declaration;
            3. a completed Price Schedule; and
            4. any additional documents that the Tenderer is obliged to submit as part of its Tender as set out in the RFT Data Sheet.

Tenderers are advised that only one file may be uploaded to each dedicated section of Bonfire unless otherwise specified in Bonfire. Tenderers are cautioned that if a Tenderer attempts to upload more than one file into the same dedicated section, the file that was originally uploaded to the section will be overwritten.

* + - 1. Tenderers are advised that minimum system requirements for Bonfire include Internet Explorer 11+, Google Chrome, Microsoft Edge or Mozilla Firefox. Tenderers are advised that Javascript must be enabled in order for Bonfire to function.
      2. Tenderers should allow sufficient time to submit and upload their Tenders. If a Tender contains many large documents or if the Tenderer is not running on high speed internet, the Tenderer may require additional time in order to complete the submission and should budget time for submission of the Tender accordingly. Tenderers are cautioned that Bonfire will not allow the submission of a Tender or portion of a Tender if,
         1. the Submission Deadline passes prior to a Tenderer commencing the upload or submission of the Tender or portion of the Tender; or
         2. the Submission Deadline passes while a Tenderer is in the process of uploading or submitting its Tender or portion of a Tender.

If a Tenderer experiences an issue with submission of its Tender, the Tenderer is advised to contact Bonfire directly at the e-mail address set out in RFT Section 5.1(3). The University will be unable to assist with any Bonfire-related issues.

* + - 1. The largest individual file size that can be submitted by a Tenderer through Bonfire is 1000 MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 1000 MB, the Tenderer is advised to divide its Tender portions into multiple files.
      2. Each Tenderer should receive an email confirmation receipt with a unique confirmation number once it has submitted its Tender.
    1. A Tender that is not submitted in accordance with the requirements of this RFT Section 5.1 may be rejected by the University and the University will not be under any obligation to notify the Tenderer that the Tender was not submitted in accordance with the requirements of this RFT Section 5.1.
  1. Late Tenders
     1. The University will not accept a Tender received after the Submission Deadline.
  2. Withdrawal of Tenders
     1. A Tenderer may withdraw its Tender by un-submitting its entire Tender on Bonfire prior to the Submission Deadline.
  3. Amendment of Tenders
     1. Tenderers may amend their Tenders only by completing the process set out in RFT Section 5.4(2) in its entirety prior to the Submission Deadline. Any amended Tender must be finalized and submitted prior to the Submission Deadline in order to be considered. The University will not evaluate any Tenders that were un-submitted by a Tenderer in accordance with RFT Section 5.4(2). The last Tender submitted by a Tenderer will supersede all previously submitted Tenders by such Tenderer.
     2. To amend a Tender, a Tenderer must log into Bonfire, select the appropriate project, scroll to the bottom of the page and click on the un-submit link. Once un-submitted, Tenderers may make changes to the Tender and re-upload the Tender.
  4. Tender Irrevocability
     1. Subject only to the Tenderer’s right to withdraw its Tender prior to the Submission Deadline in accordance with RFT Section 5.3, each Tender will be irrevocable and will remain in effect and open for acceptance by the University for the number of calendar days after the Submission Deadline set out in the RFT Data Sheet.
  5. Tenders to be Retained by University
     1. The University will not return or delete any Tenders or accompanying documentation.

1. - TENDER EVALUATION
   1. Evaluation Team
      1. The University will establish the Evaluation Team. The Evaluation Team may, in its sole discretion, delegate certain administrative functions related to the evaluation of Tenders to a separate team of individuals who are not members of the Evaluation Team, supervised by the Evaluation Team.
   2. Compliance
      1. The University will review the contents of each Tender to assess whether it is in compliance with the requirements of the RFT Documents, including whether all documents that the Tenderer is obliged to submit in accordance with RFT Section 4.1 have been submitted.
      2. If, in the sole discretion of the University, a Tender does not comply with the requirements of the RFT Documents, the University will, without liability, cost, or penalty reject the Tender and will not consider the Tender further in the RFT Process. For the purpose of this Tender, “comply” and “compliance” means that the Tender conforms to the requirements of the RFT Documents without material deviation.
      3. For the purpose of clarity, each Tenderer acknowledges and agrees that the University’s standard in evaluating compliance with the RFT Documents is not an evaluation of absolute compliance. The Tenderer also acknowledges and agrees that the University may waive failures in compliance that, in the University’s sole discretion, do not constitute a material deviation in accordance with this RFT Section 6.2.
   3. Evaluation of Tenders
      1. The Tenderer will submit a Tender that is compliant with the terms and conditions of the Draft Agreement and will be compliant with all other requirements of the RFT Documents.
      2. The University will evaluate Tenders based on,
         1. the Total Tender Price;
         2. the information submitted by the Tenderer in its Tender; and
         3. any other factors set out in the RFT Data Sheet which, for clarity, will be assessed on a pass/fail basis.
      3. The University may, in its sole discretion, interpret any errors, inconsistencies or ambiguities in the Tender.
      4. The University will apply the following rules when reviewing and evaluating the Price Schedules:
         1. If the amount tendered in the Price Schedule for an item does not agree with the extension of a tender quantity and the tendered unit price, the unit price will govern and the University will correct the Total Tender Price;
         2. If a mathematical discrepancy exists in the Price Schedule between the tendered unit price, the extension of a tendered quantity and the Total Tender Price, the University will correct the mathematical discrepancy, based on the unit price, and will adjust the Total Tender Price accordingly;
         3. If a Tenderer has made an error in transferring an amount from one part of the Tender to another, the University will assume that the amount shown before the transfer, subject to any corrections made by the University in accordance with RFT Sections 6.3(4)(a) or 6.3(4)(b) is correct. The University will correct the amount shown after the transfer and adjust the Total Tender Price accordingly; and
         4. If an amount tendered in the Price Schedule is for the cumulative price for a group of individual component parts and the cumulative price contains a mathematical error, the prices of the individual component parts will govern and the University will correct the Total Tender Price.
      5. In evaluating the Tender the University may, in its sole discretion, compare the Total Tender Prices of Tenderers based on the University’s opinion as to which Total Tender Price and Tender represents the best value for the University.
   4. The University’s Discretion
      1. The University will, in its sole discretion, determine,
         1. the membership of the Evaluation Team;
         2. whether a Tender is in compliance with the RFT Documents;
         3. whether a failure to comply constitutes a material deviation or reservation;
         4. the rankings of the Tenders;
         5. the evaluation results for each Tenderer; and
         6. whether a Tender or a Tenderer,
            1. is disqualified; or
            2. will cease to be considered in the evaluation process.
      2. If the RFT Process was preceded by a prequalification process, the University’s discretion in determining compliance, ranking and disqualification is not limited or restricted in any way by the fact that a prequalification process has preceded the RFT Process.
      3. Notwithstanding anything else to the contrary in the RFT Documents, if the University, in its sole discretion, is of the opinion that a Tenderer has submitted a price that is too low to be sustainable and to ensure the delivery of the Works in accordance with the Draft Agreement, the University may reject such Tender.
   5. Disqualification
      1. The University may, in its sole discretion, disqualify a Tender or cancel its decision to make an award under the RFT Documents, at any time prior to the execution of the Final Agreement by the University, if,
         1. the Tender is determined to be non-compliant pursuant to RFT Section 6.2;
         2. the Tenderer fails to cooperate in any attempt by the University to clarify or verify any information provided by the Tenderer;
         3. the Tenderer is not, in the University’s sole discretion, financially creditworthy;
         4. the Tenderer does not, in the University’s sole discretion, satisfy the University’s privacy and security requirements;
         5. the Tenderer contravenes RFT Sections 3.6 or 3.8;
         6. the Tenderer fails to comply with the Governing Law;
         7. the Tender contains false or misleading information;
         8. the Tender, in the sole discretion of the University, reveals a perceived, potential or actual Conflict of Interest that cannot be managed, mitigated or minimized;
         9. the Tenderer misrepresents any information provided in its Tender;
         10. a Prequalified Tenderer Change has occurred which has not been accepted by the University in accordance with RFT Section 3.18(3);
         11. a Post-Submission Tenderer Change has occurred which has not been accepted by the University in accordance with RFT Section 3.18(5);
         12. the Tenderer is the Acquiree in a change of Control;
         13. the Tenderer fails to disclose any information (including in any declaration or form attached to the Tender in connection with the RFT Documents) that would materially adversely affect the University’s evaluation of the Tender;
         14. the University becomes aware of a perceived, potential or actual Conflict of Interest as described in RFT Section 1.5 and the Tenderer,
             1. does not receive a waiver from the University in accordance with RFT Section 1.5(5)(c) or does not receive a consent in accordance with RFT Section 3.7(2), as applicable; or
             2. fails to substitute the person or entity giving rise to the perceived, potential or actual Conflict of Interest in accordance with RFT Section 1.5(5)(b);
         15. at any time prior to the Submission Deadline, the University became aware that the Tenderer failed to disclose an actual Conflict of Interest in any past or current procurement issued by the University, unless the Tenderer has demonstrated to the satisfaction of the University that the Tenderer has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
         16. there is evidence that the Tenderer or any of its respective employees, agents, consultants, contractors, service providers or representatives directly or indirectly colluded with one or more other Tenderers or any of their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Tenders or otherwise contravened RFT Section 3.9;
         17. the Tenderer has breached any agreement with the University (whether or not the University exercises any right to terminate such agreement) or has breached the University of Toronto’s Code of Ethics;
         18. the Tenderer has been convicted of an offence in connection with any services rendered to the University;
         19. the Tenderer has breached an agreement for work similar to the Work that is the subject of the RFT Documents with an entity other than the University;
         20. the Tenderer was convicted of a criminal offence within the three years immediately prior to the Submission Deadline;
         21. a Tenderer is, at the time of issuance of the RFT Documents or any time during the RFT Process, engaged in ongoing litigation against the University;
         22. there are any convictions related to inappropriate bidding practices or unethical behaviour by a Tenderer or any of its Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
         23. a Tenderer engages in any activity which, at the sole discretion of the University, is contrary to the public interest or is harmful to the integrity or reputation of the University.
      2. For the purposes of RFT Section 6.5(1) the term Tenderer includes the Tenderer itself and,
         1. if the Tenderer is an individual,
            1. any current employee of the Tenderer;
            2. any partnership of which the Tenderer is or was a partner; and
            3. any corporation of which the Tenderer is or was a controlling shareholder;
         2. if the Tenderer is a corporation,
            1. any current director, officer, employee or controlling shareholder of the Tenderer;
            2. any partnership of which the Tenderer is or was a partner; and
            3. any corporation of which the Tenderer is or was a controlling shareholder; and
         3. if the Tenderer is a partnership,
            1. any current member or employee of the Tenderer; and
            2. any corporation of which the Tenderer is or was a controlling shareholder.
   6. The University’s Right to Accept, Reject and Cancel
      1. The University may, in its sole discretion, and at any time during the RFT Process,
         1. reject any or all Tenders, including the Tender with the lowest Total Tender Price;
         2. accept any Tender, including a Tender that does not have the lowest Total Tender Price;
         3. if only one Tender is received, accept or reject that Tender;
         4. discontinue the RFT Process at any time prior to the issuance by the University of the Notification of Award;
         5. alter the Timetable and the RFT Process in accordance with RFT Section 3.1;
         6. waive any threshold or minimum passing score;
         7. cancel the RFT Process and subsequently conduct another competitive process for the same Work that is the subject matter of the RFT Documents or subsequently enter into negotiations with any person or persons with respect to the Work that is the subject matter of the RFT Documents.;
         8. reject a Tender from a Tenderer that has had an agreement or agreements with the University and which the University terminated for default;
         9. reject a Tender from a Tenderer that has previously been given a Notification of Award of agreement by the University and has failed to proceed with the work of that agreement; and
         10. change the RFT Process or any other aspect of the RFT Documents.
      2. If the University determines that all or the majority of Tenders submitted are non-compliant, the University may take any action in accordance with RFT Section 6.6(1).
      3. The University will not be liable for any expense, cost, loss or damage occurred or suffered by any Tenderer, or any person connected with any Tenderer, as a result of any action referred to in RFT Section 6.6(1) or RFT Section 6.6(2).
2. TENDER AWARD AND AGREEMENT SUBMISSION AND EXECUTION
   1. Tender Award
      1. On completion of its evaluation process, the University will identify the Successful Tenderer and the University will send a written notification or award of agreement to the Successful Tenderer (the “**Notification of Award**”). The Notification of Award will indicate the University’s acceptance of the Successful Tenderer’s Tender.
      2. The University will include the documents set out in the RFT Data Sheet with the Notification of Award.
      3. At the time the Successful Tenderer is notified pursuant to RFT Section 7.1(1), the Successful Tenderer and the University will enter into discussions to finalize the Final Agreement.
      4. After the selection of the Successful Tenderer, if any, the University may finalize the terms and conditions of the Final Agreement with the Successful Tenderer, and, as part of that process, may in its sole discretion, negotiate changes, amendments or modifications to the Successful Tenderer’s Tender or the Draft Agreement.
      5. Each Successful Tenderer is required to sign the Final Agreement in the same form and substance as the Draft Agreement attached as Schedule E of this RFT.
   2. Execution and Submission of Agreement Documents
      1. No later than ten days after the date of the Successful Tenderer’s receipt of the Notification of Award, the Successful Tenderer will submit to the University,
         1. the Draft Agreement signedby the person legally authorized to bind the Successful Tenderer;
         2. Performance and Labour and Material Payment Bonds in the form provided by the University and executed by the Successful Tenderer’s surety in accordance with the RFT Documents;
         3. a certificate of insurance in the form provided by the University and executed by the Successful Tenderer’s insurance broker in accordance with the RFT Documents; and
         4. a current clearance certificate issued by the WSIB.
   3. Failure to Execute the Agreement and Provide Documents
      1. The University may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Tenderer if,
         1. the University elects to exercise its discretion pursuant to RFT Sections 6.5, 6.6(1) or 7.3(2);
         2. a Prequalified Tenderer Change or a Post-Submission Tenderer Change has occurred in respect of the Successful Tenderer which has not been approved by the University in accordance with RFT Section 3.18(3) or RFT Section 3.18(5); or
         3. any other material change has occurred with respect to the Successful Tenderer’s Tender.
      2. If the Successful Tenderer fails to meet its obligations pursuant to RFT Section 7.2, the University may, in its sole discretion,
         1. withdraw its Notification of Award, without liability, cost or penalty to the University;
         2. accept the next lowest or any Tender;
         3. carry out a new RFT Process; or
         4. have the Work carried out in any other way the University, in its sole discretion, considers is in the best interest of the University.
      3. A Successful Tenderer that fails to meet its obligations in accordance with RFT Section 7.2 will,
         1. indemnify and save harmless the University from all loss, damage, cost, charges and expenses that the University may suffer or be put to by reason of the Successful Tenderer’s failure to carry out its obligations; and
         2. make no claim whatsoever for any costs or expenses incurred by the Tenderer after the Notification of Award.
      4. If the Successful Tenderer fails to meet its obligations in accordance with RFT Section 7.2, the University may, in its sole discretion, prohibit the Successful Tenderer from submitting a tender or proposal on subsequent requests for tenders or requests for proposals issued by the University for a period of time that the University considers to be appropriate.
3. - LEGAL MATTERS AND RIGHTS OF THE UNIVERSITY
   1. Notification If Successful Or Not
      1. The University will post a Notice that sets out the Successful Tenderer(s) on MERX. Tenderers acknowledge that this notification may disclose the pricing information submitted by the Successful Tenderer(s).
   2. Debriefing
      1. Unsuccessful Tenderers may request a debriefing after the posting of the Notice pursuant to RFT Section 8.1(1) by e-mail to the Contact Person. All Tenderer requests should be in writing to the Contact Person no later than 60 calendar days following the posting of such notification. The University will determine the format, timing and contents of the debriefing session.Generally, debriefings shall include a discussion regarding the unsuccessful Tenderer’s Tender, why it was unsuccessful, and the relative advantages of the Successful Tenderer’s Tender. The debriefing is not for the purpose of challenging the procurement process.
   3. Dispute Resolution
      1. With respect to any disputes that may arise in connection with this RFT Process, Tenderers are referred to the bid dispute resolution standard operating procedure set out on the University’s website.
   4. Limit on Liability
      1. The Tenderer and all other entities participating in this RFT Process agree that if the University is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of this RFT Process, the total liability of the University to any Tenderer or any other entity participating in this RFT Process, and the aggregate amount of damages recoverable against the University for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the University will be no greater than the Tenderer’s cost of preparing its Tender or the liability cap amount set out in the RFT Data Sheet, whichever is less.
4. - DEFINITIONS
   1. General
      1. In the RFT Documents, the singular is deemed to include the plural and the plural is deemed to include the singular, except where the context otherwise requires.
      2. All references in the RFT Documents to “discretion” or “sole discretion” means in the sole and absolute discretion of the party exercising the discretion.
   2. RFT Definitions

Whenever used in the RFT Documents,

* + 1. “**Acquiree**” is defined in RFT Section 3.18(6);
    2. “**Acquirer**” is defined in RFT Section 3.18(6);
    3. “**Addendum**” means a written addendum to the RFT Documents issued by the University as set out in RFT Section 3.4;
    4. “**Advisor**” means any person or firm retained to provide professional advice to any one of the University or a Tenderer, as applicable;
    5. “**Affiliate**” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
    6. “**Background Information**” is defined in RFT Section 2.1(3);
    7. “**Bonfire**” is the University’s web portal tool that will be used for the submission of Tenders in accordance with this RFT Process;
    8. “**Business Day**” means any day of the week other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day that the University has elected to be closed for business;
    9. “**Commercially Confidential Question**” is defined in RFT Section 3.2(1)(b)(ii);
    10. “**Confidential Information**” is defined in RFT Section 3.11(1);
    11. “**Conflict of Interest**” is defined in RFT Section 1.5(1);
    12. “**Contact Person**” means the contact person listed in the RFT Data Sheet in respect of RFT Section 1.3(1);
    13. “**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;
    14. “**Draft Agreement**” is defined in RFT Section 2.1(1)(f);
    15. “**Evaluation Team**” means the evaluation team established by the University for the purpose of evaluating Tenders, as set out in RFT Section 6.1(1);
    16. “**Final Agreement**” is defined in RFT Section 1.1(2);
    17. “**FIPPA**” is defined in RFT Section 3.10(1);
    18. “**General Question**” is defined in RFT Section 3.2(1)(b)(i);
    19. “**Governing Law**” means the laws of Ontario and the applicable laws of Canada;
    20. “**Identified Tenderer Party**” means any of the entities identified in the Tenderer’s Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants;
    21. “**includes**” and “**including**” means “includes without limitation” and “including without limitation” respectively;
    22. “**Ineligible Person’s Affiliate**” is defined in RFT Section 3.7(1);
    23. “**Ineligible Persons**” is defined in RFT Section 3.7(1);
    24. “**Joint Venture Participant**” is defined in RFT Section 3.16(2)(b);
    25. “**Joint Venture Tenderer**” is defined in RFT Section 3.16(2)(b);
    26. “**MERX**” means the electronic bid solicitation website used by the University for this RFT Process;
    27. “**Notice**” means a written notice issued by the University as set out in RFT Section 3.3;
    28. “**Notification of Award**” is defined in RFT Section 7.1(1).
    29. “**Parental Guarantee**” is defined in RFT Section 4.5(2);
    30. “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted;
    31. “**Post-Submission Tenderer Change**” means:
        1. an actual or proposed change of Control of the Tenderer;
        2. a change in circumstances that may materially adversely affect a Tenderer in a way which could impair the Tenderer’s ability to perform its respective obligations under or in connection with the Draft Agreement; or
        3. the withdrawal of any Joint Venture Participant from a Joint Venture Tenderer and the proposed substitution of such person or entity;
    32. “**Pre-Tender Meeting**” is defined in RFT Section 3.5(1);
    33. “**Prequalification Submission**” is defined in RFT Section 3.16(1);
    34. **“Prequalified Parties”** is defined in RFT Section 1.1(2)(b);
    35. “**Prequalified Tenderer Change**” means:
        1. an actual or proposed change of Control of the Tenderer or any Identified Tenderer Party;
        2. a change in circumstances that may materially adversely affect a Tenderer or an Identified Tenderer Party in a way which could impair the Tenderer’s or the Identified Tenderer Party’s ability to perform their respective obligations under or in connection with the Draft Agreement;
        3. the withdrawal of any of the Identified Tenderer Parties and the proposed substitution of such person or entity; or
        4. the proposed addition of any person or entity as an Identified Tenderer Party;
    36. “**Price Schedules**” means the price schedules attached as Schedule D – Price Schedules of this RFT;
    37. “**Question**” is defined in RFT Section 3.2(1);
    38. “**Questions and Answers Document**” and “**Questions and Answers Documents**” are defined in RFT Section 3.2(2);
    39. “**RFT**” is defined in RFT Section 2.1(1)(a);
    40. “**RFT Data Sheet**” means Schedule A to this RFT;
    41. “**RFT Documents**” is defined in RFT Section 2.1(1);
    42. “**RFT Number**” is defined in RFT Section 1.1(1);
    43. “**RFT Process**” is defined in RFT Section 1.1(3);
    44. “**Site**” is defined in RFT Section 1.1(1);
    45. “**Site Visit**” is defined in RFT Section 3.5(1);
    46. “**Submission Deadline**” is defined in RFT Section 3.1(1);
    47. “**Successful Tenderer**” is defined in RFT Section 1.1(2);
    48. “**Tender**” is defined in RFT Section 1.1(2);
    49. “**Tenderer**” is defined in RFT Section 1.1(2);
    50. “**Tenderer Representative**” is defined in RFT Section 1.4(1);
    51. “**Tender Information**” is defined in RFT Section 3.13(5);
    52. “**Tender Information Licence**” is defined in RFT Section 3.13(4);
    53. “**Tender Submission Form**” means the tender submission form attached as Schedule B to this RFT;
    54. “**Timetable**” is defined in RFT Section 3.1(1);
    55. “**Total Tender Price**” is defined in RFT Section 4.4(1);
    56. “**University**” is defined in RFT Section 1.1(1); and
    57. “**Work**” is defined in RFT Section 1.1(1).

# SCHEDULE A RFT DATA SHEET

**RFT DATA SHEET  
SCHEDULE A TO THE RFT**

| **RFT SECTION REFERENCE AND DESCRIPTION** | **ITEM** |
| --- | --- |
| RFT Section 1.1(1) – Name and Description of the Work | SW149 Interior Research Lab Renovation  Design and Construction Management requires General Contracting services for the interior renovation of 27.5 sqm of laboratory research space located in Room SW149, Science Wing, University of Toronto Scarborough Campus |
| RFT Section 1.1(1) – Location of the Work | Room SW149, Science Wing, University of Toronto Scarborough Campus, 1265 Military Trail, Toronto, Ontario M1C 1A4 |
| RFT Section 1.1(1) and 3.2(1)(a)(ii) – RFT Number | The RFT Number is DCM2019-02. |
| RFT Section 1.1(2) – Tenderers | The RFT Process is open to only those Tenderers that are prequalified to submit a Tender as follows:  Anacond Contracting  25 North Rivermede Rd., Unit 16  Concord Ontario L4K 5V4  Telephone: 905-660-7183  Attn: Jose Correa  Email: jose@anacond.ca  Gillanders Construction Inc.  7 Dohme Avenue,  Toronto, ON M4B 1Y7  Telephone: 416-750-7313  Attn: Brian Ramos  Email: brian.ramos@gillanders.com  Classic Construction Company  3583 Sheppard Ave E,  Toronto, ON M1T 3K8  Telephone: (416) 750-0349  Attn: Alan Blake  Email: alblake@classicconstructionco.com    Morosons Construction  103 Fairbank Avenue,  Toronto, ON L4K 3Z2  Telephone: 416-233-4171  Attn: Billy Zang  Email: estimating@morogroup.ca  RossClair Contractors  59 Comstock Rd, Suite 1,  Toronto, ON M1L 2G6  Telephone: 416-285-0190  Attn: Michael Weeks  Email: [estimating@rossclair.ca](mailto:estimating@rossclair.ca) |
| RFT Section 1.3(1) and 3.2(1) – Contact Person and Questions | The name of the Contact Person is:  Susan Dyson  The e-mail address of the Contact Person is:  dyson@utsc.utoronto.ca |
| RFT Section 1.6(1) – University Policies | Tenderers must adhere to the University of Toronto General Labour Conditions as outlined in Schedule E Draft Agreement and Schedules to Draft Agreement, Attachment 2 Supplementary Conditions to the Stipulated Priced Contract (CCDC2 – 2008), SC # 53 |
| RFT Section 2.1(3) – Background Information Document | Background Information:  The interior renovation of SW149 is to accommodate the growth of The Centre of French and Linguistics. To complement the Prime Investigator’s research needs assigned to SW149, the University of Toronto Scarborough will be purchasing a sound cabin intended for SW149.  The sound cabin is expected to arrive in September 2019. Work under this RFT is expected to start May 9th, 2019. It is expected that work described in this RFT will be unable to be completed until following the installation of the sound cabin. Installation of the sound cabin is by others. |
| RFT Section 3.1(1) – Timetable | Timetable:  (a) Issuance of RFT Documents **Tuesday, April 16, 2019**  (b) Deadline for Tenderers’ disclosure with respect to  RFT Section 3.6(4)(a) **Tuesday, April 23, 2019**  (c) Deadline for Tenderers to submit their **Tuesday, April 23, 2019**  Conflict of Interest Declarations  (d) Deadline for Tenderers to submit **Tuesday, April 23, 2019**  Questions ***2:00:00 p.m. local time***  (e) Deadline for posting all Questions and Answers Documents  **Thursday, April 25, 2019**  (f) Deadline for issuance of Addenda **Thursday, April 25, 2019**  (except Addenda related to the Timetable)  (g) Deadline for Submission of Tenders **Thursday, May 2, 2019**  (Submission Deadline) ***at 2:00:00 p.m. local time***  The Bonfire portal will be used for the purposes of determining the Submission Deadline. |
| RFT Section 3.5(2) – Site Visit and Pre-Tender Meeting | **There will a Mandatory Contractor Site Visit & Pre-Tender Meeting on Monday, April 22, 2019 at 8:30 am. Contractors are to meet inside the main Science Wing Doors on Level 3 at the University of Toronto – Scarborough Campus, 1265 Military Trail, Toronto, ON M1C 1A4**  ***Pass / Fail***  The site visit is intended for tenderers to carefully examine the site and note the conditions affecting the work prior to the Tender submission. Alternative date will not be provided for the Site Visit. |
| RFT Section 3.5(4) – Safety Requirements and/or Restrictions | N/A |
| RFT Section 3.6(2)(c)(ii) – Prohibited Contacts | N/A |
| RFT Section 3.7(1) – Ineligible Persons | N/A |
| RFT Section 4.1(1)(d) and 5.1(4)(d)(iv) – RFT Documents | Tenderers must provide the following additional documents with their submission:  Letter from Surety Company with agreement to provide 50% performance bond and 50% Labour and Material Bond  Contractors Safety Acknowledgement Form  WSIB  Proof of Insurance |
| RFT Section 4.1(2) – Pre-printed Literature | Pre-printed literature submitted will not be reviewed by the Evaluation Team. |
| RFT Section 4.1(4) – Format and Content of Tender | The maximum number of pages for the Tender is limited to ***N/A***, single sided. The page limit specifically ***[includes/excludes]*** requested appendices, CVs, schedules, forms and charts.  **N/A** |
| RFT Section 4.3(1) – Bid Security | **N/A** |
| RFT Section 4.4(1)(b) – Tender Pricing | Tenderer to provide all the necessary labour, plant, equipment, and materials necessary to perform the completion Work and to confirm to all requirements as specified in the Schedule E. |
| RFT Section 4.5(1) – Joint Ventures | See Attachment 1 to Schedule A for Joint Venture Requirements. |
| RFT Section 5.1(1) – Bonfire Link for Submission of Tenders | Each Tenderer is required to submit its Tender on Bonfire at the following link:  [**https://utoronto.bonfirehub.ca/opportunities/private/4483f69d392fffb499919ad421e52863**](https://utoronto.bonfirehub.ca/opportunities/private/4483f69d392fffb499919ad421e52863) |
| RFT Section 5.5(1) – Tender Irrevocability | **90 Days** |
| RFT Section 6.3(2)(c) – Tender Evaluation | In addition to the factors set out in RFT Section 6.3(2)(a) and 6.3(2)(b), the University will evaluate the Tenders based on the following additional factors:  (a) Site Visit Pre-Tender Meeting Attendance Pass / Fail |
| RFT Section 7.1(2) – Notification of Award | Upon Notification of Award the successful Tenderer will be provided with a Letter of Intent. This letter is your authorization to commence the required work preparatory to the Form of Agreement immediately including all the submissions noted below. In accordance with the RFT and Contract Requirements please submit the following documents immediately in hard copy original form, except where noted otherwise, prior to commencing any work   1. A letter of good standing with the Workplace Safety and Insurance Board. 2. WSIB Certificate of Clearance. 3. A copy of the Notice of Project from the Ministry of Labour 4. A Performance Bond, and Labour and Materials Bond in the amounts noted in the Request for Tender documents and in a format acceptable to the University of Toronto. 5. A valid Certificate of Insurance in the necessary format and in the amounts noted in the RFT documents and ensuring that the University of Toronto is a named insured. 6. Construction Schedule, with the intent the work is to begin May 9, 2019. 7. Confirmation and List of all Sub Contractors |
| RFT Section 8.4(1) – Limit on Liability | The Limit on Liability cap is ***$10,000.*** |

## Attachment 1 to Schedule A Joint Venture Requirements

**JOINT VENTURE REQUIREMENTS**

**ATTACHMENT 1 TO SCHEDULE A**

1.1 Each Joint Venture Participant must individually satisfy the following criteria:

***[Insert criteria that each participant in the joint venture must satisfy individually.]***

1.2 The Joint Venture Tenderer will state in its Tender the joint venture arrangements that form the basis on which the Joint Venture Tenderer plans to carry out its obligations under the Final Agreement. The Joint Venture Tenderer will not change its joint venture arrangements without the prior written approval of the University.

1.3 One of the Joint Venture Participants who is responsible for performing a key function or in executing a major component of the Final Agreement will be nominated as being the Participant in Charge. The Participant in Charge will be in charge during the RFT Process and, in the event of a successful Tender, during finalization and execution of the Final Agreement. The Participant in Charge will be authorized by the other Joint Venture Participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture Tenderer. Each Joint Venture Participant will demonstrate its authorization of the Participant in Charge by submitting a power of attorney signed by legally authorized signatories.

1.4 All participants of the Joint Venture Tenderer will be legally liable, jointly and severally, during the RFT Process and for carrying out the obligations pursuant to the Final Agreement terms and conditions, and a statement to this effect will be included in the authorization set out in Attachment 1 to the RFT Data Sheet.

# SCHEDULE B TENDER SUBMISSION FORM

**TENDER SUBMISSION FORM**

**SCHEDULE B TO THE RFT**

**TO: University of Toronto Scarborough**

**RE: DCM2019-02**

**RE: SW149 Interior Research Lab Renovation**

**1. Tenderer Information**

(a) Tenderer’s registered legal business name and any other name under which it carries on business:

(b) Tenderer’s address, telephone and facsimile numbers:

(c) Name, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Tenderer:

(d) Name of the person who is primarily responsible for the Tender:

(e) Whether the Tenderer is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

(f) Name(s) of the proprietor, where the Tenderer is a sole proprietor; each of the directors and officers where the Tenderer is a corporation; each of the partners where the Tenderer is a partnership; and applicable combinations of these when the Tenderer is a joint venture or a not-for-profit organization, whichever applies:

(g) Joint Venture Information  
(See Attachment 1 to Schedule A – RFT Data Sheet)

**2. Regulatory Matters**

We confirm as follows:

(a) With respect to the *Excise Tax Act*, we are either:

(i) a Harmonized Sales Tax registrant for purposes of the *Excise Tax Act* and our HST registration number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_; or

(ii) not a HST registrant for the purposes of the *Excise Tax Act*.

***[Note: Tenderers to strike the provision not applicable to them.]***

**3. Tender**

With respect to the above noted RFT, we confirm as follows:

1. capitalized terms used in clauses (b) through (t) below will have the meanings given thereto in the RFT Documents;
2. except to the extent that we have sought and received written approval in accordance with RFT Section 3.18, there have been no changes to the Tenderer;
3. there have been no changes in circumstance that could have a material adverse effect on the Tenderer in a way that could impair our ability to perform the obligations under the Draft Agreement;
4. except for those actions, suits or proceedings as disclosed in our Prequalification Submission, if any, there are no actions, suits or proceedings pending that could have a material adverse effect on our ability to provide the Work or, to the best of our knowledge after reasonable inquiry, threatened against us and we are not aware of any ground on which such an action, suit or proceeding might be commenced, except for the following:
   1. actions, suits or proceedings, if applicable:

1.

2.

3.

**[Tenderer to add more rows if necessary.]**

1. we have not and, to the best of our knowledge, our Advisors have not engaged in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RFT Process in contravention of RFT Section 3.6;
2. we have and, to the best of our knowledge, our Advisors have complied fully with RFT Section 3.9. We confirm that:
   1. we have not discussed or communicated, directly or indirectly, with any other Tenderer, any information whatsoever regarding the preparation of our Tender or the Tender of the other Tenderers in a way that would contravene Governing Law; and
   2. we have prepared and submitted our Tender independently and without connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Tenderer;
3. we have and, to the best of our knowledge, our Advisors have complied fully with RFT Sections 3.8, 3.11, 3.13 and the provisions of any confidentiality agreement entered into in connection with the RFT Process;
4. at the time of submitting our Tender, we are in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been paid or satisfactory arrangements for their payment have been made and maintained;
5. our Tender is based on and relies solely upon our own examinations, knowledge, information, judgement, and investigations and not upon any statement, representation, investigation or information made or provided by the University whether provided through MERX or in any other way whatsoever;
6. we have obtained tax advice from our own advisors and experts, including obtaining any advance interpretations or rulings that we consider appropriate or necessary in relation to any participation in a subsequent procurement process related to the Work, the Work or Draft Agreement;
7. we have examined the RFT Documents and confirm that we have received all pages of the RFT Documents;
8. we have made any necessary inquiries with respect to Addenda issued by the University and have ensured that we have received and examined all Addenda to the RFT Documents;
9. our Tender is based on the terms and conditions of the RFT Documents;
10. we acknowledge and accept the obligations set out in RFT Section 3.11;
11. we acknowledge and accept the limit of liability set out in RFT Section 8.4;
12. by the submission of our Tender we submit a binding offer to carry out all Work and obligations described in the RFT Documents in accordance with the terms and conditions of the RFT Documents; for the compensation set out in the Price Schedule of our Tender and in accordance with the RFT Documents;
13. the prices contained in the Price Schedule are based on the terms and conditions of the RFT Documents;
14. we have conducted ourselves with integrity and propriety and we have not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFT Process.
15. we agree to hold our Tender open for acceptance until the expiration of the period of Tender irrevocability set out in the RFT Documents; and
16. we agree to provide any required information and cooperate with the University with respect to the conduct of background checks and security screening of employees.

**4. Conflict of Interest, Confidential Information, and Inappropriate Bidding Practices**

(a) We confirm that we do not have any perceived, potential or actual Conflict of Interest or any other type of unfair advantage in submitting our Tender or performing or observing the contractual obligations set out in the Draft Agreement, except as disclosed in the Conflict of Interest Declaration included in our Tender.

(b) We confirm that we have not had access to University confidential information, other than the RFT Documents themselves, with respect to this RFT Process, except as disclosed as follows.

(c) We confirm that there are no charges or investigations by a public body related to inappropriate bidding practices or unethical behaviour by the Tenderer or any of its Affiliates in relation to a public or broader public sector tender or procurement in any jurisdiction, other than as described below.

**(1) Confidential Information**

In addition to the RFT Documents, we have access to the following confidential information relating to the RFT Process.

1.

2.

3.

**[Tenderer to add more rows if necessary.]**

**(2) Inappropriate Bidding Practices and Unethical Behaviour**

The following is a description of all charges or investigations by a public body related to inappropriate bidding practices or unethical behaviour by the Tenderer or any of its Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction:

1.

2.

3.

**[Tenderer to add more rows if necessary.]**

Signed by person or persons authorised to  
bind the Tenderer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Print Name and Title of Person Signing

## Attachment 1 to Schedule B Subcontractors

**SUBCONTRACTORS**

**ATTACHMENT 1 TO SCHEDULE B**

Name of Tenderer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Tenderer intends to use the following subcontractors to deliver the Work with the consent of the University:

|  |  |
| --- | --- |
| **Name of Subcontractor** | **Description of Work To Be Provided By Subcontractor** |
|  |  |
|  |  |
|  |  |

# SCHEDULE C CONFLICT OF INTEREST DECLARATION

**CONFLICT OF INTEREST DECLARATION**

**SCHEDULE C TO THE RFT**

**To: The University of Toronto (the “University”)**

**Re: Request for Tenders RFT No. DCM2019-02 – SW149 Interior Research Lab (the “RFT”)**

This Conflict of Interest Declaration is delivered to the University pursuant to the RFT. All capitalized terms used in this Conflict of Interest Declaration have the meaning set out in the RFT.

The undersigned Tenderer hereby declares on its own behalf that, to the best of its knowledge, having made all necessary inquiries and investigations to permit the Tenderer to make this Conflict of Interest Declaration and except as disclosed, accurately and completely, in Attachment 1 hereto:

1. No Tenderer or person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of our Tender (together, the “**Tenderer Conflict Declaration Parties**”) has any relationships with employees (both current or former) of the University or individuals or firms who have been involved on the University’s behalf in this RFT Process or the design, planning or implementation of the Work, that could constitute a Conflict of Interest or unfair advantage, or could otherwise affect or impair or appear to affect or impair the integrity of this RFT Process or provision of the Work in accordance with the Draft Agreement;

2. There is no perceived, potential or actual Conflict of Interest, collusion or any other type of unfair advantage in any of the Tenderer Conflict Declaration Parties’ participation in this RFT Process;

3. No Tenderer Conflict Declaration Party has any knowledge of or the ability to avail themselves of Confidential Information, other than Confidential Information which may have been disclosed by the University to the Tenderer Conflict Declaration Party in the normal course of this RFT Process, that is or was relevant to the Work or this RFT Process;

4. None of the Tenderer Conflict Declaration Parties, or any Affiliate of any of them has been charged in the last five years for any criminal offence involving fraud, fraudulent misrepresentation, bribery, collusion, anti-corruption, conspiracy, breach of competition laws, destruction of records or professional misconduct;

5. None of the Tendereror any of its Affiliates has sought protection under any bankruptcy or insolvency laws during the past five years;

6. None of the Tenderer or any of its Affiliates has been the subject of a final determination that it has breached any Governing Law relating to worker health and safety and/or protection of the environment within the past five years;

7. This Conflict of Interest Declaration has not been modified in any manner, except to complete the required information.

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20[•].

|  |
| --- |
| **[INSERT NAME OF TENDERER]** |
|  |
| Name of Authorized Signatory: Title: |
| I have authority to bind the Tenderer. |

## Attachment 1 to Schedule C Exceptions

**EXCEPTIONS**

**ATTACHMENT 1 TO SCHEDULE C**

**[The Tenderer must complete this Attachment 1 to Schedule C, setting out accurately and completely, any exceptions to the statements made in the Declaration. If there are no such exceptions, the Tenderer must insert the word “*NIL*” in this Attachment 1 to Schedule C.**

**If there are exceptions set out in this Attachment 1 to Schedule C, the Tenderer should submit to the University, as a separate document, the Tenderer’s suggested measures for addressing each such conflict or potential conflict. The University will review such suggested measures and determine whether, in the University’s opinion, such measures satisfactorily address the conflict or potential conflict. If the conflict or potential conflict cannot be addressed to the satisfaction of the University, the University may, in its sole and absolute discretion, disqualify the Tenderer.]**

# SCHEDULE D PRICE SCHEDULES

**SCHEDULE D TO THE RFT**

**PRICE SCHEDULES**

**To: University of Toronto Scarborough**

**Project: DCM2019-02 SW149 Interior Research Lab Renovation**

**Tenderer:**

**Bid Price**

Furnish all plant, equipment, labour and material and perform all duties and services, including the work of all trades, called for in the contract documents, for the stipulated price of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars

($\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**Add: Cash Allowance for installing new self-levelling flooring including EBA primer and M20 flooring in consultation with Armorrock flooring if required:**

**Ninety-Five Hundred Dollars**

**($9,500.00)**

**Total Bid Price:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars

($\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The above sum **excludes** **all Harmonized Sales Tax**, but includes, Customs Duty Tax on all materials subjected thereto at the rates existing at the date of this Bid. Reference is made to the General Conditions and Supplementary General Conditions for the specific provisions relating to the HST and Customs Duty Tax.

# SCHEDULE E DRAFT AGREEMENT AND SCHEDULES TO THE DRAFT AGREEMENT

23340643.6

**The form of agreement resulting from this Request for Tender document shall be the CCDC2 - 2008 Stipulated Price form of agreement in conjuntion with the University of Toronto Supplementary Conditions to the Stipulated Price Contract (CCDC 2 – 2008).**

**SUPPLEMENTARY CONDITIONS TO**

**THE STIPULATED PRICE CONTRACT (CCDC 2-2008)**

These Supplementary Conditions are made as of the day of , 20 between **[OWNER]** (the “Owner”) and **[CONTRACTOR]** (the “Contractor”). Other than the Supplementary Conditions contained herein, the Stipulated Price Contract (CCDC 2-2008) between the Owner and the Contractor remains in full force and effect (the “Contract”). The Owner and the Contractor hereby agree to supplement and amend the Definitions and General Conditions of the Contract as set out herein. Notwithstanding General Condition 1.1.7, where there is anything in the Contract which is inconsistent with these Supplementary Conditions, the provisions of these Supplementary Conditions shall govern. Throughout the Contract Documents, reference to the General Conditions or a paragraph of the General Conditions shall include these Supplementary Conditions unless the context requires otherwise. Where a General Condition or paragraph of the General Conditions of the Contract is deleted by these amendments, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, unless stated otherwise herein, and the numbering of the deleted item will be retained, unused.

**SC# Supplementary Conditions**

1. Add the following to the list of Contract Documents in paragraph 3.1 of ARTICLE A-3 – CONTRACT DOCUMENTS:

- Supplementary Conditions to CCDC 2 – 2008

- *Drawings*

- *Specifications*

- Submission Form D - Price Schedules dated **[•]**

1. Revise ARTICLE A-5 - PAYMENT by, (a) deleting the phrase “the issuance of the” in the first line of paragraph 5.1.3 and replacing it with the phrase “receipt of the *Consultant’s*”; and (b) deleting paragraph 5.3.1 and replacing it with the following:

“5.3 Interest

.1 If either party fails to make payments as they become due under the terms of the *Contract* or in an award by arbitration or a court, interest shall also become due and payable on such unpaid amounts at 1% above the prime rate. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by CIBC Main Branch, Commerce Court West, Toronto, Ontario for prime business loans as it may change from time to time.”

1. Add the following new paragraph 5.4 to ARTICLE A-5 – PAYMENT:

“5.4 *Owner* is entitled to set off against any amounts otherwise due to *Contractor* pursuant to the terms of this *Contract*, any amounts which are due or owed to *Owner* from or by *Contractor* pursuant to the terms of the *Contract*, or being disputed in accordance with the terms of the *Contract*.”

1. Add the following new ARTICLE A-9 – CONFLICT OF INTEREST:

“**ARTICLE A-9 – CONFLICT OF INTEREST**

9.1 The *Contractor*, all of the *Subcontractors* and *Suppliers* and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services or work where such activity or the provision of such services or work creates a conflict of interest, in the sole opinion of the *Owner* with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.”

1. Add the following new definitions:

**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 *Owner*, the *Contractor* or the *Work*, or any part thereof, including those relating to employment, zoning, building, life/safety, environment and health. Whenever the term “applicable legislation” is used in the *Contract,* it shall be deemed amended to read “*Applicable Law*”.

**Confidential Information**

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

1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;

2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;

3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or

4) is independently developed by the *Contractor* without use of any *Confidential Information*.

**Construction Schedule**

*Construction Schedule* means the schedule for the performance of the *Work* provided by the *Contractor* and accepted by the *Owner* and the *Consultant* pursuant to GC 3.5 – CONSTRUCTION SCHEDULE, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.

**Deficiency Holdback**

*Deficiency Holdback* has the meaning given in paragraph 5.10.1 of GC 5.10 – DEFICIENCY HOLDBACK.

**Force Majeure**

*Force Majeure* means an event that is, (a) beyond the reasonable control of a party; and (b) makes a party's performance of its obligations under this *Contract* impossible or so impractical as reasonably to be considered impossible in the circumstances. Force Majeure includes, war, riots and civil disorder; storm, flood, earthquake or other severely adverse weather conditions; and confiscation, expropriation or other similar action by a Governmental Authority, provided that Force Majeure shall not include any event that is caused by the negligence or intentional action of a party or such party’s subcontractors or agents or employees, strikes, lockouts or similar labour actions or any event that a diligent party could reasonably have been expected to take into account at the time of the execution of this *Contract* and avoid or overcome in the carrying out of its obligations under this *Contract*. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

**GLC Provision**

*GLC Provision* has the meaning given in paragraph 3.8.7 of GC 3.8 – LABOUR AND PRODUCTS.

**Governmental Authority**

*Governmental Authority* means any federal, provincial, territorial, regional, municipal or local government authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency or any political or other subdivision, department, or branch of any foregoing having legal jurisdiction in any way over the *Owner*, any aspect of the performance of the *Contract*, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

**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, a *Governmental Authority* and for clarity includes an agreement between the Owner and any *Governmental Authority*.

**Hazardous Material**

*Hazardous Material* means, any contaminant, waste or subject waste (as defined in the *Environmental Protection Act,* R.S.O. 1990, c. E. 19, as amended from time to time(the “**EPA**”)), toxic substance (as defined in the *Canadian Environmental Protection Act*, *1999,* S.C. 1999, c. 33 as amended from time to time (the “CEPA”)), dangerous goods (as defined in the *Transportation of Dangerous Goods Act*, *1992*, S.C. 1992, c. 34 as amended from time to time (the “TGDA”)) or pollutant (as defined in the EPA), or any other substance which when released to the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation to the natural environment or material risk or harm to human health. Whenever the terms "toxic and hazardous substances" is used in the *Contract*, it shall be deemed amended to read "Hazardous Material".

**Lien Holdback**

*Lien Holdback* has the meaning given in paragraph 5.10.1 of GC 5.10 – DEFICIENCY HOLDBACK.

**Overhead**

*Overhead* means all site and head office operations and facilities, all site and head office administration and supervision; all duties and taxes for permits and licenses required by the authorities having jurisdiction at the *Place of the Work*; all requirements of the *Specifications*, including but not limited to submittals, warranty, quality control, insurance and bonding; calculations, testing and inspections; meals and accommodations; and, tools, expendables and clean-up costs.

**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: **[●]**.

**Person**

*Person* includes any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity howsoever designated or constituted.

**Statutory Declaration**

*Statutory Declaration* means the form of the *Statutory Declaration* to be delivered by the *Contractor* upon applications for progress payment, release of holdback and final payment is attached to this *Contract* as Exhibit “1”.

**Submittals**

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

(a) *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and

(b) record drawings and manuals to provide instructions to the operation and maintenance of the Work.

**Total Performance of the Work**

*Total Performance of the Work* means the point at which all Work has been performed to the requirements of the *Contract Documents* and the *Consultant* has issued a written certificate to the *Owner* confirming that the *Work* has been completed in accordance with the requirements of the applicable lien legislation in the jurisdiction of the *Place of the Work*.

**WSIB**

*WSIB* has the meaning given in paragraph 9.4.3 of GC 9.4 – CONSTRUCTION SAFETY.

1. Delete the definition of “Change Directive” and replace with the following new definition:

**Change Directive**

A *Change Directive* is a written instruction prepared by the *Consultant* on a form prescribed by the *Owner* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract* *Price* and the *Contract Time*, and is subsequently documented as a *Change* *Order*.

1. Delete the definition of “Owner” and replace it with the following new definition:

**Owner**

*Owner* means the Governing Council of the University of Toronto but for clarity does not include the Consultant.

**GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**

1. Delete the first sentence of paragraph 1.1.1 and replace it with “The intent of the *Contract Documents* is to include the construction, labour, *Products*, *Construction Equipment* and other services necessary, complementary or ancillary, for the performance and completion of the *Work* by the *Contractor* in accordance with the *Contract Documents* or properly inferable from them.”
2. Add the following sentence at the end of paragraph 1.1.3: “The *Contract*, including the *Contract* *Documents*, constitutes the entire agreement between the *Owner* and the *Contractor* with respect to the *Work*.”
3. Add the following to the end of paragraph 1.1.6:

“The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* in respect to such divisions. The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangement and sizes of fixtures, equipment and outlets. The *Contractor* shall obtain more accurate information about the locations, arrangement and sizes from study and coordination of the *Drawings*, including *Shop* *Drawings* and shall become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require reasonable minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible. The schedules are that portion of the *Contract Documents* wherever located and whenever issued, compiling information of similar content and may consist of *Drawings*, tables and/or lists.”

1. Delete paragraph 1.1.7 in its entirety and replace it with the following:

“1.1.7

.1 In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this *Contract*, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

(a) material and finishing schedules shall govern over *Drawings*;

(b) *Specifications* shall govern over *Drawings* and material and finishing schedules;

(c) the General Conditions shall govern over *Specifications*;

(d) Supplementary Conditions shall govern over the General Conditions;

(e) the executed Agreement between the *Owner* and the *Contractor* shall govern all documents;

(f) dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*; and

(g) later dated documents shall govern over earlier documents of the same type.

.2 Notwithstanding the order of precedence set out in paragraph 1.1.7.1, the following rules of interpretation shall govern the interpretation of all *Contract Documents*, including disputes within a *Contract Document*:

(a) the provision of amendments in writing to this *Contract* signed by the parties and *Change* *Order* shall govern and take precedence only over those specific provisions of this *Project* agreement expressly amended thereby;

(b) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;

(c) if the *Contract Documents* contain inconsistent provisions dealing with the same matter, the *Contractor* shall provide the better quality or greater quantity of *Work* or materials, as applicable, unless the *Owner* otherwise directs in writing;

(d) if any of the *Specifications*, *Drawings* or material and finishing schedules for the *Work* are inconsistent or in conflict, any work necessary and described in (or reasonably inferred from) the *Specifications* but not shown on the *Drawings* or material and finishing schedules, or necessary and shown on (or reasonably inferred from) the *Drawings* or material and finishing schedules but not described in the *Specifications* shall be deemed to be part of the Work and carried out as part of the *Contract*; and

(e) if any of the documents within a sub paragraph of paragraph 1.1.7.1 are inconsistent or in conflict, documents of more recent date within that sub paragraph shall govern over prior documents described within the same sub paragraph.”

1. Delete paragraph 1.1.9 and replace it with the following:

“1.1.9 Contracts, *Drawings*, *Specifications*, models, documents and copies thereof furnished by the *Contractor* or the *Owner* are and shall remain the property of the *Owner*, with the exception of the signed contract set belonging to the *Contractor*. Such documents and models are to be used by the *Contractor* only with respect to the *Work* and are not to be used on any other work. Such documents and models are not to be copied or revised in any manner without the written authorization of the *Owner*.”

1. Add the following new paragraphs 1.1.11 and 1.1.12

“1.1.11The *Contractor*acknowledges and agrees that it shall at all times comply with the University of Toronto Code of Ethics and the commitments set out in all *Owner* policies (available on the University of Toronto’s website) and include the following:

.1 In performing the *Work*, the *Contractor* shall at all times comply with the *Accessibility for Ontarians with Disabilities Act*, 2005, and all regulations made thereunder (“**AODA**”). Without limiting the generality of the foregoing, the *Contractor* shall have in place all accessibility plans, policies, practices and procedures required by AODA and shall ensure that all personnel of the *Contractor* engaged in performing the *Work*, including without limitation those personnel of the *Contractor* who may deal with members of the public or other third parties on behalf of the *Owner*, have received all training required by AODA. The *Owner* shall have the right, upon request, to inspect and obtain copies of the accessibility plans, policies, practices and procedures maintained by the *Contractor* in relation to AODA, as well as reasonable evidence that personnel of the *Contractor* performing the *Work* have received all training required by AODA. In delivering the *Work*, the *Contractor* shall provide information and communications in accessible formats and with communication supports, upon request by the *Owner*, members of the public or other third parties, in accordance with the requirements of AODA.

.2 The *Contractor* shall familiarize itself with Ministry of Labour Guidelines for Contractors found at: <https://www.labour.gov.on.ca/english/hs/pubs/constructor/>

1.1.12 The *Consultant* shall furnish to the *Contractor* without charge, one reproducible set of *Drawings* and two copies of the *Specifications*, exclusive of those required by jurisdictional authorities and the executed *Contract Documents*.”

1. Delete paragraph 1.4.1 in its entirety and replace it with the following:

“1.4.1 The *Owner* shall be entitled to assign its rights under the *Contract* to any lender as security for the obligations of the *Owner* to such lender. In addition, with the consent of the *Contractor* (which consent shall not be unreasonably withheld), the *Owner* shall be entitled to assign its rights to, and to have its obligations assumed by, any purchaser of the *Project*. No assignee shall be entitled to enforce any rights under this *Contract* unless such assignee has agreed to assume all obligations thereunder; upon such purchaser assuming the remaining obligations hereunder the *Owner* shall be released therefrom. The *Contractor* shall not assign the *Contract* or any portion thereof without the written consent of the *Owner*, which consent may be arbitrarily withheld.”

1. Add the following new GC 1.5 – EXAMINATION OF DOCUMENTS AND SITE:

“**GC 1.5 EXAMINATION OF DOCUMENTS AND SITE**

1.5.1 The *Contractor* declares and represents that in entering into the *Contract* with the *Owner* for the performance of the *Work*, it has either investigated for itself the character of the *Work* to be done and all local conditions, including the location of any utility which can be determined from the records or other information available at the offices of any *Person*, including a municipal corporation and any board or commission thereof having jurisdiction or control over the utility that might affect its acceptance of the *Work*, or that, not having so investigated, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the *Contract* signed.

1.5.2 The *Contractor* also declares that in entering into this *Contract,* the *Contractor* did not and does not rely upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the *Work*, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of *Work*, or the character of the construction machinery and equipment or facilities needed to perform the *Work*, or the general and local performance of the *Work* under the *Contract* and expressly waives and releases the *Owner* from all claims with respect to the said information with respect to the *Work*.”

1. Add the following new GC 1.6 – CONFIDENTIALITY:

“**GC 1.6 CONFIDENTIALITY**

1.6.1 The *Contractor* shall keep confidential all *Confidential Information* and shall not, without the prior written consent of the *Owner*, disclose such *Confidential Information*, except in strict confidence, to its professional advisors. Before granting such access to a third party, the *Contractor* agrees to have such third party sign an agreement causing it to be bound by terms substantially the same as those of the *Contractor* with respect to such *Confidential Information*. The *Contractor* further agrees to comply with any applicable policies of the *Owner* in relation to its *Confidential Information*.

1.6.2 The matters that are subject to the confidentiality requirements of this GC 1.5 – CONFIDENTIALITY shall not include information that: (i) has become generally available to the public other than as a result of a disclosure by the *Contractor* or any of its representatives; (ii) was available to the *Contractor* or its representatives on a non-confidential basis before the date of this *Contract*; or (iii) becomes available to the *Contractor* or its representatives on a non-confidential basis from a *Person* other than the *Owner* or any of its representatives who is not, to the knowledge of the *Contractor* or its representatives, otherwise bound by confidentiality obligations to the *Owner* in respect of such information or otherwise prohibited from transmitting the information to the *Contractor* or its representatives.

1.6.3 At the *Owner’s* request, the *Contractor* shall promptly return to the *Owner* any *Confidential Information* of the *Owner* then in the *Contractor’s* possession or under the *Contractor’s* control, except for *Confidential Information* necessary to perform the *Contractor’s* duties under this *Contract*.

1.6.4 If any unauthorized disclosure of, loss of, or inability to account for, *Confidential Information* occurs, *Contractor* shall notify the *Owner* immediately by *Notice in Writing*.

1.6.5 If any *Confidential Information* contains information received in confidence from a third party, the *Contractor* shall, on request by the *Owner*, enter into any non-disclosure agreement that the third party may reasonably require on terms no more onerous than those in this *Contract*.”

1. Add the following new GC 1.7 – OWNER’S REPRESENTATIVE:

“**GC 1.7 OWNER’S REPRESENTATIVE**

1.7.1 The *Owner* shall designate an *Owner’s Representative* authorized to act on the *Owner’s* behalf and shall specify in written notice to the *Contractor* any limits on the representative’s authority.

1.7.2 Subject to any notified limitations in authority, the *Contractor* may rely upon any written instructions or directions provided by the *Owner’s Representative*.

1.7.3 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 promptly to avoid delay in the performance of the *Contract*.”

1. Add the following new GC 1.8 – RELATIONSHIP BETWEEN THE PARTIES:

“**GC 1.8 RELATIONSHIP BETWEEN THE PARTIES**

1.8.1 The *Contractor* acknowledges acting strictly as an independent contractor under *Applicable Law*, and not as an employee of the *Owner*. Nothing in this *Contract* will be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose. Neither the *Contractor*, nor any employee, *Subcontractor*, *Supplier* or agent of the *Contractor*, shall hold themselves out as being or shall be construed to be employees or agents of the *Owner*. The *Contractor*, its *Subcontractors*, its *Suppliers* and their respective employees will not be entitled to any benefits, policy, programme or practice, including, but not limited to, vacation pay, holiday pay, health insurance, unemployment insurance, workers’ compensation insurance, and fringe benefit plan made available to employees of the *Owner*.”

1. Add the following to the end of paragraph 2.2.2:

“The Contractor shall not be entitled to rely on such inspections as a limitation of its obligations under the Contract Documents.”

1. Delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER” from paragraph 2.2.7 and add the following sentence at the end of the paragraph: “and shall make findings as to the performance thereunder by both parties to the *Contract*.”
2. Add the following paragraph to the end of paragraph 2.2.13:

“If, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or the *Contract Time*, the *Contractor* shall, within five *Working Days* of receipt of a *Supplemental Instruction* provide the *Consultant* with a written notice to that effect. In the event that the *Contractor* needs additional information to determine whether a *Supplemental Instruction* involves an adjustment of the *Contract Price* or the *Contract Time*, the *Contractor* may issue a written request to the *Consultant* seeking such additional information. The *Contractor* shall, within five *Working Days* of receipt of such additional information, provide the *Consultant* with a written notice if, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or the *Contract Time*. Failure to provide written notification within the time stipulated in this paragraph 2.2.13 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment in the *Contract Price* or *Contract Time*.”

1. Add the following new paragraph 2.2.19:

“2.2.19 In any written or printed notice 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 spot or spots 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 to the clause or clauses bearing upon the matter, and a description of the locality in general terms, and sufficiently clear, in the opinion of the *Consultant*, to indicate where the defect or trouble exists, shall be deemed to be, and shall be, ample notice.”

1. Add the following new paragraph 2.2.20:

“2.2.20 Neither the *Contractor* nor any *Subcontractor*, *Supplier* or other third party shall have any claim against the *Consultant* as a result of the performance or non-performance of the *Consultant's* services. The *Contractor* shall include this provision in any contracts it makes with its *Subcontractors*, *Suppliers* and others and shall require such *Subcontractors*, *Suppliers* and others to include the same term in their contracts with sub-subcontractors, sub-suppliers and others.”

1. Add the words “and *Owner*” after the words “*Consultant*” in the second and third lines of paragraph 2.3.2, and delete the phrase “reasonable notice” and replace it with “48 hours’ notice” in paragraph 2.3.2.
2. Add “or the *Owner”* in the first line after *“Consultant”* in paragraph 2.3.5.
3. Add the following to the end of paragraph 2.3.2:

“If the *Contractor* notifies the *Consultant* that the *Work* is ready for testing, review or inspection and subsequent to such notification the *Contractor* is not prepared for a test, inspection or approval of *Work* by the *Consultant* and the *Consultant* is required to make a subsequent visit, the cost of any such unnecessary visit by the *Consultant* may be deducted from amounts payable to the *Contractor*.”

1. Add the following new paragraph 2.3.8:

“2.3.8 The *Consultant* or the *Owner* may conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction means, methods, techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which belongs exclusively to the *Contractor*. The undertaking of periodic site review by the Consultant or Owner and their employees and agents shall not be construed as supervision of actual construction, nor make them responsible for providing a safe place for work.”

1. Revise paragraph 2.4.1 by, (a) adding the phrase “at the Contractor’s expense” after the phrase “correct defective work” in the first sentence; (b) inserting the phrase “or the *Owner*” in the first sentence after the phrase “rejected by the *Consultant*”; and (c) adding the following to the end of the paragraph:

“The *Contractor* shall also,

.1 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*; and

.2 prioritize the correction of any defective work, which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*.”

1. Add the phrase “and the *Owner*” after the word “*Consultant*” in the first line of paragraph 2.4.3.
2. Add the following new paragraph 2.4.4:

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

1. Add the following new paragraph 3.1.3:

“3.1.3 All *Products*, materials, equipment work, means, methods, techniques and procedures shall be performed in strict compliance with *Occupational Health and Safety Act*, R.S.O, 1990, c. O.1, as amended from time to time and Ontario Regulation 213/91, as amended from time to time and other *Applicable Law* as it relates to health and safety of work site, personnel, occupants, and public.”

1. Add the following new paragraphs 3.1.8 to 3.1.10:

3.1.8 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.

3.1.9 The *Contractor* agrees that the *Owner* shall not be liable for any loss of, or damage to, the *Contractor’s* materials or equipment located at the *Place* of the *Work* or any associated lands, properties, facilities or buildings belonging to or managed by the *Owner*.

3.1.10 The *Contractor* represents and warrants that, on behalf of the *Contractor* and each of its agents, employees, *Subcontractors* and representatives, that it has all training licenses and certifications required or necessary with respect to providing the *Work*.”

1. Delete paragraphs 3.2.2.1 to 3.2.2.4 in their entirety.
2. Delete paragraph 3.2.3.2 in its entirety and replace it with the following:

“.2 coordinate and schedule the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contractor* and connect as specified or shown in the *Contract Documents*.”

1. 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 except those deficiencies not then reasonably discoverable; and”.
2. Revise paragraph 3.2.3 by, (a) deleting the word “and” from paragraph 3.2.3.2; (b) deleting the period at the end of paragraph 3.2.3.3 and replacing it with a semi-colon; and (c) adding the following new paragraphs 3.2.3.4 to 3.2.3.6:

“.4 retain overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of Work;*

.5 until *Total Performance of the Work*, stop any unsafe work and instruct the party responsible to cure the condition, and shall remove any person failing to comply from the *Place of the Work*; and

.6 where the *Contractor* believes that the work of other contractors or of the *Owner's* own forces may compromise any of the warranties to be provided pursuant to this *Contract*, promptly give *Notice in Writing* to the *Consultant* and the *Owner* and include in such notice the reasons why the *Contractor* believes a warranty or a warranties will be compromised together with the *Contractor's* recommendation for avoiding such result.”

1. Add the following new paragraph 3.2.7:

“3.2.7 The *Owner* shall have the right to enter upon and take possession of the *Work* in whole or in part for the purpose of placing fittings and equipment or for other use before completion of the *Contract* if such entry and taking of possession does not prevent or interfere with the *Contractor’s* efforts to complete the *Work* in the time specified. Such entry and taking of possession shall not be considered as acceptance of the *Work* nor shall it in any way relieve the *Contractor* from its responsibilities under the *Contract*.”

1. Replace the word “law” in paragraph 3.3.2 with the words “*Applicable Law”*.
2. Delete paragraph 3.4.1 in its entirety and replace it with the following:

“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 be undertaken with the standard of care described in paragraph 3.14.1 of GC 3.14 – CONTRACTOR STANDARD OF CARE. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in this paragraph 3.4.1, the *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care.”

1. Add the following new paragraph 3.4.2:

“3.4.2 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, including laying out of the *Work*, the *Contractor* shall immediately notify the *Consultant*, and request instructions, a *Supplemental Instruction, Change Order,* or *Change Directive,* as the case may require, and the *Contractor* shall not proceed with the work affected until the *Contractor* has received such instructions, a *Supplemental Instruction*, *Change Order* or *Change Directive*. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.”

1. Delete paragraph 3.5.1 in its entirety and replace it with the following:

“The Contractor shall:

.1 Seven calendar days prior to site mobilization, submit to the *Owner* and the *Consultant* for their approval a *Construction Schedule* indicating critical milestone dates for the Project as required to demonstrate that the *Work* will be performed in conformity with the *Contract Time*. The *Contractor* shall provide the schedule information required by this paragraph 3.5.1.1 in both electronic format and hard copy. The *Contractor* shall not amend the accepted *Construction Schedule* without the written consent of the *Owner*;

.2 monitor the progress of the *Work* relative to the Construction Schedule, or any successor or revised schedule approved by the *Owner*, update the Construction Schedule on a monthly basis or as otherwise stipulated in the *Contract Documents*;

.3 advise the *Consultant* by *Notice* in *Writing* of any slippage in the *Construction Schedule* or any other schedule and of any revisions required to the *Construction Schedule* as a result of extension of the *Contract Time* as provided in GC 6 – CHANGES IN THE WORK;

.4 at all times perform the *Work* required hereunder as diligently and expeditiously as is consistent with the highest professional standards and the orderly progress of the *Work*, within the *Contract Time* and in accordance with the *Construction Schedule* and any revisions thereto, in order to maintain the desired development and construction schedule for the *Project*, and in order not to delay the *Work* or any aspect of the construction of the *Project*;

.5 at all times provide sufficient personnel to accomplish its services within the *Contract Time* and in accordance with the *Construction Schedule* and any revisions thereto;

.5 provide the expertise and resources, such resources including sufficient 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;

.5 provide overtime work without change to the *Contract Price* if such work is deemed necessary by the *Contractor* to meet the *Construction Schedule*; and

.6 ensure that the *Contract Price* includes all costs required to phase or stage the *Work*.”

1. Add the following new paragraphs 3.5.2 to 3.5.6:

“3.5.2 If requested by the *Owner*,the *Contractor* shall promptly provide to the *Owner* and the *Consultant* a two week look-ahead schedule indicating the major activities to be undertaken or constructed in such two week period.

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* 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*.

3.5.4 If the *Owner* specifically 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*.

3.5.5 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, based on critical path methodology, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to paragraph 3.5.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract* *Price* in relation to a schedule recovery plan, the *Contractor* shall proceed pursuant to Part 6 of the General Conditions – CHANGES IN THE WORK.

3.5.6 Time shall in all respects be of the essence of this *Contract*. Notwithstanding the foregoing, if the *Contractor* is delayed in the performance of its obligations or services under this *Contract* or under the *Construction Schedule* for a period of seven days or more as a result of *Force Majeure*, the *Contractor* shall be entitled to request an extension or extensions to the required completion date(s) set out in the *Construction Schedule*, provided that the *Contractor* shall not be entitled to any additional compensation as a result of such *Force Majeure* event or the delay occasioned thereby and shall not be compensated for any additional costs, directly or indirectly arising as a result of such *Force Majeure* event or the delay occasioned thereby (including, without limiting the generality of the foregoing, any additional costs arising out of winter construction). No controversy or dispute of any kind between the parties or between the *Contractor* and the *Consultant* or the *Owner* (or the *Owner’s Representative*) and the *Consultant* shall constitute a cause for stoppage of the performance of the *Contractor’s* obligations or services or for a delay or extension.”

1. Revise paragraph 3.6.1 by (a) adding “acceptable to the *Owner* and *Consultant*” after “appoint a competent representative” in the first sentence; and (b) deleting “except for a valid reason” and replacing it with “without prior consultation with and agreement in writing by the *Owner* and the *Consultant*” in the second sentence.
2. Delete the words “, except with respect to Article A-6 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING” from the end of paragraph 3.6.2.
3. Add the following new paragraph 3.6.3:

“3.6.3 The *Owner* shall have the right to immediately terminate the contract should the *Contractor* fail to comply with *Occupational Health and Safety Act*, R.S.O., 1990, c. O.1, as amended from time to time and Ontario Regulation 213/91, as amended from time to time and other *Applicable Law* as it relates to health and safety of work site, personnel, occupants, and public.”

1. Revise paragraph 3.7.1 by adding the phrase “including any warranties and service agreements which extend beyond the term of the *Contract*” after the phrase “under subcontract” in the second line.
2. Revise paragraph 3.7.1.2 by adding the phrase “including any required contract security” after the phrase “the *Contract Documents*”.
3. Replace the words “Should the *Owner* not object” in the third line of paragraph 3.7.2 with “Upon obtaining the written approval of the Owner.”
4. Add the following new paragraph 3.7.4 and renumber the current paragraphs 3.7.4 to 3.7.6 accordingly:

“3.7.4 The *Contractor* agrees not to change *Subcontractors* without prior written approval of the *Owner*, which approval shall be in the sole discretion of the Owner.”

1. Addthe followingnew paragraphs 3.7.7 to 3.7.9:

“3.7.7 The *Contractor* covenants that each subcontract or supply contract which the *Contractor* enters into for the purpose of performing the *Work* shall expressly provide for the assignment thereof to the *Owner* (at the option of the *Owner*) and the assumption by the *Owner* of the obligations of the *Contractor* thereunder, upon the termination of the *Contract* and upon written notice by the *Owner* to the other parties to such subcontracts or supply contracts, without the imposition of further terms or conditions; provided, however, that until the *Owner* has given such notice, nothing herein contained shall be deemed to create any contractual or other liability upon the *Owner* for the performance of obligations under such subcontracts or supply contracts and the *Contractor* shall be fully responsible for all of its obligations and liabilities (if any) under such subcontracts and supply contracts. The *Contractor* shall be fully responsible to ensure that all *Subcontractors* and *Suppliers* are familiar with and perform all activities and supply products in accordance with *Applicable Law*, including the *Occupational Health and Safety Act*, R.S.O., 1990, c. O.1, as amended from time to time and Ontario Regulation 213/91, as amended from time to time. The *Owner* reserves the right to terminate the contract should either *Supplier* or *Subcontractor* fail to comply with any regulation, practice or procedure as determined by current health and safety legislation. The *Contractor* shall not be eligible for any claims resulting from non-compliance of *Suppliers* and *Subcontractors*.

3.7.8 The *Owner* may assign to the *Contractor*, and the *Contractor* agrees to accept, any contract procured by the *Owner* for work or services or *Products* required on the *Project* that has been pre-tendered or pre-negotiated by the *Owner*. As part of its acceptance for any contract procured by the *Owner*, the *Contractor* shall be entitled to apply a mark-up of no more than ten percent to the value of the assigned contract.

3.7.9 The *Contractor* agrees and confirms that all *Contractor* agents, employees, *Subcontractors* and representatives will carry the required *Owner* identification badges and shall properly display them at all times while on the *Owner’s* property. When required, the *Contractor* shall also ensure *Contractor* vehicles are appropriately branded and carry the correct markings including the *Contractor’s* name and registration numbers (e.g., TSSA number). All *Owner* provided badges shall be returned to the *Owner* immediately upon completion of the *Contract*. The *Contractor* shall be financially responsible for all lost or unreturned badges.”

1. Revise paragraph 3.8.1 by, (a) deleting the word “The” at the beginning of paragraph 3.8.1 and replacing it with “Unless otherwise specified in the *Contract*, the”; and (b) adding the following sentence at the end of the paragraph: “The *Contractor* represents and warrants that the *Products* provided in accordance with the *Contract* *Documents* are not subject to any conditional sales contracts and are not subject to any security rights claimed or obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place* of the *Work*.”
2. Delete paragraph 3.8.2 in its entirety and replace it with the following:

“3.8.2 Except as otherwise specifically stated in the *Contract Documents*, *Products* provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, provincial and municipal building codes, fire safety standards, and all *Governmental Authorities* and regulatory agencies having jurisdiction at the *Place of the Work*. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the 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* shall be at the sole risk of the *Contractor*. Workmanship shall be, in every respect, first class and the *Work* shall be performed in accordance with the best modern industry practice.”

1. Add the following new paragraphs 3.8.4 to 3.8.8:

“3.8.4 Upon receipt of a written notice from the *Consultant* or *Owne*r*,* the *Contractor* shall immediately dismiss, from the *Place of the Work*, tradesmen and labourers whose *Work* is unsatisfactory to the *Consultant* or *Owner* or who are considered by the *Consultant* or *Owner* to be unskilled or otherwise objectionable. *Products* provided shall be new, unless the *Contract Documents* stipulate otherwise or the *Owner* or the *Consultant* directs that a particular product which is not new be utilized.

3.8.5 The cost for overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, such as pouring or finishing of concrete or similar work, or *Work* that the *Contractor* elects to perform at overtime rates without the *Owner* requesting it, shall not be chargeable to the *Owner*. Tradesmen and labourers whose work is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable shall be excluded from the *Work* upon notice from the *Consultant*.

3.8.6 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*.

3.8.7 The *Contractor* acknowledges and agrees that any part of the work performed by the *Contractor* on behalf of the *Owner* that falls under the provisions of any collective agreements by which the *Owner* is bound, or which the *Owner* is contractually required to apply to the *Contract*, shall in each case be performed by employees covered by the applicable collective agreement. Without limiting the generality of the foregoing, such collective agreements include:

.1 where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Electrical Trade Bargaining Agency of the Electrical Contactors' Association of Ontario (the "ETBA") and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario (the "Electricians' Union" Local 353);

.2 where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between Mechanical Contractors' Association of Ontario (the "MCAO") and the Ontario Pipe Trades Council (the "Plumbers' Union");

.3 where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Canadian Automatic Sprinkler Association (the "CASA") and the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, local 853 (the "Sprinkler Fitters' Union");

.4 where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between a council of employers' associations consisting of the Ontario Painting Contractors Association, the Acoustical Association of Ontario and the Interior Systems Contractors Association of Ontario (the "Employer Bargaining Agency") and the International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades (the "Painters' Union");

.5 where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Carpenters' Employer Bargaining Agency (the "CEBA") and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (the "Carpenters' Union"); and

.6 incorporate the terms of understanding as set out in the "Letter of Understanding, Carpentry Work on Smaller Projects" between the University of Toronto and Carpenter's Union Local 27, as amended from time to time which states that "on smaller projects where the cost of labour and materials for the contract, (as budgeted prior to tendering the project), is less than seven hundred thousand dollars ($700,000) but greater than one hundred and fifty thousand dollars ($150,000), the University is deemed to comply with this Letter of Understanding where it contracts or subcontracts with a general contractor who is not bound to the Carpenters' Provincial Agreement, provided that the general contractor subcontracts all the work covered by the Carpenters' Provincial Agreement to an employer bound by the Carpenters' Provincial Agreement.

This paragraph 3.8.7 (the "**GLC Provision**") shall apply to each *Subcontractor* *mutatis mutandis* and the *Contractor* shall include this *GLC Provision*, with all necessary changes, in each of its contracts with *Subcontractors* for any applicable part of the delivery or performance of the *Work*.

3.8.8 Without limiting the generality of paragraph 3.8.7, the *Contractor* shall not employ any persons for the Work whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. Any costs arising from labour disputes as a result of the employment of any such person by the *Contractor*, its *Subcontractors* or *Suppliers*, shall be the sole expense of the *Contractor*. Any part of the *Work* that is the work of union members represented by the union locals under the provisions of any collective agreements by which the *Owner* is bound, shall in each such case be performed only by an employer also bound by such agreement.

3.8.8 The *Contractor* shall give due consideration to the environment in the discharge of its duties under and pursuant to this *Contract*, including, without limitation, using environmentally friendly materials and/or processes consistent with prudent industry practices. The *Contractor* shall consider the energy intensity of its products and services, in the event that the *Owner* requests such information related to the carbon footprint of this aspect of their business. The *Contractor* shall comply with all *Applicable Law*, including without limitation any waste, recycling, electric and electronic equipment regulations. The *Contractor* shall use Eco-logo or green products whenever commercially available. To the extent required by the *Owner*, the *Contractor* shall provide the *Work* in accordance with the *Owner’s* environmental policy, and abide by LEED or BOMA building requirements if the *Contractor* is providing *Work* to a LEED or BOMA certified property.”

1. Delete paragraph 3.9.1 in its entirety and replace it with the following:

“3.9.1 The *Contractor* shall keep one copy of the current *Contract* *Documents*, *Supplemental* *Instructions*, contemplated *Change* *Orders*, *Change* *Orders*, *Change* *Directives*, cash allowance disbursement authorizations, reviewed *Shop* *Drawings*, submittals, reports (including any reports or orders by *Governmental Authorities*) and records of meetings at the *Place* of the *Work*, in good order and available to the *Owner* and *Consultant*.”

1. Add the words “AND OTHER SUBMITTALS” to the title of GC 3.10 – SHOP DRAWINGS after the words “SHOP DRAWINGS” such that the title of GC 3.10 is “SHOP DRAWINGS AND OTHER SUBMITTALS”.
2. Add the phrase “and *Submittals*” after the words “*Shop Drawings*” in paragraphs 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, and 3.10.11.
3. Delete paragraph 3.10.1 in its entirety and replace it with the following:

“3.10.1 The *Contractor* shall provide *Shop Drawings* and *Submittals*as required in the *Contract Documents* and as the *Consultant* may reasonably request. The *Contractor* shall submit all *Drawings* in triplicate and in reproducible form. The Contractor shall also, (a) prepare and maintain current as-built *Drawings* which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings and Specifications*, which current as-built *Drawings* shall be maintained by the *Contractor* and provided to the *Consultant* for review with each application for payment pursuant to paragraph 5.2.5 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT; and (b) provide as-built *Drawings* upon completion of the *Work*. The *Contractor* shall grant the *Owner* a perpetual and royalty-free licence to use, display and modify such *Shop Drawings* and as-built *Drawings*.”

1. Delete paragraph 3.10.3 in its entirety and replace it with the following :

“3.10.3 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop* *Drawings* and any *Submittals*.”

1. Delete paragraph 3.10.8.1 in its entirety and replace it with the following:

“.1 the *Contractor* has determined and correlated the field measurements with the *Shop* *Drawings* and any *Submittals* and field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so if not possible at that time, and”.

1. Delete paragraph 3.10.12 in its entirety and replace it with the following:

“3.10.12 The *Consultant* will review and return *Shop* *Drawings* and *Submittals* in accordance with the schedule agreed upon in paragraph 3.10.3, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Consultant* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Consultant* shall notify the *Contractor* and they shall meet to review and arrive at an acceptable revised schedule for processing. The *Contractor* shall update the *Shop* *Drawings* and *Submittals* schedule to correspond to changes in the *Construction Schedule*. Changes in the *Contract* *Price* or *Contract* *Time* may be made only as provided in the *Contract*.”

1. Add the following new paragraphs 3.11.3 to 3.11.8:

“3.11.3 The *Contractor* shall take all reasonable steps to prevent interference with adjacent properties. The *Contractor* shall not close or obstruct streets, sidewalks, alleys, or other public thoroughfares unless all permits required by *Applicable Law* have been obtained. Any damage to public property, private property, or to utilities, including business interruption losses resulting from the negligent acts or omissions or default of the *Contractor* shall be paid, corrected or remedied by *Contractor* in a manner approved by the *Owner* and the party whose property has been damaged, all at no additional cost to *Owner* and not as a cost to the *Project*.

3.11.4 If work or storage areas in addition to areas provided by the premises are required, the *Contractor* shall be responsible for making arrangements to obtain the additional areas, whether adjacent to the premises or not, and for making permit and rental payments that may be required.

3.11.5 In carrying out the *Work*, the *Contractor* must minimize damage or injury to any adjacent property and, except as otherwise provided in this *Contract*, if injury or damage is done, it must make good the same, at its own expense, in the manner directed by, and to the satisfaction of, the *Consultant*. The *Contractor* shall be responsible for any and all damages, or claims for damages for injury or accidents done or caused by it or its employees or agents, or resulting from the prosecution of the works, or any of its operations, or caused by reason of the existence or location or condition of the works, or of any materials, plant or machinery used thereon or therein, or which may happen by reason thereof, or arising from any act of commission or omission on its part, or on the part of any of its agents or employees, in connection with the *Contract*, and covenants and agrees to hold the *Owner* harmless and indemnified from all such damages and claims for damage; and in case of *Contractor’s* failure, neglect or omission to observe and perform faithfully and strictly, all the provisions of the *Contract*, the *Consultant* may, either with or without notice (except where in this *Contract*, notice is specially provided for, and then upon giving the notice therein provided for), take such steps, procure such material, plant, trucks and men, and do such work or things as it may deem advisable toward carrying out and enforcing the same, and any and all expenses so incurred may be deducted or collected by the *Owner*, and any such action by the *Consultant* as it is herein empowered to take, shall not in any way relieve the *Contractor* or its surety from any liability under the *Contract*.

3.11.6 If the *Contractor* enters into the lands or buildings of the Province or of any municipality or of any *Person* or enters into any highway or road under the jurisdiction and control of any public authority for the purpose of making any survey, examination, investigation, inspection or other arrangement or lays any pipes or appurtenances in, upon, through, over or under any highway or road under the jurisdiction and control of any public authority and in so doing disturbs any such lands, buildings, highways or roads, such lands, buildings, highways or roads shall be restored to their original condition without unnecessary delay.

3.11.7 The *Contractor* must (if it is practicable in the opinion of the *Consultant*) keep the roadway open for travel for the use of the public, for such width as the *Consultant* may direct. Where, in the opinion of the *Consultant*, it is not practicable to keep a roadway open for the full flow of traffic, it may permit the *Contractor* to close or partially close such roadway and to provide for a detour of the traffic or a part thereof. In each such case and before putting into effect the closure or detour, the *Contractor* shall present its proposal for closure or detour to any *Governmental Authority* having jurisdiction over any of the roadways which will be affected by the proposed closure of the said authority or authorities. The *Contractor* must provide a sufficient number of “NO THOROUGHFARE”, “DETOUR” or other proper notices, which it must cause to be placed and maintained in good order in conspicuous places wherever any roadway, sidewalk, or thoroughfare is torn up or dangerous, and so long as it remains unsafe or unfinished. When any work is carried on at night, the *Contractor* must supply, at its own expense, a sufficient number of electric or other approved and efficient lights, to enable the same to be done in an efficient and satisfactory manner, and the *Consultant* shall have the power to order additional lights to be put on at the *Contractor’s* expense if in the opinion of the *Consultant,* they are, or may be, required.

3.11.8 The method of use and the character of all explosives shall be subject to the approval of the *Consultant*. The *Contractor* shall ensure that the charges of explosives used by the *Contractor* and the time at which they are exploded shall be such as not to cause damage to person or property or to cause unreasonable inconvenience. Explosives shall be properly housed and protected as provided by *Applicable Law*, and no explosives known to have deteriorated shall be used. Approved methods of handling and thawing of frozen explosives shall be followed, and the greatest care shall be exercised at all times by the *Contractor* in blasting operations.”

1. At the end of the paragraph 3.13.1, add the following:

“The *Contractor* shall remove accumulated waste and debris at least once a week as a minimum or as required by the nature of the *Work.”*

1. In paragraph 3.13.2, in the fourth line addthe word “materials,” between the word “tools” and the words “*Construction Equipment*”.
2. In paragraph 3.13.3, in the first and second lines add the word “materials,” between the word “tools” and the words “*Construction Equipment*”.
3. Add the following new paragraphs 3.13.4 to 3.13.6:

“3.13.4 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.13, then the *Owner* or the *Consultant* may give the *Contractor* 24 hours written notice to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.13 within the 24 hour period following delivery of the notice, the *Owner* may remove such waste and debris and deduct from payments otherwise due to the *Contractor*, the *Owner’s* costs for such clean up, including a reasonable mark-up for administration costs.

3.13.5 From the commencement of the *Work* until the *Total* *Performance* of the *Work* the *Contractor* shall in accordance with accepted industry practices and using reasonable efforts maximum waste diversion from landfill for any and all waste generated by the Work.

3.13.6 Upon *Substantial Performance of the Work*, the *Contractor* shall remove from the *Place* of the *Work* products, tools, construction machinery, and equipment brought onto the *Place* of the *Work* by *Contractor* or its *Subcontractors*. If the *Contractor* fails to comply with its obligations under this paragraph, the *Owner* may remove the debris and other items and charge the *Contractor* the full cost of such removal including an overhead charge of 15%.”

1. Add the following new GC 3.14 – CONTRACTOR STANDARD OF CARE:

“**GC 3.14 CONTRACTOR STANDARD OF CARE**

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

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

.1 the personnel it assigns to the *Project* are appropriately experienced;

.2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner’s* approval, in the event of death, incapacity, removal or resignation; and

.3 there are no pending, threatened or anticipated claims, liabilities or contingent liabilities that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.”

1. Add the following new GC 3.15 – OCCUPANCY OF THE WORK:

“**GC 3.15 OCCUPANCY OF THE WORK**

3.15.1 Where 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 this *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, 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. Without *Owner's* prior approval, the *Contractor* shall not permit any worker or *Subcontractors* to use any existing facilities including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the *Owner*.”

1. Add the following new GC 3.16 – CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS:

“**GC 3.16 CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS**

3.16.1 With the prior written approval of the *Owner*, the *Contractor* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Project* during the final stages of construction. In such event, and before the issuance of the certificate of *Substantial* *Performance* of the *Work*, the *Contractor* shall clean and make good, to the satisfaction of the *Consultant*, such systems and equipment as it had been permitted to use. The *Contractor* shall pay any and all costs associated with such use, cleaning and making good.

3.16.2 Where the *Contractor* has made use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work*, as described in paragraph 3.16.1, the *Contractor* shall obtain, from the manufacturer or *Supplier* of the systems or equipment used, a confirmation from such manufacturer or *Supplier* that the warranty on such systems or equipment begins on the date of *Substantial* *Performance* of the *Work* and is not impaired in scope or reduced in time by virtue of the *Contractor's* use of such systems or equipment.”

1. Delete paragraph 4.1.4 in its entirety and replace it with the following:

“4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Consultant’s* direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Contract Price* for *Overhead* and profit. Only where the actual cost of the *Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Contractor* be compensated for the excess incurred and substantiated, plus an amount for *Overhead* and profit on the excess only, as set out in the *Contract Documents*.”

1. Delete paragraph 4.1.5 in its entirety and replace it with the following:

“4.1.5 The unexpended total cash allowance amount shall be deducted from the Contract Price by Change Order.”

1. Add the following new paragraph 4.1.8:

“4.1.8 The *Owner* may direct the *Contractor* to conduct a competitive procurement process for any work, materials or *Products* for which payment is made from a cash allowance.”

1. Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER in its entirety.
2. Revise paragraph 5.2.3 by (a) deleting the words “*Products* delivered to the *Place of the Work*” in the first and second lines and substituting “*Products* delivered and incorporated into the *Work*, less the amount of all previous payments claimed”; and (b) adding the following to the end of the paragraph:

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

1. Delete paragraphs 5.2.4 to 5.2.7 in their entirety and replace them with the following new paragraphs 5.2.4 to 5.2.9:

“5.2.4 Before the *Contractor* submits each application for payment, the *Contractor* shall document the progress of the *Work* on site to establish the value of the Work performed. The *Consultant* or the *Owner* may attend at the site to verify the progress of the *Work* and the value of the *Work* performed as documented by the *Contractor*. The *Contractor’s* applications for payment shall be submitted to the *Owner* on or before the 16th of each month and the amount claimed shall be for the value of any portion of the *Work* performed and *Products* installed under the *Contract* as of the last day of the applicable payment period less the aggregate of previous payments and holdback amounts. No payment shall be claimed for *Products* delivered to the *Place of the Work*, or elsewhere, prior to their incorporation into the *Work* without the *Owner’s* prior consent to the delivery and such evidence as the *Consultant* may reasonably require to establish the value and delivery of such *Products*.

5.2.5 Each *Contractor’s* application for payment shall be in a form prescribed by the *Owner* and shall contain such information as requested by the *Owner* or *Consultant*, including but not limited to:

1. a detailed breakdown showing (a) the costs and expenses incurred or paid by the *Contractor* during the immediately preceding payment period (up until the last working day) to any *Subcontractor*, *Supplier*, employee or labourer for any portion of the *Work* actually performed and for *Products* actually incorporated into the *Work*, and (b) such *Work* and such *Products*;
2. a *Statutory Declaration* for the relevant dates;
3. a clearance certificate issued by the WSIB;
4. the names of *Subcontractors* and *Products Suppliers* to be paid and the amount to be paid to each;
5. the total amount of expenditures to date and the total estimated expenditures to be made for the remaining balance of the *Work*;
6. the purchase order number assigned to the Contract;
7. any additional information required by the Owner as set out in the *Contract Documents*.

5.2.6 Each *Contractor*’s application for payment shall be supported by invoices, payrolls, equipment rental schedules and such other evidence as the *Owner* or *Consultant* shall require to support the application for payment and copies thereof shall be supplied to the *Owner* by the *Contractor* upon request. Except for the *Contractor’s* first application for payment, each application shall also be accompanied by such evidence as *Owner* may require establishing payment and satisfaction by the *Contractor* of all items with respect to the *Work* for which the *Contractor* has been previously paid, such as receipts, *Statutory Declarations* and releases from *Subcontractors* and *Products Suppliers* arising out of or in connection with the *Work*, and statutory declarations from the *Contractor*, in such form as may be required by *Owner*. Upon receipt of a written request from the *Owner*, the *Contractor* shall also make available to the *Owner* the *Contractor’s* files setting forth the addresses of all *Subcontractors*, labourers and *Products Suppliers* and the names of all labourers involved in the *Work*, and *Owner* shall have the right to make and retain copies of the same. The Contractor assumes liability for any and all taxes, fees, duties, withholdings or similar charges, whether domestic or foreign, including, without limitation federal, provincial and local taxes, value added taxes, goods and services taxes, property taxes or other governmental charges. Taxes shall be separately stated by the *Contractor* on each *Contractor’s* application for payment.

5.2.7 The *Contractor* shall submit to the *Owner* and *Consultant* at least 15 calendar days before the first application for payment, a schedule of values of the various parts of the *Work*, divided so as to facilitate evaluation of applications for payment.

5.2.8 This schedule shall be made out in such form and supported by such evidence as to its correctness as the *Owner* or *Consultant* may direct and when approved by the *Owner* and *Consultant* shall be used as the basis for applications for payment, unless it is found to be in error.

5.2.9 When making application for payment, the *Contractor* shall submit a statement based upon this schedule which statement shall be made out in such form and supported by such evidence as to its correctness as the *Owner* or *Consultant* may direct.”

1. Delete paragraph 5.3.1.3 in its entirety and replace it with the following:

“.3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before the later of (i) 35 calendar daysafter the date of the application for payment; and (ii) 15 *Working Days* after the date of the certificate of payment is issued by the *Consultant.* Absolutely no payments will be issued for applications submitted more than 180 days after the date the *Work* was delivered.”

1. Add the following new paragraphs 5.3.2 to 5.3.6:

“5.3.2 If the *Contractor* fails to provide all documentation as required by GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, the *Contractor* or *Owner* shall be entitled to return the application for progress payment to the *Contractor* for completion. The review period by the *Consultant* and payment period by the *Owner* will commence upon receipt of a complete application for progress payment.

5.3.3 The issuance of a certificate of payment will constitute a representation by the *Consultant* to the *Owner*, based on the *Consultant’s* observations at the *Place of the Work* and the data comprising the application for payment, that to the best of the *Consultant’s* knowledge, information and belief, the *Work* has progressed to the point indicated; that in the opinion of the *Consultant*, the quality of the *Work* is in accordance with the *Contract Documents*; and that the *Contractor* is entitled to payment under the *Contract Documents* in the amount certified. In addition, the *Consultant’s* final certificate for payment issued pursuant to paragraph 5.7.2 of GC 5.7 – FINAL PAYMENT will constitute a further representation that the conditions precedent to the *Contractor’s* being entitled to final payment as set forth in GC 5.7 – FINAL PAYMENT have been fulfilled.

5.3.4 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, if in the *Consultant’s* opinion it is unable to make representations to the *Owner* as provided in paragraph 5.3.2 of this GC 5.3 – PROGRESS PAYMENT. 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 or the *Owner* may refuse to make payment, to such extent as may be necessary in its opinion to protect the *Owner* from loss because of:

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| --- |
| 1. defective work not remedied; |
| 1. third party claims filed or reasonable evidence indicating possible filing of such claims; |
| 1. failure of the *Contractor* to make payments promptly to *Subcontractors*, *Suppliers* or for labour, *Products* or equipment; |
| 1. damage to work of other contractors; or |
| 1. unsatisfactory prosecution of the *Work* by the *Contractor* or any *Subcontractor*. |

5.3.5 No payment made by the *Owner* under this *Contract* nor any partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or any *Products* which are not in accordance with the requirements of the *Contract Documents*.

5.3.6 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 any future payments until satisfactory evidence of payment is provided to the *Owner* by the *Contractor*.”

1. Add the following at the end of paragraph 5.4.1:

“The issuance of the list of items to be completed or corrected does not relieve the *Contractor* from its obligations to correct and/or complete the deficiencies in the performance of the *Contract*.”

1. Add the phrase “and correcting any deficient *Work*, as applicable” after the phrase “date for finishing the *Work*.” in paragraph 5.4.3.
2. Add the following new paragraphs 5.4.4 to 5.4.6:

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

.1 guarantees;

.2 warranties;

.3 certificates;

.4 final testing and balancing reports;

.5 distribution system diagrams;

.6 spare parts;

.7 a complete manual for the operation and recommended maintenance of all systems, equipment, materials and finishes, and other similar concepts for use by the *Owner*;

.8 samples;

.9 reports and correspondence from authorities having jurisdiction in the *Place of the Work*;

.10 *Shop Drawings*;

.11 inspection certificates;

.12 a complete set of as-built drawings describing the as-built condition of all aspects of the *Work*;

.13 waste audit reporting;

.14 logs and reports related to compliance with the Federal Halocarbon Regulations (2003), as amended from time to time;

.15 any spare parts or materials left over to the Contractor and required by *Owner*; and

.16 any other materials or documentation required to be submitted under the *Contract Documents*,

together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*. The *Consultant* shall not be required to certify *Substantial Performance of the Work* if the submittals referred to in this paragraph 5.4.4 are not provided by the *Contractor*.

5.4.5 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 contract whether for a change in the *Contract Price*, extension of *Contract Time*, or otherwise, except those made in writing prior to the *Contractor’s* application for payment upon *Substantial Performance of the Work* and still unsettled.

5.4.6 The *Contractor* shall conform to all requirements of *Applicable Law* in force in the jurisdiction of the *Place* of the *Work* with respect to publishing a copy of the Certificate of Substantial Performance. As applicable, the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and *Owner*. If the *Contractor* fails to publish such notice and the publication of the notice is a requirement of *Applicable Law*in the *Place* of the *Work*, the *Owner* shall be at liberty to publish and back charge the *Contractor* its reasonable costs for doing so.”

1. Revise paragraph 5.5.1.1 by adding the following to the end of the sentence: “, and the application by the *Contractor* shall be accompanied by:

.1 a certificate, issued by the agency providing workers’ compensation insurance to the *Contractor*, verifying that coverage is in force at the time of making application for payment, and that coverage will remain in force for at least 60 days thereafter; and

.2 a declaration by the *Contractor*, in a form approved by the *Consultant*, verifying performance of the *Work* in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety;”

1. Replace the words “submit CCDC 9A ‘Statutory Declaration’” in paragraph 5.5.1.2 with the words “submit a *Statutory Declaration*”.
2. Replace the period at the end of paragraph 5.5.1.2 with “, and” and add the following new paragraph 5.5.1.3:

“.3 submit a statement that no written notices of liens have been received by it.”

1. Replace the words “the statement as provided in paragraph 5.5.1” in paragraph 5.5.2 with “the *Statutory* *Declaration*”.
2. Delete paragraph 5.5.3 in its entirety.
3. Replace the word “law” in the last sentence of paragraph 5.5.4 with “*Applicable Law*”.
4. Delete paragraph 5.5.5 in its entirety.
5. Delete GC 5.6 – PROGRESSIVE RELEASE OF HOLDBACK in its entirety.
6. Delete paragraph 5.7.1 in its entirety and replace it with the following:

“5.7.1 When the *Contractor* considers that the *Work* is completed, as defined in the lien legislation applicable to the *Place of the Work* or if such definition does not exist, in accordance with other *Applicable Law*, industry practice or provisions which may be agreed to between the parties, the *Contractor* shall submit an application for final payment. The *Contractor’s* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.4 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, together with,

.1 complete and final as-built *Drawings*;

.2 the *Contractor’s* written request for release of the *Deficiency Holdback*, including a statement that no written notices of lien have been received by it;

.3 a *Statutory Declaration*;

.4 a written statement that the *Work* has been performed to the requirements of the *Contract Documents*, and itemizing approved changes in the *Work* and the *Consultant’s* written instructions and modifications indicated by the *Governmental Authorities* having jurisdiction;

.5 the evidence of workers’ compensation compliance required by paragraph 10.4.1 of GC 10.4 – WORKERS’ COMPENSATION;

.6 a certificate of publication in accordance with paragraph 5.4.6 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK;

.7 a clearance certificate issued by the WSIB; and

.8 such other materials or documentation as may be required to be submitted under the *Contract Documents*.

The *Work* shall be deemed not to be completed until all of the aforementioned documents have been delivered.”

1. Delete from the first line of paragraph 5.7.2 the words, “calendar days” and substitute the words “*Working Days*”.
2. Delete from the second line of paragraph 5.7.4 the words, “5 calendar days after the issuance” and substitute the words “30 calendar days after receipt”.
3. Add the following new GC 5.10 – DEFICIENCY HOLDBACK:

“**GC 5.10 DEFICIENCY HOLDBACK**

5.10.1 Notwithstanding any provisions contained in the *Contract Documents* concerning certification and release of monies to the *Contractor*, the *Owner* reserves the right to establish a deficiency holdback at the time of the review for *Substantial Performance of the Work,* based on a 200% dollar value of the deficiencies to be corrected and work to be completed as listed by the *Consultant* (the “*Deficiency Holdback*”). If the *Consultant* determines, at the time the *Consultant* issues a final certificate for payment as set out in GC 5.7 – FINAL PAYMENT, that there are still outstanding deficiencies or incomplete work, then the *Owner* may retain some or all of the *Deficiency Holdback* as required for the *Owner* to correct the deficiencies or complete the *Work*. This *Deficiency Holdback* is separate from and in addition to the holdback referred to in the General Conditions (the “*Lien* *Holdback*”). All references to “holdback” in the *Contract* shall be taken to be references to the “*Lien* *Holdback*” unless specifically stated to be references to the *Deficiency* *Holdback*.”

1. Delete paragraph 6.1.2 in its entirety and replace it 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. 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*.

6.1.3 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.

6.1.4 Quotations for changes to the *Work* shall be accompanied by itemized breakdowns together with detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers,* submitted in a format acceptable to the *Consultant* and including any costs associated with extensions in *Contract Time.*

6.1.5 When both additions and deletions covering related *Work* or substitutions are involved in a change to the *Work*, payment, including *Overhead* and profit, shall be calculated on the basis of the net difference, if any, with respect to that change in the *Work*.

6.1.6 No extension to the *Contract Time* shall be granted for changes in the *Work* unless the *Contractor* can clearly demonstrate that such changes significantly alter the overall construction schedule submitted at the commencement of the *Work.* Extensions of *Contract Time* and all associated costs are to be included in the relevant *Change Order.*”

1. Add the following new paragraphs 6.2.3 to 6.2.5:

“6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the *Consultant*:

.1 by estimate and acceptance of a lump sum;

.2 by negotiated unit prices which include the *Contractor’s* *Overhead* and profit, or;

.3 by the actual cost to the Owner, such costs to be the actual cost after all credits included in the change have been deducted, plus the following ranges of mark-up on such costs:

.1 for *Change Orders* with a value of $0 to $15,000 the total *Subcontractor/Supplier* mark-up including *Overhead* and profit shall be 10% and the total *Contractor* mark-up including *Overhead* and profit shall be 5%.

.2 for Change Orders in excess of $15,000, the total Subcontractor/Supplier mark-up including Overhead and profit shall be 5% and the total Contractor mark-up including Overhead and profit shall be 3%.

6.2.4 All quotations will be submitted in a complete manner listing:

.1 quantity of each material;

.2 unit cost of each material;

.3 man hours involved;

.4 cost per hour;

.5 *Subcontractor* quotations submitted listing items 1 to 4 above and item 6 below; and

.6 mark-up.

6.2.5 The *Owner* and the *Consultant* will not be responsible for delays to the *Work* resulting from late, incomplete or inadequately broken down valuations submitted by the *Contractor.*”

1. Amend paragraph 6.3.6.1 by, (a) deleting the final period and replacing it with the following: “calculated as follows:

.1 10% for profit plus 5% for *Overhead* on work by the *Contractor’s* own forces up to the value of $15,000 and 5% for profit plus 3% for *Overhead* on work by the *Contractor’s* own forces in excess of $15,000; and

.2 10% fee on amounts paid to *Subcontractors* or *Suppliers* under subparagraph 6.3.7.9 for changes up to the value of $15,000 and 5% on changes over $15,000.

Unless a *Subcontractor’s* or *Supplier’s* price has been approved by the *Owner,* the *Subcontractor* or *Supplier* shall be entitled to its actual net cost as determined in accordance with paragraph 6.3.7, plus 10% for profit and 5% for *Overhead* on such actual net cost for changes in the *Work*, up to the value of $15,000 and 5% for profit and 3% for *Overhead* on such actual net cost changes in the *Work* in excess of $15,000.”

1. Add the following new paragraph 6.3.6.4:

“.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* no later than two calendar days of receipt of any such *Change Directive*.”

1. Delete paragraph 6.3.6.2 and replace it with the following:

“.2 If a change in the *Work* results in a net decrease in the *Contract Price* in excess of $15,000 the amount of the credit shall be the net cost, with deduction for *Overhead* and profit. If a change in the *Work* results in a net decrease in the *Contract Price* of $15,000 or less, the amount of the credit shall be the net cost, without deduction for *Overhead* or profit.”

1. Insert the phrase “while directly engaged in the *Work*” after the words “in the direct employ of the *Contractor*” in paragraph 6.3.7.1.
2. Delete paragraphs 6.3.7.1(1) to 6.3.7.1(4) and replace them with the following:

“(1) carrying out the *Work*, including necessary supervisory services;

(2) engaged in the preparation of *Shop* *Drawings*, fabrication drawings, coordination drawings and *Project* record drawings; or

(3) engaged in the processing of changes in the *Work*.”

1. Delete the words “or others” and replace them with “, as approved by the *Owner*, acting reasonably” after the words “delivery cost thereof” in the third line of paragraph 6.3.7.6.
2. Add the phrase “, provided that any such cost in excess of $10,000.00 shall be subject to the *Owner’*s prior written approval within 2 *Working Days* after receipt by the *Owner* of written request for such approval from the *Contractor*” to the end of paragraph 6.3.7.10.
3. Delete the words “and damages for infringements of patents and cost of defending suits therefor” from paragraph 6.3.7.12.
4. Add the phrase “, excluding income taxes and capital taxes and other taxes personal to the *Contractor*” immediately prior to the semi-colon at the end of paragraph 6.3.7.14.
5. Add the following to the end of paragraph 6.3.7:

“All other costs attributable to the change in the *Work* including the costs of all administrative or supervisory personnel are included in *Overhead* and profit calculated in accordance with the provisions of paragraph 6.1.5 of GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES.”

1. Add the following new paragraphs 6.3.14:

“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.”

1. Add the following new paragraph 6.4.5

“6.4.5 Notwithstanding anything in the *Contract* to the contrary, the *Contractor* represents and warrants that it has investigated the *Place 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. 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. Notwithstanding anything in the *Contract* to the contrary, the *Contractor* acknowledges that in entering into this *Contract* it has not relied upon any information furnished by the *Owner*, or the *Consultant* or any of their respective officers and employees in relation to the *Place of Work*.”

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

“6.5.1 If the *Contractor* is delayed in the performance of the *Work* by a proven act or omission of the *Owner* or the *Consultant* contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* determines, and the *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity or loss of productivity). In the event of a dispute as to the amount of such costs such dispute shall be resolved in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.”

1. Revise paragraph 6.5.2 by, (a) deleting the words “in consultation with the *Contractor*.” at the end of the first sentence; and (b) and deleting the last sentence and replacing it with the following:

“The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* at the noted per diem rate as the result of such delay provided that said delay does not result from the act or omission of the *Contractor* or anyone employed or engaged by *Contractor* directly or indirectly. The *Owner* shall not be responsible for any consequential, indirect or special damages (including without limitation, loss of profits, loss of opportunity or loss of productivity).”

1. Delete paragraph 6.5.3 in its entirety and replace with the following:

“6.5.3 If the *Contractor* is delayed in the performance of the *Work* by *Force Majeure*, then, except as otherwise provided in this GC 6.5, the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from the actions of the *Owner.”*

1. Revise paragraph 6.5.4 by, (a) replacing “10 *Working Days*” with “five *Working Days*”; and (b) adding the following to the end of the paragraph:

“A notice of claim with respect to any delay shall indicate the reasons for such delay and the best estimate of the *Contractor* as to its estimated duration and the likely effect upon the time to complete the *Work*. Upon termination of the circumstances giving rise to the delay, the *Contractor* shall give to the *Owner* a *Notice in Writing* of the termination of the delay.”

1. Add the following new paragraphs 6.5.6, 6.5.7 and 6.5.8:

“6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor,* or by any cause within the *Contractor’s* control, then the *Contract Time* shall not be extended. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any sub-consultants, project managers, or others employed or engaged by the *Owner*, and in particular, the costs of the *Consultant’s* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1, as the same may be extended through the provision of these General Conditions, and any later or actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

6.5.7 For clarity, no claim for delay shall be made and the *Contract Time* shall not be extended due to climatic or weather conditions unless such weather conditions constitute *Force Majeure*.

6.5.8 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any delay in the performance of the *Work* in accordance with paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such delay in the performance of the *Work*, the *Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such care, maintenance and protection, but excluding the costs of the *Contractor's* head office personnel. The *Contractor's* entitlement to costs pursuant to this paragraph 6.5.8, if any, shall be in addition to amounts, if any, to which the *Contractor* is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3.”

1. Delete GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE in its entirety.
2. Add the words “or a proposal” after the word “assignment” in paragraph 7.1.1.
3. Revise paragraph 7.1.2 by, (a) inserting the phrase “or fails or neglects to maintain the latest *Construction Schedule*” after the word “properly” in the first line; and (b) inserting the phrase “including failure of the *Contractor* to pay its *Subcontractors*, suppliers or employees on a timely basis” after the word “degree” in the second line.
4. Add the following after the words “as may be subsequently agreed in writing by the parties,”: “or if the *Contractor* is delayed for 30 *Working Days* or longer in the performance of the *Work* and notwithstanding anything else herein provided,”.
5. Revise paragraph 7.1.5.3 by, (a) inserting the phrase “and all other costs incurred by the *Owner* as a result of such termination” after the word “WARRANTY”; and (b) inserting the phrase “including expenses” after the word “*Work*”.
6. Delete paragraph 7.1.6 in its entirety.
7. Add the following new paragraphs 7.1.7 to 7.1.13:

“7.1.7 In addition to its right to terminate the *Contract* set out herein, the *Owner* may terminate this *Contract* at any time for any other reason and without cause upon giving the *Contractor* 15 *Working Days’* *Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or for any indirect, special, or consequential losses or damages incurred. If the Contractor and /or its *Subcontractors* fail to comply with the *Occupational Health and Safety Act*, R.S.O., 1990, c. O.1, as amended from time to time and Ontario Regulation 213/91, as amended from time to time, or anyother relevant and current legislation pertaining to health and safety work practices on a work site, the Owner shall have the right to immediately terminate the Contract.

7.1.8 The *Owner* may suspend *Work* under this *Contract* at any time for any reason and without cause upon giving the *Contractor* 10 days’ *Notice in Writing* to that effect. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the suspension of the *Work*, but in no event shall the *Contractor* be entitled to be compensated for any indirect, special, or consequential losses or damages incurred.

7.1.9 In the case of either a termination of the *Contract* or a suspension of the *Work*, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.

7.1.10 Upon the resumption of the *Work* following a suspension of the *Work*, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.

7.1.11 The *Contractor's* obligations under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work* and shall survive termination by the *Contractor*.

7.1.12 In the event of termination pursuant to paragraph 7.1.7, the *Owner* shall be entitled to, (a) take possession of the *Work* and the *Products* at the *Place of the Work;* (b) subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work* on mutually acceptable rental rates to be paid to the *Contractor;* and (c) complete the *Work*.

7.1.13 If the *Owner* terminates this *Contract* in accordance with the provisions of this *Contract*, the *Contractor* shall immediately cease the *Work*, place no additional orders and if requested by the *Owner*, the *Contractor* shall use best efforts to cancel any existing orders, subcontracts and contracts specified by the *Owner* upon terms satisfactory to the *Owner*. Notwithstanding any termination pursuant to this *Contract*, the *Contractor* shall take such steps as are reasonably necessary to preserve and protect *Work* completed and in progress and to protect materials, supplies, plant and equipment at the *Place of the Work* or in transit, pending the *Owner’s* instructions, and the *Contractor* shall dispose of same in accordance with the *Owner’s* instructions. Should this *Contract* be terminated by the *Owner* for convenience in accordance with paragraph 7.1.7, the *Contractor* shall be reimbursed for any costs it may incur in connection with the preservation or protection of the *Work*.”

1. Delete paragraph 7.2.2 in its entirety.
2. Delete paragraphs 7.2.3.1 to 7.2.3.3 in their entirety.
3. Revise paragraph 7.2.3.4 by deleting the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".
4. Delete the period at the end of paragraph 7.2.5 and replace it with “, including the costs of demobilization. The Contractor shall not be entitled to any recovery for consequential, indirect or special damages.”
5. Add the following new paragraphs 7.2.6 and 7.2.7:

“7.2.6 The *Contractor* shall not be entitled to give notice of the *Owner’s* default or terminate the *Contract* in the event the *Owner* withholds certificates or payment or both in accordance with the *Contract* because of:

.1 the *Contractor’s* failure to pay all legitimate claims promptly; or

.2 the failure of the *Contractor* to discharge construction liens which are registered against the title to the *Place of the Work.*

7.2.7 If the Contractor stops the *Work* or terminates the *Contract* as provided in this GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, *Contractor* shall ensure the *Place of the Work* is left in a secure and safe condition as required by all authorities having jurisdiction at the *Place of the Work* and the *Contract Documents*.”

1. Add the following new paragraph 8.2.9:

“8.2.9 Notwithstanding anything in GC 8 – 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, 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.”

1. Add the following to the end of paragraph 9.1.1: “, provided, however, the foregoing shall not excuse the *Contractor* from its own negligence or the negligence of those for whom the *Contractor* is responsible at law nor for any breach of the *Contract* by the *Contractor.*”
2. Delete paragraph 9.1.1.1 and replace it with the following:

“.1 errors in the Contract Documents, except those prepared or to be prepared by the Contractor;”

1. Add the following new paragraph 9.1.5:

“9.1.5 “If the *Contractor* has caused damage to the work of another contractor on the *Project*, the *Contractor* agrees upon due notice 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.”

1. Delete paragraph 9.2.5.3 in its entirety and replace it with the following:

“.3 take all reasonable steps, including stopping the *Work* to ensure that,

(a) no person’s exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by *Applicable Law* at the *Place of the Work*, and

(b) no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Material.”

1. Delete the period at the end of the sentence and replace it with “, and” in paragraph 9.2.5.4.
2. Add the following new paragraph 9.2.5.5:

“.5 in addition to the steps described in subparagraph 9.2.5.3, take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials.”

1. Add the following to paragraph 9.2.6, after the word “responsible” in the second line:

“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 damages to the property of the *Owner* or others,”.

1. Add the phrase “, but excluding any consequential, indirect or special damages, and any claims for loss of profits or opportunity” after the word “delay” in paragraph 9.2.7.3.
2. Add the following to paragraph 9.2.8, after the word “responsible” in the second line:

“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 damages to the property of the *Owner* or others,”.

1. Add the following new paragraphs 9.2.10 to 9.2.12:

“9.2.10 “The *Contractor* shall indemnify and hold harmless the *Owner*, *Consultant*, other consultants, *Subcontractors*, *Suppliers* and their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were 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.

9.2.11 Without limiting its other obligations under this GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, the *Contractor* acknowledges that its obligations under the *Contract* include compliance with EPA, CEPA and TGDA. The *Contractor* acknowledges that the *Owner* may suffer loss and damage should the *Contractor* fail to comply with EPA, CEPA and TGDA and agrees to indemnify and hold harmless the *Owner* with respect to any loss or damage to which the *Owner* is exposed by the *Contractor's* failure to comply. The *Contractor* expressly agrees that such loss and damage shall be included within the scope of the *Contractor's* indemnity described in paragraph 12.1.1. The *Contractor* acknowledges that should it fail to comply with EPA, CEPA and TGDA, such failure will constitute a failure to comply with the *Contract* to a substantial degree within the meaning of paragraph 7.1.2 of GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT.

9.2.12 The *Contractor* shall comply with all requirements of the Federal Halocarbon Regulations (2003) and all subsequent amendments thereto insofar as the Federal Halocarbon Regulations (2003) are applicable to the *Work*.”

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

“9.4.1 “The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. The *Contractor* shall assume overall responsibility, carry out and discharge all duties and obligations of, and be designated or registered as the “prime contractor”, “constructor” or equivalent role with respect to the health and construction safety legislation applicable to the *Place of the Work* and the *Project*, including responsibility for all health and safety at the *Place of the Work* and over the *Owner* and the *Owner’s* other contractors. In order to effectively exercise that responsibility, the *Owner* authorizes the *Contractor* to supervise the *Owner's* own forces at the *Place of the Work* with respect to applicable health and construction safety matters and, where reasonably necessary due to health or construction safety considerations, deny the *Owner's* own forces or its other contractors access to the *Place of Work*.”

1. Add the following new paragraphs 9.4.2 to 9.4.8:

“9.4.2 The *Owner* has authority in an emergency to stop the progress of the *Work* whenever in its opinion such stoppage may be necessary to ensure the safety of life, or of the *Work* or neighbouring property. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the *Project* site. The *Owner’s* authority in an emergency to stop the progress of the *Work* includes the authority to make changes in the *Work*, and to order, assess and award the cost of such work, extra to the *Contract* or otherwise, as may in its opinion may be necessary. The Owner shall within two *Working Days* confirm in writing any such instructions.

9.4.3 Prior to commencement of the *Work*, the *Contractor* shall ensure that:

.1 it submits to the Owner a current clearance certificate issued by the Workplace Safety and Insurance Board or equivalent in the Province of the Place of the Work (“**WSIB**”) and confirmation from the WSIB of the Contractor’s current WSIB CAD-7 performance rating;

.2 it submits to the Owner copies of the Contractor’s insurance coverage that has application to the Project;

.3 it submits to the Owner documentation of the Contractor’s in-house safety-related programs;

.4 it submits to the Owner documentation of the Contractor’s site specific Health and Safety plan;

.5 a copy of the Notice of Project is filed with the Ministry of Labour naming itself as “constructor” under the occupational health and safety legislation applicable to the Place of the Work, if required, or a copy of any provincially prescribed “Notice of Project” and all necessary permits, notifications and related health and safety documents;

.6 each work space is properly delineated and protected by the necessary safety measures required by such legislation;

.7 it notifies the Owner of any infraction or non-compliance with the Contractor’s health and safety directions, instructions, plans or policies by any of the Owner’s own forces or its other contractors and takes immediate action to ensure no further infractions or non-compliance;

.8 all other contractors, labour, Consultant, personnel and site staff are fully familiar with the safety policy and procedure set down for the Project and shall ensure that the Contractor is responsible for ensuring such procedure in accordance with the rules, regulations and law of the work place; and

.9 it conducts an inspection of the *Place of the Work* and submits to the Owner pre and post inspection reports.

9.4.4 The *Contractor* shall file any notices or any similar document required pursuant to the *Contract* or the safety statutes and regulations in force at the *Place of the Work*. This duty of the *Contractor* will be considered to be included in the *Work* and no separate payment therefore will be made to the *Contractor*.

9.4.5 The *Contractor* shall promptly report in writing to the *Owner* and the *Consultant* all accidents of any sort arising out of or in connection with the performance of the *Work*, whether on or adjacent to the job site, giving full details and statement of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the *Contractor* to the *Owner* and the *Consultant* in addition to any reporting required under the applicable safety regulations.

9.4.6 The *Contractor* hereby represents and warrants to the *Owner* that appropriate health and safety instruction and training have been provided and will be provided to the *Contractor’s* employees, *Subcontractors* and *Suppliers*, before the *Work* is commenced and agrees to provide the *Owner*, if requested, proof of such instruction and training.

9.4.7 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the occupational health and safety legislation applicable in the *Place of Work*, including the payment of legal fees and disbursements on a solicitor and client basis.

9.4.8 The *Owner* undertakes to include in its contracts with other contractors and/or in its instructions to its own forces the requirement that the other contractors or own forces, as the case may be, will comply with health and safety directions, instructions, plans and policies of the *Contractor* with respect to coordination of work and with respect to occupational health and safety related matters and require its other contractors to provide the *Contractor* with a written and signed acknowledgement and agreement to that effect. The text of such instructions is attached to these Supplementary Conditions as Exhibit **[•]**.”

1. Add the following phrase after the word “*Owner”* in paragraph 9.5.2.4: “and the *Consultant*, and their respective agents and employees,”.
2. Add “but excluding any consequential, indirect or special damages, and any claims for loss of profit or opportunity” before “, and” in paragraph 9.5.3.3.
3. Delete paragraph 9.5.3.4 in its entirety.
4. Delete paragraph 10.1.2 in its entirety and replace it 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.”

1. Add the following new paragraphs 10.1.3 to 10.1.5:

“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 its 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.

10.1.4 The *Contractor* shall maintain accurate records of equipment, material and component costs reflecting the taxes, customs duties, excise taxes and value added taxes paid.

10.1.5 Customs duties penalties, or any other penalty, fine or assessment levied against the *Contractor* shall not be treated as a tax or customs duty for purposes of this GC 10.1.”

1. Delete paragraphs 10.2.2 and 10.2.3 in their entirety and replace them with the following:

“10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, and rights of servitude necessary for the performance of the *Work*.

10.2.3 The *Contractor* shall be responsible for the procurement of all permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* other than those that are the responsibility of the *Owner* pursuant to paragraph 10.2.2. All necessary permits, licenses and certificates shall include the approval of *Drawings and Specifications* required by applicable provincial labour legislation. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.”

1. Delete first sentence of paragraph 10.2.5 and replace it with the following: “The *Contractor* shall, to the extent only of the *Contractor’s* expertise, experience and knowledge, be responsible for verifying that the *Contract Documents* are in compliance with *Applicable Laws*, ordinances, rules, regulations, or codes relating to the *Work*.”
2. Delete the phrase “performs work knowing it to be contrary” in the first sentence of paragraph 10.2.6 and replace it with the phrase “performs work that is contrary”.
3. Delete paragraph 10.2.7 in its entirety.
4. Delete GC 11.1 – INSURANCE in its entirety and replace it with the following:

“**GC 11.1 INSURANCE**

11.1 Without restricting the generality of GC 12 – INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY, the *Contractor* shall provide, maintain, and pay for the following insurance coverages. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the expiration of the warranty periods set out in the *Contract Documents*. Prior to commencement of the *Work*  and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements:

.1 **General Liability Insurance**

General liability insurance shall be in the name of the *Contractor,* with the *Owner* and the *Consultant* named as additional insureds, with limits of not less than $10,000,000 inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof, for itself and each of its employees, *Subcontractors* and/or agents. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work,* on an ongoing basis for a period of six years following *Substantial Performance of the Work*. Where the *Contractor* maintains a single, blanket policy, the addition of the *Owner* and the *Consultant* is limited to liability arising out of the *Project* and all operations necessary or incidental thereto. The policy shall be endorsed to provide the *Owner* with not less than 30 days’ notice, in writing, in advance of any cancellation and of change or amendment restricting coverage.

.2 **Automobile Liability Insurance**

Automobile liability insurance in respect of licensed vehicles shall limits of not less than $2,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all licensed vehicles owned or leased by the *Contractor*, and endorsed to provide the *Owner* with not less than 30 days’ notice, in writing, in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor.*

.3 **Property and Boiler and Machinery Insurance**

.1 Builder’s Risk property insurance shall be in the name of the *Contractor* with the *Owner* and the *Consultant* named as additional insureds. The policy shall insure against all risks of direct physical loss or damage to the property insured which shall include all property included in the *Work*, whether owned by the *Contractor* or the *Owner* or owned by others, so long as the property forms part of the *Work*. The property insured also includes all materials and supplies necessary to complete the *Work*, whether installed in the *Work* temporarily or permanently, in storage on the *Project* site, or in transit to the *Project* site, as well as temporary buildings, scaffolding, falsework forms, hoardings, excavation, site preparation and similar work. The insurance shall be for not less than the sum of the amount of the *Contract Price* and the full value of products that are specified to be provided by the *Owner* for incorporation into the *Work*, if applicable, with the deductible of $10,000 payable by the contractor. The insurance shall include the foregoing and, otherwise, shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement provided that the IBC Form 4042 shall include the latest addition of the relevant CCDC endorsement form. The coverage shall be based on a completed value form and shall be maintained continuously until 10 days after the date of the final certificate of payment.

.2 Boiler and machinery insurance shall be in the name of the *Contractor*, with the *Owner* and the *Consultant* named as additional insureds, for not less than the replacement value of the boilers, pressure vessels and other insurable objects forming part of the *Work*. The insurance provided shall not be less than the insurance provided by the “Comprehensive Boiler and Machinery Form” and shall be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment.

.3 The policies shall allow for partial or total use or occupancy of the *Work.*

.4 The policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of the *Contract Time,* relative to the extent of the loss or damage, as the *Consultant* may determine in consultation with the *Contractor* and the *Owner*.

.5 The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner’s* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT. In addition, the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor’s* interest in the restoration of the *Work*.

.6 In the case of loss or damage to the *Work* arising from the work of other contractors, or the *Owner’s* own forces, the *Owner*, in accordance with the *Owner’s* obligations under paragraph 3.2.2.4 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT.

.4 **Contractors’ Equipment Insurance**

“All risks” contractors’ equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, excluding boiler insurance, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner.* The policies shall be endorsed to provide the *Owner* with not less than 30 days’ notice, in writing, in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance of his equipment, the *Owner* agrees to waive the equipment insurance requirement.

11.1.2 The *Contractor* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Contractor’s* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES.

11.1.3 Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required to waive the course of construction insurance requirement.

11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right, but without obligation, to provide and maintain such insurance and provide evidence of same to the *Contractor*. The *Contractor* shall pay the costs thereof to the *Owner* on demand, or the *Owner* may deduct the amount that is due or may become due to the *Contractor*.

11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

11.1.6 All insurance policies shall contain a cross‑liability and severability of interest endorsement.”

1. Delete GC 11.2 – CONTRACT SECURITY in its entirety and replace it with the following:

“**GC 11.2 – CONTRACT SECURITY**

11.2.1 The *Contractor* shall, prior to the commencement of the *Work* or within the time specified by the *Owner*, provide to the *Owner* the following contract security and any other contract security specified in the *Contract Documents*:

.1 a performance bond for 50% of the *Contract Price; and*

.2 a labour and materials bond for 50% of the *Contract Price*.

Such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the Place of the Work acceptable to the *Owner* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.”

1. Delete GC 12.1 – INDEMNIFICATION in its entirety and replace it with the following:

“**GC 12.1 – INDEMNIFICATION**

12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner*, its directors, officers, employees and agents, harmless from and against any and all claims, damages, losses, liabilities, demands, judgments, causes of action, legal proceedings, economic loss (including lost profits), penalties or other sanctions and any and all costs and expenses arising in connection therewith (including legal fees and disbursements on a substantial indemnity basis) (hereinafter called “claims”), that may, directly or indirectly, result from, arise out of, or be in relation to, (a) the performance by *Contractor*, or by any of its employees, *Subcontractors, Suppliers* or other *Persons* for whom it is responsible, of the *Work* (including, without limitation, claims that directly or indirectly arise out of, or are attributable to, loss of use or damage to the *Work*, the *Owner’s* property or equipment, the *Contractor’s* property or equipment or equipment or property adjacent to the *Place of the Work* or death or injury to the *Contractor’s* personnel); (b) any breach, violation or non-performance by the *Contractor*, or by any of its employees, *Subcontractors* or other persons for whom it is responsible, of any term, condition, representation, warranty or covenant contained in this *Contract*; (c) any failure or delay by the *Contractor* to make or maintain any registration, coverage or payments or file any return or information required by *Applicable Law*; (d) any negligent act or omission of the *Contractor* or any of its employees, *Subcontractors, Suppliers* or other *Persons* for whom it is responsible at law or in equity; (e) any claim that the *Work*, or its use by the University, directly or indirectly, violate or infringe any intellectual property right or other proprietary right of any person; and/or (f) any failure of the *Contractor* or any *Subcontractor* to comply with the requirements of the *GLC Provision*.

12.1.2 The provisions of GC 12.1 - INDEMNIFICATION shall survive the termination of the *Contract,* howsoever caused and no payment or partial payment, no issuance of a final certificate of payment and no occupancy in whole or in part of the *Work* shall constitute a waiver or release of any of the provisions of GC 12.1 - INDEMNIFICATION.”

1. Delete GC-12.2 in its entirety and replace with the following:

“**GC 12.2 WAIVER OF CLAIMS**

12.2.1 Waiver of Claims by *Owner*

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

.1 those made in writing prior to the date of the final certificate for payment and still unsettled;

.2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Contractor* pursuant to the provisions of this *Contract*;

.3 those arising from a breach of *Applicable Law* by the *Contractor*;

.4 those arising from the provisions of GC 12.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;

.5 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES or from the provisions of GC 9.5 – MOULD and arising from the *Contractor* bringing or introducing any toxic hazardous substances and materials, or mould to the *Place of Work* after the *Contractor* commences the *Work*;

.6 damages arising from the *Contractor’s* actions which result in substantial defects or deficiencies in the *Work* where “substantial defects or deficiencies” means any defect or deficiency in the Work where the reasonable cost of repair of such defect or deficiency exceeds: (a) for a *Contract Price* of $2,000,000 or less, the sum of $50,000, before applicable taxes; and (b) for a *Contract Price* of $2,000,000 or more, the sum of $100,000, before applicable taxes;

.6 those made in writing within a period of 2 years from the date of *Substantial Performance* of the *Work*, as set out in the certificate of *Substantial Performance* of the *Work* and arising from any liability of the *Contractor* for damages resulting from the *Contractor’s* performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible.

12.2.2 Waiver of Claims by *Contractor*

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims which it has, or reasonably ought to have knowledge of that could be advanced, against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

.1 those made for which *Notice in Writing* was given prior to the *Contractor’s* application for final payment and still unsettled; and

.2 claims for which a right of indemnity could be asserted by the *Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION.

12.2.3 GC 12.2 – WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.

12.2.4 “*Notice in Writing* of a claim” as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:

.1 a clear and unequivocal statement of the intention to claim;

.2 a statement as to the nature of the claim and the grounds upon which the claim is based; and

.3 a statement of the estimated quantum of the claim.

12.2.5 The party giving “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

12.2.6 Where the event or series of events giving rise to a claim under paragraphs 12.2.1 or 12.2.2 has a continuing effect, the detailed account submitted under paragraph 12.2.5 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

12.2.7 No action or failure by the *Owner* will constitute a waiver of any right or duty afforded either of them under the *Contract*, nor shall any such action or failure to act constitute any approval of or acquiescence in the breach thereunder except as may be specifically agreed in writing.”

Delete paragraph 12.3.1 in its entirety and replace 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* and the *Contractor* agrees to correct promptly, at its own expense, defects or deficiencies in the Work which appear (i) in the case of *Work* covered by the extended warranties set out in the *Specifications*, prior to the end of the extended warranty period, and (ii) in the case of all other *Work*, prior to and during the period of two years from the date of *Substantial Performance of the Work*. The *Contractor* shall also pay at its 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. The carrying out of the replacement work and the making good of all defects shall be executed at such time as is convenient to the *Owner* and this may entail overtime work on the part of the *Contractor*. Additional charges for overtime work in this regard shall be borne by the *Contractor* at its expense. These warranties shall enure to the benefit of any subsequent owner of the Project or any part thereof.”

1. Delete the word “The” from the beginning of paragraph 12.3.2 and replace it with “Subject to paragraph 3.4.1 of GC 3.4 – DOCUMENT REVIEW, the”.
2. Delete the words “one year” from paragraph 12.3.3.
3. Add the phrase “Except for the provisions of paragraph 12.3.6 and subject” to the beginning of paragraph 12.3.4 and delete the phrase “during the one year warranty period” at the end of paragraph 12.3.4 and replace it with the phrase “during the warranty periods specified in the *Contract Documents*.”
4. Delete paragraph 12.3.6 in its entirety and replace it 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. These *Product* warranties shall be issued by the manufacturer to the benefit of the *Owner*.”

1. Add the following new paragraphs 12.3.7-12.3.12:

“12.3.7 If any defect is corrected under the conditions of GC 12.3 – WARRANTY, the time period for the warranty in that particular item in the *Work* shall begin again from the date when the defect is corrected 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.

12.3.8 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond at no additional cost to the *Owner* as security for the performance of the *Contractor’s* obligations as set out in GC 12.3 – WARRANTY.

12.3.9 The Contractor shall provide fully and properly completed and signed copies of all warranties and guarantees required by the Contract Documents, containing:

.1 the proper name of the *Owner*;

.2 the proper name and address of the *Project*;

.3 the date the warranty commences, which shall be at the “date of *Substantial Performance of the Work*” unless otherwise agreed upon by the *Consultant* in writing;

.4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and

.5 the signature and seal (if required by Applicable Law of the Contract) of the company issuing the warranty, countersigned by the Contractor.

12.3.10 The *Contractor* shall ensure that its *Subcontractors* are bound to the requirements of GC 12.3 – WARRANTY for the *Subcontractor’s* portionofthe *Work.*

12.3.11 The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor, Supplier* or other *Person* in connection with the *Work* are obtained and available for the direct benefit of the *Owner.* In the alternative, the *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor, Supplier* or other *Person* in connection with the *Work* and such assignment shall be with the consent of the assigning party, where required by *Applicable Law*, or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.12 The *Contractor* shall commence or correct any deficiency within 2 *Working Days* after receiving a notice from the *Owner* or the *Consultant*, and shall complete the *Work* as expeditiously as possible, except in the case where the deficiency prevents maintaining security or where basic systems essential to the ongoing business of the *Owner* and/or its tenants cannot be maintained operational as designed. In those circumstances all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 8 hours of a request being made during the normal business hours of the *Contractor*, the *Owner* is authorized, notwithstanding GC 3.1, to carry out all necessary repairs or replacements at the *Contractor’s* expense.”

1. Add the following new **PART 13 – OTHER PROVISIONS**:

“**PART 13 OTHER PROVISIONS**

**GC 13.1 OWNERSHIP OF MATERIALS**

13.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner.* The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*.

**GC 13.2 CONSTRUCTION LIENS**

13.2.1 In the event that a claim for lien is registered against the *Project* by a *Subcontractor, Sub-subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:

.1 within 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and

.2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

13.2.2 In the event that the *Contractor* fails to comply with the requirements of paragraph 13.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and the *Contractor* shall reimburse the *Owner* on demand for all costs and associated expenses incurred by the *Owner*, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If the *Contractor* fails to pay such reimbursement the *Owner* shall have the right, if it so elects, and without prejudice to any other rights or remedies, to set off and deduct all such costs and expenses from any amount owing to the *Contractor*.

13.2.3 Notwithstanding any other provision in the *Contract*, the *Consultant* shall not be obligated to issue a certificate and the *Owner* shall not be obligated to make payment to the *Contractor* if, at the time such certificate or payment was otherwise due:

.1 a claim for lien has been registered against the *Project* lands; or

.2 if the *Owner* or mortgagee of the *Project* lands has received written notice of a lien; or

.3 the *Owner* or *Consultant* reasonably believe that any party has purported to retain title to *Products* or materials in respect of which an application for payment has been made.

13.2.4 Without limiting the foregoing, the *Contractor* shall, if requested by the *Owner*, defend, indemnify and save the *Owner* harmless from the amount of all such claims and the costs of defending any and all actions commenced against the *Owner* pursuant to the construction/builder’s lien legislation in force at the *Place of the Work*, including the legal costs of the *Owner*, unless the lien was a direct result of a breach of the *Contract* by the *Owner* or the non-payment by the *Owner* of a valid charge or claim under the *Contract*.

13.2.5 GC 13.2 – CONSTRUCTION LIENS does not apply to construction/builder’s liens claimed by the *Contractor.*

**GC 13.3 ACCELERATION OF THE WORK**

13.3.1 If, in the opinion of the *Consultant*, the *Contractor* is failing to perform the *Work* in accordance with any agreed schedule, or is otherwise in danger of failing to complete the *Work* in accordance with the time requirements of the *Contract Documents*, in either case after giving effect to extensions of time in accordance with GC 6.5 - DELAYS, then the *Contractor* shall, upon written notice from the *Consultant*, use its best efforts to accelerate the *Work* in order to catch up and keep abreast of the agreed schedule.

**GC 13.4 AUDIT**

13.4.1 For seven years following the expiry or termination of this *Contract*, the *Contractor* shall maintain and retain complete and accurate records and documents pertaining to this *Contract* and the furnishing of the *Work* including all necessary records to substantiate all charges and payments under this *Contract* and that the *Work* was completed in accordance with the *Contract* and with *Applicable Law*. During the term of this *Contract* and for seven years after the term, the *Contractor* shall permit and assist the *Owner* in conducting audits of the operations of the *Contractor* to verify all charges and payments under this *Contract* and that the *Work* was completed in accordance with the *Contract* and with *Applicable Law*. The *Owner* shall provide the *Contractor* with at least 10 *Working Days’* prior notice of its requirement for such an audit. If any such audit or inspection, reveals the payments paid by the *Owner* to be incorrect, so that such error resulted in an overpayment by the *Owner* equal to or greater than three percent of *Contract Price* required to be paid by the *Owner* in accordance with this *Contract*; or reveals any breach, violation or non-performance by the *Contractor* of any term, condition, representation, warranty or covenant contained in this *Contract*, then the *Contractor* shall (in addition to forthwith reimbursing the *Owner* for any overpayment) pay all costs incurred by the *Owner* with respect to any audit(s) and/or inspection(s) that uncovered such error, including the costs of any internal and external auditors, accountants and associates of the *Owner* directly involved with such process.

**GC 13.5 DAILY REPORTS/DAILY LOGS**

13.5.1 The *Contractor* shall prepare a daily log reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

13.5.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.5 – CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the *Construction Schedule* was prepared pursuant to GC 3.5 – CONSTRUCTION SCHEDULE.

13.5.3 Upon the request of the *Owner* or the *Consultant*, the *Contractor* shall make available for inspection and copying all of the records generated pursuant to this GC 13.5 – DAILY REPORTS/DAILY LOGS, along with other routine *Project* records ordinarily maintained by the *Contractor*.

**GC 13.6 CONTRACTOR DISCHARGE OF LIABILITIES**

13.6.1 In addition to the obligations assumed by the *Contractor* pursuant to GC 3.7 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld. As provided in paragraph 3.7.1 of GC 3.7 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* shall cause every *Subcontractor* and *Supplier* engaged in the performance of the *Work* to meet the requirements of this GC 13.6 – CONTRACTOR DISCHARGE OF LIABILITIES.”

**GC 13.7 FIPPA**

The parties acknowledge and agree that the *Freedom of Information and Protection of Privacy Act* (Ontario) applies to and governs all recorded information, including any personal information, related to this *Contract* and may require the disclosure of such records to third parties.

END OF SUPPLEMENTARY CONDITIONS

**Exhibit “1”**

**Statutory Declaration**

**TO BE MADE BY THE CONTRACTOR WHEN APPLYING FOR PROGRESS PAYMENT**

**OR FOR RELEASE OF HOLDBACK, SECURITY DEPOSIT OR BOTH UPON**

**SUBSTANTIAL OR TOTAL PERFORMANCE**

**C A N A D A** )IN THE MATTER OF THE CONTRACT

) BETWEEN •,

PROVINCE OF ONTARIO ) OWNER AND •

) COMPANY, CONTRACTOR FOR THE

) •WORK ON PREMISES

TO WIT: ) LOCATED AT •,

) IN THE PROVINCE OF **[ONTARIO]**

)

I, of the of in the Province of **[ONTARIO]**, do hereby DECLARE THAT:

1. I am of , the Contractor named in the Contract abovementioned, and as such have personal knowledge of the facts hereunder declared.
2. All accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the performance of the Work (as defined in the Contract) and for which the Owner might in any way be held responsible have been paid in full except holdback monies properly retained.
3. There are no claims for lien registered against the Owner or the Place of the Work (as defined in the Contract) and I am not aware of any grounds supporting any claim for lien against the Owner.
4. I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

**DECLARED** before me at the **[City/Town/etc.]** )

                           of  **[name]**     )

in the Province of Ontario )

day of **[month]** 200  ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

A Commissioner, etc.

**ATTACHMENT 1 – Schedule 1**

**List of Appendicies**

**Project Description**

The interior renovation of SW149 is to accommodate the growth of The Centre of French and Linguistics. To complement the Prime Investigator’s research needs assigned to SW149, the University of Toronto Scarborough will be purchasing a sound cabin intended for SW149.

The sound cabin is expected to arrive in September 2019. Work under this RFT is expected to start May 9th, 2019. It is expected that work described in this RFT will be unable to be completed until following the installation of the sound cabin. Installation of the sound cabin is by others.

Appendix #1 DCM2019-02 Tender Drawing Package

Appendix #2 DCM2019-02 Tender Electrical Specifications

Appendix #3 DCM2019-02 Tender Mechanical Specifications