

SUPPLEMENTARY CONDITIONS

The Standard Construction Document CCDC-2 2008 for Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. These Supplementary Conditions have been developed by Ontario Infrastructure and Lands Corporation, with the endorsement of the Ontario General Contractors Association.

All references in this contract to the *Owner* shall refer to the entity identified in the Agreement Between *Owner* and *Contractor*, but all rights, benefits, or entitlements reserved to the *Owner* under the terms of this contract shall equally accrue to and be jointly or severally enforceable by *Infrastructure Ontario*, Her Majesty the Queen in Right of Ontario, and the *Owner*.

Where an Article, Definition, General Condition or paragraph thereof is deleted by these Supplementary Conditions, the numbering of the remaining Article, Definition, General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 – CONTRACT DOCUMENTS

3.1 Include in the list of *Contract Documents* in paragraph 3.1:

- Supplementary Conditions
- *Ontario Fair Wage Program Labour Conditions* including the applicable *Schedule of Fair Wage Rates*
- Performance Bond
- Labour and Material Payment Bond
- *Vendor Performance Program (Real Estate)* and/or *Vendor Performance Scorecard and Guidelines*
- Project Specific Supplementary Conditions

ARTICLE A-5 – PAYMENT

5.1.2 Delete paragraph 5.1.2 in its entirety and substitute new paragraph 5.1.2:

- 5.1.2 on the day following the expiry of the holdback period specified in the *Construction Act* for the retention of holdback funds following *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount together with such *Value Added Taxes* as may be

applicable to such payment, provided that (i) there are no claims for lien registered against title to the *Place of the Work*; (ii) the *Owner* has not received any valid written notices of lien in respect of the *Work*; and (iii) the *Owner* has not published a notice of non-payment in the form prescribed by the *Construction Act* prior to the 40th calendar day following the publication of the certificate of *Substantial Performance of the Work*.

5.3.1 Delete paragraph 5.3.1 in its entirety and substitute new paragraph 5.3.1:

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest on such unpaid amounts shall begin to accrue on the date such payments are due and shall continue to accrue until the date payment is made at the quarterly prejudgment interest rate determined in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

- 9.1 The *Contractor*, all of the *Subcontractors*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest includes 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*.
- 9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of Ontario Realty Corporation, Ontario Infrastructure Projects Corporation, *IO* or the Ontario Public Service where to do so constitutes a breach by such employee or previous employee of the previous employer's conflict of interest policy, as it may be amended from time to time.

- 9.4 A breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

ARTICLE A-10 – CONFIDENTIALITY

Add new Article A-10 – Confidentiality:

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any *Subcontractor* or *Supplier* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with the *Subcontractor* or *Supplier*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended (“*FIPPA*”), and the *Open Data Directive*, as all may be amended from time to time. The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information*, *Personal Information* and *Open Data* in the event that it is compelled to do so by law, through a request under *FIPPA*, the *Open Data Directive* or by the rules of any applicable regulatory authority.

DEFINITIONS

Add the following definitions:

a. Affected Party and Affected Parties

Affected Party and *Affected Parties* have the meaning set out in GC 13.6.4

b. As-Built Drawings

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

2a. 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*.

2b. Construction Act

Construction Act means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, repealed, superseded or replaced from time to time.

9a. Contractor Security Officer or “CSO”

Contractor Security Officer or “*CSO*” means the individual designated by the *Contractor* as the *Contractor’s* representative who will liaise with the *Owner* for the purposes of coordinating the *Security Clearance Checks* for the *Contractor* and all *Affected Parties* and who will have overall responsibility for carrying out *Contractor’s* security screening obligations outlined in this contract, and to whom any additional information deemed relevant to the required *Security Clearance Checks*, may be communicated during the contractor security screening process.

10b. Fair Wage Program Labour Conditions

Fair Wage Program Labour Conditions refers to the Ontario Fair Wage Program Labour Conditions and applicable Schedule of Fair Wage Rates included in the *Contract Documents*.

10d. Infrastructure Ontario or IO

“*Infrastructure Ontario*” or “*IO*” means Ontario Infrastructure and Lands Corporation, the statutory agent and delegate of Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure or his or her authorized successor.”

11c. Open Data

“*Open Data*” means data that is required to be released to the public pursuant to the Open Data Directive

11d. Open Data Directive

“*Open Data Directive*” means the Management Board of Cabinet’s Open Data Directive updated on April 29, 2016, as amended from time to time.

12b. Personal Information

Personal Information has the same definition as in subsection 2(1) of *FIPPA* and includes an individual’s name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Contractor*.

13b. PPEB

“*PPEB*” means the Program & Policy Enablement Branch, Supply Chain Ontario, Ministry of Government & Consumer Services, or any successor thereof.

16a. Security Clearance Check

Security Clearance Check includes all of the following:

- (a) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;
- (b) a police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual in relation to:
 - convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;

- findings of guilt in relation to federal statutes for which a court has granted a discharge;
 - charges laid under the offense provisions of any federal statutes that are unresolved; and
 - records of judicial orders in effect made in relation to the offense provisions of federal statutes;
- (c) a police records check in other jurisdictions as deemed necessary by the information provided to the *PPEB* during a Security Clearance Check; and
- (d) if deemed necessary by *PPEB* considering the circumstances of the Project, a driving records check.

24a. Vendor Performance Guidelines

Vendor Performance Guidelines mean guidelines developed by the *Owner* in connection with the *Vendor Performance Program (Real Estate)*.

24b. Vendor Performance Program (Real Estate)

Vendor Performance Program (Real Estate) means the *Owner's* policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The *Vendor Performance Program (Real Estate)* establishes a standard methodology for the incorporation of a vendor's past performance as a criterion in assessing that vendor's bids or proposals for future work with the *Owner*.

24c. Vendor Performance Scorecard

Vendor Performance Scorecard means a scorecard developed by the *Owner* in connection with the *Vendor Performance Program (Real Estate)*.

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

GC 1.1 CONTRACT DOCUMENTS

.1 Add new sentence to the end of paragraph 1.1.6:

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* or as between them and the *Contractor* with respect to such divisions.

.2 Add new subparagraph 1.1.7.5:

1.1.7.5 noted materials and annotations shall take precedence over graphic indications.

.3 Delete paragraph 1.1.8 in its entirety and substitute new paragraph 1.1.8:

1.1.8 The *Owner* shall provide the *Contractor*, without charge, 6 copies of the *Contract Documents*.

GC 1.3 RIGHTS AND REMEDIES

.1 Delete the word “No” from the beginning of paragraph 1.3.2 and substitute the words:

1.3.2 “Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1, no ...”.

GC 1.4 ASSIGNMENT

.1 Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1:

1.4.1 The *Owner* may assign the *Contract* or a portion thereof without the consent of the *Contractor*, where such assignment is to an entity undertaking the *Project* for the use of the Crown in Right of Ontario or Canada. The *Contractor* may not assign the *Contract* or a portion thereof without the consent of the *Owner*, and the granting of such consent shall be in the *Owner's* discretion, not to be unreasonably withheld.

GC 2.2 ROLE OF THE CONSULTANT

.1 Add the following to the end of paragraph 2.2.1:

2.2.1 , and where applicable, in accordance with the recommended procedures outlined in the OAA OGCA Document No. 100 dated December 12, 2007 and the OAA OGCA Guide to Project Closeout Procedures dated November 2010.

GC 2.4 DEFECTIVE WORK

.1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

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

- 2.4.1.2 When applicable, the *Contractor* shall give priority to the correction of any defective work or deficiencies which the *Owner* determines adversely affect its day-to-day operations.

GC 3.1 CONTROL OF THE WORK

- .1 Add new paragraph 3.1.3:

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

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- .1 Delete subparagraph 3.2.2.1 in its entirety

- .2 Delete subparagraph 3.2.2.2 in its entirety

- .3 Add new subparagraph 3.2.3.4:

- 3.2.3.4 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.4 of General Condition 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the *Owner's* own forces and for other contractors performing work identified in the *Contract Documents*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work*, including all of the responsibilities of the constructor as that term is defined in the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended.

GC 3.4 DOCUMENT REVIEW

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

- 3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. 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. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

.2 Add 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, the *Contractor* shall immediately notify the *Consultant*, and request a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

GC 3.5 CONSTRUCTION SCHEDULE

.1 Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

3.5.1 The *Contractor* shall,

.1 within 15 days following the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review, a construction schedule that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Unless otherwise agreed to in writing, in advance by the *Owner* and the *Contractor*, when required by the *Specifications* to employ construction scheduling software, the *Contractor* shall employ the software Microsoft Project in generating the construction schedule, which permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the construction schedule to the *Owner* in editable format, together with a record version in PDF format. Once reviewed by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule. The review of the construction schedule by the *Owner* and the *Consultant* shall

not be perceived as their approval in any way of the construction schedule. The *Contractor* is fully responsible for the means and methods necessary to meet the baseline construction schedule or any revision(s) thereto. The *Owner* and the *Consultant's* review are solely intended to help establish the *Contractor's* ability to meet the requirements of the *Contract*.

- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the baseline construction schedule or any successor or revised schedule pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .4 if, after applying the expertise and resources required under subparagraph 3.5.1.2, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

.2 Add new paragraph 3.5.2:

- 3.5.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with General Condition 6.5 – DELAYS.

GC 3.6 SUPERVISION

- .1 Delete paragraph 3.6.1 in its entirety and substitute new paragraph 3.6.1:

3.6.1 The *Contractor* shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representatives shall not be changed except for valid reasons, and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld.

- .2 Add new paragraph 3.6.3:

3.6.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s), where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

GC 3.8 LABOUR AND PRODUCTS

- .1 Delete paragraph 3.8.2 and replace with new paragraph 3.8.2:

3.8.2 Unless otherwise specified in the Contract Documents, Products provided shall be new and as specified. The *Contractor* shall not provide substitutions for specified Products without the express written consent of the Consultant and the Owner.

- .2 Add new paragraph 3.8.4:

3.8.4 The *Contractor* shall comply with all requirements set out in the *Fair Wage Program Labour Conditions*. The hours of work, the rates of wages paid, and the working conditions shall be in accordance with the Labour Conditions and applicable Schedule of Fair Wage Rates, included therein, as amended from time to time.

GC 3.11 USE OF THE WORK

- .1 Add new paragraph 3.11.3:

3.11.3 The *Contractor* shall abide by and enforce directives and policies regarding signs, advertisements, fires and smoking at the *Place of the Work* as directed by the *Owner*.

Add new General Conditions 3.14, 3.15, and 3.16:

GC 3.14 PERFORMANCE BY CONTRACTOR

- 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 that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

GC 3.15 RIGHT OF ENTRY

- 3.15.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant* and *Contractor*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*.

GC 3.16 OAA/OGCA TAKE-OVER PROCEDURES

- 3.16.1 Unless otherwise required by this Contract, *Contractor* shall execute the closing stages of the *Work* in accordance with the OAA OGCA Document No. 100, dated December 12, 2007 and the OAA OGCA Guide to Project Closeout Procedures dated November 2010.

GC 4.1 CASH ALLOWANCES

.1 Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

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*.

.2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order* without any adjustment for the *Contractor's* overhead and profit on such amount.

.3 Add new paragraph 4.1.8:

4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work*, to be paid for from cash allowances.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

.1 Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.

.2 Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:

5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

.3 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

.1 Add to the end of paragraph 5.2.7 the following new sentence:

5.2.7 Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to General Condition 13.1 - OWNERSHIP OF MATERIALS.

.2 Add new paragraphs 5.2.8, 5.2.9, and 5.2.10:

5.2.8 As a condition of receiving each progress payment after the first, the *Contractor* shall submit a Statutory Declaration on an original form CCDC Document 9A-2001, attesting to the truth of the statements made therein.

5.2.9 The *Contractor* shall submit a Workplace Safety & Insurance Board Clearance Certificate with each application for progress payment.

5.2.10 The *Contractor* shall prepare current *As-Built Drawings* during the course of the *Work*, which current *As-Built Drawings* shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* may retain a reasonable amount and up to a maximum of the amounts outlined in paragraph 5.4.7, from any progress payment for the value of the *As-Built Drawings* not presented for review until the *As-Built Drawings* are presented for review.

GC 5.3 PROGRESS PAYMENT

.1 Delete subparagraph 5.3.1.3 in its entirety and substitute new subparagraph 5.3.1.3:

5.3.1.3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 45 calendar days after the date of a certificate of payment issued by the *Consultant*

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

.1 Delete paragraph 5.4.3 in its entirety and substitute new paragraph 5.4.3:

5.4.3 Immediately prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish reasonable dates for finishing the *Work* and correcting deficiencies.

.2 Add new paragraphs 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8 and 5.4.9:

5.4.4 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Act* or the regulations promulgated thereunder) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.

5.4.5 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 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance manuals;
- .8 samples;
- .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;
- .10 commissioning verification form(s);
- .11 computerized maintenance management system form(s) for base building and/or client equipment

and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*.

5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. If the *Contractor* fails to deliver any of the materials required in subparagraphs 5.4.5.7 or 5.4.5.8, the *Consultant* shall retain from the payment of holdback under General Condition 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the amount set out in paragraph 5.4.7, until the materials required pursuant to subparagraphs 5.4.5.7 or 5.4.5.8 are delivered, provided the *Owner*, within 40 calendar

days after publication of the applicable certification or declaration of *Substantial Performance of the Work*, publishes a notice of non-payment in the form prescribed by the *Construction Act*.

5.4.7 The amount to be retained by the *Consultant* as contemplated in subparagraphs 5.2.10 and 5.4.6 is as follows:

- .1 where the *Contract Price* is less than \$100,000 the amount to be retained is \$5,000;
- .2 where the *Contract Price* is greater than \$100,000 but less than \$500,000, the amount to be retained is 5% of the *Contract Price*;
- .3 where the *Contract Price* is greater than \$500,000 but less than \$5,000,000, the amount to be retained is the greater of \$25,000 or 3% of the *Contract Price*;
- .4 where the *Contract Price* is greater than \$5,000,000, the amount to be retained is 1.5% of the *Contract Price* up to a maximum of \$1,000,000.00.

5.4.8 Except for payment of holdback, from which amounts can only be retained or withheld in accordance with the *Construction Act*, should the *As-Built Drawings* not be delivered in accordance with subparagraph 5.2.10 or any documents or materials not be delivered in accordance with paragraph 5.4.5 by the earlier of 50 days following the date of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.7.1 of General Condition 5.7 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.10 or 5.4.7 shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Price* shall be reduced accordingly.

5.4.9 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:

- .1 identify the parties involved;
- .2 identify the amount in dispute;
- .3 provide a brief statement summarizing the position of each party;
- .4 include copies of any correspondence or documents in support of either party's position;
- .5 include copies of any documents of any court or arbitration process related to the matter;
- .6 identify the dispute or claim between the *Contractor* and the *Owner* to which the matter relates; and
- .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Contractor* shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Contractor* and the *Owner*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- .1 Add new subparagraph 5.5.1.3:
5.5.1.3 submit a statement that no written notices of lien have been received by it.
- .2 Delete from line 1 of paragraph 5.5.2, the words, “the statement” and substitute the words:
“the documents”.
- .3 Delete paragraph 5.5.3 in its entirety.

- .4 Delete paragraph 5.5.4 in its entirety and substitute new paragraph 5.5.4:

5.5.4 The statutory holdback amount authorized by the certificate for payment referred to in paragraph 5.5.2 is due and payable on the day following the expiry of the holdback period specified in the *Construction Act* for the retention of holdback funds following *Substantial Performance of the Work*, unless (i) a claim for lien has been registered against title to the *Place of the Work*; (ii) the *Owner* has received a valid written notice of lien in respect of the *Work*; or (iii) the *Owner* has published a notice of non-payment in the form prescribed by the *Construction Act* prior to the 40th calendar day following the publication of the certificate of *Substantial Performance of the Work*.

GC 5.7 FINAL PAYMENT

- .1 Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1:

5.7.1 When the *Contractor* considers that the *Work* is completed, 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 5.4.5. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered.

- .2 Delete from the first line of paragraph 5.7.2 the words, “calendar days” and substitute the words:

“*Working Days*”.

- .3 Delete from the second line of paragraph 5.7.4 the words, “calendar days” and substitute the words:

“*Working Days*”.

- .4 Add new paragraph 5.7.5:

5.7.5 Prior to the release of the finishing holdback provided for under the *Construction Act*, the *Contractor* shall submit:

- .1 *Contractor's* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;
- .2 a Statutory Declaration CCDC 9A-2001;

- .3 a final Workplace Safety & Insurance Board Clearance Certificate.

GC 6.2 CHANGE ORDER

- .1 Add new paragraphs 6.2.3, 6.2.4, 6.2.5 and 6.2.6 as follows:

6.2.3 The *Contractor* may apply mark-ups for overhead and profit to approved changes to the *Contract Price* as follows:

- .1 15% for work carried out by the *Contractor's* own forces; and
- .2 10% for work carried out by *Subcontractors*.

Similarly, *Subcontractors* shall be entitled to apply mark-up for overhead and profit as follows:

- .3 15% for work carried out by their own forces; and
- .4 10% for work carried out by their *subcontractors*.

6.2.4 In no event shall the maximum aggregate mark-up applied by all levels of contract for overhead and profit exceed 40% of an approved change.

6.2.5 Where the cost of a proposed change is a credit to the *Contract Price*, such credit shall be exclusive of the *Contractor's* overhead and profit.

6.2.6 The *Contractor's* overhead includes without limitation all site and head office costs including head office personnel, insurance and bonding (except where additional bonding is at the *Owner's* expense pursuant to subparagraph 11.2.3), traveling costs, financing costs including those related to hold back; the salaries, premiums for overtime or shift time unless otherwise approved by the *Owner* in writing prior to the *Work* being performed, and other miscellaneous employee benefits of superintendents and sub-trade superintendence, engineers, timekeepers, accountants, clerks, watch persons and security, office administration; processing correspondence, changes, shop drawings, engineering, *As-Built Drawings*, maintenance manuals and all other documents required to be provided prior to certification of *Substantial Performance* of the *Work*, costing and accounting, payroll, technical staff, and all other site supervision staff above foreperson employed directly on the *Work*; coordination with other trades affected, use of temporary offices, plant, tools and equipment including operators, sheds, storage compounds and other general temporary site support facilities and all utilities used therein; first aid, safety and protection measures, including training; licences and permits; scheduling; temporary

protection; daily clean up; disposal; garbage chute; scaffolding; hoisting and unloading; commissioning; cutting and patching, and shall be applied to both extras and credits equally.

GC 6.3 CHANGE DIRECTIVE

.1 Delete subparagraph 6.3.7.1(1) and replace it with:

“(1) carrying out the work, including necessary supervisory services;”

.2 Delete subparagraph 6.3.7.1(2) and replace it with

“(2) intentionally left blank.”

.3 Amend subparagraph 6.3.7.1(3) so that, as amended, it reads:

“(3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *As-Built Drawings*: or...”

.4 Amend subparagraph 6.3.7.1(4) so that, as amended, it reads:

“(4) including clerical staff engaged in processing changes in the *Work*.”

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

.1 Add new paragraph 6.4.5:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.1, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.

GC 6.5 DELAYS

.1 Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.2 Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.3 Add new paragraph 6.5.6.

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. 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 subconsultants, project managers, or others employed or engaged by the *Owner*.

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

.1 Revise the heading, “OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT” to read, “OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT”

.2 Delete paragraph 7.1.6 and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11 and 7.1.12:

7.1.6 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 or no reason and without cause upon giving the *Contractor Notice in Writing* to that effect and in such event the *Owner* shall publish, in the form prescribed by the *Construction Act*, a notice of termination in accordance with the *Construction Act* which, in any event, shall include the date on which the *Contract* is terminated. In such event, the *Contractor* shall be entitled to be paid for all *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the

Contractor may have sustained as a result of the termination of the *Contract*, but in no event shall the *Contractor* be entitled to be compensated for any loss of profit on unperformed portions of the *Work*, or indirect, special, or consequential damages incurred.

- 7.1.7 The *Owner* may suspend *Work* under this *Contract* at any time for any reason and without cause upon giving the *Contractor 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 damages incurred. In the event that the suspension continues for more than 180 calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.
- 7.1.8 In the case of either a termination of the *Contract*, or a suspension of the *Work* under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.
- 7.1.9 Upon the resumption of the *Work* following a suspension under General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.10 The *Contractor's* obligation 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*.

7.1.11 If any security check performed in accordance with GC13.6 discloses a security problem that is not resolved by *Contractor* to the satisfaction of the *Owner* within ten (10) *Working Days* following receipt of written notice of such problem from the *Owner*, the *Owner* may terminate this *Contract* by giving *Contractor* notice in writing to that effect.

7.1.12 Without limiting the foregoing in this section, a finding on a security check that is incompatible with ensuring any of the achievement of the following objectives is a security problem:

- (i) *Contractor's* ability to provide the services in accordance with the Agreement;
- (ii) the safety of the client's directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor's directors, officers, employees, agents, consultants or subcontractors, the *Owner's* clients and their directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor's directors, officers, employees, agents, consultants or subcontractors and the public;
- (iii) the reputation of or public confidence in the client;
- (iv) the security of the client's financial assets and revenue;
- (v) the security of any real property owned, controlled or managed by the client;
- (vi) the security of any other property owned, controlled, managed or licensed by the client;
- (vii) the security, confidentiality or integrity of the client's confidential information and the integrity of any other materials held by the client.

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

- .1 Delete paragraph 7.2.2 in its entirety.
- .2 Delete subparagraph 7.2.3.1 in its entirety.

- .3 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or

- .4 Delete from subparagraph 7.2.3.4, the words:

7.2.3.4 “, except for General Condition 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,”

- .5 Delete from the end of paragraph 7.2.4 the words “or terminate the *Contract*” and substitute the words:

7.2.4 “until the default is corrected, provided, however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the *Contractor’s Notice in Writing* to the *Owner* was given pursuant to subparagraph 7.2.3.3, then, 180 days after the delivery of the *Notice in Writing*, the *Contractor* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply and in such event the *Contractor* shall publish, in the form prescribed by the *Construction Act*, a notice of termination in accordance with the *Construction Act* which, in any event, shall include the date on which the *Contract* is terminated.”

GC 8.1 AUTHORITY OF THE CONSULTANT

- .1 Delete last sentence of 8.1.3 and substitute the following sentence:

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

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- .1 Delete paragraphs 8.2.6, 8.2.7, and 8.2.8 in their entirety and substitute new subparagraph 8.2.6:

8.2.6 When a dispute has not been resolved through negotiation or mediation, within 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may give a *Notice in Writing* to the other party and to the *Consultant* inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended. If

the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding *Notice in Writing* within 10 *Working Days* of receipt of the invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

GC 9.1 PROTECTION OF WORK AND PROPERTY

.1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;

.2 Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in or inferable from the *Contract Documents*, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1.

.3 Add new paragraph 9.1.5:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

.4 Add new paragraph 9.1.6:

9.1.6 The *Contractor* shall be responsible for securing the *Place of Work* at all times and shall take all reasonable precautions necessary to protect the *Place of Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours. Where the *Consultant* or the *Owner* deems the provision of security guard services to be necessary, the *Contractor* shall provide those services at the *Owner's* expense.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

.1 Add new subparagraph 9.2.5.5

9.2.5.5 take all reasonable steps to mitigate the impact on Contract Time and Contract Price

.2 Delete subparagraph 9.2.7.4 in its entirety.

.3 Add to subparagraph 9.2.8.3 immediately before the comma, the following new words:

“and as a result of the delay”

GC 9.4 CONSTRUCTION SAFETY

.1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1

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*.

.2 Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

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

- .1 a current Workplace Safety & Insurance Board Clearance Certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation setting out the *Contractor's* in-house safety programs;
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended.

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.4 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters. Prior to admission to the *Place of the Work*, the *Contractor* may, as a condition of admission, require any other contractor or the *Owner's* own forces to sign a written acknowledgement in the following form:

Acknowledgement

The undersigned acknowledges that the *Work* it will perform on behalf of the *Owner* requires it to enter a *Place of the Work* which is under the total control of a *Contractor* that has a *Contract* with the *Owner*, pursuant to which the *Contractor* has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act*, R.S.O 1990, c. O.1, as amended, as well as responsibility to coordinate and schedule the activities of our *Work* with the *Work* of the *Contractor* under its *Contract*. The undersigned agrees to comply with the *Contractor's* directions and instructions with respect to health, safety, coordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned's *Contract* with the *Owner*, as the case may be. The undersigned also agrees to have the *Contractor* named as an additional insured on any comprehensive liability insurance policy, where such insurance is required.

Name:

Title:

Date:

GC 9.5 MOULD

.1 Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:

“and as a result of the delay”

.2 Delete subparagraph 9.5.3.4 in its entirety.

GC 10.1 TAXES AND DUTIES

.1 Add new paragraph 10.1.3:

10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

.2 Add new paragraph 10.1.4:

10.1.4 In the event that new or additional taxes in respect of the *Work* are required by federal, provincial, territorial, regional or municipal legislation after the *Contract* is executed, the amount payable under this *Contract* shall be adjusted to include such taxes.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

.1 Add to the end of paragraph 10.2.4 the following words:

10.2.4 “The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the *Ontario Building Code*. The *Contractor* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern.”

.2 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:

“Subject to paragraph 3.4.1, the”.

GC 10.3 PATENT FEES

- .1 Delete paragraph 10.3.2 in its entirety.

GC 10.4 WORKERS' COMPENSATION

- .1 Add to subparagraph 10.4.1 immediately after the first comma, the following new words:

“again with each application for progress payment, and”

- .2 Add to the beginning of subparagraph 10.4.2 the following new words:

“The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*.”

- .3 Add new paragraph 10.4.3:

10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers' compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor's* admission to the *Place of Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

GC 11.1 INSURANCE

- .1 Add to the end of paragraph 11.1.1.1 the following new words:

11.1.1.1 “In addition, this policy shall include coverage for non-owned automobiles.”

- .2 Add new subparagraph 11.1.1.6(4):

11.1.1.6(4) If any loss occurs involving damage to property in an amount greater than \$25,000, bodily injury to any person, or damage to any existing structure, the *Contractor* shall, in addition to the other requirements set out herein, immediately provide a detailed written report to the *Owner* and to *Infrastructure Ontario*, 1 Dundas Street West, Suite 2000, Toronto, Ontario M5G 2L5, Att'n: Divisional Lead, Real Estate Management & Lending.

.3 Add new subparagraph 11.1.1.8:

11.1.1.8 Pollution Liability Insurance, naming the Owner as insured, with limits of not less than \$5 million per occurrence, an aggregate limit of not less than \$5 million within any policy year, and a deductible not exceeding \$5,000, such insurance to be maintained from the date of commencement of the *Work* until one year from the date of *Substantial Performance of the Work*.

.4 Delete paragraph 11.1.2 in its entirety and substitute new paragraph 11.1.2:

11.1.2 In all instances in paragraph 11.1.1 where the *Contractor* is required to obtain insurance coverages naming or jointly naming the *Owner* or the *Consultant*, such policies shall instead include the *Consultant* (where applicable), the *Owner*, Ontario Infrastructure and Lands Corporation and Her Majesty the Queen in Right of Ontario as additional insureds. Each of the policies of insurance shall also contain a provision requiring not less than 30 days' written notice to each named insured prior to cancellation or any change that would reduce coverage. At least 10 calendar days prior to commencement of the *Work* and upon any 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 applicable to the *Work*.

.5 Add new subparagraph 11.1.9 as follows:

11.1.9 The parenthetical reference in CCDC 41 - INSURANCE REQUIREMENTS, paragraph 4 which reads: “(excluding flood and earthquake)” is deleted and replaced with the following: “(including flood, earthquake, testing, and commissioning)”.

GC 11.2 CONTRACT SECURITY

.1 Delete paragraph 11.2.1 in its entirety and substitute new paragraph 11.2.1:

11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner*:

- .1 a performance bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Price*, covering the performance of the *Contract*, including the *Contractor's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and

- .2 a labour and material payment bond, in the form set out in the *Contract Documents*, in an amount equal to 50% of the *Contract Price* covering payment for labour, *Product*, or both.

- .2 Delete paragraph 11.2.2 in its entirety and substitute new paragraph 11.2.2:

11.2.2 The bonds referred to in paragraph 11.2.1 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* and shall be maintained in good standing until two years following the date of *Substantial Performance* of the *Work*.

- .3 Add new paragraph 11.2.3:

11.2.3 If approved changes pursuant to the Contract result in approved increase or cumulative increases to the *Contract Price* the *Contractor* shall promptly acquire additional bonding at the *Owner's* expense. Where additional bonding premiums are paid by the *Owner*, the *Contractor* shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original revised performance bond(s).

GC 12.1 INDEMNIFICATION

- .1 Delete General Condition 12.1 – INDEMNIFICATION in its entirety and substitute:

12.1 The *Contractor* shall indemnify and hold harmless *IO*, Her Majesty the Queen in right of Ontario, the *Owner*, the *Consultant*, and their respective agents, appointees, directors, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the *Contractor's* performance of the *Contract*. Nothing in this paragraph 12.1, shall limit any claim that *IO*, Her Majesty the Queen in right of Ontario, or the *Owner* may have under the insurance coverage to be provided under General Condition 11.1 - INSURANCE.

GC 12.2 WAIVER OF CLAIMS

- .1 Delete the reference to “395 calendar days” in the last line of paragraph 12.2.2 and substitute “120 calendar days”.

- .2 Delete the last sentence of subparagraph 12.2.3.4 and substitute:

12.2.3.4 “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:

- .1 if the *Contract Price* is \$2 million or less, the sum of \$50,000, before *Value Added Taxes*;
- .2 if the *Contract Price* exceeds \$2 million, the sum of \$100,000, before *Value Added Taxes*;

but, in any event, a defect or deficiency in the *Work* which affects the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents* shall be deemed to be a “substantial defects or deficiencies” regardless of the cost of repair.

- .3 Amend paragraph 12.2.5 by adding “12.2.3.4” immediately after the reference to paragraph 12.2.3.3.

GC 12.3 WARRANTY

- .1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words:

“Subject to paragraph 3.4.1, the...”.

Add new PART 13 as follows:

PART 13 OTHER PROVISIONS

GC 13.1 OWNERSHIP OF MATERIALS

- 13.1.1 All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*.

GC 13.2 CONSTRUCTION LIENS

- 13.2.1 In the event that a claim for lien is registered against the Project by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then 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 conform with the requirements of paragraph 13.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, 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 there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.

GC 13.3 CONTRACTOR DISCHARGE OF LIABILITIES

- 13.3.1 In addition to the obligations assumed by the *Contractor* pursuant to General Condition 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 which have been identified to the party or parties, from whom payment has been withheld.

GC 13.4 RECORDS/DAILY REPORTS/DAILY LOGS

- 13.4.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law, but in any event for not less than 6 years from *Substantial Performance of the Work* or until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* and *IO* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

GC 13.5 CONTRACTOR EVALUATION

- 13.5.1 In accordance with the *Owner's Vendor Performance Program (Real Estate)*, the *Owner* will evaluate the performance of the *Contractor* with respect to the *Work* using the criteria outlined in the *Vendor Performance Scorecard* and the *Vendor Performance Guidelines* included with the *Contract Documents*.

GC 13.6 SECURITY SCREENING

- 13.6.1 *Contractor* acknowledges that the Ontario government has implemented a policy that requires *Contractor* and all individuals who will be performing work on behalf of the *Contractor* doing business with the Ontario government to undergo *Security Clearance Checks*. The *Security Clearance Checks* are administered by the *PPEB*.
- 13.6.2 *Contractor* shall comply with the above-noted policy. Should there be any discrepancy between the above-noted policy and the security screening steps outlined herein, the former shall govern. *Contractor* shall ensure that *Contractor's* staff and all *Subcontractors* are in full compliance with the above-noted policy.
- 13.6.3 *Contractor* shall ensure that the screening provisions outlined herein are included in each subcontract *Contractor* enters into with its *Subcontractors* for any part of the *Work*. In addition, *Contractor* shall require its *Subcontractors* to include the screening provisions outlined herein into every level of contract thereunder with each of their respective subcontractors for any part of the *Work*.
- 13.6.4 *Contractor* acknowledges that *PPEB* will perform *Security Clearance Checks* on *Contractor*, including its directors, officers, *owner's*, partners, if applicable, and shareholders (if a privately held corporation and as requested by *PPEB*), *Contractor's* staff and *Contractor's Subcontractors* (including each *Subcontractor's* directors, officers, owners, partners, shareholders and employees who will perform any part of the *Work*) (collectively referred to in this section as "*Affected Parties*" and individually as an "*Affected Party*"). Accordingly, *Contractor* shall require each *Affected Party* to undergo a *Security Clearance Check*.
- 13.6.5 *Contractor* further acknowledges that unless stated otherwise by the *Owner* in writing, *Security Clearance Checks* must be completed for each *Affected party* and each *Affected party* must receive clearance in accordance with the timelines set out in 13.6.5(i) and 13.6.5(ii) in order for *Contractor* its staff and *Subcontractors* to perform any part of the *Work* required for the *Project*. Accordingly:
- (i) *Contractor*, its directors, officers, owners, partners, if applicable, shareholders (if a privately held corporation and as requested by *PPEB*) and *Contractor's* staff then assigned to the *Project* must receive clearance prior to award of the *Contract*; and

- (ii) *Subcontractors* (including each of the *Subcontractor's* directors, officers, owners, partners, shareholders and staff who will be required to perform any part of the *Work*), must receive clearance prior to performing any part of the *Work*.

13.6.6 The *Owner* will provide *CSO* with all forms and information necessary to coordinate and facilitate the required *Security Clearance Checks*.

13.6.7 *Contractor's CSO* shall obtain:

- (i) written consent to perform a *Security Clearance Check*, in the form provided by the *Owner*, from each *Affected Party*; and
- (ii) any other information that the *Owner*, in its sole and absolute discretion acting on the direction of *PPEB*, may deem necessary in order to conduct a *Security Clearance Check* on the *Affected Parties*;

and shall submit this information to the *Owner* in the prescribed form, where required.

13.6.8 As a consequence of any *Security Clearance Check*, the *Owner*, acting promptly on the determination by *PPEB*, may notify *Contractor's CSO* that an *Affected Party* did not receive clearance. Upon request by the *Owner*, *Contractor* will remove and replace any such *Affected Party* in accordance with GC13.6.11 and GC 13.6.12 so that such *Affected Party* is no longer performing the *Work* or any part thereof. *Contractor* further acknowledges and agrees that the *Owner* shall be acting reasonably and consistent with applicable laws if the *Owner* requests the replacement of an *Affected Party* who did not receive clearance following a *Security Clearance Check*.

13.6.9 During the term or any extension term of this agreement, *Contractor* shall ensure that, within five (5) *Working Days* of becoming aware of any change, *Contractor* shall inform the *Owner* in writing of any:

- (i) change to any information related to *Security Clearance Checks* for any existing *Affected Party* to enable *PPEB* to update the individual's *Security Clearance Check*; and
- (ii) addition to the *Affected Parties* for the purpose of enabling *PPEB* to perform *Security Clearance Checks* on any such new *Affected Party*. *Contractor* shall provide any such information in accordance with GC 13.6.4, 13.6.5 and GC 13.6.7.

- 13.6.10 All administrative costs incurred by *Contractor* in complying with the requirements of this GC 13.6 shall be borne solely by *Contractor*.
- 13.6.11 If any *Affected Party* refuses to consent to a security check performed in accordance with this GC13.6 or if any security check performed in accordance with this GC13.6 relating to any *Affected Party* assigned to fulfil *Contractor's* obligations under this agreement discloses any security issue relating to the *Affected Party*, the *Owner* may determine that any such *Affected Party* is a security threat and provide written notice to *Contractor* of the *Owner's* determination. Upon receipt of such written notice, *Contractor* shall promptly replace any such *Affected Party*.
- 13.6.12 Unless otherwise agreed to by the *Owner* in writing, any individual proposed by *Contractor* to replace an *Affected Party* further to GC13.6.11 must possess the equivalent or greater qualifications and experience than that of the *Affected Party* being replaced and such individual must be provided at no incremental cost to the *Owner*.

GC 13.7 COUNTERPART EXECUTION

- 13.7.1 The *Contract* may be signed in counterparts and each such counterpart shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. The *Contract* may be executed and delivered by facsimile or electronic (including pdf) transmission and each of the parties hereto may rely on such facsimile or electronic signature as though such facsimile or electronic signature were an original signature.

END OF DOCUMENT