



**Addendum No. 03**

**Bid Call**

**for**

**General Contractors**

**for**

**Ministry of the Attorney General (MAG)  
Justice Video Technology Program Phase 3**

**Group 3**

**Perth Courthouse**

**Project No. 230601**

**Bid Call No. 25-1546**

**Issued: February 9, 2026**

**This Addendum is issued in accordance with Bid Call Section 5, and amends the Bid Call Documents as set out below.**

**Such revisions shall become part of the Bid Call Documents, and shall change the original Bid Call Documents only in the manner and extent stated.**

## **1. BID CALL DOCUMENT LIST**

### **1.1. Section 1. Procurement Document List**

**DELETE** Section 1. Procurement Document List in its entirety and **REPLACE** with the following:

1. Bid Call Notice
2. Bid Call Document List
3. 00 21 13 Instruction to Bidders
4. 00 41 10 Stipulated Price Bid Form
5. Declaration Form
6. Forms 3-4A & 3-4B Certificate of Officer
7. Non-Disclosure Agreement
8. Form of Domestic Supply Chain Plan
9. Canadian Business Attestation Form
10. Bonds Certificates and Forms
11. CCDC 2 2020 IO Supplementary Conditions
12. Certificate of Completion
13. Certificate of Substantial Performance
14. Certificate of Completion of Subcontract
15. Statutory Declaration upon Completion
16. Statutory Declaration upon Substantial Performance
17. Application for Certificate of Completion
18. Application for Certificate of Substantial Performance
19. Addenda, if any

### **1.2. Section 4. Background Information**

**ADD** the following documents:

- Capital Infrastructure Procurement Direction – A Guide for Buyers  
December 16, 2025

- Appendix A Buy Ontario Capital Infrastructure Procurement Direction
- Buy Ontario Capital Infrastructure Procurement Direction - FAQs

## **2. PROCUREMENT DOCUMENTS**

**2.1.ADD** the following document: Form of Domestic Supply Chain Plan

**2.2.ADD** the following document: Canadian Business Attestation Form

## **3. 00 21 13 INSTRUCTIONS TO BIDDERS**

**3.1.DELETE** the document 00 21 13 Instructions to Bidders in its entirety and **REPLACE** the updated document titled “Revised 00 21 13 Instructions to Bidders”.

In addition to the above noted document, a blackline version will be made available for reference purposes.

## **4. CCDC 2 2020 IO SUPPLEMENTARY CONDITIONS**

**4.1.DELETE** the CCDC 2 2020 IO Supplementary Conditions in its entirety and **REPLACE** with the following updated CCDC 2 2010 IO Supplementary titled “CCDC 2 2020 IO Supplementary Conditions (Updated Construction Act & BOA).

In addition to the above noted document, a blackline version will be made available for reference purposes.

**End of Addendum**

**INSTRUCTION TO BIDDERS**  
**General Contractors for the Ministry of the Attorney General (MAG)**  
**Justice Video Technology Program Phase 3 Group 3**  
**Perth Courthouse**

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**1 GENERAL**

- 1.1 Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**” or “**IO**”) hereby solicits offers from qualified Contractors (“**Bids**”) in response to this Bid Call. Contractors who submit a Bid (“**Bidders**”) must strictly adhere to all the requirements specified in this Instruction to Bidders.
- 1.2 The fee identified in the completed Stipulated Price Bid Form must be the stipulated price to undertake the Work (“**Bid Price**”).
- 1.3 The Standard Construction Document CCDC 2 2020 for Stipulated Price Contract, English version, as modified by IO’s Supplementary Conditions and any applicable Project Specific Supplementary Conditions is the designated form of Contract for this Project (the “**Contract**”).
- 1.4 The parties to the Contract will be His Majesty the King in Right of Ontario as represented by the Minister of Infrastructure, as represented by Infrastructure Ontario and the Successful Bidder.
- 1.5 Unless otherwise defined herein, capitalized terms in this document 00 21 13 - Instructions to Bidders and in the document 00 41 10 - Stipulated Price Bid Form shall have the meaning ascribed to them in the Contract.
- 1.6 The bidding process shall be administered in accordance with these bidding requirements (the “**Bid Process**”).
- 1.7 Infrastructure Ontario on behalf of the Ministry of the Attorney General (“**MAG**”) is conducting renovations to seventeen (17) courthouses to create privacy rooms and provide infrastructure in support of the implementation of audio-visual equipment.
- 1.8 To support the initiative, MAG is undertaking renovations to the Perth courthouse for the purpose of renovating existing spaces into privacy rooms and construction of privacy booths with courtrooms.
- 1.9 The installation of the audio-visual (AV) equipment will be performed by a third party and as such not in scope of this Bid Call however installation of the infrastructure as part of this Contract will require coordination with the AV vendor.

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- 1.10 AV vendor documents are provided as Background Information however scope of Work for the Contractor is reflected in its entirety in the Bid Documents.
  - 1.11 The scope of Work includes the installation of new wall assembly, acoustic wall panels to achieve specified STC ratings, new door and room sign in new privacy booth/interview room.
  - 1.12 Bidders are to review the Bid Documents including all Drawings and Specifications for full details on the Project.

## 2 BID CALL DOCUMENTS

- 2.1 The “**Bid Call Documents**” are those solicitation documents prepared and issued or made available to Bidders by Infrastructure Ontario for the purpose of preparing a Bid (“**Bid Call Documents**”).
- 2.2 Infrastructure Ontario may also provide Bidders with project specific information (“**Background Information**”). The Background Information does not form part of the Bid Call Documents but is intended to provide additional information to assist the Bidders in the development of the document 00 41 10 - Stipulated Price Bid Form
- 2.3 Please refer to the detailed list comprising all solicitation documents, Background Information, form of Contract, Drawings and Specifications relevant to this Bid Call (“**Bid Call Document List**”).
- 2.4 Except for the completion of forms to provide required information and signatures, Bidders shall not alter the Bid Call Documents.
- 2.5 Bid Call Documents and Background Information provided by Infrastructure Ontario, are available on MERX.
- 2.6 To access the Background Information, each Bidder must submit an executed Non-Disclosure Agreement (NDA) by email in PDF Format to the Contact Person specified in the Bid Call Notice, **identifying the name of the firm, primary contact’s phone number and email address that will access the Background Information.**
- 2.7 Failure to comply with the above-mentioned requirement may render the potential Bidder ineligible to participate in any bidders’ briefing, receive the Bid Call Documents and Infrastructure Ontario acceptance of their Bid.

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- 2.8 Bidders who submit a compliant executed NDA will receive an automated message or email which provides instructions on how to access the Bid Call Documents.
- 2.9 Specifications and Drawings will be made available at no cost to Bidders upon receipt by Infrastructure Ontario of an executed NDA.

### **3 EXAMINATION OF BID CALL DOCUMENTS**

- 3.1 Each Bidder 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 Bidder to satisfy itself as to all existing conditions affecting the Project or the Contract. The Bidders' obligations set out in this Section 2.4 apply irrespective of any Background Information in the electronic data room or information contained in the Bid Call Documents or in responses to Request for Information (RFI). The Bidders' 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 Infrastructure Ontario is more particularly set out in the Contract. If, as a result of any independent research, investigations, due diligence, or independent advice, a Bidder believes that there is any insufficiency in the lands for the purpose of performing the Work, the Bidder shall immediately, and at its own cost and expense, notify Infrastructure Ontario and provide all details Infrastructure Ontario may request in considering the issue.
- 3.2 Except as explicitly provided in the Contract, Infrastructure Ontario does not represent or warrant the accuracy or completeness of any information set out in the Bid Documents or made available to Bidders in the electronic data room as Background Information or of any other background or reference information or documents prepared by the Government of Ontario or by third parties and which may be made available to Bidder by or through Infrastructure Ontario. Bidders shall 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 Bidders on any and all such information shall be at the Bidders' sole risk and without recourse against Infrastructure Ontario or the Government of Ontario.
- 3.3 Upon receipt of the Bid Call Documents and prior to submitting a Bid, Bidders shall:
- (a) Examine and read the Bid Call Documents thoroughly;
  - (b) Consider the effect of regulatory requirements applicable to the Work;

- (c) Study and correlate Bidder's observations with the Bid Call Documents;
- (d) Immediately notify the Contact Person, by submitting a question via MERX, of all perceived errors, omissions, conflicts and discrepancies in the Bid Call Documents; and
- (e) Be satisfied that Bidder understands the Bid Call Documents and is competent to undertake the Work.

#### 4 TIMETABLE

4.1 The deadline for the submission of Bids (the **"Submission Deadline"**) and the general timetable for the Bid Call Process (the **"Timetable"**) is set out below.

4.2

STEPS IN THE BID PROCESS	DATE
Bid Issuance	January 22, 2026
Last Day for Bidders to submit questions/RFIs	February <del>4</del> <u>11</u> , 2026 before 5:00 p.m. (Eastern Time)
Last Day for responses to submitted questions/RFI's	February <del>6</del> <u>13</u> , 2026
Last Day for Issuance of Addenda (Except Addenda related to Timetable changes)	February <del>6</del> <u>13</u> , 2026
<b>Submission Deadline</b>	February <del>12</del> <u>20</u> , 2026 before 2:00 p.m. (Eastern Time)
Anticipated Notification of the Successful Bidder	Week of <del>February 16</del> <u>March 2</u> , 2026
Anticipated Substantial Performance	December 2026

4.3 Infrastructure Ontario may, amend the Timetable in their sole discretion:

- (a) at any time prior to the Submission Deadline for events that are to occur prior to or on the Submission Deadline, including the Submission Deadline itself; and

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- (b) at any time in the Bid Call Process for events that are to occur after the Submission Deadline.
- 4.4 Infrastructure Ontario may extend the Submission Deadline date noted in the Timetable, in which event; the obligations of the Bidders will be extended accordingly.
- 4.5 It is anticipated that this Bid Call Process and the Project will be implemented generally in accordance with the estimated timetable set out in Section 4.2.
- 4.6 All dates and times listed in the Timetable may be subject to change in the discretion of Infrastructure Ontario. Any change to a date or time set out in the Timetable with respect to the Bid Call Process will be issued by addendum through MERX (see Section 5).

## **5 ADDENDA**

- 5.1 During the bidding period, changes, modifications, updates, amendments to the Bid Call Documents may be issued by Infrastructure Ontario as required ("Addendum" or "Addenda"). Addenda will modify the Bid Call Documents.
- 5.2 Addenda will be issued via MERX.
- 5.3 Addenda shall become an integral part of the Bid Call Documents and Contract Documents.
- 5.4 Before submitting its Bid, each Bidder shall ensure that it has received all Addenda that have been issued.
- 5.5 Each Bidder shall insert in its Stipulated Price Bid Form the Addenda numbers of all Addenda received. If no Addenda were received insert the word **"NONE"** instead.
- 5.6 If Infrastructure Ontario, for any reason and in their discretion, determine that it is necessary or desirable to amend the Bid Call Documents, any amendment will be communicated in writing through MERX to all Bidders in the form of a written addendum numbered for identification purposes. Each addendum will be considered to form an integral part of these Bid Documents. In the event of any conflict in the wording or any issue of interpretation, addenda, when issued, take priority over the original wording in the Bid Call Documents and any wording in prior addenda.



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## 6 INQUIRIES, INTERPRETATION AND MODIFICATION OF BID CALL DOCUMENTS

### 6.1

- (a) Bidders may make inquiries only by submitting questions or requests for information to Infrastructure Ontario in accordance with the instructions set out in Section 13, no later than the date and time set out in the Timetable.
- (b) Any Bidder that has questions as to the meaning of any part of this Bid or the Project, or who believes that the Bid Documents contains any error, inconsistency or omission, must submit its concern, in writing, through MERX.
- (c) In their discretion, Infrastructure Ontario may provide all questions or requests for clarification submitted by prospective Bidders, without expressly identifying the originator, along with Infrastructure Ontario's answers thereto, to all prospective Bidders through MERX.
- (d) Any response provided by Infrastructure Ontario or their representatives in connection with this Bid will neither be binding on Infrastructure Ontario nor will it change, modify, amend or waive the requirements of this Bid in any way. Bidders shall not rely on any response provided other than an addendum issued in accordance with Section 5.
- (e) Bidders are permitted to submit RFIs categorized as follows:
  - (i) RFIs that are of general application and that would apply to other Bidders ("**General RFIs**"); and
  - (ii) RFIs that the Bidder considers to be commercially sensitive or confidential to that particular Bidder ("**Commercially Confidential RFIs**");
- (f) If Infrastructure Ontario disagrees with the Bidder's categorization of an RFI as a Commercially Confidential RFI, Infrastructure Ontario will give the Bidder an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
- (g) If Infrastructure Ontario determines, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Bidder, is of general application or would provide a significant clarification of the Bid Documents or Bid Call Process to Bidders, Infrastructure Ontario may issue

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a clarification to Bidders that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and

- (h) If Infrastructure Ontario agrees with the Bidders' categorization of a Commercially Confidential RFI, then Infrastructure Ontario will provide a response to that RFI to only the Bidder that submitted the RFI.
- 6.2 Infrastructure Ontario will respond to inquiries and requests for information in writing and will distribute all questions received, with responses to all persons who received Bid Call Documents, but will not attribute the questions to any person or entity.
- 6.3 Infrastructure Ontario may, in its sole discretion, respond to inquiries received after the deadline for submitting questions noted in the Timetable if, in the opinion of Infrastructure Ontario, the inquiry raises a significant issue that needs clarification. Infrastructure Ontario will not respond to inquiries received after the Submission Deadline date.
- 6.4 If any inquiries require interpretation or modification to the Bid Call Documents, the response to that inquiry will be issued in the form of a written Addendum only.
- 6.5 No other statement, including any interpretation, clarification, or response to either requests for information or inquiries, whether verbal or written or made by Infrastructure Ontario or an Infrastructure Ontario representative, including the Contact Person, shall amend the Bid Call Documents.
- 6.6 Bidders and all of 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 Bid Call Process.
- 6.7 During the Bid Process, neither Bidders nor any of their respective Advisors, employees or representatives shall contact or make any attempt to contact either directly or indirectly, any of the following persons or organizations on matters related to the Bid Call Process, the Bid Documents, or the Bids:
- (a) any Infrastructure Ontario employee other than the Contact Person;
  - (b) any member of the evaluation committee;
  - (c) any Advisor to Infrastructure Ontario or the evaluation committee;
  - (d) any employee or representative of:

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- (i) NORR Architects and Engineers;
  - (ii) Ministry of the Attorney General (MAG);
  - (iii) Ministry of the Solicitor General (SolGen) Justice Technology Services (JVN);
  - (iv) Ministry of Public and Business Service Delivery (MPBSD) Infrastructure Technology Services (ITS) Division;
  - (v) ET Group;
  - (vi) Colliers Project Leaders; and
  - (vii) BGIS Global Integrated Solutions Canada LP;
- (e) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (f) any directors, officers or consultants of any entity listed in Instruction to Bidders Section 6.7.
- 6.8 If a Bidder or any of their respective Advisors, employees or representatives, in the opinion of Infrastructure Ontario, contravenes Instruction to Bidders Section 6.6 or Instruction to Bidders 6.7, Infrastructure Ontario may, in its sole discretion,
- (a) take any action in accordance with Instruction to Bidders Section 17; or
  - (b) impose conditions on the Bidder's continued participation in the Bid Call Process that Infrastructure Ontario consider, in their sole discretion, to be appropriate.

## **7 BIDDERS' BRIEFING**

- 7.1 Not applicable.

## **8 BID CLOSING**

- 8.1 Bids will be received before the Submission Deadline date and time noted in Section 4 -Timetable and per the instructions in Section 13.
- 8.2 Verbal, faxed or emailed Bid Submissions will not be acknowledged or accepted.

- 8.3 The Bidder acknowledges that any Bid is subject to the terms and conditions of this Bid Call and the submission of a Bid does not impose any obligations upon Infrastructure Ontario.

## **9 BIDDER COSTS**

- 9.1 The Bidder shall bear all costs and expenses incurred by them relating to any aspect of their participation in this Bid Call Process, including all costs and expenses related to the Bidder's involvement in:
- (a) the preparation, presentation and submission of their Bids;
  - (b) attendance at any meeting with Infrastructure Ontario;
  - (c) due diligence and information gathering processes;
  - (d) preparation of responses to questions or requests for information from Infrastructure Ontario; and
  - (e) preparation of the Bidder's own RFIs during the clarification process.

## **10 MANDATORY REQUIREMENTS**

- 10.1 The Declaration Form is a mandatory submission requirement. A Declaration Form that is unsigned, improperly signed or sealed, conditional, illegible, obscure, contain arithmetical errors, erasures, alterations, or irregularities of any kind maybe declared informal and rejected.
- 10.2 Each Bidder must include in its Declaration Form a declaration that the Bidder does not and will not have any actual or perceived conflict of interest or any other type of unfair advantage in submitting its Bid or, if selected, with the contractual obligations of the Bidder as Contractor under the Contract. A Bidder must declare in its Bid any situation that may be a conflict of interest, actual or perceived, in submitting its Bid or, if selected, with the contractual obligations of the Bidder as Contractor under the Contract. Failure to comply with this requirement may render the Bid non-compliant.
- 10.3 Each Bidder shall confirm in the Declaration Form that it does not possess and has not previously possessed any Confidential Information. Failure to comply with this requirement may render the Bid non-compliant.
- 10.4 The Bidder, by submitting its Bid, warrants and represents that it is not currently, as of the date of the Submission Deadline, engaged in litigation either directly or

indirectly against or involving Infrastructure Ontario, other than those situations explicitly disclosed in the completed Declaration Form. Where Infrastructure Ontario discovers a Bidder's misrepresentation of the facts in the completed Declaration Form or its failure to disclose its litigation history as described herein, Infrastructure Ontario may disqualify the Bidder or terminate the Contract awarded to the Successful Bidder.

- 10.5 Bidders must provide for and include in the Bid Price all costs associated with procuring and maintaining the bonds as specified in the Contract Documents.
- 10.6 Each Bidder and Team Member of any Bidder is required to provide certificates of an officer from such Team Member in the forms attached as Form 3-4A – Certificate of Officer and Form 3-4B Certificate of Officer. Without limitation to any other rights of Infrastructure Ontario hereunder, to ensure the integrity, openness and transparency of the procurement process, Infrastructure Ontario may, in their discretion require at any time, including any time after an Bidder has submitted its Bid Submission, that any Team Member of any Bidder provide or resubmit a certificate of an officer from such Team Member in the forms attached as Form 3-4 (A-B) – Certificate of Officer.

## **10A. DOMESTIC SUPPLY CHAIN PLAN**

### **10A.1 Each Bidder shall submit a domestic supply chain plan in the form included as part of the Bid Call Documents that:**

(a) lists all the goods and services required for the project, including those goods and services to be supplied by subcontractors and suppliers, and indicates whether each good and service is an Ontario Made good, Ontario Service, a Canadian Made good or Canadian Service, without duplication across any of these categories; and

(b) provides:

(i) the dollar value of each Ontario Made good and Ontario Service;

(ii) total dollar value of all Ontario Made goods and Ontario Services set out in the Domestic Supply Chain Plan;

(iii) the dollar value of each Canadian Made good and Canadian Service originating outside of Ontario;

(iv) total dollar value of all Canadian Made goods and Canadian Services originating outside of Ontario set out in the Domestic Supply Chain Plan; and

(v) a total dollar value for all the goods and services set out in the Domestic Supply Chain Plan.

(each, a “Domestic Supply Chain Plan”).

## **10B CANADIAN BUSINESS ATTESTATION FORM**

10B.1 Any Bidder that is a Canadian Business is required to provide a completed and signed attestation confirming that such Bidder is a Canadian Business for the purposes of this Bid Process (a “Canadian Business Attestation Form”) as part of their Bid.

## **11 CASH ALLOWANCES**

11.1 All cash allowances items listed in the document 00 41 10 Stipulated Price Bid Form as described in the Bid Documents shall be subject to the requirements of the General Conditions as modified by the Supplementary Conditions. The total value of all Cash Allowances shall be included in the Bid Price.

## **12 EVALUATION OF BIDS**

12.1 Infrastructure Ontario will not open Bid Submissions publicly. Infrastructure Ontario will evaluate the Bid Submissions in accordance with the steps outlined below.

12.2 Step 1 – Infrastructure Ontario will review Bid Submissions to:

- (a) assess the Conflict of Interest and Confidential Information sections of the Bid; and
- (b) to assess whether it is in compliance with the mandatory requirements and terms and conditions of the bid documents.

12.3 Step 2 – The financial submissions will be evaluated based on the criteria outlined in the below table. ~~The~~Subject to Section 12.4, the Bidder with the lowest Bid Price will become the Successful Bidder.

EVALUATION CRITERIA	MAXIMUM POINTS	MINIMUM PASSING SCORE
Financial Submission (Bid Price)	100	N/A

12.4 Step 3 – Infrastructure Ontario will:

(a) review the Canadian Business Attestation Forms and reduce the Bid Price of any Canadian Businesses by 10% for evaluation purposes; and

(b) evaluate the Domestic Supply Chain Plan based on the proportion of Ontario Made goods, Ontario Services, Canadian Made goods and Canadian Services included in each Bidder's Domestic Supply Chain Plan in accordance with Section 10A.1(b). The Bid Price of the Bidder with the highest proportion of Ontario Made goods and Ontario Services as well as Canadian Made goods and Canadian Services in their Domestic Supply Chain Plan calculated in accordance with the following formula shall be reduced by 10% for the purposes of evaluation:

$$\frac{(Add)^{-} B}{Bid Price} \times 100$$

Where:

A = the total value of all Ontario Made goods and Ontario Services set out in the Bidder's Domestic Supply Chain Plan; and

B = the total value of all Canadian Made goods and Canadian Services originating outside of Ontario set out in the Bidder's Domestic Supply Chain Plan.

For clarity, any price adjustment described in this Section 12.4 is for evaluation purposes only and the contract entered into between Infrastructure Ontario and the Successful Bidder will reflect the Bid Price set out in the Successful Bidder's Stipulated Price Bid Form.

12.5 ~~12.4~~ In the event of a tie between the evaluated Bid Price of two or more Bids on completion of the evaluation process, Infrastructure Ontario shall conduct a "coin toss" to select the Successful Bidder.

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## 13 BID SUBMISSION AND MODIFICATION

- 13.1 Each Bidder shall submit its Bid Submission on or before the Submission Deadline contained in the Timetable.
- 13.2 Bid submissions must be submitted in the format requested. Complete all forms, as required, and prepare all other documents and information required by the Bid Call Documents – for inclusion in the Bid Submission package. Any required information or documentation that is omitted or illegible, or any alteration to the forms provided may cause the Bid to be declared invalid and rejected.

13.3 The complete Bid Submission includes:

- (i) Completed and executed Declaration Form, including the Participant Conflict Screening List, Form 3-4A Certificate of Officer and Form 3-4B Certificate of Officer, ~~Health and Safety requirements~~ and Certificate of Insurance requirements of CCDC 2 2020 and Infrastructure Ontario Supplementary Conditions, and any project specific supplementary conditions if applicable. Certificates of Insurance must reference the Bid Call number on the document.

- (ii) Stipulated Price Bid Form completed exactly as required and properly executed with original signatures. The Bid shall state the Stipulated Price in Document 00 41 10 – Stipulated Price Bid Form to carry out the Work required by Bid Documents.

(iii) For Canadian Businesses, a completed and executed Canadian Business Attestation Form.

(iv) Completed Domestic Supply Chain Plan in accordance with Section 10A.

- 13.4 Bidders shall submit their Bids electronically by submitting them through the MERX Electronic Bid Submission (“EBS”), to the attention of the **Contact Person**.

The coordinates of the Contact Person are:

Helen Kozovski, Procurement Manager, Infrastructure Ontario  
Helen.Kozovski@infrastructureontario.ca

- 13.5 Only Bids uploaded through MERX will be accepted. The submission should be uploaded as follows:



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Submission folder – please submit:

- a) File 1 - One (1) original PDF file ~~of the entire submission~~ including a completed and signed Declaration Form, Form 3-4A – Certificate of Officer, Form 3-4B – Certificate of Officer and proof of Insurance (Do NOT include 00 41 10 Stipulated Price Bid Form); ~~and,~~
- b) File 2 - One (1) original PDF file of the completed and signed 00 41 10 Stipulated Price Bid Form; and
- c) File 3 - One (1) original PDF file including, if applicable, a completed and signed Canadian Business Attestation Form and a completed Domestic Supply Chain Plan (Do NOT include 00 41 10 Stipulated Price Bid Form);

**Note:** Please refer to MERX to ensure each uploaded file is within the specified size limit. Infrastructure Ontario will not be responsible for late Bid Submissions. Bid Submissions delivered to Infrastructure Ontario, either in person, courier, by fax, or by email will not be considered.

13.6 It is the sole responsibility of each Bidder to ensure that its Bid is received by Infrastructure Ontario before the Submission Deadline time.

13.7 Infrastructure Ontario will not accept a Bid delivered by electronic mail.

#### **14 BID WITHDRAWAL AND ACCEPTANCE**

14.1 A Bidder may withdraw its Bid only by giving written notice before the Submission Deadline to the Contact Person.

14.2 Withdrawn Bids may be resubmitted provided the resubmitted Bid is received before the Submission Deadline.

14.3 A Bid may not be withdrawn after the Submission Deadline and shall be open to acceptance by Infrastructure Ontario until:

- (a) some other Bidder has entered into a contract with Infrastructure Ontario for performance of the Work; or
- (b) ninety (90) calendar days after the Submission Deadline, whichever occurs first.

14.4 The ninety (90) calendar day acceptance period referred to above shall commence at midnight of the date of the Submission Deadline and shall terminate at midnight

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of the 90th day thereafter. If the 90th day falls on a statutory holiday, such day(s) shall be omitted from the computation of the ninety (90) days.

- 14.5 The ninety (90) calendar day acceptance period referred to above may be extended at Infrastructure Ontario's request and subject to the Bidder's written agreement to the extension.
- 14.6 A contract will be established upon issuance by Infrastructure Ontario to the Successful Bidder, of a notice of award.
- 14.7 The lowest or any Bid will not necessarily be accepted and Infrastructure Ontario may reject any and all Bids.

## **15 BID IRREVOCABILITY**

- 15.1 Subject only to the Bidder's right to withdraw its Bid prior to the Submission Deadline, each Bid Submission shall be irrevocable and shall remain in effect and open for acceptance by Infrastructure Ontario for ninety (90) calendar days after the Submission Deadline (the "**Bid Validity Period**").

## **16 ALTERNATIVES AND SUBSTITUTIONS**

- 16.1 Bidders shall base their Bid Submissions on the products and materials specified and the information provided in the Contract Documents.
- 16.2 Requests for product substitutions or alternatives will not be considered during the bidding period.
- 16.3 Changes to Bidders and Team Members
  - (a) Bidders are not permitted to withdraw, substitute, add to, or otherwise change any Team Members identified in the Bidder's Submission after the Submission Deadline where such withdrawal, substitution, addition or other change is within the control of the Bidder or applicable Team Member without the prior written consent of Infrastructure Ontario, acting in their discretion.
  - (b) In the event of a change in Control of a Team Member or other material change to a Team Member, either of which is not within the control of the Bidder or the applicable Team Member:

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- (i) the Bidder shall provide written notice to Infrastructure Ontario, to the attention of the Contact Person, no later than five (5) business days after such change; and
  - (ii) following delivery of such written notice, Infrastructure Ontario shall make an assessment, acting in their discretion, as to whether the change may have a material adverse impact on the Bidder's Bid Submission.
    - (A) If Infrastructure Ontario determines there to be a material adverse impact on the Bidder's Bid Submission, then Infrastructure Ontario may either disqualify the entire Bidder Team and/or reject the Bidder's Bid Submission or permit the Bidder to propose a substitute of the applicable Team Member subject to prior written consent of Infrastructure Ontario, acting in their discretion.
    - (B) If Infrastructure Ontario determines there to be no material adverse impact on the Bidder's Bid Submission, then Infrastructure Ontario may either continue to consider the Bidder in the Bid Process or permit the Bidder to propose a substitute of the applicable Team Member subject to prior written consent of Infrastructure Ontario, acting in their discretion.
  - (c) Except as set out in the Instructions to Bidders, a Bidder that becomes the Successful Bidder shall not make any material change to the role or scope of work to be performed by any Team Member, without the prior written consent of Infrastructure Ontario, acting in their discretion.
  - (d) In respect of any consent required from Infrastructure Ontario pursuant to this Section 16.2, Infrastructure Ontario may request additional information or require some or all of the Team Members, including any Team Member that will no longer form part of the Bidder Team, to confirm in writing their agreement to the Team Member withdrawal, substitution, addition or change, as applicable.

- (e) If, after identification of the Successful Bidder, Infrastructure Ontario determines, acting reasonably, that it is in the best interests of Infrastructure Ontario that any individual proposed as a Key Individual in the Successful Bidder's Bid be substituted, Infrastructure Ontario shall notify the Successful Bidder (including a detailed explanation of the reasons for such determination), and, within (10) ten days following receipt by the Successful Bidder of such notice, the Successful Bidder shall provide Infrastructure Ontario with relevant information on the proposed substitution and shall consult with IO before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the member of the Key Individual that they are replacing.

## **17 ACCEPTANCE AND DISQUALIFICATION OF BID**

### **17.1 Infrastructure Ontario reserves the right to:**

- (a) accept or reject any or all of the Bid Submissions;
- (b) if only one Bid Submission is received, elect to accept or reject it, or enter into direct negotiations with the sole Bidder;
- (c) alter the Timetable, Bid Process, procedures or objective of the Contract or any other aspects of the Bid, as it may determine in its sole and absolute discretion;
- (d) cancel this Bid at any time without incurring any liability whatsoever to any Bidder; and
- (e) at Infrastructure Ontario's sole discretion, to reject a Bid with any qualification contained therein.

### **17.2 In addition to any other express rights or any other rights, which may be implied in the circumstances, Infrastructure Ontario reserves the right to:**

- (a) request written clarification from any Bidder and incorporate a Bidder's response to that request for clarification into the Bidder's Bid;
  - (i) During the evaluation of Bid Submissions, Infrastructure Ontario may request that any Bidder provide further clarification of any part of its Bid Submission. The evaluation of a Bid Submission will include any clarifications provided in writing in response to questions posed by Infrastructure Ontario as well as any other investigations made by Infrastructure Ontario. Infrastructure Ontario will have the right to

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verify any information received, including any references, and, for that purpose, the Bidders shall be deemed to consent to and authorize the release of such information to Infrastructure Ontario. If required, it may be necessary for a Bidder to attend one or more clarification meetings with Infrastructure Ontario.

- (ii) Infrastructure Ontario is under no obligation to request clarification with respect to, or verify, any information in any Bid Submission, including the clarification or verification of an ambiguity in the Bid Submission. Infrastructure Ontario may, in their discretion, request clarification with respect to, or verify, matters related to none, one or some of the Bid Submissions.
- (b) consider other relevant information that arises during this Bid;
- (c) waive formalities and accept Bid Submissions which substantially comply with the requirements of this Bid;
- (d) in its sole and absolute discretion, determine whether a Bid is substantially compliant with the Bid;
- (e) verify with any Bidder or with a third party any information in a Bid;
- (f) check references other than those provided by any Bidder;
  - (i) Infrastructure Ontario reserves the right to check references provided by Bidders and references other than those provided by Bidders in their Bid Submissions. Infrastructure Ontario also reserves the right to conduct interviews with the Bidders to further understand the Bidder's Bid Submission and to meet key members of the Bidder's team. Infrastructure Ontario may request clarification of an Bidder's Bid Submission at an interview and Infrastructure Ontario may treat these clarifications in the same fashion as clarifications provided in writing in accordance with Section 17.2(a)(i). Infrastructure Ontario are under no obligation to check references provided by Bidders or to conduct interviews with the Bidders.
- (g) disqualify a Bidder who submits a Bid containing misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this Bid;

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- (i) make changes, including substantial changes, to this Bid provided that those changes are issued by way of Addenda in the manner set out in this Bid;
  - (j) select any Bidder other than the Bidder whose Bid reflects the lowest cost to Infrastructure Ontario or the highest overall score;
  - (k) cancel this Bid at any stage;
  - (l) cancel this Bid at any stage and issue a new Bid for the same or similar Work;
  - (m) accept any Bid, in whole or in part, in its sole and absolute discretion;
  - (n) discuss with any Bidder, different or additional terms to those contemplated in this Bid or in any Bidder's Bid submission;
  - (o) reject or disqualify any Bid if, in Infrastructure Ontario's sole opinion and absolute discretion, the Bidder's credit worthiness would detrimentally affect the completion of the Work;
  - (p) rescind any notice of award issued to a Bidder, in the event that Infrastructure Ontario, in its sole and absolute discretion, determines that the Bidder has not complied with or adhered to its requirements and obligations under this Instruction to Bidders.

17.3 The lowest Bid Price or any Bid Submission will not necessarily be accepted.

## 18 POSTING OF BID RESULTS

18.1 Bid results will be posted on MERX.

## 19 CONFLICT OF INTEREST AND INELIGIBLE PERSONS

- (a) Each Bidder representative, on behalf of the Bidder and such Bidder's Team Members, must declare and continue to be under an obligation to declare all Conflicts of Interest or any situation that may be reasonably perceived as a Conflict of Interest that exists now or may exist in the future. "**Conflict of Interest**" includes any situation or circumstance where a Bidder and/or Team Member or any of the employees of a Bidder and/or Team Member engaged in the development or oversight of development of the Bidder's Bid Submission (including for such employees in their personal capacities):

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- (i) has other commitments, relationships, financial interests or involvement in any litigation or proceeding that:
    - (A) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of Infrastructure Ontario's independent judgment; or
    - (B) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Agreement;
  - (ii) has contractual or other obligations to any of the Infrastructure Ontario that could or could be seen to have been compromised or impaired as a result of its participation in the Bid Process or the Project; or
  - (iii) has knowledge of confidential information (other than Confidential Information disclosed by Infrastructure Ontario in the normal course of the Bid Process) of strategic and/or material relevance to the Bid Process or to the Project that is not available to other Bidders and that could or could be seen to give the Bidder an unfair competitive advantage.
- (b) In connection with its Bid Submission, each Bidder shall,
- (i) avoid any perceived, potential or actual Conflict of Interest in relation to the Project;
  - (ii) prior to or following submission of its Bid Submission, upon discovering any perceived, potential or actual Conflicts of Interest, promptly disclose same to Infrastructure Ontario in a written statement to the Contact Person;
  - (iii) at the request of Infrastructure Ontario, provide Infrastructure Ontario with the Bidder's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest and shall submit any additional information to Infrastructure Ontario that Infrastructure Ontario considers necessary to properly assess the perceived, potential or actual Conflict of Interest; and

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- (iv) comply with any requirements prescribed by Infrastructure Ontario to mitigate or resolve any perceived, potential or actual Conflict of Interest.
  - (c) Without limiting Section 19(d), Infrastructure Ontario, in their discretion, waive any and all perceived, potential or actual Conflicts of Interest. A waiver may be upon such terms and conditions as Infrastructure Ontario, in their discretion, require to satisfy themselves that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Bidder to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to Infrastructure Ontario, in their discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
  - (d) Without limiting Section 19(c), and in addition to all contractual or other rights or rights available at law or in equity or legislation, Infrastructure Ontario may, in their discretion, immediately exclude an Bidder from further consideration or remove the Bidder from the Bid Process or require the Bidder to remove and/or replace any Team Member in the manner set forth in Section 16.2 of the Bid, if, in each case as determined by Infrastructure Ontario in their discretion,
    - (i) the Bidder fails to disclose a perceived, potential or actual Conflict of Interest;
    - (ii) the Bidder and/or any Team Member fails to comply with any requirements prescribed by Infrastructure Ontario to mitigate or resolve a Conflict of Interest; or
    - (iii) the Bidder's or Team Member's Conflict of Interest issue cannot be mitigated or otherwise resolved.
  - (e) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by Infrastructure Ontario in their discretion.
  - (f) Ineligible Persons
    - (i) As a result of their involvement in the Project, the persons named as "Ineligible Persons" in the Instruction of Bidders, together with any persons who formerly worked on behalf of either of Infrastructure Ontario and in the course of such work had knowledge of Confidential Information of strategic and/or material relevance to the Bid Call Process or to the Project that is not available to other Bidders



and that could or could be seen to give the Bidder an unfair advantage (collectively, “**Ineligible Persons**”), their employees, and any of their subcontractors, Advisors, consultants or representatives engaged in respect of this Project and, subject to Instruction to Bidders Sections 19(f) and 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 Bidder Team Member or Advisor to the Bidder.

Infrastructure Ontario may amend the Ineligible Persons list in the Instruction to Bidders from time to time during the Bid Call Process. The Ineligible Person list is the following:

1. No Ineligible Persons

- (ii) An Ineligible Person’s Affiliate may be eligible to participate as a Bidder Team Member or consultant to the Bidder only after it has obtained a written consent from Infrastructure Ontario permitting it to participate as a Bidder Team Member or Advisor to the Bidder. To obtain consent for an Ineligible Person’s Affiliate to participate as a Bidder Team Member or consultant to the Bidder, the Bidder must submit a request for consent to the Contact Person that includes the following information:
  - (A) the full legal name of the Ineligible Person’s Affiliate that the Bidder wishes to include on its team or as a Bidder Team Member or consultant to the Bidder;
  - (B) information regarding the Ineligible Person’s Affiliate’s relationship to the Ineligible Person listed in the Instruction to Bidders; and
  - (C) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any perceived, potential or actual Conflict of Interest with respect to the Ineligible Person’s Affiliate.
- (iii) Upon the Contact Person’s receipt of a Bidder’s properly completed request for consent in accordance with Section 19(f) (ii) Infrastructure Ontario shall, in their discretion, make a determination as to whether they consider there to be a perceived, potential or actual Conflict of Interest and whether such a Conflict of Interest can be appropriately

managed, mitigated or minimized. The Bidder shall be notified of Infrastructure Ontario's decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person's Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, Infrastructure Ontario shall add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

- (iv) A subcontractor or consultant to any of the Ineligible Persons may be eligible to participate as a Team Member provided that it has undertaken to implement internal policies and procedures to protect and, if requested by Infrastructure Ontario, to return or destroy all Confidential Information which it obtained from or through Infrastructure Ontario in the performance of any obligations under the Agreement, and to abide by all confidentiality obligations previously imposed on it in relation to such Confidential Information and Agreement obligations.
- (v) With respect to Ineligible Persons or their subcontractors or consultants, Infrastructure Ontario reserves the right, in their discretion, to exclude any Bidder, Affiliate or any subcontractor or consultant to any Bidder on the grounds of Conflict of Interest. Infrastructure Ontario may also, in their discretion, waive the ineligibility of an Affiliate, subcontractor or subconsultant of an Ineligible Person on such terms and conditions as Infrastructure Ontario, in their discretion, may require, including that the Bidder or entity put into place adequate safeguards to mitigate the impact of any Conflict of Interest and to ensure that any and all Confidential Information the Bidder may have continues to be kept confidential and not disclosed or used except as expressly permitted by Infrastructure Ontario.
- (vi) Other firms or persons that may be contracted or retained by Infrastructure Ontario to work on the Project may also be deemed Ineligible Persons.
- (g) For the purposes of this Section 19, "**Team Member**" means an individual or entity that is a member of the Bidder's team, including a member of Key Individuals.

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## 19.2 Use of Confidential Information

- (a) For the purpose of this Bid Call Process, (“**Confidential Information**”) means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by Infrastructure Ontario or the Government of Ontario in connection with the Bid Call Process, the Bid Documents or the Project, whether supplied, obtained from or provided before or after the Bid Call Process.
- (b) Each Bidder must declare and continue to be under an obligation to declare that it does not have knowledge of or the ability to avail itself of Confidential Information of any Governmental Authority or Infrastructure Ontario relevant to the Project where such Governmental Authority or Infrastructure Ontario have not specifically authorized such use.
- (c) The Bidder agrees that all Confidential Information,
  - (i) shall remain the sole property of the Government or Infrastructure Ontario, as applicable, and the Bidder shall treat it as confidential;
  - (ii) shall not be used by the Bidder for any other purpose other than submitting a Bid Submission, Bid submission or the performance of any subsequent agreement relating to the Project with the Governmental Authority or Infrastructure Ontario, as applicable;
  - (iii) shall not be disclosed by the Bidder to any person who is not involved in the Bidder’s preparation of its Bid Submission, Bid submission or the performance of any subsequent agreement relating to the Project with any Governmental Authority or Infrastructure Ontario, as applicable, without prior written authorization from the party in respect of whom the Confidential Information relates;
  - (iv) if requested by the Government or Infrastructure Ontario, will be returned to same no later than ten calendar days after such request; and
  - (v) shall not be used in any way that is detrimental to any Governmental Authority or Infrastructure Ontario.
  - (vi) Each Bidder shall be responsible for any breach of the provisions of this Instruction to Bidders Section 19.2.(vi) by any person to whom it discloses the Confidential Information including, for greater clarity,

the Bidder's employees, representatives and Advisors and the Bidder Team Members and their employees, representatives and Advisors. Each Bidder shall indemnify each of Infrastructure Ontario and the Government of Ontario and each of their 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 Instruction to Bidders Section 19.2.(vi) by the Bidder or by any person to whom the Bidder has disclosed the Confidential Information. Each Bidder agrees that Infrastructure Ontario act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government of Ontario or any of their respective directors, officers, consultants, employees, agents or representatives and that Infrastructure Ontario have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.

- (vii) Each Bidder acknowledges and agrees that a breach of the provisions of this Instruction to Bidders Section 19.2 would cause Infrastructure Ontario, the Government of Ontario and their related entities to suffer loss that could not be adequately compensated by damages, and that Infrastructure Ontario, the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this Instruction to Bidders Section 19.2 upon application to a court of competent jurisdiction without proof of actual damage to Infrastructure Ontario, the Government of Ontario or any of their related entities.
- (viii) Notwithstanding anything else to the contrary in this Instruction to Bidders, the provisions of this Instruction to Bidders Section 19.2 shall survive any cancellation of this Bid Call Process and the conclusion of the Bid Call Process and, for greater clarity, shall be legally binding on all Bidders Parties, whether or not they submit a Bid.

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- (ix) The confidentiality obligations of the Bidder shall not apply to any information which falls within the following exceptions:
- (A) information that is lawfully in the public domain at the time of first disclosure to the Bidder, or which, after disclosure to the Bidder, becomes part of the public domain other than by a breach of the Bidder's confidentiality obligations or by any act or fault of the Bidder;
  - (B) information which was in the Bidder's possession prior to its disclosure to the Bidder by Infrastructure Ontario, and provided that it was not acquired by the Bidder under an obligation of confidence; or
  - (C) information which was lawfully obtained by the Bidder 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.

## **20 LITIGATION HISTORY**

- 20.1 The Bidder, by submitting the Bid Submission, warrants and represents that it, including each of its Team Members if the Bidder is a Multi-Party Entity, is not currently involved in Litigation, either directly or indirectly (e.g. through a related party) against or involving Infrastructure Ontario or the Government of Ontario other than those situations explicitly disclosed in the Declaration Form. Where Infrastructure Ontario discovers a Bidder's misrepresentation of the facts in the Declaration Form or its failure to disclose its Litigation history as described herein, Infrastructure Ontario may disqualify the Bidder.
- 20.2 Infrastructure Ontario will be assessing each Bidder, and reserves the right to assess any related entities who share all or some of the same directors and officers as the Bidder in light of current litigation to determine if Infrastructure Ontario and/or the Ontario government would face unacceptable risks if Infrastructure Ontario were to enter into a Contract with the Bidder. Infrastructure Ontario reserves the right to disqualify the Bidder from this invitation to Bid or terminate the Contract awarded to the Successful Bidder as a result of its assessment of the risks of entering into a Contract with that Bidder.

- 20.3 Regardless of when any litigation was commenced, Infrastructure Ontario reserves the right to disqualify the Bidder from this Bid Process or terminate the Contract following award to the Successful Bidder as a result of its own assessment of the risks of entering into a Contract with that Bidder.

## **21 DEBRIEF**

- 21.1 Bidders may request a debriefing from Infrastructure Ontario after the issuance of the notification of award. Bidders request must be in writing and submitted to the Contact Person no later than sixty (60) days following notification of award. Infrastructure Ontario will determine the content and format of the debriefing session. Infrastructure Ontario reserves the right to hold individual and/or group debriefing sessions. Any information provided by Infrastructure Ontario in good faith during a debriefing shall not be used against Infrastructure Ontario or their representatives in any way whatsoever, including any legal action.

## **22 TAXES**

- 22.1 Bid Price must include all applicable taxes or duties as provided in the Contract Documents unless stated otherwise in Infrastructure Ontario's Supplementary Conditions or Project Specific Supplementary Conditions.
- 22.2 Infrastructure Ontario is subject to the Harmonized Sales Tax ("HST").

## **23 LIMITATION OF LIABILITY**

- 23.1 Costs and Expenses of Bidders
- (a) All costs and expenses incurred by each Bidder in the preparation and delivery of its Bid Submission or in providing any additional information necessary for the evaluation of its Bid Submission shall be borne solely by that Bidder.
  - (b) Neither Infrastructure Ontario nor their representatives will be liable to pay any costs or expenses of any Bidder or prospective Bidder or to reimburse or compensate a Bidder or prospective Bidder in any manner whatsoever under any circumstances, including in the event of the rejection of any or all Bid Submissions or if Infrastructure Ontario decides not to proceed with the Project.

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## **24 HEALTH AND SAFETY**

- 24.1 Bidders shall comply with the health and safety requirements detailed in the Contract Documents.

## **25 CONSTRUCTION CONTRACT REQUIREMENTS**

- 25.1 The Successful Bidder shall submit the required Labour and Material and Performance Bonds as detailed in the Contract Documents.
- 25.2 The Successful Bidder shall submit the required insurance certificates as detailed in the Contract Documents.
- 25.3 The Successful Bidder shall submit the required WSIB certificates as detailed in the Contract Documents.

## **26 FAILURE TO ENTER INTO AGREEMENT**

- 26.1 In addition to all other remedies available to Infrastructure Ontario, if the Successful Bidder fails to execute the form of Contract or satisfy any other applicable conditions within fifteen (15) days of the issuance of the notice of award, Infrastructure Ontario may, in its sole and absolute discretion and without incurring any liability, withdraw the award and proceed with the selection of another Bidder.

## **27 SECURITY SCREENING**

- 27.1 The Successful Bidder will comply with the security clearance check requirements as detailed in the Supplementary Conditions section 14.6.

## **28 CONDUCT OF BIDDERS**

- 28.1 Communications and Public Comment
- (a) Neither Bidders nor their representatives or Team Members shall,
- (i) make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, interest in or participation in the Project or this Bid Process without Infrastructure Ontario's prior written consent, which consent may be arbitrarily withheld or delayed; or
- (ii) engage in any way whatsoever in any form of political or other lobbying to influence the outcome of this Bid Process.

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- (b) In the event of any lobbying or communication by an Bidder in contravention of Section 28.1(a), Infrastructure Ontario may, in their discretion and at any time, prohibit a prospective Bidder from submitting a Bid Submission or reject the Bid Submission submitted by that Bidder in this Bid Process, without further consideration. Infrastructure Ontario may, as an alternative to the rejection of a Bid Submission or the related prospective Bidder impose such conditions on that Bidder's continued participation in the Bid Process and any subsequent procurement process as Infrastructure Ontario, in their discretion, may consider in the public interest or otherwise appropriate.
- (c) Other than as expressly permitted or required in this Bid, any attempt on the part of any Bidder or any of its representatives or Team Members to contact, or any contact of, any of the following persons, directly or indirectly, with respect to this Bid, may lead to disqualification of a Bidder or rejection of a Bid Submission:
- (i) any person at Infrastructure Ontario, other than the Contact Person;
  - (ii) any member of the evaluation committee
  - (iii) any Advisor to Infrastructure Ontario or the evaluation committee;
  - (iv) any employee or representative of:
    - (A) NORR Architects and Engineers;
    - (B) Ministry of the Attorney General (MAG);
    - (C) Ministry of the Solicitor General (SolGen) Justice Technology Services (JVN);
    - (D) Ministry of Public and Business Service Delivery (MPBSD) Infrastructure Technology Services (ITS) Division;
    - (E) ET Group;
    - (F) Colliers Project Leaders; and
    - (G) BGIS Global Integrated Solutions Canada LP;
  - (v) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or



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- (vi) any directors, officers or consultants of any entity listed in Instruction to Bidders Sections 6.7.

## **28.2 Restriction on Communication between Bidders**

- (a) An Bidder shall not discuss or communicate, directly or indirectly, with any other Bidder, any information whatsoever regarding the preparation of its own Bid Submission or the Bid Submission of the other Bidder in a fashion that would contravene the Applicable Law Bidders shall prepare and submit Bid independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Bidder.
- (b) Section 28.2(a) applies to Bidders, their Team Members, their respective consultants, employees and representatives.

## **28.3 Participation by Team Members on More than One Bidder Team**

- (a) A Team Member of one Bidder, or any Person related thereto, may not be a Team Member or otherwise participate in the Bid Submission of any other Bidder.
- (b) Key Individuals, or any Person related thereto, may not be involved in the Bid Submission of more than one Bidder.

# **29 INFRASTRUCTURE ONTARIO RIGHTS AND OTHER BIDDER OBLIGATIONS**

## **29.1 Use of Information**

- (a) These Bid Documents may not contain all of the information that a Bidder may need in deciding whether to submit a Bid.
- (b) Infrastructure Ontario and their representatives shall not be liable for any information or advice or any errors or omissions that may be contained in these Bid Documents or the addenda, appendices, data, materials or documents (electronic or otherwise) attached or provided to the Bidders pursuant to these Bid Documents or otherwise with respect to the Project.
- (c) Infrastructure Ontario and their representatives make no representations or warranties, and there are no representations, warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the accuracy or completeness of these Bid Documents or any addenda, appendices, data, materials or other documents and Infrastructure Ontario and their representatives will not be responsible for

any claim, action, cost, loss, damage or liability whatsoever arising from any Bidder's reliance on or use of these Bid Documents or any addenda, appendices, data, materials or other documents provided, delivered or made available by Infrastructure Ontario or their representatives.

- (d) Each Bidder is responsible for obtaining its own independent financial, legal, accounting, engineering, environmental, architectural and other technical and professional advice with respect to the Project, the Bid Documents, the Bid Process, and any addenda, appendices, data, materials or other documents provided, delivered or made available or required by Infrastructure Ontario or their representatives.

## 29.2 Rights of Infrastructure Ontario

- (a) Right to Disqualify a Bidder / Reject a Bid Submission

Without limiting Infrastructure Ontario's general right to disqualify a Bidder or reject a Bid Submission, Infrastructure Ontario shall have the following rights, at any time and in their discretion unless otherwise stated in this section and, in each case, without incurring any liability for costs and damages incurred by the Bidder.

- (i) **Unethical Behaviour or Inappropriate Bidding:** to disqualify an Bidder, or reject a Bid Submission from an Bidder, where the Bidder or any Team Member has been disqualified from an Infrastructure Ontario procurement process as the result of any convictions related to inappropriate bidding practices or unethical behaviour or where there are any convictions related to inappropriate bidding practices or unethical behaviour by an Bidder, Team Member, or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction. Infrastructure Ontario may reject and not consider a Bidder's Bid Submission or otherwise elect not to proceed further in the procurement process with such Bidder, including after notifying such Bidder of the results of the Bid Process, in the event that the Bidder:
  - (A) fails to comply with a requirement prescribed by Infrastructure Ontario pursuant to Section 10.11 or Section 29.2(d);
  - (B) complies with Infrastructure Ontario's requirement as prescribed in accordance with Section 10.11 or Section 29.2(d) but Infrastructure Ontario determines that the Bidder

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- or Team Member thereof has or may have engaged in inappropriate bidding practices or unethical behaviour; or
- (C) fails to comply with a requirement prescribed by Infrastructure Ontario pursuant to Section 10.11.
- (ii) **Prohibited Contact:** to disqualify a Bidder or reject a Bid Submission where there is attempted contact with specified individuals in Section 28.1(c) by the Bidder or any of its representatives or Team Members;
- (iii) **Lobbying:** to prohibit a prospective Bidder from submitting a Bid Submission, or to reject the Bid Submission submitted by that Bidder, in the event of any lobbying or communication by a Bidder in contravention of Section 28.1(a) as stated in Section 28.1(b);
- (iv) **Team Member Changes:** pursuant to Section 16.3:
- (A) Infrastructure Ontario may, at any time, in their sole discretion, disqualify a Bidder and terminate a Bidder's continued involvement in the Bid Call Process or allow a Bidder to continue under such terms and conditions as Infrastructure Ontario may require, in their sole discretion, in the event of any of the following:
- (1) an actual change in any Team Member is made at any time during the Bid Call Process by the Bidder without obtaining prior consent of Infrastructure Ontario (including any withdrawal of a Team Member described in Instruction to Bidders Section 16.3);
- (2) a request for a change in any Team Member is made after the deadlines set out in Instruction to Bidders Section 16.3; or
- (3) a change in circumstances with respect to a Bidder after the Submission Deadline that may materially adversely affect a Team Member in a way which could impair the Bidder's or the Team Member's ability to perform their respective obligations under the Contract.
- (B) If, at any time, and notwithstanding any other provision in this Instruction to Bidders, there is a Change in Control of a Bidder

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or of one of its Bidder Team Members (the “**Acquiree**”) by one of the other Bidders or one of the other Bidder’s Bidder Team Members (the “**Acquirer**”):

- (1) the Acquiree shall be immediately disqualified from further participation in this Bid Call Process. In the event that a Bidder Team Member is the Acquiree, the affected Bidder may request a change of the Acquiree and Infrastructure Ontario shall consider such request, in their sole discretion, in accordance with this Instruction to Bidders Section 16.2. In the event that such request to change the Bidder Team Member is rejected by Infrastructure Ontario, Infrastructure Ontario shall disqualify the Bidder from continuing in the Bid Call Process; and
- (2) Infrastructure Ontario may, in their sole discretion, allow the Acquirer to continue in the Bid Call Process, however, Infrastructure Ontario’s consent to continue may be subject to such terms and conditions as Infrastructure Ontario may require.

(v) **Conduct:** to disqualify a Bidder that:

- (A) does not meet the requirements of this Bid, including for a contravention of any prohibition or requirement that is set out in this Bid in respect of the conduct of Bidders; or
- (B) has an economic or other interest or relationship that:
  - (1) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
  - (2) could potentially compromise Infrastructure Ontario’s reputation or integrity or the Infrastructure Ontario procurement process, so as to affect public confidence in that process, whether or not such interest or relationship creates a Conflict of Interest.

(vi) **Applicable Law and Prohibited Acts:** to disqualify a Bidder if:

- (A) the Bidder fails to comply with Applicable Law; or

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- (B) the Bidder or any of its Team Members, Key Individuals, identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act.
- (vii) **Restricted Person:** to disqualify a Bidder if the Bidder, any of its Team Members, Key Individuals, identified subcontractors, or any of their directors, officers, employees or Affiliates are a Restricted Person;
- (viii) **False, Misleading or Undisclosed Material Information:** to disqualify, a Bidder or reject that Bidder's Bid Submission if:
- (A) the Bidder's Bid Submission, including any officer's certificate, Declaration Form, Stipulated Price Bid Form, [Canadian Business Attestation Form](#), [the Domestic Supply Chain Plan](#) or any other form attached to the Bid Submission, contains false or misleading information; or
- (B) the Bidder fails to disclose any information (including in any officer's certificate, Declaration Form, Stipulated Price Bid Form, [Canadian Business Attestation Form](#), [the Domestic Supply Chain Plan](#) or any other form attached to the Bid Submission of the Bidder in connection with this Bid Call) that would materially adversely affect Infrastructure Ontario's evaluation of the Bid Submission.
- (ix) **Conflict of Interest:** to exclude or remove any Bidder from the Bid Call Process:
- (A) pursuant to Section 19 (f)(v), on grounds of Conflict of Interest with respect to Ineligible Persons or their subcontractors or consultants;
- (B) pursuant to Section 19(d), where there is a failure to disclose an actual or perceived Conflict of Interest, failure to comply with the Infrastructure Ontario requirements to mitigate or resolve a Conflict of Interest or the Bidder's Conflict of Interest cannot be mitigated or resolved; or
- (C) Infrastructure Ontario becomes aware that the Bidder or any Bidder team member failed to disclose, in the thirty-six (36) months prior to the Submission Deadline, an actual Conflict of Interest in any past or current procurement issued by either

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Infrastructure Ontario, unless the Bidder has demonstrated to the satisfaction of Infrastructure Ontario that the Bidder has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest.

- (x) **Late Submission:** pursuant to Section 13.1, to reject without discretion any Bid Submissions received after the Submission Deadline;
  - (xi) **Submission Integrity:** to reject a Bid Submission that is not submitted in accordance with Section 13;
  - (xii) **Submission Completeness:** pursuant to Section 12, to not evaluate a Bid Submission that is not substantially complete;
  - (xiii) **Health and Safety:** to determine whether an Bidder's Bid Submission may continue to be considered in the Bid Call Process if any construction Team Member (or any Team Member of a Joint Venture that is the Bidder's construction Team Member , if applicable) fails or if the construction Team Member (which for the purposes of this section may include a single Team Member from within a Joint Venture) that intends to file the Notice of Project with the Ontario Ministry of Labour (should its Bidder Team ultimately become successful in the Bid Process) fails to provide the health and safety certification/accreditation or proof of enrollment as set out in Section 24.
- (b) Right to Require Removal or Replacement of a Team Member or a member of Key Individuals

Infrastructure Ontario shall have the following rights in their discretion with respect to any Team Member or Key Individual as applicable and in each case without incurring any liability for costs and damages incurred by any Bidder, Team Member, or Key Individual. In exercising their discretion, Infrastructure Ontario may have reference criteria Infrastructure Ontario may be considered relevant.

- (i) **Unethical Behaviour or Inappropriate Bidding:** pursuant to Section 16.2(a), to require the Bidder to remove or replace a Team Member or Key Individual, if the applicable Team Member has been disqualified from an Infrastructure Ontario procurement process as the result of a conviction related to inappropriate bidding practices or

unethical behaviour, or if there are any convictions related to inappropriate bidding practices or unethical behaviour by a Team Member or Key Individual or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction. Furthermore, Infrastructure Ontario shall have the discretion to require the Bidder to remove or replace any Team Member or Key Individual in the event that any Team Member or Key Individual:

- (A) fails to comply with any requirement prescribed by Infrastructure Ontario pursuant to Section 10.11 or Section 29.2(d); or
- (B) complies with the Infrastructure Ontario requirements as prescribed in accordance with Section 10.11 or Section 29.2(d) but Infrastructure Ontario determines that a Team Member or Key Individual has or may have engaged in inappropriate bidding practices or unethical behaviour;

(ii) **Applicable Law and Prohibited Acts:** to require the Bidder to remove or replace any Team Member or Key Individual, as applicable, if:

- (A) the Team Member or Key Individual fails to comply with Applicable Law; or
- (B) the Team Member, Key Individual, identified subcontractor of a Team Member or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;

(iii) **Restricted Person:** to require the Bidder to remove or replace any Team Member or Key Individual, as applicable, if the Team Member, Key Individual, identified subcontractor of a Team Member or any of their directors, officers, employees or Affiliates are a Restricted Person;

(iv) **Conduct:** to require the Bidder to remove or replace any Team Member or Key Individual:

- (A) that does not meet the requirements of this Bid Call, including for a contravention of any prohibition or requirement that is set out in this Bid Call in respect of the conduct of a Team Member or Key Individual; or

- 
- (B) that has an economic or other interest or relationship that
- (1) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
  - (2) could potentially compromise Infrastructure Ontario's reputation or integrity or the Infrastructure Ontario procurement process, so as to affect public confidence in that process, whether or not such an interest or relationship creates a Conflict of Interest;
- (v) **Conflict of Interest:** to require the Bidder to remove or replace any Team Member or Key Individual:
- (A) pursuant to Section 19 (f)(v), on grounds of Conflict of Interest with respect to Ineligible Persons or their subcontractors or consultants;
  - (B) pursuant to Section 19(d), where there is a failure to disclose an actual or perceived Conflict of Interest, failure to comply with Infrastructure Ontario requirements to mitigate or resolve a Conflict of Interest or the Team Member or Key Individual Conflict of Interest cannot be mitigated or resolved; or
  - (C) where the Team Member or Key Individual is known to have failed to disclose, in the 36 months prior to the Submission Deadline, an actual Conflict of Interest in any past or current procurement issued by Infrastructure Ontario unless the Bidder has demonstrated to the satisfaction of Infrastructure Ontario that the Bidder has implemented measures to prevent future false or non-disclosure of Conflicts of Interest;
- (vi) **False, Misleading or Undisclosed Material Information:** to require the removal or replacement of a Team Member or Key Individual if:
- (A) the Team Member or Key Personnel portion of the Bid Submission, including any officer's certificate, Declaration Form, Stipulated Price Bid Form or any other form attached to the Bid Submission, contains false or misleading information; or
  - (B) the Team Member or Key Individual fails to disclose any information (including in any officer's certificate, Declaration



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Form, Stipulated Price Bid Form or any other form attached to the Bid Submission in connection with this Bid Call) that would materially adversely affect Infrastructure Ontario's evaluation of the Bid Submission;

- (vii) **Health and Safety:** to require an Bidder to remove or replace a construction Team Member (which for the purposes of this section may include a single Team Member from within a Joint Venture) that intends to file the Notice of Project with the Ontario Ministry of Labour (should its Bidder Team ultimately become successful in the Bid Process) fails to provide the health and safety certification/accreditation as set out in Section 24; and
- (viii) **Analogous Grounds:** to require a Bidder to remove or replace a Team Member or Key Individual for any reason for which Infrastructure Ontario have the discretion to disqualify a Bidder or reject a Bid Submission.

(c) Additional Infrastructure Ontario Rights

Notwithstanding anything to the contrary in this Bid Call, Infrastructure Ontario may exercise the following rights, at any time and in their discretion unless stated otherwise, in each case without incurring any liability for costs and damages incurred by any Bidder.

- (i) **Revision of Bid Call Documents:** to change the dates, schedule, deadlines, process and requirements described in the Bid Call Documents;
- (ii) **Changes to Project:** to change the limits, scope and details of the Project;
- (iii) **Reissuance of Bid Call:** to reissue the same Bid Call or a different request for qualifications document in relation to the Project;
- (iv) **Cancellation of Bid Call or Project:** to cancel this Bid Call or to elect not to proceed with the Project for any reason whatsoever;
- (v) **Vendor Past Poor Performance:** to consider, in the evaluation of the Bid Submissions, instances of poor performance of a Bidder, Team Member or Key Individual experienced on past projects by Infrastructure Ontario, and may consider, any formal deduction,

infraction, or other performance indicator under any vendor performance program administered by Infrastructure Ontario.

- (vi) **Infrastructure Ontario's General Right to Disqualify a Bidder or Require the Removal or Replacement of a Team Member:** to reject a Bid Submission, disqualify a Bidder or require a Bidder to remove or replace a Team Member, or otherwise elect not to proceed further in the procurement process with any Bidder, including after notifying such Bidder of the results of the Bid Process.
- (d) Without limitation to any other rights of Infrastructure Ontario hereunder, to ensure the integrity, openness and transparency of the procurement process, Infrastructure Ontario may, in their discretion:
  - (i) impose at any time on all Bidders and/or any Team Member or Key Individual of the Bidders additional conditions, requirements or measures with respect to bidding practices or ethical behaviour of the Bidders and Team Members; and
  - (ii) require that any or all Bidders and/or any Team Member at any time during the Bid Process provide Infrastructure Ontario with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Bidder and all Team Members with such policies, processes and controls.

### 29.3 Verification of Information

- (a) Infrastructure Ontario may, in their discretion, independently verify any information in any of the Bid Submissions, but are under no obligation to conduct such verification.
- (b) If Infrastructure Ontario determines, in their discretion, that a Bid Submission, including any officer's certificate, Declaration Form, Stipulated Price Bid Form, [Canadian Business Attestation Form](#), [Domestic Supply Chain Plan](#) or any other form attached to the Bid Submission, contains false or misleading information or that an Bidder, Team Member or Key Individual has failed to disclose any information that would, if disclosed, materially adversely affect Infrastructure Ontario's evaluation of the relevant Bidder's Bid Submission, then Infrastructure Ontario shall be entitled to the exercise of all rights set out under Sections 29.2(a)(viii) and 29.2(b)(vi), as applicable.

- (c) Infrastructure Ontario may consider any information obtained through the exercise of their rights described in Section 29.3(a) in evaluating and scoring the Bid Submissions.

### 30 LEGAL MATTERS, INTERPRETATION

- (a) **Power of Legislative Assembly.** Bidders are advised that no provision of this Bid Call (including a provision stating the intention of Infrastructure Ontario) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.
- (b) Freedom of Information, Protection of Privacy & Other Disclosure Requirements
  - (i) Bidders are advised that Infrastructure Ontario may be required to disclose the Bid Call Documents and a part or parts of any Bid Submission pursuant to the Freedom of Information and Protection of Privacy Act (Ontario) ("**FIPPA**").
  - (ii) Bidders are also advised that FIPPA may provide protection for confidential and proprietary business information. Bidders 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 Bid Submissions.
- (c) **Open Data Directive.** Bidders acknowledge that the Bid Call Documents and a part or parts of any Bid Submission are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

Subject to the provisions of FIPPA, Infrastructure Ontario will use commercially reasonable efforts to safeguard the confidentiality of any information identified by the Bidder as confidential but shall not be liable in any way whatsoever to any Bidder or Team Member if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under the Applicable Law.

#### 30.2 Interpretation

- (a) Unless otherwise defined in this Instruction to Bidders Section 17, capitalized terms and expressions used in this Instruction to Bidders have

the meaning given to them in the Contract. In this Instruction to Bidders, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

- (b) Any reference in the Bid Call Documents to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (c) All references in this Bid Call to Infrastructure Ontario's "**discretion**" means Infrastructure Ontario's absolute sole unqualified subjective discretion and all references to Infrastructure Ontario's "**judgment**" means Infrastructure Ontario's absolute sole unqualified subjective judgment.

### 30.3 Bid Submission Property of Infrastructure Ontario

Bid Submissions will become the property of Infrastructure Ontario and will not be returned to the Bidders unless withdrawn pursuant to Section 14.

## 31 DEFINITIONS

### 31.1 Whenever used in the Bid Documents:

- (a) "**Acquiree**" is defined in Instruction to Bidders Section 29.2(a)(iv)(B).
- (b) "**Acquirer**" is defined in Instruction to Bidders Section 29.2(a)(iv) (B).
- (c) "**Addendum**" means a written addendum to the Bid Documents issued by Infrastructure Ontario.
- (d) "**Advisor**" means any person or firm retained to provide professional advice to any one of Infrastructure Ontario, a Bidder, or a Bidder Team Member as applicable.
- (e) "**Affiliate**" means an "affiliate" as that term is used in the Business Corporations Act (Ontario) and any successor legislation thereto.
- (f) "**Applicable Law**" means provincial laws of Ontario and federal laws of Canada applicable therein.
- (g) "**Background Information**" means various types of information provided by Infrastructure Ontario and is defined in Instruction to Bidders Section 2.2.

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- (h) **"Bid"** is defined in Instruction to Bidders Section 1.1.
- (i) **"Bidder"** is defined in Instruction to Bidders Section 1.1.
- (j) **"Bid Call Process"** is defined as the process for the Bid Call.
- (k) **"Bid Call Documents"** is defined in Instruction to Bidders Section 2.1.
- (l) **"Bid Call Document List"** is defined in Instruction to Bidders Section 2.3.
- (m) **"Bid Price"** is defined in Instruction to Bidders section 1.2.
- (n) **"Bidder Team Members"** means all members of the Bidder team.
- (o) **"Bid Validity Period"** is defined in Instruction to Bidders 15.1.
- (p) **"Business Day"** means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario.
- (q) **"Canadian Business"** means a supplier, manufacturer or distributor of any business structure that conducts its activities on a permanent basis in Canada and has:
- (i) its headquarters or main office in any province or territory within Canada; or
- (ii) at least 250 full-time employees in any one province or territory within Canada at the time of this Bid Process.
- (r) **"Canadian Business Attestation Form"** is defined in Instructions to Bidders Section 10B.1.
- (s) ~~(q)~~ **"Commercially Confidential RFIs"** is defined in Instruction to Bidders Section 6.1(e)(ii).
- (t) ~~(r)~~ **"Confidential Information"** is defined in Instruction to Bidders Section 19.2(a).
- (u) ~~(s)~~ **"Conflict of Interest"** is defined in Instruction to Bidders Section 19(a).
- (v) ~~(t)~~ **"Contact Person"** is defined in Instruction to Bidders Section 13.4.

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(w) ~~(u)~~ **“Contract”** are those documents listed as the “Contract” Instruction to Bidders Section 1.3.

(x) ~~(v)~~ **“Data Room”** is defined as the secure website address for the distribution of Bid Documents and Addenda and for the provision of various types of Background Information.

(y) **“Domestic Supply Chain Plan”** is defined in Instructions to Bidders Section 10A.1.

(z) ~~(w)~~ **“FIPPA”** is defined in Instruction to Bidders Section 30(b)(i).

(aa) ~~(x)~~ **“General RFIs”** is defined in Instruction to Bidders Section 6.1(e)(i).

(bb) ~~(y)~~ **“includes”** and **“including”** means “includes without limitation” and “including without limitation” respectively.

(cc) ~~(z)~~ **“Ineligible Person’s Affiliate”** is defined in Instruction to Bidders Section 19(f)(i).

(dd) ~~(aa)~~ **“Ineligible Persons”** is defined in Instruction to Bidders Section 19(f)(i).

(ee) ~~(bb)~~ **“Infrastructure Ontario”** is defined in Instruction to Bidders Section 1.1.

(ff) ~~(cc)~~ **“IO”** is defined in Instruction to Bidders Section 1.1.

(gg) ~~(dd)~~ **“Joint Venture”** means an association of two or more Team Members engaged in a limited purpose business enterprise for profit without actual partnership or incorporation.

(hh) ~~(ee)~~ **“Key Individual”** means an individual who will play an important role in performing the Work on behalf of a Bidder and/or Team Member.

(ii) **“Ontario Made”** means originating within the province of Ontario and either grown, produced, or manufactured in Ontario.

(ij) **“Ontario Service”** means any service provided by an individual or a supplier, manufacturer or distributor or any business structure based in Ontario.

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(kk) ~~(ff)~~ **“Open Data Directive”** means the Management Board of Cabinet’s Open Data Directive dated April 29, 2016, as may be amended from time to time.

(ll) ~~(gg)~~ **“Prohibited Act”** means:

- (A) offering, giving or agreeing to give to Infrastructure Ontario or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
  - (1) for doing or not doing, or for having done or not having done, any act in relation to a Bidder becoming a Successful Bidder; or
  - (2) for showing or not showing favour or disfavour to any person in relation to a Bidder’s Bid;

provided that this definition shall not apply to a Bidder or Bidder Team Member (or anyone employed by or acting on their behalf) providing consideration to Infrastructure Ontario or any public body in the ordinary course.

- (B) entering into any other agreement with Infrastructure Ontario or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by a Bidder or any Bidder Team Members, Key Individuals or any of their Affiliates, or on its behalf or to its knowledge, to Infrastructure Ontario or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Infrastructure Ontario, provided that this definition shall not apply to a fee or commission paid by the Bidder or any Bidder Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to Infrastructure Ontario or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;
- (C) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Bid Call Process; or

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- (D) defrauding or attempting to defraud or conspiring to defraud Infrastructure Ontario or any other public body.

(mm) ~~(hh)~~ “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:

- (A) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
- (B) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (C) in the case of an individual, he or she (or in the case of a legal entity, any members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
- (D) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (E) is subject to a material claim of Infrastructure Ontario or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Infrastructure Ontario s’ view, in either case, be reasonably likely to materially affect the ability of the Bidder to perform its obligations under the Contract, if it were to become the Successful Bidder under the Bid Call Process; or
- (F) has a material interest in the production of tobacco products.



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(nn) ~~(ii)~~ “**RFI**” is defined in Instruction to Bidders Section 6.1 and includes General RFI’s and Commercially Confidential RFI’s.

- (ii) “**Submission Deadline**” is defined in Instruction to Bidders Section 4.1.
- (jj) “**Team Member**” is defined in Instruction to Bidders Section 19.1(g).
- (kk) “**Timetable**” is defined in Instruction to Bidders Section 4.1.

**END OF DOCUMENT**

<b>Summary report:</b> <b>Litera Compare for Word 11.12.0.83 Document comparison done on 2026-02-09 2:06:38 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> 03. 00 21 13 Instructions to Bidders - Perth.docx	
<b>Modified filename:</b> 25-1546 Revised 00 21 13 Instructions to Bidders - Clean.docx	
<b>Changes:</b>	
<u>Add</u>	84
<del>Delete</del>	31
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	116

## SUPPLEMENTARY CONDITIONS

The Standard Construction Document CCDC-2 2020 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 13 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*, His Majesty the King 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-1 THE WORK

- .1 Delete paragraph 1.3 in its entirety and substitute new paragraphs 1.3 and 1.4:
  - 1.3 except as expressly provided otherwise in the *Contract Documents*, perform all of its obligations under, and observe all provisions of, the *Contract Documents* at its own cost and risk, and
  - 1.4 commence the Work by the *Commencement Date* and, subject to adjustment to the *Contract Time* as provided for in the *Contract Documents*, attain *Ready-for-Takeover* by the *Scheduled Ready-for-Takeover Date* and the *End of the Work* by the *Scheduled End of the Work Date*.

### ARTICLE A-3 – CONTRACT DOCUMENTS

- .1 Delete paragraph 3.1 in its entirety and substitute new paragraph 3.1:
  - 3.1 the following are the *Contract Documents* referred to in Article A-1 of the Agreement - the Work:
    - .1 Amending Agreements (excluding *Change Orders* and *Change Directives*), if any;
    - .2 Project Specific Supplementary Conditions;

- .3 Supplementary Conditions;
- .4 Change Orders and Change Directives;
- .5 Schedule 8 – Data Sheet;
- .6 Agreement between *Owner* and *Contractor*;
- .7 Definitions;
- .8 General Conditions;
- .9 Performance Bond;
- .10 Labour and Material Payment Bond;
- .11 Division 01 of the *Specifications*;
- .12 technical *Specifications*;
- .13 material and finishing schedules;
- .14 the *Drawings*;
- .15 Appendix A
- .16 Appendix B – Permits, Licences, Approvals and Agreements;
- .17 Schedule 7 – Works Report Requirements;
- .18 Schedule 2 – Key Individuals;
- .19 Schedule 1 – Coordination with Other Parties;
- .20 *Background Information*;
- .21 Schedule 3 – Parental Guarantee;
- .22 Schedule 4 – ~~Intentionally Deleted~~ Contractor's Domestic Supply Chain Plan;
- .23 Schedule 5 – Intentionally Deleted; and
- .24 Schedule 6 – Intentionally Deleted.

## **ARTICLE A-5 – PAYMENT**

- .1 Delete paragraph 5.1.2 in its entirety and substitute new paragraph 5.1.2:

5.1.2

.1 beginning at the second Contract Year, each Contract Year preceding Substantial Performance of the Work, not later than 14 days after the Contract Year's commencement, publish a notice of annual release of holdback in the form prescribed by the Construction Act specifying the amount of holdback that the Owner intends to pay under subsection 26(4) of the Construction Act and the intended payment date,

.2 at least 60 days but not later than 74 days after the date on which the notice of annual release of holdback is published, pay to the Contractor all of the accrued holdback in respect of services or materials supplied by the Contractor during the immediately preceding Contract Year together with such Value Added Taxes as may be applicable to such payment, provided that such payment of the accrued holdback is permitted pursuant to Section 26(4) of the Construction Act,

~~5.1.2 forthwith .3~~ following the expiry of the ~~holdback—~~period specified in the Construction Act for the retention of holdback ~~funds—~~following publication of the certificate or declaration of Substantial Performance of the Work ~~(which for certainty shall not be less than 10 Working Days following expiration of the holdback period stipulated in~~ and no later than 14 calendar days after all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act), pay to the Contractor the ~~unpaid balance of the~~ holdback ~~amount~~ that has not been paid and is payable under the Construction Act together with such Value Added Taxes as may be applicable to such payment, provided that (i) ~~there are no claims for lien preserved against the Place of the Work;~~ (ii) ~~the Owner has not received any 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~~ all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act ~~prior to the 40<sup>th</sup> calendar day following the publication of the certificate of Substantial Performance of the Work,~~ and

.4 following the expiry of the period specified in the Construction Act for the retention of holdback following the earlier of the date the Contract is completed and the date the Contract is abandoned or terminated and once all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act, pay to the Contractor the holdback retained from the date certified or declared to be the date of Substantial Performance of the Work to the earlier of the date the Contract is completed and the date the Contract is abandoned or terminated together with such Value Added Taxes as may be applicable to such payment, provided that all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act, and

- .2 Delete paragraph 5.2.1 in its entirety and substitute new paragraph 5.2.1:

5.2 Interest

- 5.2.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by *Adjudication*, arbitration or court, interest on such unpaid amounts shall be calculated and payable in accordance with the *Construction Act*, which for certainty shall be the prejudgment interest rate under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

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

- .1 Add new Article A-9 – CONFLICT OF INTEREST:

**ARTICLE A-9 CONFLICT OF INTEREST**

- 9.1 The *Contractor* shall not, and shall cause the other *Contractor Parties* to 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 the *Owner* 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* or any other *Contractor Party* shall entitle the *Owner* to immediately terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has under the *Contract*, in law, or in equity.

**ARTICLE A-10 – CONFIDENTIALITY**

- .1 Add new Article A-10 – CONFIDENTIALITY:

**ARTICLE A-10 CONFIDENTIALITY**

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the currency 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 *Digital and 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 *Digital and Data Directive* or by the rules of any applicable regulatory authority.

## DEFINITIONS

Delete the definition of *Contract* and substitute new definition of *Contract*:

### ***Contract***

*Contract* means the agreement executed between the parties as documented by the *Contract Documents*, as the same may be amended, and represents the entire agreement between the parties. For clarity, reference to the “Agreement” means the first five (5) pages of CCDC 2 – 2020, which comprises a part of the *Contract*. The *Owner* may issue one or more purchase orders in respect of the *Work*. For clarity, any purchase order issued by the *Owner* shall be solely for the convenience of the *Owner* in administering its internal procedures and, notwithstanding any of the provisions set out in such purchase order, shall not create any binding obligations of either the *Owner* or the *Contractor* or in any way be deemed to supersede or amend the *Contract* or be considered to form a part of the *Contract*.

Delete the definition of *Contract Documents* and substitute new definition of *Contract Documents*:

### ***Contract Documents***

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon in writing between the parties.

Delete the definition of *Contract Time* and substitute new definition of *Contract Time*:

### ***Contract Time***

The *Contract Time* is the time from commencement of the *Work* to the date of *End of the Work* as stipulated in paragraph 1.4 of Article A-1 of the Agreement – THE WORK.

Delete the definition of *Other Contractor* and substitute new definition of *Other Contractor*:

### ***Other Contractor***

*Other Contractor* means a contractor, other than the *Contractor*, engaged by the *Owner* for the *Project*, including, for certainty, but without limitation, the *Persons* listed in the *Data Sheet* as *Other Contractors*.

Delete the definition of *Notice in Writing* and substitute new definition of *Notice in Writing*:

### ***Notice in Writing***



A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING. Any *Notice in Writing* shall include the *Owner's Project Number* in the subject line or title page, as applicable.

Add the following definitions:

***Adjudication***

*Adjudication* means the construction dispute interim adjudication procedure under Part II.1 of the *Construction Act* ~~with respect to any and all matters referred to in Section 13.5 of the~~ *Construction Act*.

***Adjudicator***

*Adjudicator* has the meaning given in ~~paragraph 8.3.3~~ the *Construction Act*.

***Affected Party***

*Affected Party* has the meaning given in paragraph 14.6.4.

***Affiliate***

*Affiliate* means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of the *Contractor*, shall include each of its unitholders, shareholders, partners or owners, as the case may be.

***Annual Holdback Payment Amount***

*Annual Holdback Payment Amount* ~~has the meaning given in paragraph 5.4.13.1.~~ means the amount of accrued holdback that the *Owner* is required to pay to the *Contractor* pursuant to Section 26(4) of the *Construction Act* for the immediately preceding *Contract Year* in relation to the services or materials supplied by the *Contractor* during such *Contract Year*.

***Annual Holdback Payment ~~Certificate~~ Application***

*Annual Holdback Payment ~~Certificate~~ Application* has the meaning given in paragraph ~~5.4.13.1~~ 5.4.21.

***Annual Holdback Payment Date***

*Annual Holdback Payment Date* ~~means the date that is two (2) *Working Days* following the issuance of the *Annual Holdback Payment Certificate*.~~

***Anticipated End of the Work Date***

*Anticipated End of the Work Date* has the meaning given in paragraph 5.6.1.

### ***Applicable Services***

*Applicable Services* means the applicable services listed in the *Data Sheet*, as may be amended from time to time.

### ***Approved Monitoring Plan***

*Approved Monitoring Plan* has the meaning given in paragraph in 14.6.14.2

### ***Associated Liabilities***

*Associated Liabilities* has the meaning given in paragraph 10.1.8.

### ***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*.

### ***Assignable Parties***

*Assignable Parties* means the assignable parties listed in the *Data Sheet*.

### ***Authority***

*Authority* has the meaning given in Section 13.1 of the *Construction Act*.

### ***Background Information***

*Background Information* means any and all drawings, reports, studies, plans, data, documents, or other information, given or made available to *Contractor* by *Owner*, or which was obtained from or through any other sources prior to the date of the *Contract*, and, for clarity, includes the contents of the data room established for the purposes of the *Procurement Document* and the *Technical Reports*.

### ***Baseline Schedule***

*Baseline Schedule* has the meaning given in paragraph 3.4.1.1.

### ***Canadian Made***

*Canadian Made* means originating from any one province or territory within Canada and is either grown, produced, or manufactured in Canada.

### ***Canadian Service***

*Canadian Service* means any service provided by an individual or a supplier, manufacturer or distributor

[of any business structure based in Canada.](#)

### ***CEB***

*CEB* means the Change and Engagement Branch at the Ministry of Public and Business Service Delivery or any successor thereof.

### ***Change in Ownership***

*Change in Ownership* means, with respect to a Person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such Person, or any change in the direct or indirect power to vote or transfer any of the shares or units of ownership of such Person.

### ***Change in U.S. Business Status***

*Change in U.S. Business Status* means any change that causes the *Contractor* or any *Contractor Member* to become a *U.S. Business*.

### ***Claims***

*Claims* means any and all claims, demands, actions, suits or proceedings, and *Losses* in respect of the foregoing matters.

### ***Commencement Date***

*Commencement Date* means the date set out in the *Data Sheet*.

### ***Compliant Investigation***

*Compliant Investigation* has the meaning given in paragraph 6.4.4.

### ***Concurrent Delay***

*Concurrent Delay* means the occurrence of two or more independent events causing delay in the performance of the Work where the time period over which such delays occur overlap in time, but only for the duration of the overlap.

### ***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:

- (a) 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;

- (b) 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;
- (c) 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
- (d) is independently developed by the *Contractor* without use of any *Confidential Information*.

### ***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.

### ***Constructor***

*Constructor* means the “constructor” within the meaning of the *OHSA*.

### ***Contract Year***

*Contract Year* means a twelve-month period commencing on *Execution Date* and each anniversary thereof.

### ***Contractor Group***

*Contractor Group* means the *Contractor* together with any *Person* or group of *Persons*, who, either individually or collectively, have *Direct or Indirect Power or Control* of *Contractor*.

### ***Contractor Member***

Not applicable.

### ***Contractor Parties***

*Contractor Parties* means the *Contractor*, the *Subcontractors*, the *Suppliers* and the *Sub-subcontractors* and their respective advisors, appointees, partners, directors, officers, employees, agents and volunteers and successors and assigns, and any other *Person* performing any part of the *Work*.

### ***Contractor Personnel***

*Contractor Personnel* means any *Subcontractor* or *Supplier* or other *Person* performing or supplying any part of the *Work*, for or on behalf of the *Contractor*, and any employees or agents thereof, and any employees or agents of the *Contractor*.

***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.

***Data Sheet***

*Data Sheet* means the *Data Sheet* in Schedule 8 – Data Sheet.

***Delay Event***

*Delay Event* has the meaning given in paragraph 3.4.1.4.

***Digital and Data Directive***

*Digital and Data Directive* means the Management Board of Cabinet’s Digital and Data Directive published January 29, 2021, as amended from time to time.

***Direct or Indirect Power or Control***

*Direct or Indirect Power or Control* means the direct or indirect power or control over the decisions, management, actions or policies of a *Person*, including through the direct or indirect power or control over the decisions, management, actions or policies of any *Persons* having direct or indirect power or control over the decisions, management, actions or policies of any other *Person*, whether through:

- (a) ownership, beneficial or otherwise, of greater than five percent of any of the shares, units or equity interests of a *Person*;
- (b) the direct or indirect power to vote any of the shares, units or equity interests of a *Person* where an individual’s ownership, beneficial or otherwise, is equal to or exceeds five percent (5%) of the voting securities, units or equity interests of such *Person*; or
- (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a *Person* or to prevent the approval of a decision, the management, actions or policies of a *Person* through any contractual right or other power or interest with or over a *Person*.

***Domestic Supply Chain Liquidated Damages***

*Domestic Supply Chain Liquidated Damages* means the liquidated damages to be paid pursuant to GC 3.17.

**Domestic Supply Chain LD Cap**

Domestic Supply Chain LD Cap has the meaning given in paragraph 3.17.2.

**Domestic Supply Chain Plan**

Domestic Supply Chain Plan means the domestic supply chain plan submitted by the *Contractor* as part of its *Proposal* pursuant to the *Procurement Documents* and attached as Schedule 4 – Contractor’s Domestic Supply Chain Plan.

**Domestic Supply Chain Report**

Domestic Supply Chain Report has the meaning given in paragraph 3.16.9.

**Domestic Supply Chain Target**

Domestic Supply Chain Target has the meaning given in paragraph 3.16.1.

**Draft Annual Holdback Payment Application**

Draft Annual Holdback Payment Application has the meaning given in paragraph 5.4.18.

***Earliest Payment Date***

*Earliest Payment Date* means the date that is ten (10) Working Days following expiry of the holdback period stipulated in the *Construction Act*.

***Economic Interest***

*Economic Interest* means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.

***Employer***

*Employer* means the “employer” within the meaning of the *OHS Act*.

***End of the Work***

*End of the Work* means the completion of all the *Work* in accordance with the requirements of the *Contract Documents*, including all commissioning, but excepting those items arising from the provisions of GC 12.3 – WARRANTY.

***Environmental Contaminant***

*Environmental Contaminant* means any hazardous or toxic substances or materials, including, but not limited to, products of waste, contaminants, pollutants, dangerous substances, noxious

substances, toxic substances, hazardous wastes, flammable, explosive or improperly handled friable materials including asbestos and PCBs, and substances or any other materials declared or defined to be hazardous, toxic, contaminant or pollutant in or pursuant to any law of any authority, located, stored, manufactured, refined, disposed of, produced, processed or incorporated in or on any part of the *Place of the Work*, other than any *Environmental Contaminant* located, stored, manufactured, refined, disposed of, produced, processed or incorporated in or on any part of the *Place of the Work* in accordance with all laws of all applicable governmental authorities.

***Environmental Reports***

*Environmental Reports* means the environmental reports listed in the *Data Sheet*.

***Excess Soil***

*Excess Soil* means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project as defined in the *Excess Soil Regulation*.

***Excess Soil Legislation***

*Excess Soil Legislation* means any laws, ordinances, rules, regulations or codes, which are or become in force during the performance of the *Work* dealing with the excavation, removal and transportation of *Excess Soil* including, without limitation, the *Excess Soil Regulation*.

***Excess Soil Regulation***

*Excess Soil Regulation* means the On-Site and Excess Soil Management Regulation (O. Reg. 406/19).

***Execution Date***

Execution Date means the date the Agreement is executed by the Owner and the Contractor.

***Existing Facility***

*Existing Facility* means, as of the *Execution Date*, as applicable, the existing facility referenced in the *Data Sheet* including all or any portion of buildings, building systems, structures, sites, complexes, equipment, roads, walks, parking lots or other real property.

***Finishing Holdback Payment Application***

*Finishing Holdback Payment Application* has the meaning given in paragraph 5.4.27.

***FIPPA***

*FIPPA* has the meaning given in paragraph 10.1 of Article A-10 CONFIDENTIALITY of the Agreement.

***Geotechnical Reports***

*Geotechnical Reports* means the geotechnical reports listed in the *Data Sheet*.

***Guarantor***

*Guarantor* has the meaning given in paragraph 11.2.4.

***Hazardous Substance Report***

*Hazardous Substance Report* means the hazardous substance report listed in the *Data Sheet*.

***Indemnifiable Taxes***

*Indemnifiable Taxes* has the meaning given in paragraph 10.1.8.

***Indemnitees***

*Indemnitees* means the Owner, its agents, representatives, officers, directors, employees, consultants, successors, appointees, and assigns.

***Infrastructure Ontario or IO***

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

***Key Individuals***

*Key Individuals* has the meaning given in paragraph 3.5.4.1.

***Key Subcontractors***

*Key Subcontractor* has the meaning set out in the *Data Sheet*.

***Key Supplier***

*Key Supplier* has the meaning set out in the *Data Sheet*.

***Losses***

*Losses* means any and all damages, losses, costs (including, without limitation, legal, expert and consultant fees and disbursements), liabilities and expenses.

***Meetings***



*Meetings* means formal, previously scheduled meetings, either in-person or remotely, between *Owner* and *Contractor* to discuss the *Contract*, including the *Contract Documents*.

***New Facility***

*New Facility* means, as applicable, the new facility to be constructed by the *Contractor* as part of the *Work*.

***Notice of Adjudication***

*Notice of Adjudication* has the meaning given in paragraph 8.3.5.

***Non-Resident***

*Non-Resident* means a *Person* that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act (Canada)*.

***OHSA***

*OHSA* means the *Occupational Health and Safety Act*, R.S.O (1990), c. O.1 (or any successor legislation), and all regulations thereunder, as amended.

***Ontario Made***

*Ontario Made* means originating within the province of Ontario and either grown, produced, or manufactured in Ontario

***Ontario Service***

*Ontario Service* means any service provided by an individual or a supplier, manufacturer or distributor of any business structure based in Ontario.

***Open Data***

*Open Data* means data that is required to be released to the public pursuant to the *Digital and Data Directive*.

***Operator***

*Operator* means the “operator of the project area” within the meaning of the *Excess Soil Regulation*. For clarity, the *Operator* does not mean the “operator of the reuse site” within the meaning of the *Excess Soil Regulation*.

***Operations***

*Operations* means all operations, services and activities provided or performed at, or in respect of, as applicable, the *Existing Facility* and/or the *New Facility* by or on behalf of the *Owner* from time to time, including, without limitation, *Applicable Services*.

***Owner's Project Number***

*Owner's Project Number* means the *Owner's* project number set out in the *Data Sheet*.

***Pandemic/Epidemic***

*Pandemic/Epidemic* has the meaning given in paragraph 6.5.13.

***Pandemic/Epidemic Change in Law***

*Pandemic/Epidemic Change in Law* has the meaning given in paragraph 6.5.13.1.

***Pandemic/Epidemic Response and Mitigation Plan***

*Pandemic/Epidemic Response and Mitigation Plan* has the meaning given in paragraph 6.5.13.4.

***Pandemic/Epidemic Rules***

*Pandemic/Epidemic Rules* has the meaning given in paragraph 6.5.13.1.

***Parental Guarantee***

*Parental Guarantee* has the meaning given in paragraph 11.2.4.

***Permits, Licences, Approvals and Agreements***

*Permits, Licences, Approvals and Agreements* means the permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained and/or performed in connection with the *Project* and as required by applicable law, and all necessary consents and agreements from and with any third parties, including, but not limited to, those permits, licences, approvals and agreements as set out in Appendix B–PERMITS, LICENCES, APPROVALS AND AGREEMENTS.

***Person***

*Person* means any individual, partnership, limited partnership, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or legal personal representative, governmental authority or other entity however designated or constituted.

***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*.

***Pre-Selected Subcontractors***

*Pre-Selected Subcontractors* means the pre-selected *Subcontractors* listed in the *Data Sheet*.

***Procurement Document***

*Procurement Document* means the procurement document issued by the *Owner* in respect of this *Contract*, including but not limited to a request for information, request for qualifications and standing offer, request for proposals, and/or call for bids, as referenced in the *Data Sheet*.

***Project Leader***

*Project Leader* means the “project leader” within the meaning of the *Excess Soil Regulation*.

***Proper Invoice***

*Proper Invoice* ~~shall have~~has the meaning given in paragraph 5.2.1.

***Proposal***

*Proposal* means the proposal submitted by or on behalf of the *Contractor* pursuant to the *Procurement Document*.

***Public Communications Materials***

*Public Communications Materials* has the meaning given in paragraph 2.5.1.

***Punch List***

*Punch List* has the meaning given in paragraph 12.3.8.

***Recovery Plan***

*Recovery Plan* has the meaning given in paragraph 3.4.2.

***Release***

*Release* has the meaning given in paragraph 9.2.5.

***Residual Holdback Payment Application***

*Residual Holdback Payment Application* has the meaning given in paragraph 5.4.23.

### ***Restricted Person***

*Restricted Person* means any *Person* who, or any member of a group of *Persons* acting together, any one of which:

- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
- (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such *Person* from undertaking the *Project* in whole or in part in a manner which the *Owner* considers unacceptable in its sole and absolute discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by the *Owner* in its sole and absolute discretion);
- (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “*Restricted Person*” is made hereunder, whether or not such *Person* received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “*Restricted Person*” is made hereunder;
- (e) in the case of a *Person* other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “*Restricted Person*” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “*Restricted Person*” is made hereunder;
- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

(g) is subject to a material claim of the *Owner* or His Majesty the King in Right of Ontario under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “*Restricted Person*” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the *Owner*’s view, in either case, be reasonably likely to materially affect the ability of the *Contractor* to perform its obligations under the *Contract*; or

(h) has a material interest in the production of tobacco products.

### ***Safety Plans and Programs***

*Safety Plans and Programs* has the meaning given in paragraph 9.4.8.3.

### ***Scheduled End of the Work Date***

*Scheduled End of the Work Date* means the date set out in *Data Sheet*, as the same may be amended or extended pursuant to the *Contract Documents*.

### ***Scheduled Ready-for-Takeover Date***

*Scheduled Ready-for-Takeover Date* means the date set out in the *Data Sheet*, as the same may be amended or extended pursuant to the *Contract Documents*.

### ***Security Clearance Check***

*Security Clearance Check* includes all of the following:

- (a) confirmation of compliance by an individual who is or would become a *Contractor Party* to the security clearance processes established in the *Owner*’s policies, procedures, guidelines and other requirements;
- (b) a written declaration by an individual disclosing any convictions and unresolved charges:
  - (i) under the offense provisions of federal statutes, including 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;
  - (ii) for any offence that is of moral turpitude (being, conduct which is morally reprehensible or intrinsically wrong as determined by the *Owner*, in its sole and unfettered discretion, and includes, by way of example, offences such as theft, perjury and vice crimes) or involving acts of violence, in Canada or elsewhere; and
  - (iii) for any offence identified by the *Owner* from time to time;

- (c) a police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual including in relation to the following:
  - (i) convictions under the offense provisions of federal statutes, including 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;
  - (ii) findings of guilt in relation to federal statutes for which a court has granted a discharge;
  - (iii) charges laid under the offense provisions of any federal statutes that are unresolved; and
  - (iv) records of judicial orders in effect made in relation to the offense provisions of federal statutes;
- (d) a police records check in other jurisdictions as deemed necessary by the information provided to the *CEB* during a *Security Clearance Check*; and
- (e) if deemed necessary by *CEB* considering the circumstances of the Project or applicable work or services, a driving records check.

### ***Standard of Care***

*Standard of Care* has the meaning given in paragraph 3.12.1.

### ***Subject Matter of Indemnity***

*Subject Matter of Indemnity* has the meaning given in paragraph 13.1.1.

### ***Sub-subcontractor***

*Sub-subcontractor* means a *Person* having a direct contract with a *Subcontractor* or a *Supplier* or any other subcontractor or supplier at any tier, to perform a part or parts of the *Work*.

### ***Technical Reports***

*Technical Reports* means the following documents:

- (a) the Environmental Reports;
- (b) the Geotechnical Reports; and
- (c) the Hazardous Substance Report.

### ***Time Impact Analysis or TIA***

Time Impact Analysis or TIA has the meaning given in paragraph 6.5.7.

### ***Unusually Severe Adverse Weather Conditions***

*Unusually Severe Adverse Weather Conditions* means unusually severe adverse weather conditions at the *Project* site which: (i) are materially different from those normally and customarily experienced at the *Project* site (as documented by weather data from Environment Canada) over the past five (5) years, taking into consideration severity, duration and time of year conditions; (ii) have a material adverse effect on the *Contractor's* performance of the *Work*; and (iii) preclude the safe performance of the *Work* in accordance with key milestones.

### ***U.S. Business***

*U.S. Business* means a contractor, supplier, manufacturer or distributor of any business structure (includes a sole proprietorship, partnership, corporation or other business structure) that:

- (a) has its headquarters or main office located in the United States; and
- (b) has fewer than 250 full-time employees in Canada.

For clarity, where the *Contractor* is a subsidiary of another corporation, Section (a) of the definition of *U.S. Business* is met if the *Contractor* is controlled by a corporation that has its headquarters or main office located in the United States.

### ***Utility Company Connection***

*Utility Company Connection* has the meaning given in paragraph 3.9.2.

### ***Utility Relocations***

Intentionally left blank.

### ***Works Report***

*Works Report* has the meaning given in paragraph 3.10.1.

The phrase “includes”, “include” or “including” means “includes, without limitation” or “including, without limitation” or “include, without limitation,”. The table of contents, titles, headings, running headlines and marginal notes contained in the *Contract Documents* are solely to facilitate reference to various provisions of the *Contract Documents* and in no way affect, limit, or cast light upon the interpretation or construction of the provisions to which they refer.

## GENERAL CONDITIONS

### GC 1.1 CONTRACT DOCUMENTS

- .1 Delete the second sentence of paragraph 1.1.2.
- .2 Intentionally deleted.
- .3 Delete paragraph 1.1.5.1 in its entirety and substitute new paragraph 1.1.5.1:
  - 1.1.5.1 the order of priority of documents, from highest to lowest, shall be based on the order the *Contract Documents* are listed in Article A-3, from top to bottom.
- .4 Add a new sentence to the end of paragraph 1.1.9:
  - 1.1.9 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.

### GC 1.3 RIGHTS AND REMEDIES

- .1 1.3.2 Delete the word “No” from the beginning of paragraph 1.3.2 and substitute the words “Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, 6.6.1 and 8.3.1, no”.

### GC 1.4 ASSIGNMENT

- .1 Delete paragraph 1.4.1 in its entirety and substitute new paragraphs 1.4.1 and 1.4.2:
  - 1.4.1 The *Owner* may sell, assign, transfer, dispose of or otherwise alienate any interest in this *Contract* or any agreement in connection with this *Contract* to which the *Contractor* and *Owner* are parties to any of the *Assignable Parties*.
  - 1.4.2 The *Contractor* shall not directly or indirectly assign, transfer, charge, disposition or otherwise alienate the *Contract* or any portion thereof without the prior consent of the *Owner*, which consent may be withheld in the sole and absolute discretion of the *Owner*, provided, however, that no assignment, transfer, charge, disposition or other alienation shall be permitted to a *Person* where that *Person* or its *Affiliates* is a *Restricted Person* or a *Person* whose standing or activities (i) are inconsistent with the *Owner's* role in respect of the *Operations* or are inconsistent with the *Operations*, or (ii) may compromise the reputation or integrity of the *Owner* and/or His Majesty the King in Right of Ontario, or (iii) may



compromise the integrity of, as applicable, the *Existing Facility* or the *New Facility*.

## **GC 1.5 RESTRICTED PERSON**

### **.1 Add new GC 1.5 RESTRICTED PERSON:**

1.5.1 The *Contractor* represents and warrants to the *Owner* that as of the date of this *Contract*:

- .1 the *Contractor* is not a *Restricted Person*;
- .2 no *Restricted Person* has *Direct or Indirect Power or Control* over any member of the *Contractor Group* in relation to the decisions, management, actions or policies of the *Contractor* or in relation to the *Project*; and
- .3 to the knowledge of the *Contractor*, following the exercise of reasonable due diligence, no *Restricted Person* has, directly or indirectly, an *Economic Interest* in the *Contractor* or the *Project*.

1.5.2 In the event that:

- .1 a *Person* having *Direct or Indirect Power or Control* over any member of the *Contractor Group* in relation to the decisions, management, actions or policies of the *Contractor* or in relation to the *Project* becomes a *Restricted Person*; or
- .2 a *Person* who, directly or indirectly, has an *Economic Interest* in the *Contractor* or the *Project* becomes a *Restricted Person* as set out in paragraph (a)(i) of the definition of *Restricted Person*,

the *Owner* may:

- .1 in the case of an individual who becomes a *Restricted Person*, require that such *Restricted Person* be divested of his or her *Direct or Indirect Power or Control* or *Economic Interest*, as applicable; or
- .2 in any other circumstance, require a *Change in Ownership* so that the *Restricted Person* shall be divested of its *Direct or Indirect Power or Control*, in each case, on such terms as are satisfactory to the *Owner*, in its sole and absolute discretion.

## GC 2.2 ROLE OF THE CONSULTANT

- .1 Add the following to the end of paragraph 2.2.1: “, and where applicable, in accordance with the recommended procedures outlined in the OAA/OGCA Document No. 100-2018, OAA/OGCA Guide to Project Closeout Procedures dated April 30, 2020, and any close-out procedures specified in the *Specifications*, as each may be amended from time to time”.
- .2 Delete paragraph 2.2.4 in its entirety and substitute new paragraph 2.2.4:  
  
2.2.4           The *Consultant* will participate in a monthly pre-screening meeting with the *Owner* and the *Contractor* in accordance with the *Owner*’s timing and requirements to review the particulars, details, information and documentation, including the breakdown of the schedule of values, proposed to constitute the basis of the *Contractor*’s *Proper Invoice* for such month, so as to assist the *Contractor* with the preparation and submission of its *Proper Invoices* on a monthly basis. Upon receipt of a *Proper Invoice*, the *Consultant* shall review the *Proper Invoice* and issue to the *Owner*, no later than five (5) calendar days after the *Consultant*’s receipt of the *Proper Invoice*, a certificate for payment in accordance with paragraph 5.3.1.1 and paragraph 5.6.3.
- .3 Amend paragraph 2.2.6 by deleting the words “Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER” at the beginning of the paragraph and replacing it with “The”.

## GC 2.3 REVIEW AND INSPECTION OF THE WORK

- .1 Delete the word “The” from the beginning of paragraph 2.3.1 and substitute the words “Subject to Schedule 1 – Coordination with Other Parties, the”.
- .2 Delete paragraph 2.3.2 in its entirety and substitute new paragraph 2.3.2:  
  
2.3.2           If work is designated for tests, inspections or approvals in the *Contract Documents*, by the *Consultant*’s instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Contractor* shall coordinate and arrange for and shall give the *Consultant* and the *Owner* reasonable notification of the date and time of inspections by other authorities.
- .3 Delete paragraph 2.3.5 in its entirety and substitute new paragraph 2.3.5:  
  
2.3.5           The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance

with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction, and there shall be no extension of the *Contract Time* resulting from any delay caused by such examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

## **GC 2.4 DEFECTIVE WORK**

- .1 Amend paragraph 2.4.1 by inserting the words “, at the *Contractor’s* sole cost and expense and without any extension of the *Contract Time*,” after the words “The *Contractor* shall” in the first line.
- .2 Add new paragraphs 2.4.1.1, 2.4.1.2 and 2.4.1.3:
  - 2.4.1.1 The *Contractor* shall rectify all defective work and deficiencies throughout the *Work* to conform to the requirements of the *Contract*, 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.
  - 2.4.1.3 Failure of the *Consultant* to identify defective work and deficiencies shall not relieve the *Contractor* of its responsibility to rectify defective work and deficiencies at the *Contractor’s* cost.
- .3 Amend paragraph 2.4.2 by replacing “*Contractor’s* expense” with “*Contractor’s* cost and expense and without any extension of the *Contract Time*”.

## **GC 2.5 COMMUNICATIONS**

- .1 Add new GC 2.5 COMMUNICATIONS:

### **GC 2.5 COMMUNICATIONS**

- 2.5.1 The *Contractor* shall not, and shall cause its directors, officers, shareholders, partners, employees, advisors, and agents to not, directly or indirectly, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the *Owner*, the *Project*, this *Contract*, or any matters related thereto (collectively, the “**Public Communications Materials**”), without the prior written consent of the *Owner*, in its sole discretion, unless such issuance or dissemination is required by applicable law. If such issuance or dissemination is required by applicable law, the *Contractor* shall provide the *Owner* with 20

*Working Days*' advance *Notice in Writing* of the required issuance or dissemination with reference to the applicable law requiring such issuance or dissemination. This paragraph 2.5.1 shall survive termination. The *Contractor* shall ensure a provision commensurate to this paragraph 2.5.1 is included in each agreement it enters into in connection with the *Project*, including but not limited to agreements with its *Subcontractors* and *Suppliers*.

2.5.2 While the *Owner* shall assume the lead communication role and be responsible for providing final review and approval of all *Public Communications Materials*, at the request of the *Owner*, the *Contractor* shall cooperate with the *Owner* to issue or disseminate *Public Communications Materials* that will:

- .1 enhance the opportunities for open, transparent, effective and proactive communications with the public;
- .2 be accountable to the *Project's* stakeholders; and
- .3 otherwise meet the needs of the *Owner*.

## **GC 2.6 DOCUMENTATION OF MEETINGS**

1. Add new GC 2.6 DOCUMENTATION OF MEETINGS:

### **GC 2.6 DOCUMENTATION OF MEETINGS**

2.6.1 Minutes of all *Meetings* and recommendations and decisions arising from, or related to, *Meetings*, including those made by telephone or other form of communication, shall be recorded and maintained by the *Owner*. The *Owner* shall circulate copies of such minutes within 5 *Working Days* of the holding of the *Meeting* or the making of the recommendation or decision. Unless the *Contractor* notifies the *Owner* within 5 *Working Days* of receipt of the minutes that the *Contractor* disagrees with the contents of the minutes, the *Contractor* shall be deemed to have approved such minutes. The *Owner* shall maintain a complete set of all minutes of all *Meetings* and shall make such minutes available for inspection by the *Contractor* during regular business hours.

## **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 paragraph 3.2.2.1 in its entirety and replace with “Intentionally deleted;”.
- .2 Delete paragraph 3.2.3.2 and replace with the following:
  - .2 cooperate with *Other Contractors* and the *Owner* in reviewing their construction schedules and co-ordinate and schedule the activities and work of *Other Contractors* and *Owner’s* own forces with the *Work*, and attach or connect the *Work* to the work of *Other Contractors* or the *Owner’s* own forces as specified or as shown in the *Contract Documents*. The *Contractor* shall coordinate and perform the *Work* with care and diligence so as to ensure that the *Contractor*, *Other Contractors*, and *Owner’s* own forces, will be in a position to proceed according to the *Baseline Schedule* and the schedules of the *Other Contractors* and the *Owner’s* own forces.
- .3 Add new paragraph 3.2.3.5:
  - 3.2.3.5 In accordance with GC 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.3 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the *Owner’s* own forces and for *Other Contractors*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation at the *Place of the Work*, including all of the responsibilities of the *Constructor*.
- .4 Delete the last sentence in paragraph 3.2.5.
- .5 Add new paragraph 3.2.7:
  - 3.2.7 The *Contractor* acknowledges and agrees that:
    - .1 Intentionally deleted;
    - .2 subject to Schedule 1 – Coordination With Other Parties, any contractors, consultants or other persons authorized by the *Owner*, including the *Other Contractors*, shall be permitted access to those parts of the *Place of the Work* and, if applicable, the *Existing Facility*, including as is necessary for purposes of the *Project*, the *Work* or, if applicable, the *Operations* of the *Existing Facility* or in accordance with applicable laws; and

- .3 the *Contractor* shall develop its *Baseline Schedule* in accordance with paragraph 3.4.1 and otherwise cooperate and coordinate with the *Owner* and such contractors, consultants or other persons identified by the *Owner*, including the *Other Contractors*, in compliance with the principles and restrictions set forth in Schedule 1 – Coordination With Other Parties.

.6 Add new paragraph 3.2.8:

- 3.2.8 The attachment of work by *Other Contractors* or the *Owner's* own forces to the *Work* and the modification of the *Work* by *Other Contractors* or the *Owner's* own forces for the purpose of attachment and connection of their work shall not negate the *Contractor's* obligations in the *Contract* (including the warranty provisions of the *Contract*), except to the extent that such work by *Other Contractors* or the *Owner's* own forces has created a defect.

#### GC 3.4 CONSTRUCTION SCHEDULE

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

- 3.4.1 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 draft 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 draft construction schedule and the *Baseline 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 draft construction schedule and the *Baseline Schedule* to the *Owner* in electronic format. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the draft construction schedule and the *Baseline Schedule* to the *Owner* in editable format, together with a record version in PDF format. Once accepted by the *Owner* and the *Consultant*, the draft construction schedule submitted by the *Contractor* shall become the baseline schedule for the *Work*, as amended, with the approval of the *Owner* (the “*Baseline Schedule*”). The review of the draft construction schedule by the *Owner* and the *Consultant* shall not

be perceived as their approval in any way of the draft construction schedule. The *Contractor* is fully responsible for the means and methods necessary to meet the *Baseline 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 meet and maintain the *Baseline Schedule*;
- .3 monitor the progress of the *Work* at a minimum on a weekly basis relative to the *Baseline Schedule* pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the *Baseline Schedule* or slippage in the *Baseline Schedule* (provided that such updates shall not be amendments to the *Baseline Schedule*, unless accepted by the *Owner* as an amendment to the *Baseline Schedule*). For clarity, any updates to the *Baseline Schedule* shall include, as applicable, the requirements of a *Works Report*;
- .4 if the *Contractor* forms the opinion that slippage in *Baseline Schedule* reported pursuant to paragraph 3.4.1.3 cannot be recovered by the *Contractor* and if the *Contractor* is of the opinion that such slippage is the direct result of a delay event referred to in GC 6.5 – DELAYS (“**Delay Event**”) that entitles the *Contractor* to an extension of the *Contract Time* and any additional direct costs, in accordance with GC 6.5 - DELAYS of the *Contract* the *Contractor* shall be solely responsible for providing written notice to the *Owner* within the time period described in paragraph 6.5.4 of the *Contract*; and
- .5 perform the *Work* in accordance with, and in compliance with, the *Baseline Schedule*.

.2 Add new paragraph 3.4.2:

- 3.4.2 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 paragraph 3.4.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Baseline Schedule* or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan (“*Recovery Plan*”) demonstrating how the *Contractor* will achieve the

recovery of the schedule and shall promptly commence, and continue, the implementation of such *Recovery Plan*. Unless the circumstances giving rise to the delay are matters covered by Part 6 – CHANGES for which the *Contractor* is entitled to reimbursement of costs, all costs of taking such preventative and corrective action and steps (including implementation of the *Recovery Plan*) and any costs reasonably incurred or damages suffered by the *Owner* arising out of or as a result of any such delay shall be for the account of the *Contractor*. For clarity, unless the circumstances giving rise to the delay are matters covered by Part 6 – CHANGES for which the *Contractor* is entitled to reimbursement of costs, the *Contractor* is responsible for, and the *Owner* is not liable to pay for, the costs required to comply with this paragraph 3.4.2 (including the preparation and implementation of the *Recovery Plan* or as otherwise required to comply with this paragraph 3.4.2).

### GC 3.5 SUPERVISION

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

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

- .2 Add new paragraph 3.5.3:

3.5.3 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.

- .3 Add new paragraph 3.5.4:

#### 3.5.4 Key Individuals

- .1 Without limiting the generality of any other provision in the *Contract Documents*, the *Contractor* agrees to commit to the *Project*, until completion of the *Work*, the *Key Individuals* listed in Schedule 2 – Key Individuals (the “**Key Individuals**”).
- .2 Intentionally deleted.



- .3 The *Contractor* shall provide the *Owner* with the telephone numbers of the *Key Individual* and other persons who may be contacted for emergency and other critical reasons during non-working hours.
- .4 No *Key Individual* will be changed without the *Owner's* prior written acceptance other than for: disability; leave under applicable law; termination of employment; retirement; or resignation. If any of the *Key Individuals* becomes unavailable to perform services, then the *Contractor*, subject to the prior written acceptance of the *Owner*, shall promptly appoint a replacement. The *Contractor* shall replace a *Key Individual*, as instructed by the *Owner*, within 25 *Working Days* of receiving such instruction, with a replacement acceptable to the *Owner* for which acceptance shall not be unreasonably withheld. There shall be no change to the *Contract Price* for any reason arising from a replacement of *Key Individual*.

### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

- .1 Add the following to the end of paragraph 3.6.1.2 “including: GC 12.3 – WARRANTY, paragraph 7.1.1 and a provision requiring the *Contractor Parties* to provide adequate notice to the *Contractor* in order for the *Contractor* to fulfil its obligations under paragraph 8.3.9. For clarity, such provision shall include a requirement that the *Contractor Parties* include a similar provision in all its subcontracts with other *Contractor Parties*.”.
- .2 Delete paragraph 3.6.1.3 in its entirety and substitute new paragraph 3.6.1.3:
  - 3.6.1.3 be fully responsible to the *Owner* for acts and omissions of the *Contractor Parties*, even if the subcontractor or supplier was approved or selected by the *Owner*.
- .3 Add new paragraph 3.6.7:
  - 3.6.7 The *Contractor* shall only use the *Pre-Selected Subcontractors* for the applicable work they are listed in the *Data Sheet* as performing and the *Contractor* shall not change a *Pre-Selected Subcontractor* without the *Owner's* prior written consent, which consent will not be unreasonably withheld.
- .4 Add new paragraph 3.6.8:
  - 3.6.8 The *Contractor* shall include provisions in any contract or agreement with a *Subcontractor* or *Key Supplier* to the effect that, if the *Contract* is terminated or the *Contractor's* right to continue with the *Work* is terminated, such contract or agreement shall, at the *Owner's* option, be novated or assigned to the *Owner* or its nominee, provided that where termination occurs other than pursuant to GC 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, the consent of the relevant *Subcontractor or Key Supplier* shall be required.

.5 Add new paragraph 3.6.9:

3.6.9 The *Contractor* shall not subcontract any interest in this *Contract*, and shall not permit the *Subcontractors and Suppliers* to sub-subcontract any interest in their respective subcontracts for the *Project*, to a *Restricted Person*, or any *Affiliate* thereof, or a *Person* whose standing or activities (i) are inconsistent with the *Owner's* role in respect of the *Operations* or are inconsistent with the *Operations*, or (ii) may compromise the reputation or integrity of the *Owner* or *His Majesty the King in Right of Ontario*, or (iii) may compromise the integrity of, as applicable, the *Existing Facility* or the *New Facility*.

**GC 3.7 LABOUR AND PRODUCTS**

.1 Amend paragraph 3.7.1 by adding the words “and other *Contractor Parties*” after the word “employees” toward the end of the first line.

.2 Delete paragraph 3.7.3 in its entirety and substitute new paragraph 3.7.3:

3.7.3 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*. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant* and *Owner*.

.3 Add new paragraph 3.7.4:

3.7.4 The *Contractor* shall obtain warranties from the manufacturers of each of the *Products* in the name of and to the benefit of both the *Contractor* and the *Owner* for the duration(s) and in accordance with the applicable requirements specified in the *Contract Documents*. Where, in respect of a *Product* warranty, the *Contract Documents* do not specify a specific duration and/or other requirements, the *Contractor* shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of the *Contractor* and the *Owner* which shall be for not less than the applicable warranty period set out in paragraph 12.3.1. Each *Product* warranty shall be issued by the applicable manufacturer and delivered to the *Contractor* no later than 30 days prior to *Ready-for-Takeover* or the *End of the Work*, as applicable.

## **GC 3.8 SHOP DRAWINGS**

- .1 Amend paragraph 3.8.1 by adding to the end of the paragraph the following: “The Shop Drawings shall meet the requirements of the *Contract Documents* and the *Contractor* shall carry out the *Work* in accordance with such Shop Drawings.”.

## **GC 3.9 CONNECTION TO UTILITIES AND UTILITY RELOCATIONS**

- .1 Add new GC 3.9 CONNECTION TO UTILITIES AND UTILITY RELOCATIONS:

### **GC 3.9 CONNECTION TO UTILITIES AND UTILITY RELOCATIONS**

3.9.1 The *Owner* shall, in the event necessary and to the extent necessary to perform the *Work*, be responsible for negotiating and entering into utility agreements with utility companies, including in respect of utility relocations on or about the *Place of the Work* (“**Utility Relocations**”) and shall provide a copy of each such utility agreement to the *Contractor* within 15 *Working Days* following the entering into of such agreement.

3.9.2 The *Contractor* shall be responsible:

- .1 to connect to utility work and services brought to the *Place of the Work* by any utility company; and
- .2 to commission and energize each such connection  
(collectively, the “**Utility Company Connection**”); and
- .3 to coordinate with utility companies to facilitate the *Utility Relocations*.

The requirement to so connect, commission, energize and coordinate shall be identified as part of the *Baseline Schedule*. The anticipated date(s) of the *Utility Company Connection* and any *Utility Relocations* shall be based upon discussions with utility companies and/or utility agreements, if applicable, and as accepted by the *Owner*, the *Consultant* and the *Contractor*. If a utility company will not agree to a specific date(s) for the *Utility Company Connection* or *Utility Relocations* or the date agreed to in any utility agreement or otherwise with the utility company is unreasonable in light of the *Baseline Schedule*, then the *Owner* and the *Contractor* will determine a reasonable date(s) for the *Utility Company Connection* or *Utility Relocations*, as the case may be. If a utility company does not meet the date(s) scheduled for the *Utility Company Connection* or *Utility Relocations*, as the case may be in the *Baseline Schedule*, then the *Contractor* may make a claim for a delay in accordance with and subject to GC 6.5 – DELAYS.

- 3.9.3 For clarity, this GC 3.9 does not limit, and the *Contractor* remains responsible for, as a part of the *Work*, all temporary utility connections that are required for the *Work*, including, without limitation, power for the site office.

#### **GC 3.10 WORKS REPORT**

- .1 Add new GC 3.10 WORKS REPORT and GC 3.11 INTENTIONALLY LEFT BLANK:

#### **GC 3.10 WORKS REPORT**

- 3.10.1 The *Contractor* shall continuously monitor the progress of the *Work* in relation to the *Baseline Schedule* and, within 10 *Working Days* following the end of each calendar month from the *Execution Date* until the *End of the Work* date, the *Contractor* shall provide to the *Owner* and the *Consultant* a works report (each, a “**Works Report**”), which shall include:

- .1 an executive summary describing the general status of the *Work* and progress made over the relevant month;
- .2 a narrative description of any disputes related to the *Work*, including any action that has taken place over the relevant month to resolve such disputes;
- .3 an update on those matters set out in Schedule 7 – Works Report Requirements; and
- .4 any other information specifically requested by the *Owner* on the progress of the *Work*,

all in form and substance satisfactory to the *Owner*, acting reasonably. For greater certainty, for all proposed updates and revisions to the *Baseline Schedule*, the *Contractor* must provide a revised critical path reflecting the proposed updated or revised *Baseline Schedule* and any proposed updates and revisions to the *Baseline Schedule* in the *Works Report* shall not amend the *Baseline Schedule*, unless such amendments are agreed to by the *Owner* in writing.

- 3.10.2 The *Works Report* shall be in a format reasonably acceptable to the *Owner*.

#### **GC 3.11 INTENTIONALLY LEFT BLANK**

#### **GC 3.12 PERFORMANCE BY CONTRACTOR**

- .1 Add new GC 3.12 PERFORMANCE BY CONTRACTOR:

#### **GC 3.12 PERFORMANCE BY CONTRACTOR**

- 3.12.1 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 and performing similar work for similar projects (“***Standard of Care***”). The *Contractor* acknowledges and agrees that throughout the *Contract*, the performance of the *Contractor’s* obligations, duties, and responsibilities shall be judged against the *Standard of Care*. The *Contractor* shall exercise the *Standard of Care* in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.
- 3.12.2 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 3.13 RIGHT OF ENTRY**

- .1 Add new GC 3.13 RIGHT OF ENTRY:

#### **GC 3.13 RIGHT OF ENTRY**

- 3.13.1 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 *Ready-For-Takeover*, 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* or relieve or limit any of the *Contractor’s* other responsibilities or liabilities under the *Contract* (including the warranty).

### **GC 3.14 CLOSEOUT PROCEDURES**

- .1 Add new GC 3.14 CLOSEOUT PROCEDURES:

**GC 3.14 CLOSEOUT PROCEDURES**

- 3.14.1 Unless otherwise required by this *Contract*, *Contractor* shall execute the closing stages of the *Work* in accordance with the OAA/OGCA Document No. 100-2018, OAA/OGCA Guide to Project Closeout Procedures dated April 30, 2020, and any close-out procedures specified in the *Specifications*, as each may be amended from time to time.

**GC 3.15 DOCUMENTS AT THE SITE**

- .1 Add new GC 3.15 DOCUMENTS AT THE SITE:

**GC 3.15 DOCUMENTS AT THE SITE**

- 3.15.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner*

**GC 3.16 DOMESTIC SUPPLY CHAIN PLAN**

- .1 Add new GC 3.16 DOMESTIC SUPPLY CHAIN PLAN:

- 3.16.1      The Contractor shall, and shall cause all subcontractors and suppliers, including Key Subcontractors and Key Suppliers to, comply with the Domestic Supply Chain Plan and provide all goods and services for the Work in accordance with the total proportion of Canadian Made and Ontario Made goods and Canadian Services and Ontario Services set out in the Domestic Supply Chain Plan (the “Domestic Supply Chain Target”), subject only to any deviations that may be permitted by the Owner in accordance with paragraph 3.16.4.
- 3.16.2      The Contractor represents and warrants that:
- .1 the Contractor shall implement the Domestic Supply Chain Plan and comply with the requirements set out in this GC 3.16 in good faith during the term of the Contract; and
- .2 any documentation, receipts and information submitted by the Contractor in connection with this GC 3.16 and the Domestic Supply Chain Plan shall be true, accurate and complete.
- 3.16.3      If, at any time during the performance of the Works, the Contractor will not be able to meet the Domestic Supply Chain Target as a result of:
- .1 an unforeseen unavailability of any good or services set out in the Domestic Supply Chain Plan;
- .2 unforeseen price changes that result in significant premiums;
- .3 a delay in the delivery of goods or services that prevents, delays or otherwise interferes with the performance of the Work and results in a material adverse impact on the ability of the Contractor to complete any critical path activity in accordance with the Baseline Schedule; or
- .4 any circumstance beyond the Contractor’s control that has a material adverse effect on the Contractor’s ability to meet the Domestic Supply Chain Target.
- then, no later than five Working Days following the date when the Contractor first became aware of the circumstances outlined in this paragraph 3.16.3, the Contractor shall provide Notice in Writing to the Owner detailing the applicable circumstance, the reasons for the Contractor’s anticipated failure to meet the Domestic Supply Chain Target and setting out the corresponding anticipated deviations to the Domestic Supply Chain Target.
- 3.16.4      No later than 10 Working Days following receipt of the Notice in Writing required pursuant to paragraph 3.16.3 from the Contractor or the receipt of further information from Contractor in accordance with paragraph 3.16.6, the Owner shall review such Notice in Writing and shall confirm to the Contractor in writing that:
- .1 the Owner accepts the reasons set out by the Contractor in the Notice in Writing submitted pursuant to paragraph 3.16.3 and the corresponding deviations from the Domestic Supply Chain Target;

.2 the Owner rejects the reasons set out by the Contractor in the Notice in Writing submitted pursuant to paragraph 3.16.3 and any deviations from the Domestic Supply Chain Target; or

.3 the Owner requires further information from the Contractor with respect to the alleged circumstances.

3.16.5 Provided that the Owner has accepted the deviations from the Domestic Supply Chain Target in accordance with paragraph 3.16.4.1 and such deviations were not caused or contributed to by the Contractor or any Contractor Party, the Domestic Supply Chain LDs shall not apply to such deviations and the Contractor shall update the Domestic Supply Chain Plan to reflect the revised Domestic Supply Chain Target. Any such updated Domestic Supply Chain Plan shall replace the then current Domestic Supply Chain Plan for the purposes of calculating the Domestic Supply Chain LDs in accordance with GC 3.17.

Where the Owner has rejected the Contractor's reasons and deviations from the Domestic Supply Chain Target in accordance with paragraph 3.16.4.2, the Domestic Supply Chain LDs shall apply to such deviations in accordance with GC 3.17.

3.16.6 If the Owner delivers a Notice in Writing to the Contractor pursuant to paragraph 3.16.4.3 requesting further information, then the Contractor shall, within 10 Working Days, following receipt of such Notice in Writing, provide the Owner with all such requested information.

3.16.7 During the term of this Contract, the Contractor shall maintain accurate and up to date records relating to the Contractor's compliance with its Domestic Supply Chain Plan and Domestic Supply Chain Target, including any materials, documents, receipts, certificates of origin, subcontractor records and other information in the custody of the Contractor or a Contractor Party in relation to its Domestic Supply Chain Plan and compliance with the Domestic Supply Chain Target. At any time during the term of this Contract, upon request from the Owner, the Contractor shall promptly provide such records to the Owner.

3.16.8 During the term of this Contract, the Contractor shall allow the Owner and any third-party auditor appointed by the Owner, on reasonable Notice, to inspect, verify and audit any materials, documents, receipts, certificates of origin, subcontractor records and other information in the custody of the Contractor or a Contractor Party in relation to its Domestic Supply Chain Plan and compliance with the Domestic Supply Chain Target. The Contractor shall promptly and properly respond to all reasonable inquiries of the Owner or any third-party auditor appointed by the Owner with respect to any audit carried out in accordance with this paragraph 3.16.8. The Contractor shall include provisions in any contract or agreement with any subcontractor or supplier to ensure that the Owner shall be in a position to exercise its rights, and the Contractor shall be in a position to perform its obligations under paragraphs 3.16.7 and 3.16.8.



3.16.9 By no later than the date that is 21 days following June 30 and December 31 of each year of the term of this *Contract*, the *Contractor* shall provide a report to the *Owner* and the *Consultant*, in a form satisfactory to the *Owner*, detailing the *Contractor's* compliance with the *Domestic Supply Chain Plan* and the *Domestic Supply Chain Target* (the “**Domestic Supply Chain Report**”). The Domestic Supply Chain Report shall set out:

.1 updates on the *Contractor's* implementation of the *Domestic Supply Chain Plan* and compliance with the *Domestic Supply Chain Target*;

.2 a list of any goods and services procured during the applicable time period and the location of origin of each such good and services; and

.3 any other information requested by the *Owner*.

The *Consultant* shall review and verify the contents of the *Contractor's Domestic Supply Chain Report*. The *Contractor* shall, and shall cause all *Contractor Parties* to, co-operate with the *Consultant* to permit the *Consultant* to verify the *Contractor's Domestic Supply Chain Report*.

3.16.10 The *Contractor's Domestic Supply Chain Report* shall not be *Confidential Information*.

### GC 3.17 **DOMESTIC SUPPLY CHAIN LIQUIDATED DAMAGES**

.1 Add new GC 3.17 DOMESTIC SUPPLY CHAIN LIQUIDATED DAMAGES:

3.17.1 Subject to any permitted deviations in accordance with paragraph 3.16.4.1, if on *Substantial Performance of the Work*, it is determined by the *Owner* that the *Contractor* has failed to meet the *Domestic Supply Chain Target* during the performance of the *Work*, the *Contractor* shall pay to the *Owner* domestic supply chain liquidated damages calculated in accordance with the following formula:

Domestic Supply Chain Liquidated Damages =

$$\frac{(\text{Add})\text{Actual DS}}{\text{Target DS}} \times \text{Domestic Supply Chain LD Cap}$$

Where:

Target DS is equal to the total value of Ontario Made goods, Ontario Services, Canadian Made goods and Canadian Services set out in the Domestic Supply Chain Plan as a percentage of the value of total goods and services; and

Actual DS is equal to the actual value, as of the *Substantial Performance of the Work*, of *Ontario Made* goods and *Ontario Services* and *Canadian Made* goods and *Canadian Services* (originating outside of Ontario) as a percentage of the value of total goods and services.

3.17.2 The maximum cumulative amount of the *Contractor's* liability to pay *Domestic Supply Chain LDs* shall not exceed 3.5% of the *Contract Price* (the "**Domestic Supply Chain LD Cap**").

3.17.3 The *Owner* and the *Contractor* acknowledge and agree that such *Domestic Supply Chain Liquidated Damages* are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the *Owner* will incur as a result of *Contractor's* failure to comply with the *Domestic Supply Chain Target*. Subject and without prejudice to the other remedies of the *Owner* in this *Contract*, such payment shall constitute full and final satisfaction of any and all costs that may be claimed by the *Owner* as a result of the *Contractor's* failure to achieve the *Domestic Supply Chain Target*. The *Contractor* agrees with the *Owner* that such *Domestic Supply Chain Liquidated Damages* shall be payable whether or not the *Owner* incurs or mitigates such damages, and that the *Owner* shall have no obligation to mitigate any such damages. The *Contractor* agrees that it is, and shall be, estopped from alleging that such *Domestic Supply Chain Liquidated Damages* are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.

3.17.4 The *Owner* shall be entitled to set off and deduct from any payments owing to the *Contractor* all or a portion of any *Domestic Supply Chain Liquidated Damages* due from the *Contractor* to the *Owner* pursuant to this GC 3.17.

#### **GC 4.1 CASH ALLOWANCES**

.1 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 *Contractor* shall provide the *Owner* with timely *Notice in Writing* of any material adverse change in its financial ability to fulfil its obligations under the *Contract*. Within 5 *Working Days* after the *Contractor* has provided such *Notice in Writing* to the *Owner* or, if it appears to the *Owner* that there is a material adverse change in the *Contractor's* financial

ability to fulfil the *Contractor's* obligations under the *Contract*, then within 5 *Working Days* of a request from the *Owner*, the *Contractor* shall provide the *Owner* with an action plan and further assurances with respect to the *Contractor's* ability to fulfil the *Contractor's* obligations under the *Contract* in spite of such material adverse change.

- .3 Delete paragraph 5.1.2 in its entirety.

## **GC 5.2 APPLICATIONS FOR PAYMENT**

- .1 Revise the heading, “GC 5.2 - APPLICATIONS FOR PAYMENT” to read “GC 5.2 - REQUIREMENTS OF A *PROPER INVOICE*, PROCESS AND TIMING FOR ISSUANCE OF *PROPER INVOICES*”.

- .2 Delete paragraph 5.2.1 in its entirety and substitute new paragraph 5.2.1:

5.2.1 “*Proper Invoice*” shall mean a written bill or other request for payment for services and/or materials ~~comprising in respect of~~ the *Work* performed under this *Contract* issued by the *Contractor*, provided such bill or request:

- .1 contains the information set out in Section 6.1 of the *Construction Act*, which for certainty includes the following:
  1. The *Contractor's* name and address;
  2. The date of the invoice and the period ~~during which the services or materials were supplied,~~ milestone or other contractual payment entitlement to which the invoice relates;
  3. Information identifying ~~the authority, whether in~~ this *Contract*, or ~~otherwise,~~ other authorization under which the services or materials were supplied, such as a contract number, contract line item number or purchase order number;
  4. A description, including quantity where appropriate, of the services or materials that were supplied;
  5. The amount payable for the services or materials that were supplied, and the payment terms;
  6. The name, title, ~~telephone number and~~ mailing address and telephone number of the person at the *Contractor* to whom payment is to be sent; ~~and~~ or, if payment is to be sent to an

office or department, its name, mailing address and telephone number;

7. Any other information that is necessary for the proper functioning of the owner's accounts payable system that the owner reasonably requests; and

8. ~~7.~~ Any other information that may be prescribed by the *Construction Act*;

.2 contains the following information ~~and meets the following requirements:~~

1. The name of the *Owner's* project manager for the *Project*;

2. The *Owner's* and *Contractor's* full legal names;

3. The ~~Proper Invoice must include the~~ applicable purchase order number, tax registration number and project number applicable to the *Work*;

4. The ~~Proper Invoice must include~~ *Owner's Project Number*; and

~~5. The Proper Invoice must not be combined with any other invoices when issued;~~

5. ~~6. Outlines the~~ The aggregate amount of the holdback retained by the *Owner* under the *Contract* and the amount of the holdback retained under and applicable to the *Proper Invoice*; ~~and~~

.3 meets the following requirements:

6. The invoice must not be combined with any other invoices when issued; and

7. The invoice must accurately reflect all required components of the *Proper Invoice* and the amount billed thereunder, including, without limitation, *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*; and

.34 meets the additional requirements with respect to process and contain such information as required by *Owner* as outlined in paragraphs 5.2.2, 5.2.3, 5.2.4, 5.2.5 and 5.2.6; or

.5 is deemed to be a proper invoice pursuant to Section 6.1(2) of the Construction Act.

.3 Delete paragraphs 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7 and 5.2.8 in their entirety and substitute with the following:

5.2.2 The *Contractor* shall submit to both the *Owner* and the *Consultant*, no later than five (5) *Working Days* after the *Work* has commenced, a schedule of values for the *Work*, aggregating the total amount of the *Contract Price* so as to facilitate review of the *Proper Invoices* for the *Work*.

5.2.3 On a monthly basis, the following process shall be followed in relation to applications for payment on account as provided in Article A-5 – PAYMENT of the *Contract* pursuant to the delivery of *Proper Invoices*, as follows:

.1 By not later than the fifth (5<sup>th</sup>) *Working Day* of the calendar month, which date shall be a *Working Day*, the *Contractor* shall submit to both the *Owner* and the *Consultant* the value, proportionate to the amount of the *Contract Price*, of *Work* performed and *Products* delivered to the *Place of the Work* or, pursuant to an off-site storage agreement with the *Owner*, *Products* delivered to an off-site storage location, during the immediately preceding month and a breakdown of the schedule of values for costs incurred during the immediately preceding month. Such submission shall include a cost breakdown provided in such form and supported by such evidence as the *Owner* or the *Consultant* may reasonably require and shall be based on the schedule of values accepted by the *Owner* and the *Consultant*;

.2 By not later than the tenth (10<sup>th</sup>) *Working Day* of the calendar month, the *Contractor* shall participate in a monthly pre-screening meeting with the *Owner* and the *Consultant*, the time and location of which shall be specified by the *Owner* in writing (which date shall be a *Working Day*), to review the particulars, details, information and documentation, including the amount proposed to constitute the basis of the *Contractor's Proper Invoice* for such month (which shall be the value, proportionate to the amount of the *Contract Price*, of *Work* performed and *Products* delivered to the *Place of the Work* or, pursuant to an off-site storage agreement with the *Owner*, *Products* delivered to an off-site storage location, during the immediately preceding month), so as to assist the *Contractor* with the preparation and submission of its *Proper Invoices* on a monthly basis. For clarity, the amount applied for in each *Proper Invoice* shall not include any amounts included in any claim notice under GC 6.6 – CLAIMS FOR A CHANGE IN

CONTRACT PRICE unless and until the matter has been settled in accordance with GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE;

- .3 ~~By not later than~~On the twenty-fifth (25<sup>th</sup>) day of the calendar month, between the hours of 9:00 A.M. and 5:00 P.M. on a *Working Day*, the *Contractor* shall submit simultaneously to the *Owner* (to the *Owner's* Finance Department with a copy to the *Owner's* project manager for the *Project*) and to the *Consultant*, a *Proper Invoice* for payment, for the immediately preceding month, including with the *Proper Invoice* the following:
- .1 a Statutory Declaration on an original form CCDC Document 9A-2018, declaring that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application and attesting to the truth of the statements made therein;
  - .2 evidence of compliance with workers' compensation at the *Place of the Work* including a *Workplace Safety & Insurance Board Clearance Certificate*, including payments due thereunder; and
  - .3 an unconditional written declaration, duly signed by an authorized representative of the *Contractor*, stating that there has been no delay in the progress of the *Work* for which the *Contractor* has any claim against the *Owner* with the exception of any such claim previously disclosed in accordance with the applicable provisions of the *Contract*.
- .4 For clarity, if the *Proper Invoice* referenced in paragraph 5.2.3.3 is received by the *Owner* after 5:00 P.M. on a *Working Day* or at any time on a non-*Working Day*, the *Proper Invoice* shall be deemed to be received by the *Owner* on the following *Working Day*. For clarity, except for *Products* delivered to an off-site storage location pursuant to an off-site storage agreement with the *Owner*, *Proper Invoices* shall not include payment for *Products* not yet delivered to the *Place of the Work*.

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

~~5.2.5 The Contractor agrees that any Proper Invoice submitted prior to the twenty-fifth (25<sup>th</sup>) day of the calendar month, as required pursuant to paragraph 5.2.3.3, shall be deemed to be received on the twenty-fifth (25<sup>th</sup>) day of the calendar month.~~

~~5.2.6~~ 5.2.5 Subject to paragraph 5.3.1.5, the Contractor agrees that any Proper Invoice which is not submitted ~~by~~on the twenty-fifth (25<sup>th</sup>) day of the calendar month, as required pursuant to paragraph 5.2.3.3, shall be the basis for the issuance of a notice of non-payment by the Owner in accordance with the *Construction Act*.

## **GC 5.3 PAYMENT**

.1 Revise the heading, “GC 5.3 - PAYMENT” to read, “GC 5.3 - PROCESS AND TIMING FOR PAYMENT FOLLOWING *OWNER’S RECEIPT OF PROPER INVOICE*”.

.2 Delete paragraph 5.3.1 and substitute new paragraph 5.3.1:

5.3.1 After receipt of a *Proper Invoice* submitted by the *Contractor* in accordance with GC 5.2 - REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES:

.1 The *Consultant* shall review the *Proper Invoice* and issue to the *Owner*, no later than five (5) calendar days after the *Consultant’s* receipt of the *Proper Invoice*, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due following its review of such *Proper Invoice*. The issuance by the *Consultant* to the *Owner* of such certificate for payment is solely for the *Owner’s* internal purposes and the *Owner’s* receipt or approval of such certificate shall not be a condition of the giving or payment of the *Proper Invoice* in respect of which such certificate has been issued.

.2 In the event that all or a portion of the *Proper Invoice* is disputed, the *Owner* shall issue a notice of non-payment of such portion of the *Proper Invoice*, in accordance with the *Construction Act*. After the *Owner* and the *Consultant* have reviewed the *Proper Invoice*, the *Contractor* shall amend it and submit to both the *Owner* and the *Consultant*, a revised *Proper Invoice* for the non-disputed portion of the *Proper Invoice* within two (2) *Working Days* following receipt of the *Owner’s* notice of non-payment, incorporating all of the information set out in the original *Proper Invoice* applicable to the non-disputed portion thereof. For clarity, the form and date of the *Proper Invoice* cannot change despite such a revision.



- .3 Subject to the provisions of the *Construction Act*, payment shall be made by the *Owner* to the *Contractor* of the amount outlined in the *Proper Invoice* within twenty-eight (28) calendar days of the *Owner's* receipt of the *Proper Invoice*, unless within fourteen (14) calendar days of the *Owner's* receipt of the *Proper Invoice*, the *Owner* issues a notice of non-payment to the *Contractor* in accordance with the *Construction Act*. If a notice of non-payment is issued by the *Owner*, the *Owner* shall pay the *Contractor* the undisputed portion of the *Proper Invoice* within twenty-eight (28) calendar days after receiving the *Proper Invoice*. ~~For clarity, if~~ if the *Contractor* fails to submit a *Proper Invoice* to the *Owner* which is in compliance with the requirements of the *Contract* (including, without limitation, ~~GC 5.2— REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES~~ paragraph 5.2.1), the *Owner* shall ~~not be required to make payment to the Contractor until such time as the Owner has received from the Contractor a Proper Invoice in compliance with the requirements of the Contract (including, without limitation, GC 5.2— REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES).~~ in accordance with Section 6.1(2) of the *Construction Act*, notify the Contractor in writing of the deficiency and of what is required to address it within seven (7) calendar days of the *Owner's* receipt of the *Proper Invoice*.
- .4 On receipt of payment or a notice of non-payment from the *Owner*, the *Contractor* shall comply with the *Construction Act* and either cause payment to be made to applicable *Contractor Parties* promptly when due in accordance with the *Construction Act* or issue notices of non-payment in accordance with the timelines and requirements of the *Construction Act*. Additionally, the *Contractor* shall take all necessary steps to ensure that *Subcontractors* and *Suppliers* comply with the payment requirements of the *Construction Act*.
- .5 On receipt of a notice given by the *Owner* pursuant to and in accordance with Section 6.1(2) of the *Construction Act*, the *Contractor* shall address the deficiencies described therein and, within two (2) Working Days, submit the revised *Proper Invoice* in accordance with paragraph 5.2.3.3. In the event that the *Proper Invoice* submitted pursuant to this paragraph is not submitted on the twenty-fifth (25<sup>th</sup>) day of the calendar month, as required pursuant to paragraph 5.2.3.3, such non-submission of the *Proper Invoice* on the twenty-fifth (25<sup>th</sup>) day of the calendar month will not constitute a basis for the issuance of a notice of non-payment by the *Owner* in accordance with paragraph 5.2.5. Except as



expressly stated in this paragraph, the Owner retains its rights to issue a notice of non-payment in accordance with the *Construction Act*.

**GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF ~~HOLDBACK~~HOLDBACKS**

- .1 Delete paragraphs 5.4.2, 5.4.3, 5.4.4, 5.4.5 and 5.4.6 in their entirety and substitute new paragraphs 5.4.2, 5.4.3, 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8, 5.4.9, 5.4.10, 5.4.11, 5.4.12 ~~and~~, 5.4.13, 5.4.14, 5.4.15, 5.4.16, 5.4.17, 5.4.18, 5.4.19, 5.4.20, 5.4.21, 5.4.22, 5.4.23, 5.4.24, 5.4.25, 5.4.26, and 5.4.27:
  - 5.4.2 Intentionally Left Blank.
  - 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 agree on, and prepare a list of, deficiencies in the Work and establish reasonable dates for finishing the Work and correcting the deficiencies on such list.
  - 5.4.4 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* issued by the *Consultant*, the *Contractor* shall publish a copy of the certificate ~~in~~on a construction trade ~~newspaper~~news website (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~~news website on 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 If the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided such missing documents and materials are not required for *Substantial Performance of the Work* to be achieved, 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 paragraphs 5.4.5.7 or 5.4.5.8, and provided such materials are not required for *Substantial Performance of the Work* to be achieved, the *Owner* may retain from the ~~payment of holdback under paragraph 5.4.12,~~remaining payments to the Contractor the amount set out in paragraph 5.4.7, until the materials required pursuant to paragraphs 5.4.5.7 or 5.4.5.8 are delivered, ~~provided the Owner, within 40 calendar days after publication of the applicable certificate 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 *Owner* as contemplated in paragraphs 5.2.4, 5.4.6 and 5.4.9 is:

- .1 where the *Contract Price* is less than, or equal to, \$100,000 the amount to be retained is \$5,000;
- .2 where the *Contract Price* is greater than \$100,000 but less than, or equal to, \$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, or equal to, \$5,000,000, the amount to be retained is the greater of \$25,000 or 3% of the *Contract Price*; and
- .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.

- 5.4.8 Should the *As-Built Drawings* not be delivered in accordance with paragraph 5.2.4 by the earlier of 30 days following the date of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.6.1 of GC 5.6 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.4 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. For clarity, the forfeiture of such amount shall be without prejudice to any other right or remedy available to the *Owner* for the failure of the *Contractor* to deliver such documents or materials.
- 5.4.9 Subject to the *Construction Act*, should any documents or materials not be delivered in accordance with paragraph 5.4.5 by the earlier of 30 days following the date of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.6.1 of GC 5.6 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.4.7 shall be ~~forfeit~~forfeited 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. For clarity, the forfeiture of such amount shall be without prejudice to any other right or remedy available to the *Owner* for the failure of the *Contractor* to deliver such documents or materials.
- 5.4.10 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*.

5.4.11 No partial occupancy or use of the *Work* by the *Owner* will be construed as or constitute *Substantial Performance of the Work* or completion of the *Work* under this *Contract*.

5.4.12 The *Contractor* shall submit ~~ana draft~~ application for payment to the *Owner* of the lien holdback amount ~~in the form of the *Proper Invoice* in accordance with the *Contract* (including, without limitation, paragraphs 5.2.3.3.1 to 5.2.3.3.3 (inclusive) and GC 5.3 — PROCESS AND TIMING FOR PAYMENT FOLLOWING OWNER’S RECEIPT OF PROPER INVOICE) not earlier than twenty eight days before the *Earliest Payment Date*. The *Proper Invoice* for the lien holdback amount~~ that has accrued during each applicable *Contract Year* ending prior to *Substantial Performance of the Work* not later than the date that is five (5) *Working Days* after the end of such *Contract Year* (the “**Draft Annual Holdback Payment Application**”). The *Draft Annual Holdback Payment Application* shall include all of the following:

.1 a representation and warranty from the *Contractor* that, as of the ~~date of such *Proper Invoice*~~ end of the last day of the applicable *Contract Year*, the only *Adjudications* in respect of disputes as described in paragraph 8.3.9 are *Adjudications* which the *Contractor* has provided notice in writing to the *Owner* in accordance with paragraph 8.3.9. ~~For clarity, if the *Contractor* fails to submit a *Proper Invoice* to the *Owner* which is in compliance with the requirements of the *Contract* (including, without limitation, GC 5.2 — REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES), the *Owner* shall not be required to make payment to the *Contractor*, until such time as the *Owner* has received from the *Contractor* a *Proper Invoice* in compliance with the requirements of the~~

~~Contract, including, without limitation, GC 5.2 – REQUIREMENTS OF A PROPER INVOICE, PROCESS AND TIMING FOR ISSUANCE OF PROPER INVOICES. All holdback amounts shall be due and payable forthwith following the expiry of the holdback period specified in the Construction Act for the retention of holdback funds following Substantial Performance of the Work (which for certainty shall not be less than 10 Working Days following expiration of the holdback period stipulated in the Construction Act), 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.;~~

~~For clarity, the lien holdback amount in the applications for payment submitted by the Contractor, and paid by the Owner, pursuant to this paragraph 5.4.12 is less the total Annual Holdback Payment Amount paid pursuant to paragraph 5.4.13.~~

.2 evidence substantiating the Annual Holdback Payment Amount, including all payment certificates issued by the Consultant during the applicable Contract Year and any other evidence requested by the Owner, acting reasonably. For purposes of the Draft Annual Holdback Payment Application only, in respect of the portion of the Annual Holdback Payment Amount attributable to any part of the Contract Year that is not yet the subject of a Proper Invoice delivered under paragraph 5.2.3, such amount, and substantiating evidence related thereto, shall be based on an estimated amount proposed to constitute the basis of the Contractor's Proper Invoice(s) for such parts of the Contract Year based on a schedule of values delivered with the Draft Annual Holdback Payment Application. For greater certainty, the Contractor's obligation to deliver this schedule of values is in addition to and not in lieu of the Contractor's obligations under GC 5.2 – APPLICATIONS FOR PAYMENT. The Contractor's Proper Invoices issued in respect of the applicable Contract Year, as may be reduced by notices of non-payment or otherwise revised, shall determine the Annual Holdback Payment Amount;

**5.4.13** ~~Delete paragraph 5.4.13 in its entirety and replace with the following:~~

.3 a statutory declaration in the most current form of CCDC 9A signed by the Contractor; and

~~- Annual release of holdback-~~

.4 a statutory declaration in the most current form of CCDC 9B signed by each applicable Subcontractor or Supplier.

5.4.13 Within ten (10) days of receiving the *Draft Annual Holdback Payment Application*, *Owner* shall review such deliverables and provide *Notice in Writing* to Contractor either:

- .1 confirming the deliverables required by paragraph 5.4.12 have been delivered, or
- .2 identifying any errors or omissions in the deliverables required pursuant to paragraph 5.4.12.

5.4.14 If *Owner* delivers a *Notice in Writing* to Contractor pursuant to 5.4.13.2 identifying any errors or omissions in the deliverables required pursuant to paragraph 5.4.12, then Contractor shall, within two (2) *Working Days* following receipt of such *Notice in Writing*, provide *Owner* with any such missing or revised deliverables as may be necessary to satisfy the requirements of paragraph 5.4.12. Provided Contractor provides all deliverables necessary to satisfy the requirements of paragraph 5.4.12 in accordance with this paragraph 5.4.14, Contractor shall be deemed to have satisfied its obligations set out in paragraph 5.4.12 and *Owner* shall provide the *Notice in Writing* to Contractor set out in paragraph 5.4.13.1.

~~.1 On the later of fifteen (15) days following delivery by the Owner of the Notice in Writing to the Contractor in accordance with paragraph 5.4.13.3.1 confirming the deliverables required by Section 5.4.13.2.1 have been delivered and the sixty first (61<sup>st</sup>) day following the end of~~5.4.15 The Contractor shall submit an application for payment to the *Owner* of the lien holdback amount that has accrued during each applicable *Contract Year* ending prior to *Substantial Performance of the Work* at the same time as its submission of the *Proper Invoice* in respect of the final calendar month (or partial calendar month as the case may be) of the applicable *Contract Year*, ~~the Consultant will issue a certificate for payment of the Annual Holdback Payment Amount in accordance with paragraph 5.2.3.3 (the “Annual Holdback Payment Certificate”) in an amount equal to the accrued holdback the Owner is required to retain under subsection 22(1) of the Construction Act for the immediately preceding Contract Year in relation to the services or materials supplied during such Contract Year (the “Annual Holdback Payment Amount”).~~

Application”) and~~.2 The Owner shall, to the extent permitted by section 26.1 of the Construction Act, make payment to the Contractor on each, if applicable, a revised Annual Holdback Payment Date of the~~Application at the same time as its submission of the revised *Proper Invoice* in accordance with paragraph 5.3.1.2. The *Annual Holdback Payment Amount*, ~~provided that all of the following conditions have been satisfied:~~Application shall satisfy all requirements described in paragraph 5.4.12.

5.4.16

The Contractor shall submit an officer's certificate to the Owner signed by the Contractor on the date that is seventy-three (73) days after the date that the notice of annual release of holdback is published in accordance with Section 26 of the Construction Act certifying that:

- .1 there are no preserved or perfected liens under, or notices of liens provided pursuant to, the Construction Act in respect of the Contract or any subcontracts with Subcontractors or Suppliers; or
- .2 all liens and notices of liens in respect of the Contract, and all liens and notices of liens in respect of any of the Subcontractors or Suppliers, have been satisfied, discharged, or otherwise provided for under the Construction Act and Contractor shall provide proof of same acceptable to the Owner;

For greater certainty, if the day the Contractor is required to submit the officer's certificate is not a Working Day, the Contractor shall nevertheless submit the officer's certificate on that day.

5.4.17

The Contractor shall submit an application for payment to the Owner of the lien holdback amount withheld by the Owner during the period between the day following the last day of the final Contract Year ending prior to Substantial Performance of the Work and the occurrence of Substantial Performance of the Work not later than the date that is ten (10) days after Substantial Performance of the Work occurs (the "**Residual Holdback Payment Application**"). The Residual Holdback Payment Application shall include all of the following:

- .1 a representation and warranty from the Contractor ~~has delivered to the Owner and the Consultant, no later than fifteen (15) days after the end of the applicable Contract Year all of the following:~~ that, as of the end of the day that Substantial Performance of the Work occurs, the only Adjudications in respect of disputes as described in paragraph 8.3.9 are Adjudications which the Contractor has provided notice in writing to the Owner in accordance with paragraph 8.3.9;  
~~.1 an application to the Owner requesting the release of the Annual Holdback Payment Amount that has accrued during the applicable Contract Year together with the amount of the Annual Holdback Payment and evidence substantiating the Annual Holdback Payment Amount, including all payment certificates issued by the Consultant during the applicable Contract Year and any other evidence requested by the Owner, acting reasonably;~~



.2 evidence substantiating such lien holdback amount, including all payment certificates issued by the *Consultant* during the applicable time period and any other evidence requested by the *Owner*, acting reasonably;

.23 a statutory declaration in the most current form of CCDC 9A signed by the *Contractor*; and

.34 a statutory declaration in the most current form of CCDC 9B signed by each applicable *Subcontractor* or *Supplier*;

~~.4 an officer's certificate signed by Contractor certifying that:~~

5.4.18 Within ten (10) days of receiving the deliverables required pursuant to paragraph 5.4.17 from the *Contractor*, the *Owner* shall review such deliverables and provide *Notice in Writing* to the *Contractor* either:

.1 confirming the deliverables required by paragraph 5.4.17 have been delivered, or

.2 identifying any errors or omissions in the deliverables required pursuant to paragraph 5.4.17.

5.4.19 If *Owner* delivers a *Notice in Writing* to *Contractor* pursuant to 5.4.18.2 identifying any errors or omissions in the deliverables required pursuant to paragraph 5.4.17, then *Contractor* shall, within two (2) *Working Days* following receipt of such *Notice in Writing*, provide *Owner* with any such missing or revised deliverables as may be necessary to satisfy the requirements of paragraph 5.4.17. Provided *Contractor* provides all deliverables necessary to satisfy the requirements of paragraph 5.4.17 in accordance with this paragraph 5.4.19, *Contractor* shall be deemed to have satisfied its obligations set out in paragraph 5.4.17 and *Owner* shall provide the *Notice in Writing* to *Contractor* set out in paragraph 5.4.18.1.

5.4.20 The *Contractor* shall submit an officer's certificate to the *Owner* signed by the *Contractor* on the date that is sixty-one (61) days after a copy of the certificate or declaration of *Substantial Performance of the Work* is published in accordance with Section 32 of the *Construction Act* certifying that:

- .1 there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of the *Contract* or any subcontracts with *Subcontractors* or *Suppliers*; or
- .2 all liens and notices of liens in respect of the *Contract*, and all liens and notices of liens in respect of any of the *Subcontractors* or *Suppliers*, have been satisfied, discharged, or otherwise provided for under the



*Construction Act* and *Contractor* shall provide proof of same acceptable to the *Owner*; ~~and~~

For greater certainty, if the day the *Contractor* is required to submit the officer's certificate is not a *Working Day*, the *Contractor* shall nevertheless submit the officer's certificate on that day.

5.4.21 The *Contractor* shall submit an application for payment to the *Owner* of the lien holdback amount withheld by the *Owner* during the period between the date certified or declared to be the date of *Substantial Performance of the Work* to the earlier of the date the *Contract* is completed and the date the *Contract* is abandoned or terminated not later than the date that is ten (10) days after the earliest of the occurrence of completion, abandonment or termination, respectively, of the *Contract* (the "**Finishing Holdback Payment Application**"). The Finishing Holdback Payment Application shall include all of the following:

.1 a representation and warranty from the *Contractor* that, as of the end of the day that the earliest of completion, abandonment or termination, respectively, of the *Contract* occurs, the only *Adjudications* in respect of disputes as described in paragraph 8.3.9 are *Adjudications* which the *Contractor* has provided notice in writing to the *Owner* in accordance with paragraph 8.3.9;

~~.3 as of the *Annual Holdback Payment Date*: (A) there are no preserved or perfected liens in respect of the *Contract*, or (B) all liens in respect of the *Contract* have been satisfied, discharged or otherwise provided for under the *Construction Act*.~~

.2 evidence substantiating such lien holdback amount, including all payment certificates issued by the *Consultant* during the applicable time period and any other evidence requested by the *Owner*, acting reasonably;

.3 a statutory declaration in the most current form of CCDC 9A signed by the *Contractor*;

.4 a statutory declaration in the most current form of CCDC 9B signed by each applicable *Subcontractor* or *Supplier*; and

.5 a final Workplace Safety and Insurance Board (WSIB) Clearance Certificate.

~~.3~~ 5.4.22 Within ~~fifteen~~ten (1510) days of receiving the deliverables required pursuant to paragraph ~~5.4.13.2.1~~5.4.21 from the *Contractor*, the *Owner* shall review such deliverables and provide *Notice in Writing* to the *Contractor* either:

.1 confirming the deliverables required by paragraph ~~5.4.13.2.1~~5.4.21 have been delivered, or

.2 identifying any errors or omissions in the deliverables required pursuant to paragraph ~~5.4.13.2.1~~5.4.21.

~~4~~5.4.23 If *Owner* delivers a *Notice in Writing* to *Contractor* pursuant to ~~5.4.13.3.2~~5.4.22.2 identifying any errors or omissions in the deliverables required pursuant to paragraph ~~5.4.13.2.1~~5.4.21, then *Contractor* shall, within ~~15 days~~two (2) Working Days following receipt of such *Notice in Writing*, provide *Owner* with any such missing or revised deliverables as may be necessary to satisfy the requirements of paragraph ~~5.4.13.2.1~~5.4.21. Provided *Contractor* provides all deliverables necessary to satisfy the requirements of paragraph ~~5.4.13.2.1~~5.4.21 in accordance with this paragraph ~~5.4.13.4~~5.4.23, *Contractor* shall be deemed to have satisfied ~~the condition~~its obligations set out in paragraph ~~5.4.13.2.1~~5.4.21 and *Owner* shall provide the *Notice in Writing* to *Contractor* set out in paragraph ~~5.4.13.3.1~~5.4.22.1.

5.4.24 The *Contractor* shall submit an officer's certificate to the *Owner* signed by the *Contractor* on the date that is sixty-one (61) days after the earlier of the date the *Contract* is completed and the date the *Contract* is abandoned or terminated, respectively, certifying that:

- .1 there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of the *Contract* or any subcontracts with *Subcontractors* or *Suppliers*; or
- .2 all liens and notices of liens in respect of the *Contract*, and all liens and notices of liens in respect of any of the *Subcontractors* or *Suppliers*, have been satisfied, discharged, or otherwise provided for under the *Construction Act* and *Contractor* shall provide proof of same acceptable to the *Owner*;

For greater certainty, if the day the *Contractor* is required to submit the officer's certificate is not a *Working Day*, the *Contractor* shall nevertheless submit the officer's certificate on that day.

5.4.25 If the *Contractor* fails to deliver any of the materials required in paragraphs 5.4.12, 5.4.15, 5.4.16, 5.4.17, 5.4.20, 5.4.21, or 5.4.24, or, if applicable, paragraphs 5.4.14, 5.4.19 and 5.4.23, in accordance with the timelines specified therein, then the *Contractor* shall indemnify and hold harmless the *Indemnitees* from and against all *Claims* and *Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees* arising out of or are attributable to the *Contractor's* failure to deliver the required materials. Without limiting the *Contractor's* obligation to indemnify the *Indemnities* under this paragraph

or otherwise under the *Contract*, the *Owner* may set off and deduct from any remaining payments owing to the *Contractor* the amount of all *Claims* and *Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees* arising out of or are attributable to the *Contractor*'s failure to deliver the required materials.

5.4.26      The *Contractor* acknowledges that the *Owner* will not make any payments  
~~.5      The *Contractor* acknowledges that, except for any *Annual Holdback Payment Amount* paid in accordance with this paragraph 5.4.13, the *Owner* will not make any payments~~ pursuant to ~~sections~~Section 25,  
~~26.1 or 26.2~~ of the *Construction Act* of any amount of the lien holdback, notwithstanding that the same may be permitted under the *Construction Act*, and that the *Owner* will only make payment of lien holdback in accordance with GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACKS.

~~6.5.4.27~~      Notwithstanding any ~~progressive~~ release of the holdback, the *Contractor* shall ensure that such parts of the *Work* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when the holdback was released.

## GC 5.5      INTENTIONALLY LEFT BLANK

## GC 5.6      FINAL PAYMENT

.1      Renumber GC 5.6 – DEFERRED WORK and GC 5.7 – NON-CONFORMING WORK as GC 5.7 – DEFERRED WORK and GC 5.8 – NON-CONFORMING WORK, respectively, and add new GC 5.6 – FINAL PAYMENT:

5.6.1      The *Contractor* shall deliver a *Notice in Writing* to the *Owner* and the *Consultant* specifying the date on which the *Contractor* anticipates that *End of the Work* will be achieved (the “**Anticipated End of the Work Date**”). Such *Notice in Writing* shall be delivered not less than 60 days prior to the *Anticipated End of the Work Date*. If the *Contractor* fails to deliver such *Notice in Writing* not less than 60 days prior to the *Scheduled End of the Work Date*, the *Anticipated End of the Work Date* shall be deemed to be the same date as the *Scheduled End of the Work Date*.

5.6.2      When the *Contractor* considers that the *End of the Work* is attained, the *Contractor* shall submit an application for final payment in the form of a *Proper Invoice*. The *Contractor*'s application for final payment in the form of a *Proper Invoice* shall be accompanied by:

- .1 any documents or materials not yet delivered pursuant to paragraph 5.4.5;
- .2 a description, in reasonable detail, demonstrating that the requirements for the *End of the Work* have been met, including the completion and rectification of all known defective work and deficiencies in the *Work*, including the deficiencies set out in the list referenced in paragraph 5.4.3;
- .3 the documents referenced in paragraphs 5.2.3.3.1 to 5.2.3.3.3 (inclusive);

and the delivery of such documents and materials shall constitute a requirement of the *Proper Invoice* for the final payment under this *Contract*. For clarity, the *Proper Invoice* shall otherwise comply with the other requirements of the *Contract*. The *Work* shall be deemed not to be completed until all of the aforementioned documents have been delivered.

5.6.3 The *Consultant* shall, no later than ~~10~~5 *Working Days* after the receipt of ~~an application~~the *Proper Invoice* from the *Contractor* for final payment, review the *Work* to verify the validity of the application and when the *Consultant* determines that the *Contractor's* application for final payment is valid, the *Consultant* shall promptly issue a final certificate for payment to the *Owner*, with a copy to the *Contractor*.

5.6.4 If the *Consultant* rejects the ~~application~~*Proper Invoice* or part thereof, the *Owner* shall promptly issue a written notice to the *Contractor* giving reasons for the revision or rejection, such written notice to be in compliance with *Payment Legislation*.

5.6.5 Subject to any legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 *Working Days* after a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement – PAYMENT and, in any event, in compliance with *Payment Legislation*.

~~5.6.6 Prior to the release of the finishing holdback provided for under the *Construction Act* (and without limiting the generality of any provision in the *Contract*), the *Contractor* shall submit with the *Proper Invoice* related to such release:~~

- ~~.1 *Contractor's* written request for release of the finishing holdback, including a declaration that no written notice of lien arising in relation to the performance of the *Work* has been received by it that has not been withdrawn by the lien claimant;~~
- ~~.2 a Statutory Declaration CCDC 9A-2018; and~~
- ~~.3 a final Workplace Safety & Insurance Board Clearance Certificate.~~

## **GC 5.7 DEFERRED WORK**

- .1 Delete from the first line of paragraph 5.7.1 the words “If because of climatic or other conditions reasonably beyond the control of the Contractor, or”.

## **GC 6.1 OWNER’S RIGHT TO MAKE CHANGES**

- .1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph: “Without limiting paragraph 6.5.4 or any other releases or waivers by the *Contractor*, in the event that the *Contractor* has not complied with Part 6 – CHANGES IN THE WORK in connection with a compensable claim by the *Contractor* for a change in the *Contract Price*, *Contract Time* and/or the *Contract*, any prejudice to the *Owner* resulting from such non-compliance shall be taken into account in determining the *Contractor’s* entitlement in respect of such claim.”
- .2 Add new paragraphs 6.1.3 and 6.1.4 as follows:

6.1.3 If any change in the *Work* results in either a deletion of a part of the *Work* or the removal of a part of the *Work* in circumstances where the *Owner* determines, in its sole and absolute discretion, that the removed scope should be performed by the *Owner’s* own forces or by *Other Contractors*, the *Contractor* shall not be entitled to any compensation for loss of profit on the deleted or removed scope or other consequential loss as a result of the deletion or removal.

6.1.4 Where the *Contractor* is required to perform changed or additional *Work*, resulting in an adjustment to the *Contract Price*, and provided that the parties do not agree to value the changed or additional work on a lump sum basis, the adjustment in the *Contract Price* for a change carried out by either a *Change Directive* or a *Change Order* shall be determined on the basis of the cost of the *Contractor’s* actual, net direct expenditures and savings attributable to the *Change Directive* or *Change Order*, as the case may be, valued in accordance with paragraph 6.3.7 and as follows:

- .1 If the change results in a net increase in the *Contractor’s* cost, the *Contract Price* shall be increased by the amount of the actual, net increase in the *Contractor’s* cost, plus the *Contractor’s* percentage fee for overhead and profit on such actual, net increase.
- .2 If the change results in a net decrease in the *Contractor’s* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor’s* cost, with a corresponding reduction to the *Contractor’s* profit on such net decrease.
- .3 When both additions and deletions covering related work or substitutions are involved in a change to the *Work*, the change in the *Contract Price* shall be calculated on the basis of the net difference, if any, between (i) the net increase in the *Contractor’s*

cost resulting from additions involved in the change to the *Work*, and (ii) the net decrease in the *Contractor's* cost resulting from deletions involved in the change to the *Work*, plus, if the net difference results in an increase in the *Contractor's* cost, the *Contractor's* percentage fee for overhead and profit on such net increase.

- .4 The *Contractor's* percentage fee for overhead and profit, including any changes in the *Work* performed by *Contractor Parties* shall be:
  - .1 for changes in the *Work* having a value of less than, or equal to, \$50,000, 15% for *Work* performed by the *Contractor's* own forces, and 10% for *Work* performed by *Contractor Parties* (other than the *Contractor*), as applicable.
  - .2 for changes in the *Work* having a value of more than \$50,000, 10% for *Work* performed by the *Contractor's* own forces, and 10% for *Work* performed by *Contractor Parties* (other than the *Contractor*), as applicable.
- .5 In no event shall the maximum aggregate mark-up applied by the *Contractor Parties* at all levels of contract for overhead and profit exceed 40% of an approved change.
- .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 paragraph 11.2.3), traveling costs, salaries 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, 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 plant, tools, 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; and garbage chute, and shall be applied to both extras and credits equally.

## GC 6.2 CHANGE ORDER

.1 Delete paragraph 6.2.1 and substitute new paragraph 6.2.1:

6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly, and, in any event, not more than 10 *Working Days* following receipt of the written description of the proposed change, present to the *Consultant*, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*. The *Contractor* shall, at a minimum, provide to the *Consultant*:

- .1 an itemized breakdown of all items of material;
- .2 a breakdown of all labour hours and rates;
- .3 a quotation from each *Subcontractor* and *Supplier*, as applicable, which must be itemized and broken down in the same manner as required pursuant to this paragraph 6.2.1;
- .4 breakdown of all mark-ups/overhead;
- .5 all calculations; and
- .6 a schedule analysis supporting the proposed extension to *Contract Time*, as well as its impact on the *Baseline Schedule*, or if requested by the *Owner*, a *Time Impact Analysis*.

The *Contractor* shall not be eligible for an extension of the *Contract Time* for delays resulting from the *Contractor's* failure to provide the required information.

.2 Delete paragraph 6.2.2 in its entirety and substitute new paragraph 6.2.2:

6.2.2 The adjustment in the *Contract Price* for a change carried out by way of a *Change Order* shall be determined in accordance with paragraph 6.1.4. When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price*, the aggregate mark-up for overhead and profit and the *Contract Time*, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the *Proper Invoice*.

.3 Add new paragraph 6.2.3:

- 6.2.3            There shall be no adjustments to the *Contract Time or Contract Price* or compensation or payment of any kind whatsoever based on the aggregate quantity, scope or value of all changes in the *Work* whether resulting from *Change Orders or Change Directives*. The *Contractor* agrees that, in connection with any *Change Order or Change Directive*, it shall co-operate with the *Owner* and shall use all reasonable commercial efforts to carry out such *Change Order or Change Directive* in such a manner as to avoid incurring or to minimize any additional costs to be incurred as a result of such *Change Order or Change Directive*.

### **GC 6.3            CHANGE DIRECTIVE**

- .1            Delete paragraph 6.3.6 in its entirety and substitute new paragraph 6.3.6:

6.3.6            The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined in accordance with paragraph 6.1.4.

- .2            Delete paragraph 6.3.7.1(2) in its entirety and substitute new paragraph 6.3.7.1(2):

6.3.7.1(2)       the *Contractor's* personnel when stationed at the field office, to the extent that such personnel are engaged in carrying out the change in the *Work* attributable to the *Change Directive*, including necessary supervisory services;

- .3            Delete paragraph 6.3.7.1(3) and replace it with:

6.3.7.1(3)       intentionally left blank; and

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

6.3.7.1(4)       the *Contractor's* office personnel engaged in a technical capacity, including clerical staff engaged in processing the change in the *Work* attributable to the *Change Directive* for the time spent in the performance of the change in the *Work* attributable to the *Change Directive*.



- .5 In paragraph 6.3.7.11, delete “Owner” and substitute with “Indemnitees”.
- .6 Delete paragraphs 6.3.7.13, 6.3.7.17, 6.3.7.18 and 6.3.7.19 in their entirety and substitute each with “intentionally left blank”.
- .7 Delete paragraph 6.3.8 in its entirety and substitute new paragraph 6.3.8:
- 6.3.8 Notwithstanding any other provisions contained in the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by (i) any failure on the part of a *Contractor Party* to exercise the *Standard of Care* in the *Contractor Party’s* attention to the *Work* or (ii) any breach by the *Contractor* of its obligations under the *Contract Documents*. Any cost due to (i) any failure on the part of a *Contractor Party* to exercise the *Standard of Care* in the *Contractor Party’s* performance of the *Work* attributable to the *Change Directive* or (ii) any breach by the *Contractor* of its obligations under the *Contract Documents* attributable to the *Change Directive* shall, in each case, be borne by the *Contractor*.

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- .1 Delete paragraph 6.4.4 and substitute new paragraph 6.4.4:
- 6.4.4 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the *Proposal* on which the *Contract* was awarded (whether or not the *Contractor* has actually accessed the *Place of the Work*) then the *Contractor* confirms that it investigated the *Place of the Work* in accordance with the *Standard of Care* (a “**Compliant Investigation**”). In those circumstances, notwithstanding the provisions of paragraphs 6.4.1 and 6.4.2, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions (including for certainty, conditions relating to toxic and hazardous substances and materials, artifacts and fossils) which could reasonably have been ascertained by the *Contractor* by a *Compliant Investigation* or which could have been reasonably inferred from the *Background Information* or 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 *Compliant Investigation*, because of restrictions placed on its access or because of conditions that could not reasonably have been inferred from the *Background Information* or the *Contract Documents*.

#### **GC 6.5 DELAYS**

- .1 Delete paragraph 6.5.1 in its entirety and substitute new paragraph 6.5.1:

6.5.1 If the *Contractor* is delayed in the performance of the *Work* by (i) any breach by the *Owner* of its obligations under the *Contract Documents*, other than a breach resulting from any cause beyond the *Owner's* control; (ii) any act or omission of the *Consultant*, *Other Contractors* or any person employed or engaged directly or indirectly by the *Owner* which is contrary to the provisions of the *Contract Documents*; or (iii) in respect of the *Utility Company Connection* or *Utility Relocations* pursuant to and in accordance with paragraph 3.9.2, then, subject to paragraph 6.5.6, the *Contract Time* shall be extended for such time as the delay can be demonstrated to have had an adverse impact on the ability of the *Contractor* to complete any critical path activity in accordance with the *Baseline Schedule*, in accordance with paragraph 6.5.5, and the *Contractor* shall be reimbursed by the *Owner* for reasonable, actual, direct costs necessarily incurred by the *Contractor* as a result of the delay, all subject to, and in accordance with, the provisions of paragraph 6.5.5. To the extent such actual direct costs incurred by the *Contractor* as result of such delay are comprised of the hourly rate of *Contractor Personnel*, such hourly rates shall be preapproved by the *Owner* in advance of such delay.

.2 Delete paragraph 6.5.2 and substitute new paragraph 6.5.2:

6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of a *Contractor Party* or any person employed or engaged by a *Contractor Party* directly or indirectly, resulting in the failure of the *Contractor* to attain *Ready-for-Takeover or End of the Work*, as applicable, by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for the reasonable, actual, direct costs necessarily incurred by the *Contractor* as a result of the delay subject to, and in accordance with, the provisions of paragraphs 6.5.5 and 6.5.6. To the extent such actual direct costs incurred by the *Contractor* as result of such delay are comprised of the hourly rate of *Contractor Personnel*, such hourly rates shall be preapproved by the *Owner* in advance of such delay.

.3 Delete paragraph 6.5.3.3 and substitute new paragraph 6.5.3.3:

6.5.3.3 *Unusually Severe Adverse Weather Conditions*, provided that, for clarity, no claim for delay or extension to the *Contract Time* shall be made by the *Contractor* due to climatic conditions not determined to be classified as *Unusually Severe Adverse Weather Conditions*,

- .4 Delete paragraph 6.5.3.4, the unnumbered paragraph that follows paragraph 6.5.3.4 and substitute the following:

6.5.3.4 any cause beyond the *Contractor's* control that has a material adverse effect on the ability of the *Contractor* to perform the *Work*, other than one resulting from an act or omission of the *Contractor Parties*, or which arises from a risk allocated to the *Contractor* pursuant to this *Contract*, then 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 the 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 actions by the *Owner*, but, if applicable, excluding delays arising in relation to the *Contractor's* obligations of non-interference with *Operations* at, and with respect to, as applicable, the *Existing Facility*.

- .5 Delete paragraph 6.5.4 in its entirety and substitute new paragraph 6.5.4:

6.5.4 No extension shall be made for delay, and no compensation paid in respect of any compensable delay, unless *Notice in Writing* of the delay or anticipated delay and the purported cause of the delay is given to the *Consultant* no later than ten (10) *Working Days* after the commencement of the delay.

- .6 Delete paragraph 6.5.5 in its entirety and substitute new paragraph 6.5.5:

6.5.5 The *Contractor* shall not be entitled to any extension of *Contract Time* or to any compensation in respect of any delay referred to in paragraph 6.5.1 or paragraph 6.5.2, or to any extension of *Contract Time* or to any compensation in respect of any delay referred to in paragraph 6.5.3, unless the *Contractor* is able to demonstrate that:

- .1 the *Contractor* has taken all reasonable steps required to mitigate the effect of the delay; and
- .2 the delay has an adverse impact on the ability of the *Contractor* to complete any critical path activity in accordance with the *Baseline Schedule*, in accordance with paragraph 6.5.7.

In such case, the *Contract Time* will be extended for such reasonable period which, by reference to the critical path on the *Baseline Schedule*, demonstrates the time lost as a result of such impact and, where the provisions of paragraph 6.5.1, paragraph 6.5.2 and paragraph 6.5.3 apply, the *Contractor* shall only be compensated for reasonable actual direct costs necessarily incurred by the *Contractor* as a result of such impact

including those incurred to reasonably mitigate the effect of the delay (and in no event for indirect, special or consequential damages or costs). To the extent such actual direct costs incurred by the *Contractor* as result of such delay are comprised of the hourly rate of *Contractor Personnel*, such hourly rates shall be preapproved by the *Owner* in advance of such delay.

.7 Add new paragraphs as follows:

6.5.6 Notwithstanding anything herein, where there are *Concurrent Delays*, some of which are caused by the *Owner* or others for whom the *Owner* is responsible, and some of which are caused by the *Contractor* or others for whom the *Contractor* is responsible, the *Contractor* shall not be entitled to any extension of the *Contract Time* or additional compensation to the extent of the *Concurrent Delays*.

6.5.7 The first notification of a *Delay Event* must be followed up with a detailed *Time Impact Analysis*, including, without limitation, all supporting documentation (collectively, the “*TIA*”) within ten (10) *Working Days* (first deadline for the *TIA*). The *TIA* shall clearly demonstrate how the *Delay Event* has impacted the *Contract* deliverables and the performance of the *Work*. Should the delay remain ongoing, the *Contractor* shall update the *TIA* every twenty (20) *Working Days* or at such other interval that the *Owner* may reasonably direct.

6.5.8 Should the *Contractor* need more than ten (10) *Working Days* to prepare the *TIA*, it shall submit a request to the *Owner* in writing for an extension of the deadline. However, the maximum allowable extension shall not be more than ten (10) *Working Days* after the initial deadline. For greater certainty, in no event shall the *TIA* be submitted more than twenty (20) *Working Days* from the date of the first notification. The *Owner* shall reject requests for additional deadline extensions to submit the *TIA*.

6.5.9 The *TIA* shall include:

- .1 a narrative briefly and precisely explaining:
  - .1 details of the contemporary records which the *Contractor* shall thereafter maintain to substantiate its claim for an extension of the *Contract Time*;
  - .2 the sequence of events with the exact time of occurrence;
  - .3 details of the consequences (whether direct or indirect, financial or non-financial) which such event may have upon the *Substantial Performance of the Work*, *Ready-for-Takeover* or upon the *End of the Work*, including a critical path analysis of the event or circumstances

indicating the impact upon the *Substantial Performance of the Work, Ready-for-Takeover* or the *End of the Work*, as applicable, if such event or circumstance were to become a *Delay Event*;

- .4 the possible impact of such events, referencing the impacted activity/activities in the *Baseline Schedule* and the extent of their impact. This may be in the form of a spreadsheet and shall include a proposed revised *Baseline Schedule* that reflects such impact;
  - .5 a description of any additional constraints if any;
  - .6 proposed (partial/full) resolution or mitigation measures, if any. If such measures are proposed, the estimated additional cost required shall also be indicated; and
  - .7 the conclusion of the narrative shall include the likely total delay impact after accounting for any mitigation proposals;
- .2 any proposed alterations to the *Baseline Schedule* which demonstrate and account for the impact of the event claimed as a *Delay Event* in the claim notice. For clarity, such proposed alterations to the *Baseline Schedule* shall be limited to impacts of such *Delay Event* and shall be identified as an activity and appropriately linked it to its impacted successors (activities already in the *Baseline Schedule*). For easy identification, the activity/activities representing the *Delay Event* shall have the prefix “Delay Event:” in their activity names; and
- .3 sufficient documentary evidence to support the loss of time claim and related claim for any compensation.

Within twenty (20) *Working Days* from the date on which the *Owner* receives a *TIA* that complies with the requirements of paragraphs 6.5.7 and 6.5.9, the *Owner* shall review the applicable *TIA*, provided that the *Owner* may, in its sole discretion, extend the timeline for such review by up to an additional ten (10) *Working Days*. If the *Owner* accepts the *TIA* (or an amended version thereof that incorporates the *Owner's* comments), the parties shall enter into a *Change Order* in respect of such *TIA*. For clarity, such *Change Order* shall include any agreed updates to the *Baseline Schedule* that have been prepared by the *Contractor* in accordance with paragraph 3.4.3.2.1.

For clarity, the *Owner* may, at its sole and absolute discretion, reject without review any *TIA* that are incomplete, late or do not comply with the requirements of paragraph 6.5.7 to paragraph 6.5.9.

- 6.5.10 Upon issuance of a *Change Order* that provides for an extension of the *Contract Time*, the *Contractor* shall revise the *Baseline Schedule* as specified in paragraph 3.4.3.
- 6.5.11 During any suspension of the *Work* or any construction or building operations, for whatever reason, the *Contractor* shall maintain adequate surveillance of the *Work* and undertake such maintenance and protection of the *Work* as may be necessary to maintain health and safety and, when possible, to protect *Products*, materials, plant and equipment already installed in the *Work* or delivered to the *Place of the Work*. The *Contractor* shall be responsible for the security, care, maintenance and protection of the *Work* in the event of any such shut down or interruption in the performance of the *Work*.
- 6.5.12 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of a *Contractor Party* or anyone for whom a *Contractor Party* is responsible, the *Contractor* shall be responsible for preparing, and implementing, a *Recovery Plan*, at its own cost and risk, to recover and prevent lost time in accordance with paragraph 3.4.2 of GC 3.4 – CONSTRUCTION SCHEDULE.
- 6.5.13 The *Owner* and the *Contractor* acknowledge and agree that any delay or failure of the *Contractor* to perform its obligations under this *Contract* to the extent such delay or failure was caused, directly or indirectly, by an outbreak of a disease or pandemic/epidemic, including but not limited to, the 2019 novel coronavirus disease and pandemic or any other future pandemics/epidemics (collectively, “**Pandemic/Epidemic**”), shall be determined in accordance with the following principles:
- .1 The term “**Pandemic/Epidemic Change in Law**” means any change in applicable laws that:
    - .1 came into effect after the date of this *Contract*;
    - .2 is directly the result of and is directly related to the occurrence, control, spread or ending of a *Pandemic/Epidemic*; and
    - .3 directly affects (i) the performance of the *Work*, or (ii) the *Contract Price*.

For the purposes of this *Contract*, this definition shall include any new applicable law or any amendment or other modification to or

repeal or replacement of any applicable law that satisfies the foregoing requirements of subsections .1 to .3 (inclusive) and “applicable law” shall include all ordinances, rules, regulations, codes and guidelines of any public authority having jurisdiction (including but not limited to the Ontario Ministry of Labour, Immigration, Training and Skills Development and Chief Medical Officer of Health) as well as any guidelines or policies promulgated by the World Health Organization and/or the Ontario Public Service (collectively, “**Pandemic/Epidemic Rules**”).

- .2 With respect to the impact of a *Pandemic/Epidemic*, the *Contractor* shall assume the known conditions of such *Pandemic/Epidemic* (including all *Pandemic/Epidemic Rules* in force) at the *Execution Date* during the performance of the *Work*. The *Owner* and the *Contractor* agree that any delay or failure of either party to perform its obligations under this *Contract* to the extent such delay or failure was caused, directly or indirectly, by the known conditions of such *Pandemic/Epidemic* (including all *Pandemic/Epidemic Rules* in force at the *Execution Date*), including, but not limited to, the financial inability to perform, will not excuse performance by such party under this *Contract* or constitute a cause of delay in the performance of the *Work* under this *Contract*.
- .3 Subject to a stop work order in accordance with paragraph 6.5.13.5, relief shall be provided to the *Contractor* for delays in the performance of the *Work* which arise as a result of a *Pandemic/Epidemic Change in Law* and imposes more onerous requirements than the *Pandemic/Epidemic Rules* in force at the *Execution Date*. Such relief shall be provided in accordance with paragraph 6.5.3. There will be no unjust enrichment from a *Pandemic/Epidemic Change in Law*.
- .4 The *Contractor* shall prepare and submit a plan (the “**Pandemic/Epidemic Response and Mitigation Plan**”) prior to the *Execution Date*, (which *Pandemic/Epidemic Response and Mitigation Plan* shall be incorporated by reference into and shall become a part of this *Contract*) outlining how it will prepare for and respond to any potential or actual pandemic or epidemic that may affect the *Work*, including a subsequent outbreak of such *Pandemic/Epidemic*. The *Pandemic/Epidemic Response and Mitigation Plan* (and all updates thereto) shall:
  - .1 demonstrate how potential impacts will be reduced if risks of future pandemics materialize;

- .2 set out the activities and reporting to the *Owner* that the *Contractor* will implement as part of the *Work* to prepare for and respond to any potential or actual pandemic or epidemic that may affect the *Work* (including a subsequent outbreak of an existing *Pandemic/Epidemic*), including the detailed steps that the *Contractor Parties* will undertake to prepare for and respond to any potential future pandemic or epidemic that could occur and affect the *Work*, including a subsequent outbreak of an existing *Pandemic/Epidemic*; and
- .3 be subject to review and comment by the *Owner*.

In the event that, at any time prior to *Ready-For-Takeover*, a *Pandemic/Epidemic* (including a subsequent outbreak of an existing *Pandemic/Epidemic*) is reasonably foreseeable and likely to occur and affect the *Work* or otherwise occurs and affects the *Work*, the *Contractor* shall, at its cost, promptly (at the request of the *Owner* or on its own volition) update the *Pandemic/Epidemic Response and Mitigation Plan* on a monthly basis and submit each such update to the *Owner* until such time as the *Owner* agrees, acting reasonably, that either the *Pandemic/Epidemic* will not occur and affect the *Work* or such *Pandemic/Epidemic* has ended, no longer affects the *Work* and no further updates to such plan are required. Following the review by the *Owner* of each updated *Pandemic/Epidemic Response and Mitigation Plan*, the *Contractor* shall implement such plan in accordance with its terms.

- .5 If pursuant to paragraph 6.5.2, a stop work order is issued by a court or other public authority as a result of a *Pandemic/Epidemic*, the *Contractor* shall be entitled to relief pursuant to paragraph 6.5.2.
- .6 Notwithstanding anything to the contrary in this GC 6.5 - DELAYS or paragraph 10.2.7 of GC 10.2 – LAWS, NOTICES, PERMITS AND FEES, the *Owner* and the *Contractor* acknowledge and agree that (other than supply chain impact) if a *Pandemic/Epidemic Change in Law* occurs that:
  - .1 imposes more onerous requirements than the *Pandemic/Epidemic Rules* in force at the *Execution Date*,
  - .2 results in an incremental increase in the cost of the *Work*, and



- .3 the *Contractor* is not otherwise entitled to be reimbursed for such costs pursuant to this *Contract*,

then the *Contractor* may submit a claim for such increase in the cost of the *Work* in accordance with the requirement of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE. Except as expressly provided in GC 6.5 - DELAYS, the *Contractor* shall not be entitled to a change in the *Contract Time* for a *Pandemic/Epidemic Change in Law*.

**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 7.1.1 in its entirety and substitute new paragraph 7.1.1:

7.1.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency or there is any material adverse change in the *Contractor's* financial ability to fulfil the *Contractor's* obligations under the *Contract* or the *Contractor* fails to provide the *Owner* with, or implement, a *Recovery Plan* in compliance with paragraph 3.4.2, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Contractor's* right to continue with the *Work* or terminate the *Contract*, by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

- .3 Amend paragraph 7.1.5 by adding “or terminates the *Contract*” after “right to continue with the *Work*” and by deleting the language “paragraphs 7.1.1 and 7.1.4” in its entirety and replacing it with the language “paragraphs 7.1.1, 7.1.4 and 7.1.13.

- .4 Delete paragraph 7.1.6 in its entirety and substitute 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 the event of termination of the *Contract* pursuant to this paragraph 7.1.6, the *Contractor* shall only be entitled to be paid for the following, without duplication:

- .1 that portion of the *Contract Price* relating to the *Work* performed prior to the effective date of termination; plus
- .2 the following costs actually incurred by the *Contractor* as a direct result of the termination, to the extent such costs are reasonable and substantiated:
  - (A) demobilization costs; plus
  - (B) costs for termination of the subcontracts between the *Contractor* and the *Subcontractor* and the *Supplier* (excluding any penalty, break fee or early termination fee paid or payable),

and the *Contractor* shall not be entitled to any other compensation or payment.

For clarity, the amount payable pursuant to this paragraph 7.1.6 does not include any amounts paid or properly withheld by the *Owner* on account of the *Contract Price* prior to the termination date and no profit is payable on the costs referenced in paragraph 7.1.6.2. Notwithstanding any other provision of the *Contract*, *Owner* shall not be liable for any loss of profit in respect of the unperformed portions of the *Work*, loss of revenue, loss of opportunity and special, indirect, or consequential damage arising from termination of the *Contract* pursuant to paragraph 7.1.6.

- 7.1.7 The *Owner* may suspend *Work* under this *Contract* at any time for any reason or no reason and without cause upon giving the *Contractor Notice in Writing* to that effect. In such event, and provided that the suspension was not the result of the negligent act or omission of the *Contractor Parties* or the default or breach of the *Contractor's* obligations under the *Contract*, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of suspension and be compensated for all reasonable, actual, direct costs necessarily incurred arising from the suspension, plus reasonable profit on such costs, 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 or costs. 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 GC 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 GC 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 GC 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 GC 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 GC 14.9 discloses a security problem that is not resolved by the *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 the *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) the *Contractor's* ability to provide the *Work* in accordance with the *Contract*;
  - (ii) the safety of the *Owner's* directors, officers, appointees, employees, agents or consultants, as well as the *Contractor'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 any

*Subcontractor's* directors, officers, employees, agents, consultants or sub-subcontractors, and the public;

- (iii) the reputation of or public confidence in the *Owner*;
- (iv) the security of the *Owner's* financial assets and revenue;
- (v) the security of any real property owned, controlled or managed by the *Owner*;
- (vi) the security of any other property owned, controlled, managed or licensed by the *Owner*;
- (vii) the security, confidentiality or integrity of the *Owner's* confidential information and the integrity of any other materials held by the *Owner*.

.5 Add new paragraph 7.1.13:

7.1.13 If the Contractor breaches any of the representations and warranties set out in paragraphs [3.16.2 of GC 3.16 – DOMESTIC SUPPLY CHAIN PLAN](#) or 10.5.1 or 10.5.2 of GC 10.5 – U.S. BUSINESS, or if there is a Change in U.S. Business Status that is prohibited by GC 10.6 – CHANGE IN U.S. BUSINESS STATUS, then the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contractor's right to continue with the Work or terminate the Contract, by giving the Contractor Notice in Writing to that effect.

**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 paragraph 7.2.3.1 in its entirety.

.3 Delete paragraph 7.2.3.3 in its entirety and substitute new paragraph 7.2.3.3:

7.2.3.3 the *Owner* fails to pay the *Contractor* when due the undisputed portion of a *Proper Invoice* or

.4 Delete from paragraph 7.2.3.4, the words: “, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,”

- .5 Delete paragraph 7.2.4 in its entirety and substitute new paragraph 7.2.4:

7.2.4 “The *Contractor’s Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* until the default is corrected, provided, however, that in the event of such suspension, the provisions of paragraph 7.1.10 shall apply. If the *Contractor’s Notice in Writing* to the *Owner* was given pursuant to paragraph 7.2.3.3, then, if the *Owner* has not paid the *Contractor* the undisputed amount within 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 paragraph 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 from paragraph 8.1.2 the words “NEGOTIATION, MEDIATION AND ARBITRATION” and substitute the words “NEGOTIATION, MEDIATION, ARBITRATION AND LITIGATION”.
- .2 Delete the last sentence of paragraph 8.1.3 and substitute:

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 ADJUDICATION**

- .1 Add to the end of paragraph 8.2.1 the words “and is compliant with GC 8.3 NEGOTIATION, ADJUDICATION, ARBITRATION AND LITIGATION”.

#### **GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION**

- .1 Delete GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION and substitute new GC 8.3 NEGOTIATION, ADJUDICATION, ARBITRATION AND LITIGATION:

8.3.1 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 – ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in*

*Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.

8.3.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

8.3.3 Subject to paragraph 8.3.4, either party may refer a dispute for *Adjudication* to ~~a qualified and independent adjudicator listed by the “Authorized Nominating Authority” designated pursuant to the Construction Act, (the “an Adjudicator”)~~, provided that ~~the dispute~~:

- .1 the dispute relates to the *Work* ~~and arises prior to End of the Work;~~ and;
- .2 the dispute is a matter pursuant to which there is a statutory right to submit such matter to adjudication in accordance with and to the extent set out in the *Construction Act*; and
- .3 the notice of adjudication in respect of the dispute is given prior to the date that is 90 days after the date on which the contract is completed, abandoned or terminated.

8.3.4 The parties agree that:

- .1 neither party shall refer a dispute to *Adjudication* in respect of a claim for delay, disruption or acceleration, or any claim for:
  - .1 a *Delay Event*; or
  - .2 determination as to whether
    - (a) a party is obligated pursuant to the *Contract* to proceed with a *Change Order*; or
    - (b) any works subject to a dispute are *Work* under the *Contract* or whether the *Contractor* is entitled to a *Change Order* in respect of such works; and
- .2 they shall not refer to *Adjudication*, and do not agree to adjudicate pursuant to ~~section~~Section 13.5(1)~~7~~ of the *Construction Act*, any matter described in paragraph 8.3.4.1.

- 8.3.5 The party referring a dispute for *Adjudication* by the *Adjudicator* shall deliver to the *Adjudicator* and the other party a written notice of *Adjudication* (each a “***Notice of Adjudication***”) in accordance with the requirements of the *Construction Act*. The party delivering the *Notices of Adjudication* described in this paragraph shall, on the same day such *Notices of Adjudication* are delivered, provide a copy of the *Notice of Adjudication* in electronic format to the *Authority* in accordance with the requirements of the *Construction Act*.
- 8.3.6 The responding party may deliver to the *Adjudicator* and the other party a response to the *Notice of Adjudication*. The parties agree that the responding party shall have at least 21 days within which to deliver its response, or such further time specified by the *Adjudicator*, giving consideration to the *Notice of Adjudication*, the amount in dispute, and the principles of fairness, including ensuring that the responding party has a reasonable amount of time to review and respond to any documents the referring party intends to rely on during the *Adjudication* included in the *Notice of Adjudication*.
- 8.3.7 The parties shall consent to any request by the *Adjudicator* to extend the deadline for the *Adjudicator’s* determination in accordance with Section 13.13(2)(a) of the *Construction Act*, and shall agree to any extension reasonably requested by a party to extend the deadline for the *Adjudicator’s* determination pursuant to Section 13.13(2)(b) of the *Construction Act*.
- 8.3.8 Where neither party refers a dispute to *Adjudication* or where a dispute is referred to *Adjudication* and a party is not satisfied with the outcome of *Adjudication*, either party may ~~determine to~~ 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.
- 8.3.9 The *Contractor* shall, in respect of any dispute between a *Contractor Party* and any other *Contractor Party*:
- .1 deliver no later than five (5) *Working Days* after the provision of a *Notice of Adjudication*, a notice in writing to the *Owner* setting out the date on which such *Notice of Adjudication* was provided; and

- .2 deliver no later than five (5) *Working Days* after the receipt by the *Adjudicator* of the documents under Section 13.11 of the *Construction Act* in respect of such dispute, a notice in writing to the *Owner* setting out the date on which such *Adjudicator* received such documents.

#### **GC 8.4 RETENTION OF RIGHTS**

- .1 Delete from paragraph 8.4.2 the words “paragraph 8.3.6 of GC 8.3 - NEGOTIATION, MEDIATION AND ARBITRATION” and substitute the words “paragraph 8.3.3 of GC 8.3 - NEGOTIATION, MEDIATION, ARBITRATION AND LITIGATION”.

#### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- .1 Delete paragraph 9.1.1.1 in its entirety and substitute new paragraph 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*;
- .2 Delete paragraph 9.1.2 in its entirety and substitute 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 *Standard of Care*.
- .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 the Work* at all times prior to *Ready-for-Takeover*. The *Contractor* shall take all reasonable precautions necessary to protect the *Place of the Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours, including the provision of security guard services, as needed.



**GC 9.2            TOXIC AND HAZARDOUS SUBSTANCES**

- .1    Delete GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES and substitute new GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES:

**GC 9.2            TOXIC AND HAZARDOUS SUBSTANCES**

9.2.1            Prior to the *Contractor* commencing the *Work*, the *Owner* shall:

- .1            take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the *Place of the Work*; and
- .2            provide the *Contractor* with the *Hazardous Substance Report*, containing the *Owner's* determinations made under paragraph 9.2.1.1.

- 9.2.2 If the *Contractor* discovers at the *Place of the Work* any toxic or hazardous substances or materials, including any *Environmental Contaminant*, the *Contractor* shall immediately notify the *Owner* of the presence of such substances and materials and take all reasonable steps, including stopping all or any relevant portion of the *Work*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of such substances or materials, and, subject to paragraph 9.2.3, such circumstance shall be dealt with as a change to the *Work* in accordance with the provisions of PART 6 – CHANGES IN THE WORK.
- 9.2.3 As part of the *Work*, the *Contractor* shall be responsible for taking all necessary steps, at its own expense, in accordance with all applicable laws and regulations, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials, including any *Environmental Contaminant*, which are described in the *Contract Documents* or which could reasonably have been ascertained by the *Contractor* by its investigations in accordance with paragraph 6.4.4 or which could have been reasonably inferred from the *Contract Documents*. In those circumstances, notwithstanding the provisions of paragraph 9.2.2, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time*.
- 9.2.4 The *Contractor* shall not permit any *Person* performing any part of the *Work* to introduce to the *Place of the Work* any toxic or hazardous substances or materials, including any *Environmental Contaminant*, without the prior written consent of the *Owner*. The *Contractor* shall require all *Persons* performing any part of the *Work* involving any such substances and materials to comply with all applicable laws and regulations regarding the safe use, handling and disposal of such substances and materials. For certainty, notwithstanding paragraphs 9.2.1 and 9.2.2, the *Contractor* shall be fully responsible and liable for all consequences of any toxic or hazardous substances or materials brought onto or introduced to the *Place of the Work* by the *Contractor Parties*, whether or not consented to by the *Owner*.

9.2.5 Notwithstanding any provision to the contrary in the *Contract Documents*, the *Contractor* shall indemnify and hold harmless the *Indemnitees* from and against any and all *Claims* and *Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees*, directly or indirectly arising out of or resulting from any discharge, escape, emission, leak, deposit, dispersion, or migration into the environment (“**Release**”), or threatened *Release*, of any toxic or hazardous substances or material, including any *Environmental Contaminant*, which has or may have an adverse effect upon the environment or human health or safety and which is connected, in any way, with the performance of the *Work* in any of the following circumstances:

- .1 where the *Release* or threatened *Release* is due to the *Contractor*’s failure to comply with the provisions of paragraph 9.2.2;
- .2 where any such substances or materials are required to be dealt with as part of the *Work* as provided in paragraph 9.2.3 and the *Release*, or threatened *Release*, is due to the fault or negligence of the *Contractor Parties*, or anyone for whom they are responsible at law, or due to the failure of any of them to comply with any applicable legal and regulatory requirements in respect of such substances or materials; or
- .3 where the *Release*, or threatened *Release*, is in relation to any other such substances or materials which have been brought or introduced to the *Place of the Work* by anyone performing the *Work*.

In the event of any *Release*, or threatened *Release*, described in paragraphs .1, .2 or .3 above, the *Contractor* shall immediately notify the *Owner* of such event and shall take all steps, at the *Contractor*’s cost and without any extension in the *Contract Time*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of the *Release* or threatened *Release* and to remedy such circumstance as soon as reasonably practicable.

#### **GC 9.4 CONSTRUCTION SAFETY**

- .1 Delete GC 9.4 CONSTRUCTION SAFETY and substitute new GC 9.4 CONSTRUCTION SAFETY:

## GC 9.4 CONSTRUCTION SAFETY

9.4.1 The *Contractor* shall assume overall responsibility for, and shall be solely responsible for, construction health and safety at the *Project* and the *Place of the Work* (including for the *Work* and any other work or other activities conducted or performed at the *Project* or *Place of the Work* by any *Person* whatsoever including the *Contractor Parties*, *Owner's* own forces, *Other Contractors*, or any other *Person* employed by any of them, and each of their respective employees, directors, officers, agents, and invitees, and whether or not any contractual relationship exists between the *Contractor* and such *Person* (collectively the “*Project Work*”)) and for compliance with the rules, regulations, and practices required by, and other requirements of, the *OHSA*. Without limiting the generality of the foregoing:

- .1 the *Contractor* acknowledges and agrees that the *Contractor* is the *Constructor* in respect of the *Project*, the *Project Work*, and the *Place of the Work* and shall carry out and fulfill the duties and responsibilities of the *Constructor* and *Employer*, and those obligations set out in paragraph 9.4.1, from the date of commencement of the *Work* until the date of *End of the Work*. Such duties shall also extend to, and include, managing the effects of the *Pandemic/Epidemic Rules* on the performance of the *Work* and performing the *Work* in compliance with the *Pandemic/Epidemic Rules*; and
- .2 the *Contractor's* duties, obligations, and responsibilities shall also include carrying out and fulfilling the *Owner's* duties and responsibilities as an *Employer*, in relation to workplace safety in respect of the *Project*, the *Project Work*, and the *Place of the Work*. Such duties shall also extend to, and include, managing the effects of the *Pandemic/Epidemic Rules* on the performance of the *Work* and performing the *Work* in compliance with the *Pandemic/Epidemic Rules*.

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; and

- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as the *Constructor*.
- 9.4.3 The *Contractor* shall be responsible for ensuring compliance with the recommended rules, regulations, guidelines, policies and practices provided by the World Health Organization and/or the Ontario Public Service as such may apply to a *Pandemic/Epidemic*.
- 9.4.4 The *Contractor* acknowledges and agrees that the *Contractor* was selected by the *Owner* based on a number of key factors including: (i) the *Contractor's* skill, knowledge, experience, qualifications and expertise relating to workplace safety in respect of numerous projects of a similar size and complexity in Ontario to the *Project*; (ii) the *Contractor's* Workplace Safety & Insurance Board Clearance Certificate, Lost Time Injury listing and Workplace Injury Summary Report submitted as part of the *Proposal*; and (iii) the *Contractor's* ability to fulfill its obligations and responsibilities set forth in paragraph 9.4.1.
- 9.4.5 The *Contractor* acknowledges and agrees that at all times during the construction of the *Project*, the *Owner* is expressly relying on the skill, knowledge, experience, qualifications and expertise of the *Contractor*, as it relates to workplace safety on a construction site.
- 9.4.6 The *Contractor* represents and warrants that the *Contractor* and the *Subcontractors* and *Suppliers* have the skills, knowledge, experience, qualifications and expertise necessary to comply with their health and safety obligations under the *Contract*.
- 9.4.7 The *Contractor* represents and warrants that:
- .1 the information submitted by the *Contractor* regarding the *Contractor's* Workplace Safety & Insurance Board Clearance Certificate, Lost Time Injury listing, and Workplace Injury Summary Report is accurate as of the *Execution Date*; and
  - .2 the *Contractor* and the *Key Subcontractors* have not received any orders, charges or violations from the Ontario Ministry of Labour, Immigration, Training and Skills Development, and have not been convicted of any such charges or violations, in the current year and in the prior five (5) years.
- 9.4.8 Without limiting the generality of paragraph 9.4.1,
- .1 the *Contractor* acknowledges and agrees that the *Procurement Document* includes information regarding hazards at the *Place of the Work*;
  - .2 the *Contractor* acknowledges and agrees that the *Contractor* has provided and will continue to provide the appropriate health and construction safety

instruction and training to the *Contractor's* employees, *Subcontractors* and *Suppliers* attending at the *Place of the Work*;

- .3 the *Contractor* shall prepare and submit the health and safety precautions, policies, plans and programs with respect to the *Project*, the *Project Work*, and the *Place of the Work* for *Owner's* review within ten (10) *Working Days* following the *Execution Date*. The *Contractor* shall incorporate any comments of the *Owner* into all health and safety precautions, policies, plans and programs prior to the commencement of the *Work* (such precautions, policies, plans and programs are, collectively, the “***Safety Plans and Programs***”). Such review by the *Owner* (and any comments of the *Owner*) shall not in any way limit or reduce any of the *Contractor's* obligations or responsibilities as the *Constructor*. Without limiting the generality of the foregoing, the *Safety Plans and Programs* shall be specific to the *Project*, the *Project Work*, and the *Place of the Work* and the *Safety Plans and Programs* shall address anticipated potential hazards and the measures to address them and the *Contractor* shall update the *Safety Plans and Programs* as required to address any changes to the *Project*, the *Project Work*, the *Place of the Work*;
  - .4 the *Contractor* shall maintain, implement, supervise and comply with, and shall cause other *Contractor Parties* to comply with, all *Safety Plans and Programs*;
  - .5 the *Contractor* shall report to the *Owner* all health and safety violations of the *Contractor's* health and safety program and plan and any violations of the *OHSA* and any orders or charges from the Ontario Ministry of Labour, Immigration, Training and Skills Development that are related to the *Work*, including *Contractor's* response and remedial actions, within the same time period that the *Contractor* is required to provide notice of same to the Ontario Ministry of Labour, Immigration, Training and Skills Development, if applicable, but in no event later than two (2) calendar days after such incident; and
  - .6 the *Contractor* shall carry out and perform regular audits to confirm that the *Project*, the *Project Work*, and the *Place of the Work* comply with all *Safety Plans and Programs* and *OHSA*. Without limiting the generality of the foregoing, the *Contractor* shall report any non-compliance to the *Owner* and the action required to correct any such non-compliance and the *Contractor* shall implement the corrective action to correct such non-compliance.
- 9.4.9 The *Contractor* shall provide evidence to the *Owner* upon request that the *Contractor* and the *Subcontractors* and *Suppliers* have in place health and safety programs, and that all employees of the *Contractor* and the *Subcontractors*, *Suppliers*, and all other workers performing any part of

the *Work* or other work and/or services have received training in occupational safety, all in compliance with the requirements of *OHSA*.

- 9.4.10 *Contractor* shall promptly report to the *Owner* any accident or emergency that relates to the *Work* but in no event later than twenty-four (24) hours after such incident. The *Contractor* shall cooperate fully with the *Owner* with respect to dealing with any claim resulting from an accident or emergency. In the event of an accident or emergency threatening safety, life or property, the *Contractor*, without instruction or authorization from the *Consultant* or *Owner*, shall take such action as may be necessary to save lives and protect persons from injury, and, this being done, to protect and preserve property.
- 9.4.11 The *Contractor* shall protect any adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, by applicable laws or governmental authorities, or by the *Contract Documents*.
- 9.4.12 The *Owner* undertakes to include in its contracts with *Other Contractors* and in its instructions to its own forces the requirement that the *Other Contractors* 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 Contractors* 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 co-ordinate 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, co-ordination, 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, and may otherwise result in the removal or exclusion of the undersigned from the *Place of the Work*. 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 paragraph 9.5.2.3 immediately before the comma, the following new words:

“and as a result of the delay,”

.2      Delete paragraph 9.5.3.4 in its entirety.

## **GC 9.6      MANAGEMENT OF EXCESS SOILS**

.1      Add new GC 9.6 MANAGEMENT OF EXCESS SOILS as follows:

### **GC 9.6      MANAGEMENT OF EXCESS SOILS**

9.6.1 Notwithstanding GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, the *Contractor* shall be responsible for determining whether the *Excess Soil Legislation* applies to the *Work* or the *Project* and shall provide the *Owner* with immediate written notice of such determination. For clarity, the *Contractor* acknowledges and agrees that this is an ongoing obligation of the *Contractor* during the performance of the *Work*. If the *Excess Soil Legislation* applies to the *Work* or the *Project*, the *Contractor*, at the *Contractor's* cost and expense, shall:

- .1      be solely responsible for compliance with the requirements of the *Excess Soil Legislation* during the performance of the *Work*;
- .2      assume and take on the responsibilities of the *Project Leader* for the *Work*;
- .3      perform the *Work* in accordance with, and subject to, the *Excess Soil Legislation*; and
- .4      be responsible for establishing, coordinating, implementing, administering and updating, as required, excess soil management plan for the *Work* and the *Place of the Work*.

Without restricting the generality of any other provision in the *Contract Documents*, for the duration of the performance of the *Work* until *End of the Work* in respect of the *Work*, the *Project* and the *Place of the Work*, the *Contractor* is the *Project Leader* and the *Operator* and the *Contractor* shall carry out, and fulfill, the duties and responsibilities of the *Project Leader* and the *Operator* in accordance with the requirements of the *Excess Soil Legislation*.



- 9.6.2 The *Contractor* shall be solely responsible for the management of any *Excess Soil* generated or encountered during the performance of the *Work*.
- 9.6.3 The *Contractor* shall be solely responsible for compliance with the *Excess Soil Regulation* made under the *Ontario Environmental Protection Act* including the “Rules for Soil Management and Excess Soil Quality Standards” adopted by reference in the *Excess Soil Regulation*.
- 9.6.4 Without limiting the generality of paragraph 9.6.3, the *Contractor* shall comply with all applicable requirements prior to removal of any *Excess Soil* from the *Place of Work* including preparation of an assessment of past uses; preparation and implementation of a sampling and analysis plan; preparation of a soil characterization report; preparation of an excess soil destination assessment report; and development and implementation of a tracking system, all of which shall be undertaken by a “qualified person”, as defined in O. Reg. 153/04 – Records of Site Condition made under the *Ontario Environmental Protection Act*.
- 9.6.5 The *Contractor’s* responsibilities include, without limitation, procuring, and, as a part of the *Contract Price*, paying for, all certificates, consents, licences, authorizations, permits, approvals and disposal fees, costs and expenses required by the *Excess Soil Legislation*.
- 9.6.6 The *Contractor* shall provide the *Owner* and the *Consultant* with copies of the assessments, plans and reports referred to in paragraph 9.6.4 and all other documents evidencing that the *Work* complies with the *Excess Soil Regulation* and such other documents as required by the *Excess Soil Legislation*.
- 9.6.7 Without limiting the generality of paragraph 9.6.3, the *Contractor* shall comply with all applicable storage, processing, reuse and disposal requirements for any *Excess Soil* generated or encountered during the performance of the *Work*.
- 9.6.8 For clarity, subject to GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, this GC 9.6 – MANAGEMENT OF EXCESS SOILS is applicable to Excess Soil, even when such *Excess Soil* differs materially from those indicated in the *Contract Documents* or is of a nature which differs materially from those ordinarily found to exist and generally recognized as inherent in construction and other activities of the character provided for in the *Contract Documents*.

## **GC 10.1 TAXES AND DUTIES**

### **.1 Add new paragraphs 10.1.3 – 10.1.8:**

- 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.

- 10.1.4 Subject to paragraphs 10.1.7 and 10.1.8, 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. For greater certainty, the *Owner* shall not be responsible for any taxes based solely on *Contractor's* net income.
- 10.1.5 The *Contractor* represents and warrants that, as of the *Execution Date* and during the performance of the *Work*, the *Contractor* is not a *Non-Resident*. The *Contractor* shall not undertake any action or transaction that, if undertaken, would cause or result in the *Contractor* becoming a *Non-Resident* without the *Owner's* prior written consent, which consent may be withheld in the *Owner's* sole discretion.
- 10.1.6 The *Contractor* shall not, without the prior written consent of the *Owner* (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause the *Owner* to have (or result in the *Owner* having) any obligation to deduct, withhold or remit any taxes that are required by applicable law to be deducted, withheld or remitted from any amounts paid or credited to the *Contractor* or any of the other *Contractor Parties* under this *Contract* or under any of the *Contract Documents*.
- 10.1.7 If (i) the *Contractor* becomes a *Non-Resident*, or (ii) the *Owner* is or becomes required by applicable law to deduct or withhold any amount in respect of taxes on or in respect of any amounts paid or credited to the *Contractor* or any of the *Contractor Parties* by the *Owner* under the *Contract* or under any of the *Contract Documents*, then the *Owner* shall be entitled to make any applicable deductions or withholdings required by applicable law from any amount paid or credited or to be paid or credited to the *Contractor* or any of the *Contractor Parties* on or after the date on which (A) the *Contractor* or any of the *Contractor Parties* becomes a *Non-Resident* and at all times while it remains a *Non-Resident*; or (B) the *Owner* is required by applicable law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all taxes that are required by applicable law to be deducted or withheld from amounts paid or credited to a *Non-Resident* or otherwise as required by applicable law. The *Owner* shall remit all amounts so withheld to the applicable taxing authorities on behalf of the *Contractor* or *Contractor Parties* as the case may be. The *Owner* shall not be required to gross up or otherwise compensate *Contractor* or the *Contractor Parties* with respect to any such withheld amount and all amounts paid or credited by the *Owner* under the

*Contract* or under any of the *Contract Documents* to the *Contractor* or any of the other *Contractor Parties* shall be paid or credited net of such deductions or withholdings.

- 10.1.8 If (i) the *Contractor* becomes a *Non-Resident*, or (ii) the *Owner* is or becomes required by applicable law to deduct and withhold any amount in respect of taxes on or in respect of any amounts paid or credited to the *Contractor* or any of the *Contractor Parties* by the *Owner* under the *Contract* or under any of the *Contract Documents*, the *Contractor* shall, in each case, indemnify and hold harmless the *Owner* for (A) the full amount of all taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the *Owner* in respect of any amounts paid or credited by the *Owner* to the *Contractor* or any of the *Contractor Parties* under the *Contract* or under any of the *Contract Documents* as a result of either of the foregoing items less any amount withheld or deducted by the *Owner* in respect of such taxes, and (B) any liability payable or incurred in connection with *Indemnifiable Taxes* (including penalties, interest and reasonable expenses associated with tax compliance, reporting and contesting such liability for *Indemnifiable Taxes*, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to *Indemnifiable Taxes*, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within thirty (30) days from the date the *Owner* makes written demand for it. A certificate containing reasonable detail as to the amount of *Indemnifiable Taxes* and *Associated Liabilities* submitted to the *Contractor* by the *Owner* shall be conclusive evidence, absent manifest error, of the amount due from the *Contractor* to the *Owner*. The *Owner* shall be entitled to set off and deduct from any monthly payments owing to the *Contractor* all or a portion of any amount due from the *Contractor* to the *Owner* pursuant to this paragraph 10.1.8.

## GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- .1 Delete paragraph 10.2.2 in its entirety and substitute new paragraph 10.2.2:

10.2.2 The *Owner* shall obtain and pay the permits, licences, approvals and agreements identified as the *Owner's* responsibility in Appendix B – PERMITS, LICENCES, APPROVALS AND AGREEMENTS.

- .2 Delete paragraph 10.2.3 in its entirety and substitute new paragraph 10.2.3:

10.2.3 Except for the permits, licences, approvals and agreements identified as being the *Owner's* responsibility in Appendix B – PERMITS, LICENCES, APPROVALS AND AGREEMENTS, the *Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily

obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit or which the *Contract Documents*, including, for certainty, the permits, licences, approvals and agreements identified as being the *Contractor's* responsibility in Appendix B – PERMITS, LICENCES, APPROVALS AND AGREEMENTS. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

- .3 Add to the end of paragraph 10.2.4 the following words: 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.
- .4 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:  
  
“Subject to paragraph 1.1.3 and 1.1.4, the”.
- .5 Amend paragraph 10.2.6 by deleting the words “performs work knowing it to be” in the second line and substituting the words “performs work when it knew or ought to have known that such work is”.

### **GC 10.3 PATENT FEES**

- .1 In paragraph 10.3.1, (i) delete “Owner” and replace with “Indemnitees”; and (ii) delete “claims, demands, losses, costs, damages, actions, suits, or proceedings” and replace with “*Claims*”.
- .2 Delete paragraph 10.3.2 in its entirety.

### **GC 10.4 WORKERS’ COMPENSATION**

- .1 Delete from paragraph 10.4.1 “the *Contractor's* applications for payment” and substitute the words: “each *Proper Invoice*”.
- .2 Add a new sentence to the end of paragraph 10.4.1:  
  
“The *Contractor* shall ensure that each *Subcontractor and Supplier* complies with the workers' compensation legislation at the *Place of the Work* and shall provide evidence of compliance for each *Subcontractor and Supplier*.”
- .3 Add new paragraph 10.4.2:  
  
10.4.2       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 the Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

#### **GC 10.5 U.S. BUSINESS**

.1 Add new GC 10.5 U.S. BUSINESS as follows:

##### **GC 10.5 U.S. BUSINESS**

10.5.1. The *Contractor* represents and warrants that as of the *Execution Date*, it is not a *U.S. Business* and that none of the *Contractor Members* are a *U.S. Business*.

10.5.2 The *Contractor* represents and warrants that as of the *Execution Date*, no *Change in U.S. Business Status* has been proposed or is in the process of being undertaken, and further represents and warrants that *Contractor* has no knowledge of any proposed *Change in U.S. Business Status* in the first six months after the *Execution Date*. For the purposes of this paragraph 10.5.2, the *Contractor* shall be deemed to have such knowledge as is actually held (or ought reasonably to be held) by the directors, officers and senior management of the *Contractor*.

#### **GC 10.6 CHANGE IN U.S. BUSINESS STATUS**

.1 Add new GC 10.6 CHANGE IN U.S. BUSINESS STATUS as follows:

##### **GC 10.6 CHANGE IN U.S. BUSINESS STATUS**

10.6.1 No *Change in U.S. Business Status* shall be permitted without the prior written consent of the *Owner*, such consent to be in *Owner's* sole discretion.

10.6.2 The *Contractor* shall provide *Notice in Writing* to the *Owner* of any proposed *Change in U.S. Business Status* not less than 20 *Working Days* prior to such proposed *Change in U.S. Business Status*. Following the delivery to the *Owner* of the *Notice in Writing* referred to in this paragraph 10.6.2, the *Contractor* shall provide the *Owner* with such other information pertaining to the proposed *Change in U.S. Business Status* as the *Owner* may request.

10.6.3 This GC 10.6 shall not apply to a *Change in U.S. Business Status* if such *Change in U.S. Business Status* occurs as a result only of the acquisition or disposition of equity securities, ownership units or any other ownership interests listed on a recognized stock exchange.

## GC 11.1 INSURANCE

- .1 For any *Contract* with a *Contract Price* greater than \$10 million at the *Execution Date*, delete 11.1.1.1 in its entirety and substitute new paragraph 11.1.1.1

11.1.1.1 “Wrap-Up” Commercial General Liability in the sum of not less than \$25 million per occurrence and in the aggregate with respect to products and completed operations. This policy shall name *Contractor* and the *Owner*, all subcontractors of any tier, suppliers while working on the site, consultants, sub-consultants (other than for professional liability) as named insureds. This policy shall provide the *Contractor* and the *Owner* with primary and non-contributory insurance. Insurance shall be maintained from the *Execution Date* until the *Ready-for-Takeover* date. The policy provided shall include, as a minimum, the following coverage extensions:

- (1) occurrence form;
- (2) aggregate permitted only with respect to products and completed operations liability;
- (3) premises and operations;
- (4) *Owner’s* and *Contractor’s* protective;
- (5) broad form property damage;
- (6) personal injury (nil participation);
- (7) blanket contractual (written and oral);
- (8) non-owned automobile, including contractual;
- (9) employer’s liability and contingent employer's liability;
- (10) employees as additional insureds;
- (11) cross liability and severability of interest clause;
- (12) sudden and accidental pollution liability (not less than IBC 2313 form (one hundred twenty (120) hours detection/ one hundred twenty (120) hours’ notice) and to include hostile fire extension);
- (13) broad form completed operations;
- (14) twenty-four (24) months completed operations;

- (15) loss of use without property damage;
- (16) loading and unloading of automobiles;
- (17) use of attached machinery;
- (18) unlicensed vehicles;
- (19) worldwide territory (subject to suits being brought in Canada or the United States);
- (20) blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling and similar operations associated with the construction work, as applicable; and
- (21) limited UAV (up to 20 kg)."

.2 Delete the reference in paragraph 11.1.1.4 and paragraph 11.1.1.6 to ""Broad form" property" and substitute ""All Risks" Course of Construction".

.3 Add new paragraph 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 the following addresses set out below:

To *Infrastructure Ontario* at:

Infrastructure Ontario  
1 Dundas Street West  
Suite 2000  
Toronto, Ontario M5G 2L5

Attention: President, Real Estate Management

With a copy to:

Attention: Insurance Risk Director – Enterprise Risk

.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 also include the *Consultant* (where applicable) and Ontario Infrastructure and Lands Corporation and His

Majesty the King 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. On the *Execution Date* 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 paragraph 11.1.9:

11.1.9 In CCDC 41 - INSURANCE REQUIREMENTS, paragraph 5 add the following after “IBC Form 4042 and 4047”: “(including flood, earthquake, testing, and commissioning)”.

.6 Add new paragraph 11.1.10:

11.1.10 Unless specifically outlined in GC11.1, the *Contractor* shall, at its cost, cause all *Subcontractors* and other *Contractor Parties* to carry additional insurance that would reasonably be expected to be carried dependent on the nature, scope and complexity of the *Work*, contract value and industry standards.

.7 Add new paragraph 11.1.11:

11.1.11 The *Owner* reserves the right to require the *Contractor* to purchase such additional insurance coverage as the *Owner* may reasonably require. The *Owner* also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the *Work*, *Contract Price*, industry standards, and availability of insurance) as the *Owner* may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by the *Owner* and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of the *Owner*.

**DDGC 11.2 CONTRACT SECURITY**

.1 Add new GC 11.2 – CONTRACT SECURITY as follows:

**GC 11.2 – CONTRACT SECURITY**

11.2.1 On the *Execution Date*, the *Contractor* shall provide to the *Owner*:



- .1 a performance bond, in the form set out in the *Procurement Document*, and 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 *Procurement Document*, and in an amount equal to 50% of the *Contract Price* including covering payment for labour, *Products*, or both.
- 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 *End of the Work* date.
- 11.2.3 If approved changes pursuant to the *Contract* result in an approved increase or cumulative increases to the *Contract Price*, the *Contractor*, as a part of the applicable *Change Order* or *Change Directive*, shall promptly acquire additional bonding at the *Owner's* expense and provide the *Owner* with written confirmation from the applicable surety company of such additional bonding. 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 bond(s).
- 11.2.4 If the *Owner* identifies a *Guarantor* in the *Data Sheet* (the “**Guarantor**”), the *Contractor* shall provide on the *Execution Date*, at no cost to the *Owner*, a valid, binding and enforceable *Parental Guarantee* in favour of the *Owner* from the *Guarantor* (or a party of comparable financial strength, capacity and suitability, as determined by the *Owner*, acting in its sole and absolute discretion) substantially in the form attached hereto as Schedule 3 - Parental Guarantee (the “**Parental Guarantee**”). Pursuant to the *Parental Guarantee*, the *Guarantor* shall unconditionally and irrevocably guarantee to the *Owner* the due and proper punctual performance and observance of the *Contractor's* obligations under this *Contract*, including, without limitation, the obligation to correct to the satisfaction of the *Owner* and the *Consultant* all defects and deficiencies in the *Work*, including, without limitation, all items on the *Punch List*. The *Contractor* expressly acknowledges and agrees that any termination of this *Contract* pursuant to its terms shall be without prejudice to, and shall not affect, the *Parental Guarantee* of the *Guarantor* which shall survive any termination of this *Contract*.

## GC 12.1      READY-FOR-TAKEOVER

- .1      Delete paragraph 12.1.1 and paragraph 12.1.2 and substitute new paragraph 12.1.1 and 12.1.2:

12.1.1      The prerequisites to attaining *Ready-for-Takeover* of the *Work* are limited to the following:

- .1      The *Consultant* has certified or verified the *Substantial Performance of the Work*.
- .2      Evidence of compliance with the requirements for occupancy or the issuance of an occupancy permit as prescribed by the authorities having jurisdiction.
- .3      Final cleaning and waste removal in respect of the *Work* at the time of applying for *Ready-for-Takeover*, as required by the *Contract Documents*.
- .4      The delivery to the *Owner* of such operations and maintenance documents reasonably necessary for immediate operation and maintenance in respect of the *Work*, as required by the *Contract Documents*.
- .5      Make available a copy of the *As-Built Drawings* completed to date on site.
- .6      Commissioning, startup, testing required for immediate occupancy of the *Work*, as required by the *Contract Documents*.
- .7      Ability to secure access to the *Work* has been provided to the *Owner*, if required by the *Contract Documents*.
- .8      Demonstration and training, as required by the *Contract Documents*, is scheduled by the *Contractor* acting reasonably.
- .9      To the extent not duplicated in this paragraph 12.1.1, the documents and materials described in paragraph 5.4.5.

12.1.2      If any prerequisites set forth in paragraphs 12.1.1.3 to 12.1.1.6 or paragraph 12.1.1.9 must be deferred because of conditions reasonably beyond the control of the *Contractor*, or by agreement between the *Owner* and the *Contractor* to do so, *Ready-for-Takeover* shall not be delayed.

- .2      Delete paragraphs 12.1.5 and 12.1.6.

## **GC 12.2 EARLY OCCUPANCY BY OWNER**

- .1 Delete GC 12.2 – EARLY OCCUPANCY BY OWNER in its entirety and substitute new GC 12.2 EARLY OCCUPANCY BY OWNER:

### **GC 12.2 EARLY OCCUPANCY BY OWNER**

12.2.1 The *Owner* may take occupancy of a part or the entirety of the *Work* before *Ready-for-Takeover* provided that:

- .1 the *Owner* shall not occupy a part or the entirety of the *Work* without prior approval by authorities having jurisdiction; and
- .2 if the *Owner* takes occupancy of the entirety of the *Work* before all the prerequisites are met as described in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER, the *Work* shall, subject to the requirements of the *Construction Act*, be deemed to achieve *Ready-for-Takeover*. This shall not relieve the *Contractor's* responsibility to complete the *Work* in a timely manner.

## **GC 12.3 WARRANTY**

- .1 Delete paragraphs 12.3.1, 12.3.2, 12.3.3 and 12.3.4 in their entirety and substitute new paragraphs 12.3.1, 12.3.2, 12.3.3 and 12.3.4:

12.3.1 Except for extended warranties as described in paragraph 12.3.6 the warranty period under the *Contract* for the *Work* is 1 year from the date when *Ready-for-Takeover* has been attained.

12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work*.

12.3.3 The *Owner* through the *Consultant* shall promptly give the *Contractor* *Notice in Writing* of observed defects and deficiencies which appear during the warranty periods specified in the *Contract Documents*.

12.3.4 The *Contractor* shall, at its expense, promptly correct defects or deficiencies in the *Work* which appear prior to and during the applicable warranty periods specified in the *Contract Documents*. The *Contractor* shall remain responsible for the correction of any such defects or deficiencies, notwithstanding the work required to effectuate such correction commences after or continues beyond the end of the applicable warranty period. Without limiting the generality of the foregoing, the obligations of the *Contractor* to perform the corrective *Work* in accordance with this GC 12.3 – WARRANTY shall include, without

limitation, the provision of all necessary labour and materials and the removal and replacement of covering materials.

.2 Add a new sentence to the end of paragraph 12.3.6:

In the event that any party issuing a *Product* warranty or extended warranty fails to issue such warranty in the name of the *Owner*, the *Contractor* shall assign such warranty to the *Owner* on the date of *Substantial Performance of the Work* or such earlier date or later date as directed by the *Owner*. The *Contractor* shall cooperate with and reasonably assist the *Owner* during the warranty period in the enforcement of any and all *Product* and extended warranties.

.3 Add new paragraphs 12.3.7, 12.3.8, 12.3.9, 12.3.10 and 12.3.11:

12.3.7        The *Contractor* warrants the *Work* in accordance with the *Contract Documents*. All repairs or replacements shall have a warranty period expiring the later of (a) the original warranty period of the *Work* subject to repair or replacement and (b) one year from the final acceptance of the repair or replacement undertaken during the original warranty period of the *Work* subject to repair or replacement. For certainty, any repair or replacement during the extended warranty period set out in (b) shall not be subject to a further extension of warranty.

12.3.8        Within 30 calendar days prior to the expiry of an applicable warranty period, the *Owner*, with the involvement and participation of the *Contractor*, shall carry out a detailed and exhaustive inspection of the *Work* for the purpose of establishing a final deficiency list for the *Work* subject to that warranty period (a “**Punch List**”). The *Contractor* shall promptly correct, at the *Contractor*’s expense, any and all defects and deficiencies in the *Work* noted in the *Punch List*.

12.3.9        The *Contractor* shall, upon receiving notice of any defect or deficiency in the *Work*, commence the correction of such defect or deficiency within two (2) *Working Days* (or as otherwise agreed with the *Owner*) at such times that are convenient to the *Owner*.

12.3.10       Prior to the application for final payment under paragraph 5.6.2, the *Contractor* shall assign to the *Owner* the benefit of all guarantees and warranties for all *Products* and services used or incorporated in the *Work* and shall ensure that such an assignment is also effectuated by all *Contractor Parties* from whom the same have been obtained.

- 12.3.11 The provisions of GC 12.3 – WARRANTY shall not limit, and are without prejudice to, any action, right or remedy otherwise available to the Owner for the failure of the *Contractor* to fulfill its obligations or responsibilities under the *Contract* (including, without limitation, in respect of defects or deficiencies in the *Work*) and shall not be construed as a waiver of *Claims* in favor of the *Contractor* or as a limitation on the time in which the *Owner* may pursue such other action, right or remedy. The warranties set out in the *Contract* are not supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law, trade usage or otherwise.

### GC 13.1 INDEMNIFICATION

- .1 Delete GC 13.1 – INDEMNIFICATION and substitute new GC 13.1 INDEMNIFICATION

### GC 13.1 INDEMNIFICATION

- 13.1.1 The *Contractor* shall indemnify and hold harmless *the Indemnitees* from and against all *Claims and Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees*, directly or indirectly arising out of or are attributable to:

- .1 the negligent acts or omissions of the *Contractor Parties*;
- .2 any deliberate act of wrongdoing or criminal or other wilful misconduct (including intentional misrepresentation) or fraud of the *Contractor Parties*; or
- .3 the failure by the *Contractor* to perform any of the *Contractor's* obligations under the *Contract Documents*,

(collectively, the “**Subject Matter of Indemnity**”). The *Subject Matter of Indemnity* includes:

- .4 all *Claims and Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees*, directly or indirectly arising out of or are attributable to bodily injury, illness or death of any individual or physical loss of or damage to tangible property (including all or any part of the *Place of the Work* or any other tangible property related thereto).

- 13.1.2 The *Contractor* shall indemnify and hold harmless the *Indemnitees* from and against all *Claims and Losses* that any of the *Indemnitees* may suffer, sustain or incur or that may be brought against any of the *Indemnitees*, directly or indirectly arising out of or are attributable to:

- .1 any failure or alleged failure by the *Contractor*, or others for whom the *Contractor* is responsible, to comply with the health and safety requirements at the *Project*, for the *Project Work*, and at the *Place of the Work*;
- .2 *Contractor's* obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and GC 9.5 – MOULD;
- .3 any amounts paid by the *Owner* in accordance with paragraph ~~5.4.13~~5.1.2.

13.1.3 Paragraph 13.1.1 and paragraph 13.1.2 in no way limits any other liability or obligation of the *Contractor* in respect of the *Contract*.

## **GC 13.2 WAIVER OF CLAIMS**

- .1 Delete paragraphs 13.2.1 through 13.2.10 in their entirety and substitute the following:

13.2.1 As of the date of the *Substantial Performance* of the *Work*, the *Contractor* expressly waives and releases the *Owner* from all *Claims and Losses* which it has or reasonably ought to have knowledge of following due diligence that could be advanced against the *Owner*, including, without limitation, those that might arise from the negligence or breach of contract by the *Owner*, except:

- .1 those for which *Notice in Writing* was given to the *Owner* in accordance with the *Contract* prior to the date of *Substantial Performance* of the *Work* and still unsettled; and
- .2 *Claims* for payment for *Work* done after *Substantial Performance* of the *Work*.

13.2.2 As of the date of the *End of the Work*, the *Contractor* expressly waives and releases the *Owner* from all *Claims and Losses* which it has or reasonably ought to have knowledge of following due diligence 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 those for which *Notice in Writing* was given to the *Owner* in accordance with the *Contract* prior to the date of the *End of the Work* and still unsettled.

## **PART 14      OTHER PROVISIONS**

### **.1      Add new PART 14 OTHER PROVISIONS:**

#### **PART 14 OTHER PROVISIONS**

##### **GC 14.1      OWNERSHIP OF MATERIALS**

14.1.1      All *Work* and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*, free and clear of any and all charges, liens or encumbrances (other than rights under the *Construction Act*), provided that risk of loss or damage for all *Work* and *Products* shall remain with the *Contractor* until *Ready-for-Takeover*. The *Contractor* shall remove all surplus or rejected materials when notified in writing to do so by the *Consultant*.

##### **GC 14.2      CONSTRUCTION LIENS**

14.2.1      In the event that a lien is preserved against the Project by a *Contractor Party* (other than the *Contractor*) or a written notice of lien related to the performance of the *Work* is received by the *Owner*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then the *Contractor* shall, at its own expense, within 10 *Working Days*:

- .1      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.

14.2.2      In the event that the *Contractor* fails to conform with the requirements of paragraph 14.2.1, 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 or the withdrawal of the written notice of lien. 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 14.3      CONTRACTOR DISCHARGE OF LIABILITIES**

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

**GC 14.4      RECORDS/DAILY REPORTS/DAILY LOGS**

- 14.4.1      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 the *End of the Work date* or until all *Claims* have been settled. Prior to and 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 14.5      CONTRACTOR EVALUATION**

- 14.5.1      The *Owner* will evaluate the performance of the *Contractor* with respect to the *Work* in accordance with the *Owner's* procurement policy or alternate vendor performance framework, as each may be amended and modified from time to time.

## GC 14.6 SECURITY SCREENING

- 14.6.1 *Contractor* acknowledges that the Ontario government has implemented a policy that requires *Contractor* and all individuals who will be performing work or services for, on behalf of, the *Contractor* while doing business with the Ontario government to undergo *Security Clearance Checks*. The *Security Clearance Checks* are administered by the *CEB*.
- 14.6.2 *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 the *Contractor Parties* are in full compliance with the above-noted policy.
- 14.6.3 *Contractor* shall ensure that the screening provisions outlined herein are included in each subcontract entered into with all *Contractor Parties*. In addition, *Contractor* shall require its *Subcontractors* to, and ensure all other *Contractor Parties*, include the screening provisions outlined herein into every level of contract thereunder with each of their respective sub-subcontractors for any part of the *Contract*.
- 14.6.4 *Contractor* acknowledges that *CEB* will perform *Security Clearance Checks* on *Contractor* and its directors, officers, owners, partners, if applicable, and shareholders (if a privately held corporation and as requested by *CEB*) and employees who will perform any part of the *Work* and, the *Contractor Parties* (and each of their 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*.
- 14.6.5 *Contractor* further acknowledges that unless stated otherwise by *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 paragraphs 14.6.5.1 and 14.6.5.2 in order for such *Affected Party* to perform any part of the *Work* or the *Contract*. Accordingly:
- .1 *Contractor*, its directors, officers, owners, partners, if applicable, shareholders (if a privately held corporation and as requested by *CEB*) and applicable employees must receive clearance prior to performing any *Work*; and
  - .2 the *Contractor Parties* other than the *Contractor* (and each of their directors, officers, owners, partners, shareholders and employees who will be required to perform any part of the *Work*), must receive clearance prior to performing any part of the *Work*.

- 14.6.6      *Owner* will provide the *CSO* with all forms and information necessary to coordinate and facilitate the required *Security Clearance Checks*.
- 14.6.7      The *Contractor* shall retain the *CSO* and shall cause the *CSO* to:
- .1      obtain:
- (1)      written consent to perform a *Security Clearance Check*, in the form provided by *Owner*, from each *Affected Party*; and
- (2)      any other information that *Owner*, in its sole and absolute discretion acting on the direction of *CEB*, may deem necessary in order to conduct a *Security Clearance Check* on the *Affected Parties*; and
- .2      submit this information to *Owner* in the prescribed form, where required.
- 14.6.8      As a consequence of any *Security Clearance Check*, *Owner*, acting promptly on the determination by *CEB*, may notify the *CSO* that an *Affected Party* did not receive clearance. Upon request by *Owner*, *Contractor* will remove and replace any such *Affected Party* in accordance with paragraphs 14.6.11 and 14.6.12 so that such *Affected Party* is no longer performing, as applicable, the *Work*, or any part thereof. *Contractor* further acknowledges and agrees that *Owner* shall be acting reasonably and consistent with applicable laws if *Owner* requests the replacement of an *Affected Party* who did not receive clearance following a *Security Clearance Check*. *Contractor* shall not permit any *Affected Party* who has been charged with an offence that could lead to a conviction to access the *Place of the Work* to perform its work or services while such charge is outstanding.

- 14.6.9 During the term of the *Contract*, *Contractor* shall ensure that, within five (5) *Working Days* of becoming aware of any change, *Contractor* shall inform *Owner* in writing of any:
- .1 change to any information related to *Security Clearance Checks* for any existing *Affected Party* to enable *CEB* to update the individual's *Security Clearance Check*; and
  - .2 addition to the *Affected Parties* for the purpose of enabling *CEB* to perform *Security Clearance Checks* on any such new *Affected Party*. *Contractor* shall provide any such information in accordance with paragraphs 14.6.4, 14.6.5 and 14.6.7.
- 14.6.10 All administrative costs incurred by *Contractor* in complying with the requirements of this GC 14.6 shall be borne solely by *Contractor*.
- 14.6.11 If any *Affected Party* refuses to consent to a security check performed in accordance with this GC 14.6 or if any security check performed in accordance with this GC 14.6 relating to any *Affected Party* assigned to fulfil *Contractor*'s obligations under the *Contract* discloses any security issue relating to the *Affected Party*, *Owner* may determine that any such *Affected Party* is a security threat and provide written notice to *Contractor* of *Owner*'s determination. Upon receipt of such written notice, *Contractor* shall promptly replace any such *Affected Party* without increase in the *Contract Price* or extension of the *Contract Time*.
- 14.6.12 Unless otherwise agreed to by *Owner* in writing, any individual proposed by *Contractor* to replace an *Affected Party* further to paragraph 14.6.11 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 *Owner*.
- 14.6.13 *Contractor* shall not allow any *Contractor Parties* who would not receive clearance in the *Security Clearance Checks* to perform the *Work*.
- 14.6.14 Notwithstanding the forgoing:
- .1 no later than thirty (30) days from the date of the *Contract*, *Contractor* shall provide *Owner* with a detailed plan describing how *Contractor* will inform itself of, and complete the *Security Clearance Check*; and

.2 once such plan has been approved by *Owner* (the “**Approved Monitoring Plan**”), *Contractor* shall:

- (1) comply with such *Approved Monitoring Plan*; and
- (2) assign a senior *Contractor* security resource to be responsible for managing and complying with such *Approved Monitoring Plan*.

#### **GC 14.7 REVIEW**

14.7.1 No approval or consent of, or certification, inspection, review, comment, verification, confirmation, acknowledgement or audit by, any authorities having jurisdiction, the *Owner* or the *Consultant*, or anyone acting on their behalf, shall relieve the *Contractor* from performing or fulfilling any of its obligations under the *Contract* or reduce or limit any of the *Contractor*’s liabilities or obligations under the *Contract*.

#### **GC 14.8 INDEPENDENT CONTRACTOR**

14.8.1 The *Contractor* shall be an independent contractor in performing its obligations under the *Contract*. The *Contract* does not create any partnership, agency, joint venture, or other relationship of the *Contractor* with the *Owner* other than the relationship of an independent contractor.

#### **GC 14.9 COUNTERPART EXECUTION**

14.9.1 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.

#### **GC 14.10 TIME OF THE ESSENCE**

14.10.1 Time is of the essence in respect of the *Contractor*’s obligations and responsibilities under the *Contract* including the performance and completion of the *Work*.

#### **GC 14.11 INTENTIONALLY LEFT BLANK**

## **APPENDIX A**

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## APPENDIX B

### PERMITS, LICENCES, APPROVALS AND AGREEMENTS

Permits, Licences, Approvals and Agreements		Owner Obligation to Obtain or Execute Identified by an X	Contractor Obligation to Perform identified by an X	Additional Comments/Status
<b>OFFICIAL PLAN AND ZONING BY-LAW COMPLIANCE</b>				
<b>1.</b>	<b>1 Official Plan</b>			Not Applicable
<b>2.</b>	<b>Zoning</b>			Not Applicable
<b>3.</b>	<b>Minor Variances</b>			Not Applicable
<b>4.</b>	<b>Compliance with all other applicable by-laws</b>		<b>X</b>	
<b>SITE PLAN AND RELATED APPROVALS</b>				
<b>5.</b>	<b>Site Plan Control Approval</b>			Not Applicable
<b>AGREEMENTS</b>				
<b>6.</b>	<b>Hydro One</b>		<b>X</b>	
<b>7.</b>	<b>Temporary Power</b>		<b>X</b>	
<b>8.</b>	<b>Enbridge Gas</b>		<b>X</b>	
<b>9.</b>	<b>Municipal Water</b>		<b>X</b>	
<b>OTHER PERMITS LICENCES AND APPROVALS</b>				



Permits, Licences, Approvals and Agreements		Owner Obligation to Obtain or Execute Identified by an X	Contractor Obligation to Perform identified by an X	Additional Comments/Status
10.	Building Identification/Signage Approvals/Permits		X	
11.	Building Permit	X		
12.	Permits, Licences, Approvals and Agreements relating to Construction Process		X	
<b>ENVIRONMENTAL</b>				
13.	Permit to Take Water from the Ministry of the Environment Conservation and Parks			Not Applicable
14.	Phase I and II ESA and Record of Site Condition			Not Applicable
15.	Conservation Authority			Not Applicable
16.	Department of Fisheries and Oceans			Not Applicable
<b>HELIPORT</b>				
17.	Heliport – Transport Canada Certification and related requirements			Not Applicable
<b>ARCHAEOLOGICAL</b>				
18.	Archaeological Assessments			Not Applicable
<b>TELECOMMUNICATIONS</b>				
19.	Relevant Requirements for Telecommunications (Bell, Cogeco,	X	X	

Permits, Licences, Approvals and Agreements		Owner Obligation to Obtain or Execute Identified by an X	Contractor Obligation to Perform identified by an X	Additional Comments/Status
	Telus, etc.)			



## SCHEDULE 1

### COORDINATION WITH OTHER PARTIES

#### 1.1 *Owner's Authority*

- (a) Nothing in this *Contract* shall in any way fetter the right, authority and discretion of the *Owner* as a regulated entity under the applicable legislation in fulfilling its statutory or other functions under law including under the applicable legislation and any by-laws applicable to such entity.

#### 1.2 *Minimize Disturbance in Existing Facility*

- (a) The *Contractor* recognizes and understands that the *Owner* is a regulated entity under the applicable legislation and is therefore subject to a highly regulated legal and operational environment. The *Contractor* acknowledges that the *Existing Facility* and/or premises in or adjacent to the place where the *Work* is to be performed or to which the *Work* relates must remain in operation during the performance of the *Work*, except as specifically permitted by the *Owner*, and that the *Contractor* will, without additional cost to the *Owner*, carry out, perform and coordinate the performance of the *Work* to minimize disruption and interference to the on-going operation of the *Existing Facility* and its facilities, including the provision of services by tenants of the *Existing Facility*. The *Contractor* further acknowledges that the *Owner* may provide it with requirements as to the manner in which the *Work* is to be performed in respect of minimizing disturbance to the *Existing Facility* including in respect to noise, dust control, access to the *Place of the Work* and the particular requirements in respect to those portions of the *Work* which are to be carried out within the *Existing Facility* (or in connection with the *Existing Facility*) and in respect to those portions of the *Work* where connections are being made to the *Existing Facility*, and the *Contractor* agrees to comply with and abide by all such requirements. If such requirements change during the performance of the *Work* in a manner that materially adversely impacts the critical path activities in the Baseline Schedule or the performance of the *Work*, such changed requirements may be the subject of a change in the *Work* pursuant to Part 6 - CHANGES. In addition the *Contractor* acknowledges that it has familiarized itself with *Operations* and will perform the *Work* taking into account the requirements of the *Owner* to maintain normal *Operations* and that the *Contract Price* includes all premium time and overtime that may be required to perform the *Work* in accordance with the foregoing requirements.

#### 1.3 *Development of the Place of the Work*

- (a) The *Contractor* acknowledges that the access granted to the *Contractor* and the *Subcontractors* hereunder shall be non-exclusive and that the *Owner* and any person authorized by the *Owner* may occupy and possess the *Place of the Work*, the *Project* and/or the *Existing Facility*, including for the purposes of the *Operations*. The

*Contractor* shall not, and shall require that any *Subcontractors* shall not, except as permitted under the *Contract*, disrupt the performance of the *Operations*.

- (b) Without limiting Section 1.2(a) of this Schedule 1, the *Contractor* acknowledges that the *Owner* may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the *Place of the Work*, the *Project*, or the *Existing Facility*. To the extent that such use or development materially adversely interferes with the *Contractor's* ability to perform the *Work*, such use or development shall be dealt with as a change to the *Work* in accordance with the provisions of PART 6 - CHANGES IN THE WORK.

#### 1.4 Limited Access Areas

- (a) For purposes related to the provision of *Operations*, the *Owner* may limit or restrict the *Contractor's* and each *Subcontractor's* access to designated portions of the *Place of the Work*, the *Project* or the *Existing Facility* unless a person seeking access obtains the prior written consent of the *Owner*, which consent may be subject to such reasonable conditions as are imposed by the *Owner*.

#### 1.5 Access by Others

- (a) Subject to Section 1.5(b) of this Schedule 1, the *Contractor* shall ensure that, throughout the *Contract Time*, without prejudice to any access rights of any such person as a member of the general public or pursuant to applicable laws:
  - (i) The *Owner*, any contractors, consultants or other persons authorized by the *Owner*, including the *Other Contractors*, have access to those parts of the *Place of the Work* and the *Work* as is necessary for the purposes of the *Project*, the *Work* or the *Operations*, provided that, wherever consistent with the requirements of applicable laws and the requirements of the *Contract*, the *Contractor* may limit such access so as to not materially and unreasonably interfere with traffic flows or the *Work*;
  - (ii) the *Consultant* has access to the *Place of the Work* and the *Work* to the extent required to perform its obligations in respect of the *Work* and the *Project*;
  - (iii) inspectors and other persons authorized to act on behalf of the *Owner* have access to the *Place of the Work* and the *Work* for inspection and acceptance purposes;
  - (iv) utility companies and their agents have access to the *Place of the Work* and the *Work* at all reasonable times in accordance with, or to exercise any right or power or perform any duty or obligation under, any applicable laws or any utility agreements or encroachment permits, provided that, wherever consistent with the requirements of applicable laws and the requirements of the *Contract*,

the *Contractor* may limit such access so as to not materially and unreasonably interfere with traffic flows or the *Work*;

- (v) all authorities having jurisdiction and emergency service providers have access to the *Place of the Work* and the *Work* in order to carry out any work (including surveys and inspections) in accordance with, or to exercise any right or power or perform any duty or obligation, under any applicable laws, provided that, whenever consistent with the applicable requirements of such authorities having jurisdiction, emergency service providers or applicable laws and the requirements of the *Contract* (as the case may be), the *Contractor* may limit such access so as to not materially and unreasonably interfere with traffic flows or the *Work*; and
  - (vi) the *Owner*, *Other Contractors*, authorities having jurisdiction and emergency service providers and utility companies are permitted to enter upon the *Place of the Work* and the *Work* for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the *Place of the Work* and the *Work* owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of applicable laws and the requirements of the *Contract*, the *Contractor* may limit such access so as to not materially and unreasonably interfere with traffic flows or the *Work*.
- (b) In exercising their access rights under Section 1.5(a) of this Schedule 1, each person referred to therein shall (except in the case of access rights described in Section 1.5 of this Schedule 1 for the purpose of responding to an emergency and except to the extent inconsistent with the applicable requirements of such authorities having jurisdiction and emergency service providers):
- (i) provide reasonable prior notice appropriate to the circumstances;
  - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the *Contractor* from time to time; and
  - (iii) if reasonably required by the *Contractor*, be accompanied by a representative of the *Contractor*.

provided that the *Contractor* may restrict access to, or require the removal from, the *Place of the Work* or the *Work* of any such person who fails to comply with the foregoing provisions.

**SCHEDULE 2**  
**KEY INDIVIDUALS**

The following are the Key Individuals, as amended from time to time in accordance with paragraph 3.5.4.

<b>Item</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
1.	Construction Team Project Manager	Name:  E-mail:  Phone:
2.	Construction Team Lead Site Supervisor	Name:  E-mail:  Phone:
3.	Construction Team Commissioning Lead	Name:  E-mail:  Phone:
4.	Equipment Coordinator	Name:  E-mail:  Phone:
5.	Communications Lead	Name:  E-mail:

		Phone:
6.	Quality Assurance Representative	Name:  E-mail:  Phone:
7.	Air Tightness Quality Assurance	Name:  E-mail:  Phone:
8.	Construction Team Executive Lead/ Director	Name:  E-mail:  Phone:
9.	Construction Team Lead/ Senior Project Manager	Name:  E-mail:  Phone:
10.	ICAT Integration & Interoperability Lead	Name:  E-mail:  Phone:
11.	Construction Scheduler	Name:  E-mail:  Phone:



12.	Construction Team Electrical Lead	Name:  E-mail:  Phone:
13.	Construction Team Mechanical Lead	Name:  E-mail:  Phone:
14.	Health and Safety manager	Name:  E-mail:  Phone:

### **SCHEDULE 3**

#### **PARENTAL GUARANTEE**

This Parental Guarantee (the “**Guarantee**”) is dated as of the [●] day of [Month], 202[●].

**BETWEEN:**

[insert name of Guarantor], a [insert form of legal entity] formed and validly existing under the laws of [insert jurisdiction], having with its principal place of business located at [insert address] (the “**Guarantor**”)

- and -

[insert name of Owner], a non-share capital corporation incorporated under the laws of Ontario (the “**Owner**”)

**WHEREAS** the Owner and [insert name of Contractor], a [insert Contractor’s form of legal entity] formed and validly existing under the laws of [insert jurisdiction] (the “**Contractor**”), entered into a construction contract dated [insert Effective Date of construction contract], as amended, modified, supplemented or restated from time to time, (the “**Contract**”) in relation to the delivery of services and work, as more particularly described in the Contract;

**AND WHEREAS** the Contract requires the Contractor to cause this Guarantee to be executed and delivered by the Guarantor;

**AND WHEREAS** the Guarantor, as a result of its ownership interest in the Contractor, will derive benefit from the performance by the Contractor of its obligations under the Contract and is willing to enter into and provide this Guarantee;

**AND WHEREAS** the Guarantor hereby agrees to guarantee to the Owner the performance of the obligations of the Contractor under the Contract, on the terms and subject to the conditions set forth in this Guarantee;

**NOW THEREFORE**, in consideration of the foregoing premises and the Owner entering into the Contract, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor covenants and agrees with the Owner as follows:

**1. DEFINITIONS**

- (a) In this Guarantee, unless the context indicates a contrary intention, terms which are defined in the Contract (and not otherwise defined in this Guarantee) shall have meanings given to them in the Contract and the following terms shall have the following meanings:
  - (i) **“Communication”** has the meaning given in Section 15(a);
  - (ii) **“Contract”** has the meaning given in the Recitals;
  - (iii) **“Contractor”** has the meaning given in the Recitals;
  - (iv) **“Guaranteed Obligation”** has the meaning given in Section 3(a);
  - (v) **“Insolvency Proceeding”** has the meaning given in Section 9(a);
  - (vi) **“Judgement Currency”** has the meaning given in Section 16(a);
  - (vii) **“Original Currency”** has the meaning given in Section 16(a); and
  - (viii) **“Taxes”** has the meaning given in Section 17(a).

**2. INTERPRETATION**

- (a) Words and expressions used in this Guarantee but not defined herein shall have the same meanings as are respectively assigned to them in the Contract.

**3. GUARANTEE OF OBLIGATIONS UNDER THE CONTRACT**

- (a) The Guarantor irrevocably, unconditionally, and absolutely guarantees to the Owner, as a direct obligation, the due and proper punctual and full performance, observance and payment of each and every obligation of the Contractor as and when such performance, observance or payment is due in accordance with the

terms of the Contract (including, without limitation, the obligation to correct to the satisfaction of the Owner and the Consultant all defects and deficiencies in the Work, including, without limitation, all items on the Punch List) (each a “**Guaranteed Obligation**” and, collectively, the “**Guaranteed Obligations**”).

- (b) If the Contractor fails, refuses, or is unable to fully and punctually perform or pay any of the Guaranteed Obligations, the Guarantor shall, upon written notice from the Owner, immediately perform or pay such Guaranteed Obligations or cause such Guaranteed Obligations to be performed or paid.
- (c) This Guarantee is a guarantee of due and punctual performance and payment and is not merely a guarantee of collection. This Guarantee is in no way conditioned or contingent upon any attempt to collect from the Contractor or to cause the Contractor to perform any Guaranteed Obligation.
- (d) The Guarantor guarantees that the Guaranteed Obligations shall be performed and paid strictly in accordance with the terms and conditions of the Contract and that the Guarantor shall be liable as principal obligor and not solely as surety and, to the fullest extent permitted by law, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall continue until the full performance and satisfaction of all Guaranteed Obligations.
- (e) Notwithstanding any other provision to the contrary, the obligations of the Guarantor under this Guarantee shall not exceed those of the Contractor pursuant to the terms and conditions of the Contract.
- (f) The Guarantor shall indemnify the Owner from and against any claim, demand, proceeding, liability, loss, damages, costs, charges, and expenses arising out of:
  - (i) any failure or refusal by the Contractor to perform each and all of the Guaranteed Obligations if and to the extent that the Guarantor, for any reason, after receiving written notice from the Owner pursuant to Section 3(b), does not perform or pay any of the Guaranteed Obligations in accordance with this Guarantee;
  - (ii) any Guaranteed Obligation being or becoming unenforceable, invalid, or illegal as if the Guaranteed Obligation had not become unenforceable, invalid, or illegal, provided that the Guarantor’s liability shall be no greater than the Contractor’s liability under the Contract would have been if the Guaranteed Obligation had not become unenforceable, invalid, or illegal;
  - (iii) the Contract being terminated as a result of any default on the part of the Contractor thereunder; and
  - (iv) the Contract being released or discharged or repudiated in a bankruptcy or similar proceeding of the Contractor.

- (g) Notwithstanding any other provision of this Guarantee, the Guarantor retains all rights, claims, defences and limitations of liability possessed by the Contractor under the terms of the Contract or arising from the Contractor's performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to the Contractor under the Contract, except that no defence previously raised by the Contractor which has been fully adjudicated, determined, or settled in accordance with the terms of the Contract may be raised by the Guarantor, and no cure period previously used by the Contractor may be used or relied upon by the Guarantor. The Guarantor waives, to the fullest extent permitted by law, any right to enforce any remedy against the Owner or the Contractor until all of the Guaranteed Obligations have been indefeasibly paid or performed in full.
- (h) The Guarantor shall not be entitled to and hereby waives any and all defences which are, under law, generally applicable to suretyship, available to a guarantor, sureties, or other secondary parties at law or in equity. Without limiting the generality of the foregoing, the Guarantor waives all presentments, demands for performance or payment, protests, notices of protests, notices of dishonor, and other notices or demands of any kind or nature whatsoever. This Guarantee is a guarantee of due and punctual performance and payment. The Owner has the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against the Contractor are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, the Owner may make repeated and successive demands and recoveries under this Guarantee as and when from time to time the Contractor fails or refuses to perform or pay any of the Guaranteed Obligations, and, notwithstanding recovery under the Guarantee for or in respect of any such default, the Guarantee will remain in full force and effect unamended and will apply to each and every subsequent default.
- (i) All sums payable by the Guarantor under this Guarantee shall be paid to the Owner within seven days in full, free and clear of, and without deduction of or withholding for on account of, any present or future Taxes, duties and/or other charges, save where required by law.

#### 4. UNCONDITIONAL OBLIGATIONS

- (a) The Guarantor shall not be discharged, relieved or released by (i) time being given to the Contractor by the Owner nor by; (ii) any concession or arrangement or waiver or forbearance granted or made by the Owner to or with the Contractor; or by (iii) anything that the Owner, the Contractor or any other party to the Contract may do or omit or neglect to do (including, the assertion or failure or delay to assert any right or remedy of the Owner or the pursuit of any rights or remedies by the Owner or the giving by the Contractor of any security or the release, modification or exchange of any such security) which, in each case, but

for this provision, might discharge, relieve or release the Guarantor or impair or reduce the rights of the Owner hereunder.

**5. AMENDMENT OF THE CONTRACT**

- (a) The Guarantor hereby authorizes, without need for further consent or notice, the Owner to make any amendment, addendum, or variation to the Contract, and the due and punctual performance of such amendment, addendum, or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee, and no such amendment, addendum, or variation shall discharge, release, reduce, or impair the liability of the Guarantor hereunder nor the rights of the Owner in relation to this Guarantee.

**6. ACTIONS IN RELATION TO THE CONTRACT**

- (a) the Owner may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, altering, reducing, impairing, discharging or invalidating the obligations and liabilities of the Guarantor hereunder:
  - (i) waive compliance with, performance or payment by, or default under, the Contract or any Guaranteed Obligations deriving therefrom or take or fail to take any action of any kind, whether pursuant to the Contract, at law or otherwise, or exercise or refrain from exercising any right or take or refrain from taking any action, against the Contractor, any other guarantor or any other person;
  - (ii) effect any release, compromise, subordination or settlement of any of the Guaranteed Obligations;
  - (iii) assign, sell, sublease or otherwise transfer any or all of its interest in the Contract or in any premises to which the Contract relates, subject to the terms of the Contract applicable to such assignment, sale or other transfer;
  - (iv) accept, release, or discharge the Contractor, any other guarantor or a permitted successor or assign of any of the foregoing or any other person; or
  - (v) from time to time, apply any sums at any time received from the Contractor, any other guarantor or any other person in such manner, in such amounts and in satisfaction of such part of the Guaranteed Obligations as the Owner considers best.

**7. CONTINUING GUARANTEE**

- (a) This Guarantee is a continuing guarantee and shall apply to all Guaranteed Obligations, whenever arising, and shall continue in full force and effect until the payment, observance and performance in full of the Guaranteed Obligations. This

Guarantee is not revocable and is in addition to and not in substitution for any other security which the Owner may at any time hold for the performance of such obligations and may be enforced against the Guarantor without first having recourse to any such security and without taking any steps or proceedings against the Contractor, any other party to the Contract, any other guarantor of obligations under the Contract or any other person and the doctrine of marshalling shall have no application. A separate action may be brought and prosecuted against the Guarantor whether or not any action is brought against the Contractor or any other guarantor or person and whether or not the Contractor is joined in any such action or actions. The Guarantor and the Owner will be bound by any final determination made by an arbitrator or court pursuant to the dispute resolution procedures of the Contract in relation to any dispute between the Contractor and the Owner. The obligations of the Guarantor hereunder shall not be diminished or relieved in any way as a result of any amalgamation, merger, reorganization, restructuring, sale, lease or transfer of all or substantially all assets or similar event with respect to the Contractor or the Guarantor or any change in the ownership of any shares or other interests in the capital of the Contractor or the Guarantor and this Guarantee shall continue irrespective of:

- (i) any non-perfection, manner of application or disposition of any collateral or any proceeds thereof;
- (ii) any release of any security (including any other guarantee, letter of credit, or bond), waiver, renewal, extension, indulgence, compromise, amendment, addition, deletion, change, discharge (including by operation of law) or modification of, or with respect to, any of the Guaranteed Obligations;
- (iii) the actual or purported assignment of any obligation or agreement arising hereunder;
- (iv) the recovery of any judgment against the Contractor, the Guarantor or any other person or the failure, neglect or omission on the part of the Owner or any other person to realize upon any obligations or liabilities of the Contractor;
- (v) any failure of the Owner to mitigate its damages; or
- (vi) any lack of validity or enforceability of the Contract, any of the Guaranteed Obligations, this Guarantee or any other guarantee, except to the extent that such unenforceability or invalidity results from the default of the Owner in the performance of any of its obligations under the Contract.

## **8. INSOLVENCY AND OTHER DEFENCES**

- (a) Neither the liability of the Guarantor hereunder nor the rights of the Owner in relation to this Guarantee shall be discharged, relieved, released, reduced or impaired by reason of (a) any stay of proceedings against the Contractor, any other guarantor or any other person liable as guarantor pursuant to any law relating to bankruptcy, insolvency, restructuring or affecting creditors' rights or (b) the winding-up, dissolution, administration, incapacity, lack of power or re-organization of the Contractor or any change in its status, function, control or ownership or any lack or deficiency in the authority of any person acting on behalf of the Contractor in connection with the Contractor's obligations under the Contract.

## 9. **RIGHT TO PAYMENT**

- (a) In the case of the receivership, interim receivership, sequestration, administration, liquidation, winding-up, dissolution or bankruptcy of the Contractor (whether voluntary or involuntary) or any similar proceeding in respect of the Contractor for the relief from or otherwise affecting creditors of the Contractor or if the Contractor makes any assignment for the general benefit of creditors, an arrangement, a compromise or composition with its creditors (each an **"Insolvency Proceeding"**), the Owner shall have the right to rank, in priority to any claim by the Guarantor in such Insolvency Proceeding, for the Owner's full claims in connection with the Guaranteed Obligations and to receive all payments in respect thereof until such claims have been paid in full and the Guarantor shall continue to be liable to the Owner for the performance of the Guaranteed Obligations. If any amount shall be paid with respect to the Guaranteed Obligations to the Guarantor in connection with an Insolvency Proceeding at any time when all Guaranteed Obligations have not been fully satisfied, then such amount shall be used by the Guarantor solely towards performance of the unperformed Guaranteed Obligations until the Guaranteed Obligations are satisfied in full.

## 10. **REINSTATEMENT**

- (a) If any payment by the Contractor in respect of the Guaranteed Obligations is avoided or annulled or must be repaid as a result of insolvency, bankruptcy or otherwise, the liability of the Guarantor will continue or be automatically reinstated as if such payment by the Contractor had not occurred and, to the extent necessary, this Guarantee will automatically be reinstated. For greater certainty, the Guarantor agrees that it will remain liable for the performance in full of such obligations even if the Contractor is discharged therefrom by applicable legislation relating to bankruptcy, insolvency or reorganization.

## 11. **INFORMATION REGARDING THE CONTRACT**

- (a) The Guarantor assumes responsibility for being and keeping informed of the financial condition of the Contractor and of all other circumstances bearing upon the risk of non-performance of the Guaranteed Obligations which reasonable



inquiry would reveal and the Guarantor acknowledges and agrees that the Owner shall have no duty to advise the Guarantor of information known to the Owner now or hereafter regarding such condition or any such circumstances, except as may be required in any legal proceeding.

**12. INTEREST**

- (a) To the extent that interest is payable in accordance with the Contract, the Guarantor must pay such interest on demand, provided that such interest will not be in duplication of any interest payable pursuant to the Contract and claimed hereunder.

**13. REPRESENTATIONS AND WARRANTIES**

- (a) The Guarantor represents and warrants to the Owner as follows:
  - (i) the Guarantor is duly formed and validly existing and in good standing under the laws of the **[insert jurisdiction]**;
  - (ii) the execution, delivery and performance of this Guarantee does not and will not (i) violate any provision of the constating documents or by-laws of the Guarantor; (ii) violate or constitute any default under any indenture, mortgage, chattel mortgage, security agreement, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which the Guarantor is a party or by which the Guarantor or any of its assets is bound; or (iii) constitute a default under any law, governmental rule, regulation, judgment or order binding on the Guarantor;
  - (iii) this Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the Guarantor's legal, valid, binding and enforceable obligations except to the extent enforceability may be limited by bankruptcy and insolvency laws;
  - (iv) no event has occurred which constitutes or which, with the giving of notice and/or the lapse of time and/or a relevant determination, would constitute a contravention of, or default under, any agreement or instrument by which the Guarantor or any of its assets is bound or affected;
  - (v) there are no actions, suits or proceedings (nor, to the best knowledge of the Guarantor after due inquiry, is there any pending investigation) against or involving the Guarantor at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before or by any arbitrator of any kind, which could reasonably be expected to

materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee and the Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could reasonably be expected to materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee;

- (vi) no action or approval, authorization, consent or other order of, and no designation, filing, further registration, qualification or recording with, any governmental or public body or authority is legally required to authorize or is otherwise required in connection with or for the execution, delivery or performance by the Guarantor of this Guarantee except as has already been obtained;
  - (vii) after giving effect to the transactions contemplated in this Guarantee, the Guarantor is not, nor would it be deemed to be, insolvent nor does the Guarantor's incurrence of contingent obligations under this Guarantee render it insolvent; and
  - (viii) the Guarantor has not taken any mortgage, pledge, charge, lien, debenture, deed of trust, hypothec, assignment by way of security, security interest, conditional sales contract, option, pre-emptive right or other title retention agreement or similar interest or instrument charging or creating a security interest in property or assets, or any other part thereof or interest therein, from the Contractor for or in consideration of the Guarantor assuming any of its obligations under this Guarantee.
- (b) The Guarantor acknowledges that the Owner has executed this Guarantee and the Contract in reliance on the representations and warranties made by the Guarantor in this Section 13.
  - (c) The representations made by the Guarantor in this Section 13 will survive the execution of this Guarantee.

#### 14. **SUBROGATION**

- (a) At any time while any payment is payable or obligation is owed by the Contractor under the Contract by the Guarantor under this Guarantee, the Guarantor shall not:
  - (i) be subrogated to any rights, security or moneys held, received or receivable by the Owner or be entitled to any right against the Contractor of contribution or indemnity that would be in competition with the Owner

in respect of any payment made by the Guarantor or moneys received by the Owner under this Guarantee;

- (ii) claim, rank, prove, vote or exercise any other rights as a surety or creditor of the Contractor or its estate in competition with the Owner;
- (iii) take any steps to enforce a right or claim against the Contractor relating to any money paid by the Guarantor to the Owner under this Guarantee; or
- (iv) claim to be entitled, by way of contribution, indemnity, subrogation, marshalling or otherwise, to the benefit of any right of the Contractor under any agreement or document to which the Owner is a party (except as set out herein in relation to the Contract).

## 15. COMMUNICATIONS

- (a) Any notice or demand (a “**Communication**”) hereunder shall be duly signed by or on behalf of a duly authorized officer of the party giving the Communication and delivered by hand or by facsimile transmission, in each case with a copy by electronic transmission, to the following addresses:

### **To the Guarantor:**

Address: <\*>

Email: <\*>

Attention: <\*>

### **With a copy to:**

Address: <\*>

E-mail: <\*>

Attention: <\*>

**To the Owner:**

Address: <\*>

Email: <\*>

Attention: <\*>

**With a copy to:**

Address: <\*>

E-mail: <\*>

Attention: <\*>

- (b) Any party may change its address for Communication to another address by a Communication in writing to the other party.
- (c) Any Communication shall be deemed to have been received:
  - (i) if hand delivered, when delivered; or
  - (ii) if sent by facsimile, upon sending, subject to confirmation of uninterrupted transmission by a transmission report.

**16. CURRENCY**

- (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to the Owner hereunder in one currency (the “**Original Currency**”) into another currency (the “**Judgment Currency**”), the Guarantor agrees, to the fullest extent that it may effectively do so under applicable law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the

Owner could purchase the Original Currency with the Judgment Currency on the Working Day preceding that on which final judgment is paid or satisfied.

- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Owner under this Guarantee shall, notwithstanding any judgment in any Judgment Currency, be discharged only to the extent that, on the Business Day following receipt by the Owner of any sum adjudged to be so due in such Judgment Currency, the Owner may, in accordance with normal banking procedures, purchase the Original currency with such Judgment Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Owner in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Owner against such loss and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Owner in the Original Currency, the Owner shall remit such excess to the Guarantor.

## 17. TAX GROSS-UP

- (a) For the purposes of this Guarantee, “**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any governmental authority, including any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under this Guarantee or from the execution, delivery or enforcement of, or otherwise with respect to, this Guarantee and interest thereon or penalty with respect thereto.
- (b) All payments required to be made by the Guarantor hereunder shall be made to the Owner, free and clear of, and without deduction or withholding for, any and all present and future Taxes (other than any Taxes the Contractor would have been required to deduct or withhold had the payment been made by the Contractor). If the Guarantor is required by law to deduct any Taxes from or in respect of any sum payable hereunder (other than any Taxes the Contractor would have been required to deduct or withhold had the payment been made by the Contractor) then,
  - (i) the sum payable shall be increased as much as shall be necessary so that after making all required withholdings and deductions the Owner receives an amount equal to the sum it would have received had no such withholdings or deductions been made;
  - (ii) the Guarantor shall make such withholdings and deductions;
  - (iii) the Guarantor shall pay the full amount withheld or deducted to the relevant taxing or other governmental authority in accordance with applicable law; and

- (iv) the Owner will make commercially reasonable efforts to obtain any refunds or credits obtainable in respect of any amount paid under Section 17(b)(iii) by the Guarantor and any such refunds or credits shall be reimbursed to the Guarantor.
- (c) The Guarantor shall indemnify the Owner for the full amount of Taxes paid by the Owner in relation to amounts received by the Owner pursuant to this Guarantee, other than any Taxes the Owner would have been required to pay had the payment been received from the Contractor.

**18. AMENDMENTS AND WAIVERS**

- (a) No term or provision of this Guarantee may be changed, modified, amended, waived, discharged or terminated, except by an instrument in writing signed by the Guarantor and the Owner.

**19. OWNER NOT BOUND TO EXHAUST REMEDIES**

- (a) The Owner shall not be bound to exhaust its recourse against the Contractor or any other person or any security it may at any time hold before being entitled to payment from or performance by the Guarantor of the Guaranteed Obligations.

**20. ASSIGNMENT**

- (a) The Guarantor shall not have any right, power or authority to assign or transfer any of its obligations under this Guarantee provided that, to the extent that the Guarantor may subcontract any of its obligations, such subcontract shall be subject to the Owner's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The Owner may assign all or any of its rights under this Guarantee with the prior written consent of the Guarantor, which shall not be unreasonably withheld, conditioned or delayed.

**21. SUCCESSORS AND ASSIGNS**

- (a) This Guarantee shall enure to the benefit of and be binding upon the Guarantor and the Owner and their respective successors and assigns.

**22. FURTHER ASSURANCES**

- (a) The Guarantor covenants that, upon demand from the Owner, it shall perform all acts and execute all deeds and documents reasonably necessary to give full effect to the provisions hereof and to ensure that this Guarantee will be at all times enforceable against the Guarantor in accordance with its terms.

**23. SEVERABILITY**

- (a) The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

**24. GOVERNING LAW**

- (a) This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and all actions or proceedings in respect of any claim arising out of or related to this Guarantee, whether in contract, at law or in equity, shall be brought in the courts of the Province of Ontario.

**25. DISPUTE RESOLUTION**

- (a) Any dispute arising out of or related to this Guarantee shall be referred to and determined by arbitration in accordance with the Ontario Arbitration Act, 1991 S.O. 1990 c. 17. The seat of the arbitration shall be in Ontario and hearings shall be conducted in the [insert name of city or town].

**26. COUNTERPARTS**

- (a) This Guarantee may be executed in any number of counterparts, each of which when executed and delivered is deemed to be an original and all of which when taken together will be deemed to constitute one and the same instrument.

(Signature page to follow)

**IN WITNESS WHEREOF** this Guarantee has been executed and delivered by the Guarantor as of the date first written above.

**[INSERT NAME OF GUARANTOR]**, as  
Guarantor

Per:

\_\_\_\_\_  
Name: <\*>

Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>

Title: <\*>

I/We have the authority to bind the corporation

Acknowledged and accepted:

**[INSERT NAME OF OWNER]**

Per:

\_\_\_\_\_  
Name: <\*>



Title: <\*>

Per:

\_\_\_\_\_  
Name: <\*>

Title: <\*>

I/We have authority to bind the corporation.

Form

**SCHEDULE 4**

**~~INTENTIONALLY DELETED~~**

**CONTRACTOR'S DOMESTIC SUPPLY CHAIN PLAN**

***[Note to Bidders: The Domestic supply Chain Plan submitted by the Successful Bidder as part of its Proposal pursuant to the Procurement Documents to be attached prior to the Execution Date.]***

**SCHEDULE 5**

**INTENTIONALLY DELETED**

**SCHEDULE 6**

**INTENTIONALLY DELETED**

## SCHEDULE 7

### WORKS REPORT REQUIREMENTS

<b>Required Section to be included within the Works Report</b>	<b>Required for this Project (Marked by X)</b>	<b>Additional Comments</b>
<b>Executive Summary</b>	<b>X</b>	
<b>Health and Safety</b>	<b>X</b>	<b>Must include Key Contacts</b>
<b>Works Schedule Summary</b>	<b>X</b>	<b>Must include Construction Progress, Construction Milestones, Schedule and Forecast.</b>
<b>Financials</b>	<b>X</b>	<b>Must include Contract Status, Changes and Variations, Cash Allowance, and Progress Billing.</b>
<b>Request for Information</b>	<b>X</b>	
<b>Submittals</b>	<b>X</b>	<b>Must include any Shop Drawings, Contemplated Change Notices, and Site Instructions.</b>
<b>Quality Assurance and Quality Control (QAQC)</b>	<b>X</b>	
<b>Furniture, Fixtures and Equipment (FFE) and Transition</b>	<b>X</b>	
<b>Commissioning</b>	<b>X</b>	
<b>Risk Management</b>	<b>X</b>	<b>Must include Claims, Liens, and Outstanding Disputes</b>
<b>Critical Items</b>	<b>X</b>	

## SCHEDULE 8

### DATA SHEET

Item No	Item	
1.	<i>Commencement Date</i>	
2.	<i>Scheduled Ready-for-Takeover Date</i>	
3.	<i>Scheduled End of the Work Date</i>	
4.	<i>Applicable Services</i>	
5.	<i>Assignable Parties</i>	
6.	<i>Environmental Reports</i>	
7.	<i>Existing Facility</i>	
8.	<i>Geotechnical Reports</i>	
9.	<i>Guarantor</i>	
10.	<i>Hazardous Substance Report</i>	
11.	<i>Key Subcontractors</i>	
12.	<i>Key Supplier</i>	
13.	<i>Other Contractors</i>	
14.	<i>Owner's Project Number</i>	
15.	<i>Pre-Selected Subcontractors</i>	
16.		

Item No	Item	
	<i>Procurement Document</i>	

**END OF DOCUMENT**





<b>Summary report:</b> <b>Litera Compare for Word 11.12.0.83 Document comparison done on</b> <b>2026-02-09 11:01:14 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> 10. CCDC 2 SC - Short Form - MAG (004).docx	
<b>Modified filename:</b> 10. CCDC 2 SC - Short Form - MAG (Updated Contruction Act-BOA) .docx	
<b>Changes:</b>	
<u>Add</u>	204
<del>Delete</del>	115
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	320