

PURCHASE ORDER TERMS AND CONDITIONS – REV 18 February 2022

CONSTRUCTION

APPLICATION

1. These Purchase Order Terms and Conditions (the “Terms”) apply to all procurements of services for construction projects by ONTC except:
 - (a) If the Purchase Order relates to construction services that are the subject of a separate written agreement between the Contractor and ONTC, the terms of that agreement apply to the extent of any inconsistency with these Terms; and,
 - (b) If the Procurement Document contains contradictory terms, those terms shall apply to the extent of the inconsistency with these Terms.
2. If the Contractor's terms and conditions are supplied to ONTC in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Contract Documents (even if any representative of ONTC signs those terms and conditions or annexes the terms and conditions to the Contract Documents) unless ONTC expressly agrees in writing to be bound by all or any of the terms and conditions.

DEFINITIONS AND INTERPRETATION

Definitions

3. In the Contract,

“**Adjudication**” means construction dispute interim adjudication as defined under the *Construction Act*.

“**Administration Costs**” means those costs and expenses incurred by ONTC as a result of carrying out a process or activity due to a delay in the performance of the Work by the Contractor and include additional fees payable by ONTC to a consultant, if any, on a per diem basis according to the consultant’s personnel rates; ONTC’s personnel costs associated with the delay, in an amount determined by ONTC; and any addition costs or loss of revenue incurred by ONTC due to the delay.

“**Change Directive**” means a written instruction prepared by the ONTC Representative and signed by ONTC directing the Contractor to proceed with a change in the Work within the general scope of the Contract prior to ONTC and the Contractor agreeing upon adjustments, if any, in the Contract Price and/or the Contract Time through a Change Order.

“**Change Order**” means a written amendment to the Contract prepared by the ONTC Representative and signed by ONTC and the Contractor stating its agreement upon a change in the Work, the method of adjustment or the amount of the adjustment in the Contract Price, if any, and the extent of the adjustment in the Contract Time, if any.

“Confidential Information” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this Contract, which is identified as confidential or that would reasonably be considered as being confidential. Confidential Information does not include any portions of the Confidential Information that (a) at the time of disclosure was in the public domain; (b) after disclosure hereunder, is published or otherwise becomes part of the public domain through no fault of the Contractor; or (c) is received from an independent third party who had obtained the Confidential Information lawfully and was under no obligation of secrecy or duty of confidentiality owed to ONTC.

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where the interests, conduct, other commitments or relationships of a Contractor, a Contractor’s family member or an officer, director or employee of the Contractor could or could be perceived to, directly or indirectly, compromise, impair or be in conflict with the interests of ONTC.

“Contract” means the agreement between the parties for the work and includes all the terms and conditions contained in the Contract Documents.

“Contract Documents” means the following documents:

- (a) The Procurement Document, if any;
- (b) These Terms;
- (c) The scope of work and specifications;
- (d) The Contractor’s quote; and,
- (d) The Purchase Order.

“Contract Price” means the price or rates specified in the Contract Documents.

“Contract Time” means the time between the date of commencement of the Work and the date for final completion of the Work described in the Contract Documents.

“Contractor Parties” means the directors, officers, employees, agents, consultants, invitees, Subcontractors and representatives of the Contractor, involved either directly or indirectly in the Work.

“Construction Act” means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, including all regulations passed under it that are enforceable as of the date of the Purchase Order. For certainty, Parts I.1 (Prompt Payment) and II.1 (Construction Dispute Interim Adjudication) of the *Construction Act* apply to the Contract.

“Construction Equipment” means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Work but is not incorporated into the Work.

“Construction Schedule” means the schedule for the performance of the Work provided by the Contractor pursuant to section 8 hereof, including any amendments to the Construction Schedule made pursuant to the Contract Documents.

“Defect” or “Defective Work” means failure to perform or deliver any of the Work in accordance with the Contract Documents, whether because of error or omission.

“Deliverables” means, in any medium required by ONTC, the supplies, documentation or data to be prepared and/or delivered by the Contractor as identified in the Contract Documents.

“Drawings” means the detailed engineering designs, drawings, diagrams, illustrations, schedules, technical brochures and other data to be used by the Contractor in the performance of the Work and includes Shop Drawings and waste disposal plan.

“Environmental Laws” means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any governmental authority relating to Environmental Contaminants or the protection of human health, natural resources or the environment.

“Environmental Contaminants” means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws.

“Force Majeure” means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or emergency changes in the Laws to any acts, orders, legislation, regulations, directives, or government priorities of any government or other public authority; provided such event is not caused by the affected party’s negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Work.

“Impact Assessment Reports” means the impact assessment reports, if any, listed in the RFP related to the *Fisheries Act*; *Navigable Waters Act*; *Lakes and Rivers Improvement Act*; heritage reviews; *Endangered Species Act* and *Species at Risk Act*; terrestrial resources (vegetation, wildlife, other features); socio-economic impacts and Indigenous consultations.

“Intellectual Property” means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all Intellectual Property rights contained, embedded or disclosed in the Work.

“Materials” means material, machinery, equipment, and fixtures forming the Work, but does not include Construction Equipment.

“Notice of Non-Payment” means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the *Construction Act*, as applicable to the circumstances.

“ONTC” means ONTC and its directors, officers, employees, agents, consultants, contractors and subcontractors.

“ONTC Representative” means the person or entity appointed or engaged by ONTC to manage the Work on behalf of ONTC.

“Procurement Document” means a Request for Quotations, Request for Tenders or Request for Proposals or any similar document issued by ONTC for the Work.

“Proper Invoice” means a “proper invoice” as that term is defined in Section 6.1 of the *Construction Act*, with the minimum requirements set out in Schedule A.

“Purchase Order” means the purchase order for Goods and/or Services issued by ONTC to the Supplier containing, amongst other things, a description of the Goods and/or Services and includes these Terms.

“Shop Drawings” are drawings, diagrams, illustrations, schedules, performance charts, brochures, Materials data, and other data which the Contractor provides to illustrate details of portions of the Work.

“Specifications” means that portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for the Materials, systems, workmanship, quality, and the services necessary for the performance of the Work.

“Standard of Care” has the meaning prescribed in section 10.

“Subcontractor” means a person who contracts with the Contractor or another Subcontractor for the performance of any part of the Contractor’s obligations under the Contract Documents and includes suppliers of the Contractor.

“Work” means everything that the Contractor is required to supply or perform in order to carry out the terms and conditions of the Contract Documents and includes any work or services not expressly in the Contract Documents but which is, nevertheless, necessary for the proper completion of the Work.

“Work Site” means the designated site(s) or location(s) of the Work identified in the Contract Documents.

“Working Day” means any day except a Saturday, Sunday or statutory holiday, or statutory vacation day that is observed by the construction industry in Ontario, or such other day(s) designated as working days in the Contract Documents.

“WSIA” means the *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A.*

Interpretation

4. **Trade Terms.** Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

EXECUTION OF THE WORK

Execution of the Work

5. The Contractor is solely responsible for the execution of the Work and shall perform the Work in accordance with the requirements of the Contract Documents. In particular, the Work to be performed by the Contractor includes:
 - (a) scheduling the Work in accordance with the Contract Time and monitoring and reporting on the progress of the Work relative to the Contract Time and ensuring that each critical path activity or milestone is completed by the applicable dates in the Construction Schedule and in accordance with the Contract Time;
 - (b) coordinating and taking responsibility for the scheduling and supervising of Subcontractors;
 - (c) before the Work is commenced, ensuring that the Drawings and methods of working proposed or specified by the Contractor are provided to the ONTC Representative; and,
 - (d) consulting with the ONTC Representative throughout the performance of the Work.

Time of the Essence

6. The parties agree that time is of the essence in the performance of the obligations under the Contract Documents and that the Contractor must achieve Substantial Performance within the Contract Time, which deadline may only be amended by a fully executed Change Order, if any.
7. The Contractor acknowledges that ONTC will suffer damages if Final Completion is not achieved within the Contract Time for reasons other than Force Majeure or if the Work contains Defects that delay Final Completion. The Contractor shall be responsible for all damages suffered by ONTC due to the failure of the Contractor to achieve Final Completion within the Contract Time or a delay in Final Completion due to Defects. Notwithstanding any other provision of the Contract Documents, these damages shall include, but not be limited to, the Administration Costs of ONTC to complete the Work, any losses to ONTC due to a delay in sourcing alternate Contractors and/or Materials, and any other incidental, consequential or other indirect damages.

Construction Schedule

8. The Contractor shall prepare, and update as required or requested, a construction schedule, including identification of the critical path of the Work and the schedule of operations, indicating the proposed methods of construction and sequence of work and the times the Contractor proposes to complete the various items of work (*i.e.*, milestones) within the Contract Time (the "**Construction Schedule**"). The Construction Schedule, if not submitted with the Contractor's Submission, shall be submitted to the ONTC Representative within 10 Working Days from the date of the contract award.

Schedule Slippage

9. If at any time it should reasonably appear to ONTC that the actual progress of the Work is behind schedule or is likely to become behind schedule and notice of such opinion is given to the Contractor or the Contractor has noticed slippage in the schedule, then the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the Construction Schedule and shall provide ONTC with an updated Construction Schedule showing how the Contractor proposes to perform the balance of the Work, so as to complete the Work within the Contract Time.

Standard of Care

10. The Contractor shall:
 - (a) perform the Work in accordance with all applicable laws, the Contract Documents, all applicable professional standards, and in an efficient and workmanlike manner, using only qualified, skilful and careful workers;
 - (b) comply with all restrictions and directions issued by the federal or provincial governments and ONTC relating to physical distancing and safety during the COVID-19 pandemic;
 - (c) in performing the Work and its obligations under the Contract Documents, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor performing work of a similar nature to the Work; and
 - (d) ensure any Construction Equipment used by Contractor Parties at the Work Site will be in safe working condition, will comply with all laws applicable to such equipment and will be operated by suitably qualified and competent personnel,(the “**Standard of Care**”).
11. Where the Work does not comply with the specified Standard of Care, the deficiency in the Work shall be corrected as directed by the ONTC Representative. Subsequent testing to ensure that the Standard of Care has been attained (including re-testing by ONTC), shall be carried out at the Contractor’s expense.

Vendor Performance Evaluation

12. ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Contractor’s performance of its obligations under the Contract. The performance evaluation of the Contractor’s performance of its obligations under the Contract will be used in the assessment of the Contractor’s proposals in response to future procurements. The performance evaluation may also result in the Contractor being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>. The Contractor shall participate in the evaluation process under the Vendor Performance Policy.

Permits, Licenses, Approvals

13. The Contractor shall, at the Contractor's expense, obtain prior to commencement of the Work and at all times maintain all permits, licenses, approvals, consents and other forms of authorizations, including building permits, necessary for the performance the Work and required in accordance with applicable laws.

Labour and Materials

14. The Contractor shall provide and pay for labour, Materials, tools and Construction Equipment, transportation and other services necessary for the performance of the Work in accordance with the Contract Documents. The Contractor shall not be entitled to a change in the Contract Price due to any increase in the cost of labour, Materials, tools, Construction Equipment, water, heat, light, power, transportation, or other facilities or services, whether or not the Contract Time is extended.
15. Unless otherwise specified in the Contract Documents, Materials provided shall be new. Substitutions for Materials which are specified by their proprietary names, part numbers, or catalogue numbers shall be of the same quality as the specified Materials and substituted Materials shall be approved in writing by the ONTC Representative prior to their use. The Contractor shall use all Materials in strict accordance with the manufacturer's directions except when specified otherwise.

Documents at Work Site

16. The Contractor shall keep one copy of the current Contract Documents and Deliverables, including, Supplemental Instructions, contemplated Change Orders, Change Orders, Change Directives, reviewed Shop Drawings and reports and records of meetings at the Work Site in good order and available to ONTC and the ONTC Representative.

Shop Drawings

17. The Contractor shall provide Shop Drawings in the form directed by the ONTC Representative, as required in the Contract Documents and sufficiently in advance to ensure no delay in the Work. The Contractor shall review all Shop Drawings before providing them to the ONTC Representative and shall confirm that review by stamp, date and signature of the person responsible for the review. The review of the Shop Drawings by ONTC shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Contract Documents.
18. The specifications may require the Shop Drawings to bear the seal and signature of a professional engineer who shall be registered in the jurisdiction of the Work Site and shall have expertise in the area of practice reflected in the Shop Drawings.

Effect of Review and Approval

19. Notwithstanding any other provision of the Contract, no direction, request, acceptance or approval by ONTC, or anyone on its behalf, nor any failure of ONTC to do so, will lessen or relieve

the Contractor from performing and fulfilling its obligations or satisfying any liability under the Contract or be construed as an acceptance of all or part of the Work or as a Change Order.

PAYMENT AND COMPLETION OF THE WORK

Contract Price

20. ONTC shall, subject to any right of set-off or withholding by ONTC, pay the Contractor the Contract Price in accordance with the terms of the Contract Documents for the performance of the Work, subject to any Change Orders authorized by ONTC and the Contractor in writing. The Contract Price shall constitute the Contractor's sole and exclusive consideration for performance of the Work, and the Contractor shall not be entitled to receive any other monies or other consideration for the performance of the Work.

Applications for Payment

21. The Contractor shall submit an application for payment on account of the Contract Price plus HST by email to pay.inv@ontarionorthland.ca and to the ONTC Representative in accordance with the Contract Documents or at Final Completion with all necessary backup and support requirements set out in the Contract Documents or reasonably identified by ONTC. All applications for payment must be sent to the ONTC Representative within 30 days after following completion of the applicable milestone, if any, or Final Completion.
22. Each application for payment delivered by the Contractor in accordance with section 21 shall include all the requirements for a Proper Invoice as set forth in Schedule A.
23. ONTC may, prior to the time it is required to issue payment in respect of an application for payment, request any additional information or backup from the Contractor in respect of the application for payment.
24. The Contractor shall not claim for or be entitled to payment for the correction or re-performance of any Defective Work, including labour and time of any Contractor Parties for such correction or re-performance.

Progress Payments and Final Completion Payments

25. After receipt by the ONTC Representative of an application for payment submitted by the Contractor in accordance with sections 21 to 24:
 - (a) the ONTC Representative will assess whether all of the criteria for a Proper Invoice are satisfied and, if not, the ONTC Representative will return the application for payment to the Contractor with reasons setting out why the application for payment is not a Proper Invoice,
 - (b) within 14 calendar days of receipt of a Proper Invoice (or on the next Working Day if the 14th day is not a Working Day), in the event that ONTC disputes the amount claimed as payable in the Proper Invoice, ONTC shall deliver to the Contractor an executed Notice of Non-Payment (Form 1.1); and

- (c) ONTC shall make payment to the Contractor, on account as provided in section 20, on the 28th calendar day after receipt of a Proper Invoice, unless such 28th calendar day lands on a day that is other than a Working Day, in which case payment shall be made on the next Working Day after such 28th day.
26. Where ONTC has delivered a Notice of Non-Payment, ONTC and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a Notice of Non-Payment, ONTC and the Contractor cannot resolve the dispute, either party may issue a notice of Adjudication pursuant to the *Construction Act*, in which case ONTC and the Contractor will agree to submit the dispute to Adjudication in accordance with the Dispute Resolutions provisions of these Terms.
27. Without limitation, ONTC shall be entitled to deduct from or, set off against, any payment of the Contract Price and any other amounts payable by ONTC to the Contractor pursuant to the Contract and any amount expended by ONTC in exercising ONTC's rights under this Contract to perform any of the Contractor's obligations that the Contractor has failed to perform; any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by ONTC as a result of the failure of the Contractor to perform any of its obligations pursuant to the Contract; and any other amount owing from the Contractor to ONTC pursuant to the Contract.
28. The Contractor represents, warrants, and covenants to ONTC that it is familiar with its prompt payment and trust obligations under the *Construction Act* and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the *Construction Act* including, without limitation, section 8.1 of the *Construction Act*. Evidence of the Contractor's compliance under this section will be made available to ONTC within 5 Working Days following receipt by the Contractor of a written notice making such request.

Final Completion

29. ONTC will consider the Work is complete when, except for any obligations of the Contractor relating to the warranty, the Work has been fully completed in accordance with the Contract Documents, including all Defects remedied to meet the Standard of Care and the requirements of the Contract Documents, and all obligations of the Contractor to Subcontractors and anyone else related to the Work are fully satisfied.
30. When the Work has, in the opinion of the Contractor reached final completion, the Contractor shall submit an application for final payment, including items set out in Schedule A, a complete statement of accounts, including any Change Orders applicable to the Work; a complete statement of all money that the Contractor considers to be due from ONTC arising out of or in connection with the Work, the Contract Documents or any alleged breach of the Contract, including details of how the amount claimed in the application for final payment is calculated; and, confirmation that all Deliverables and approvals of all governmental authorities as required by the Contract Documents have been delivered to ONTC.
31. If because of climatic or other conditions reasonably beyond the control of the Contractor, there are items of work that cannot be performed, payment in full for that portion of the Work which has been performed as certified by ONTC Representative shall not be withheld or delayed by

ONTC on account thereof, but ONTC may withhold, until the remaining portion of the Work is finished, only such an amount that the ONTC Representative determines is sufficient and reasonable to cover the cost of performing such remaining work.

32. In the event of deficiencies or delays in the Work that the Contractor fails or refuses to address upon receiving notice of same in accordance with the requirements of the Contract Documents, then ONTC may, without limiting the remedies available to it under the Contract Documents and subject to ONTC's requirement to issue a Notice of Non-Payment under the *Construction Act*, retain and set off as against any payments that would otherwise be owing to the Contractor, the reasonable costs of rectifying such deficiencies or delays as determined by ONTC Representative.

Payment of Holdback upon Final Completion of the Work

33. Subject to the registration of any claims for lien or delivery of any written notices of lien and subject to the requirements of the *Construction Act* with respect to the release of holdback, the holdback amount is, due and payable on the 61st calendar day following the date of Final Completion of the Work.

Taxes

34. The Contractor shall be liable for the payment of any Taxes connected with the Work, except for taxes relating to ONTC's capital, operations or income. ONTC may deduct from or set-off against the whole or part of payments due to the Contractor any Taxes that ONTC is required to withhold or deduct by any governmental authority. Prior to payment being made to the Contractor, ONTC shall notify the Contractor of any required withholding or deduction.

Liens

35. The Contractor shall not permit a Subcontractor to assert any right to a construction, builder's, mechanic's or unpaid vendor's lien for unpaid work or supply of Materials (a "lien") or to issue a written notice of lien pursuant to the *Construction Act*.
36. The Contractor shall, at its cost, promptly discharge, release or vacate or obtain a withdrawal of any lien that is the subject of a claim for lien or a written notice of lien relating to the Work Site or any of ONTC's property or buildings by the Subcontractor. If such lien is not discharged or withdrawn within 7 calendar days of the service of the written notice of lien or of the registration of the claim for lien, then without prejudice to any other rights or remedies it may have, ONTC may take whatever steps it deems necessary and appropriate to discharge or obtain a withdrawal of the lien, including payment of any amount owing or claimed thereunder, and seek immediate recovery from the Contractor for the amount of any such payment and any associated costs, including legal costs, all of which shall be payable on demand.
37. Without limiting any of the foregoing, the Contractor shall satisfy all judgments and pay all costs resulting from any construction liens or any actions brought in connection with any liens, or in connection with any other claim or lawsuit brought against ONTC by any person that provided services or materials for the Work, and the Contractor shall indemnify ONTC for any and all costs (including, without limitation, legal fees on a solicitor and client basis) ONTC may incur in connection with such claims or actions.

38. In the event that any Subcontractor registers any claim for lien with respect to all or part of the Work Site or delivers a claim for lien or a written notice of lien to ONTC, ONTC shall have the right to withhold, in addition to the statutory holdback, the full amount of said claim for lien plus either: (a) \$250,000 if the claim for lien is in excess of \$1,000,000 or (b) 25% of the value of the claim for lien and to bring a motion to vacate the claim for lien and any associated certificate of action in respect of that claim for lien, in accordance with Section 44 of the *Construction Act*, by paying into court as security the amount withheld.
39. Section 20(1) of the *Construction Act* does not apply to the Work and no general lien arises under or in respect of the Work, such that all liens shall arise and expire on a lot-by-lot basis.

CONTRACT ADMINISTRATION

The ONTC Representative

40. ONTC shall appoint, and may replace, the ONTC Representative for the Work by written notice to the Contractor.
41. The ONTC Representative will visit the Work Site at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the Work is proceeding in general conformity with the Contract Documents.
42. Based on the ONTC Representative's observations and evaluation of the Contractor's applications, for payment the ONTC Representative will determine the amounts owing to the Contractor under the Contract and will recommend the applications for payment.
43. Matters in question by the Contractor relating to the performance of the Work or the interpretation of the Contract Documents shall be initially referred to the ONTC Representative for interpretations and findings. The ONTC Representative's interpretations and findings will be provided within a reasonable time.
44. With respect to claims for a change in Contract Price, the ONTC Representative will make findings as set out in the provisions in these Terms relating to Change Directives and Change Orders.
45. The ONTC Representative will have the authority to reject any portion of the Work (including any Materials) which in the ONTC Representative's opinion does not conform to the requirements of the Contract Documents. Whenever the ONTC Representative considers it necessary or advisable, the ONTC Representative will have authority to require inspection or testing of Work, whether or not such work is fabricated, installed or completed. However, neither the authority of the ONTC Representative to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the ONTC Representative to the Contractor Parties.

Review and Inspection of the Work

46. ONTC and the ONTC Representative shall have access to the Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by ONTC and the ONTC Representative and the inspection of the Work by authorized agencies. If parts

of the Work are in preparation at locations other than the Work Site, ONTC and the ONTC Representative shall be given access to such Work whenever it is in progress upon reasonable notice and at its cost.

47. If any part of the Work is designated for tests, inspections or approvals in the Contract Documents or by the applicable laws, the Contractor shall give ONTC reasonable notification of when the part of the Work will be ready for review and inspection. The Contractor shall arrange for and shall give ONTC reasonable notification of the date and time of inspections by other authorities.
48. The Contractor shall furnish promptly to ONTC copies of any certificates and inspection reports relating to the Work.
49. If the Contractor covers, or permits to be covered, any part of the Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Work, have the inspections or tests satisfactorily completed, and make good and cover such Work at the Contractor's sole expense.
50. ONTC 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 portion or portions of the Work are not in accordance with the requirements of the Contract Documents, the Contractor shall correct the Work and pay the cost of examination and correction. If such Work is in accordance with the requirements of the Contract Documents, ONTC shall pay the cost of examination.
51. The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is required in the Contract Documents or by applicable laws to be performed by the Contractor.

Defective Work

52. The Contractor shall promptly correct Defective Work that has been rejected by ONTC as failing to conform to the Contract Documents whether or not the Defective Work has been incorporated in the Work and whether or not the Defect is the result of poor design, poor workmanship, use of defective Materials or damage through carelessness or other act or omission of the Contractor.
53. If in the opinion of ONTC it is not expedient to correct Defective Work or Work not performed as provided in the Contract Documents, ONTC may deduct from the amount otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents. If ONTC and the Contractor do not agree on the difference in value, the matter shall be handled as a dispute in accordance with the Dispute Resolution provisions of these Terms.

EMPLOYEES AND SUBCONTRACTORS

Contractor Parties

54. The Contractor shall assign to the Work only competent, appropriately qualified, experienced and skilled Contractor Parties to perform the Work and ensure that the Work is performed under the supervision of appropriately qualified and experienced personnel. ONTC may, at any time during the course of the Work, request the replacement of a Contractor Party where the conduct of the Contractor Party jeopardizes the safety of ONTC's operations or the Work or the proper progress of the Work. Immediately upon receipt of the request, the Contractor shall appoint an acceptable replacement. The Contractor shall indemnify and hold ONTC harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by ONTC arising from the conduct of the Contractor Party that is being replaced.
55. All parts of the Work required by applicable laws to be performed by licensed or registered professional engineers or architects shall be performed by licensed or registered professional engineers and architects. All Deliverables must, to the extent required by the applicable laws, be reviewed by professional engineers registered to practice professional engineering in the jurisdiction in which the Work Site is located and bear such engineer's signature and stamp.
56. The Contractor shall be solely liable to pay all salaries, wages, overtime, bonuses, allowances, profit sharing, pensions, and other remuneration of the Contractor Parties, including payment of costs related to employee benefits, and for the deduction and remittance of all applicable employment-related taxes, premiums, dues and other burdens to the appropriate governmental authorities. The Contractor shall not be entitled to claim, nor shall ONTC be obliged to pay or reimburse the Contractor, for any monies whatsoever in respect of or in connection with any such payments, save and except where expressly included in the Contract Price.

Subcontracting

57. The Contractor shall not enter into a subcontract for any part of the Work except as disclosed in any quote or response of the Contractor to an ONTC procurement document or, in any other case, without the prior written approval of ONTC. The Contractor shall provide to ONTC as part of the Contractor's request for approval, a description of that part of the Work to be subcontracted and the name and address of the proposed Subcontractor, and such other information as ONTC may request.
58. The Contractor shall not change Subcontractors without the prior written approval of ONTC, which approval will not be unreasonably withheld.
59. The Contractor shall ensure that any subcontract with the Subcontractor:
 - (a) enables the Contractor to terminate the subcontract for convenience and without cause and without creating any liability to ONTC except as provided in the Contract Documents;
 - (b) contains a term that ensures that ONTC obtains the benefit of any warranties to be provided by the Subcontractor to the Contractor;

- (c) incorporates the relevant terms and conditions of the Contract Documents into the subcontract, including the requirement for insurance, with the Contractor and ONTC as a named insured; and
 - (d) requires the Subcontractor to perform their Work in accordance with the Contract Documents.
60. The Contractor shall be responsible to ONTC for the performance of all Subcontractors' Work. The Contractor is responsible for the acts, omissions and defaults of the Subcontractor and the employees, consultants, representatives and agents of the Subcontractor as if they were acts, omissions or defaults of the Contractor.
61. The Contractor shall ensure its Subcontractors, while working on ONTC's property, are aware of and comply with ONTC's policies, including its Drug and Alcohol Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, the current Ontario Northland Time Table, C.R.O.R. 2015, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable
62. Nothing in the Contract Documents creates any contractual relationship between ONTC and any Subcontractor, except to the extent that Subcontractor warranties shall be directly enforceable by ONTC.

CHANGES IN THE WORK

Changes Directives and Change Orders

63. ONTC may at any time make any change in, addition to, or deletion from the Work or the Contract Time by issuing a Change Order or Change Directive.
64. The Contractor shall not perform a change in the Work without a Change Order authorized by both parties or a Change Directive.
65. When a change in the work is proposed or requested, the Contractor shall present to ONTC for its acceptance a description of the change in the work and the Contractor's claim for an adjustment in the Contract Price and/or Contract Time, supported by appropriate documentation, all in a form acceptable to ONTC. If approved by ONTC, a Change Order shall be issued to the Contractor, amending the Contract Price and/or Contract Time, as appropriate.
66. If ONTC requires the Contractor to proceed with a change prior to ONTC and the Contractor agreeing on a Change Order, ONTC shall issue a Change Directive to the Contractor authorizing the change and the Contractor shall proceed with implementation and performance of the change. If at any time after the commencement of the change directed by a Change Directive, ONTC and the Contractor reach agreement with respect to the change, this agreement shall be recorded in a Change Order signed by both the Contractor and ONTC and such Change Order shall supersede the Change Directive.
67. If ONTC and the Contractor do not agree on the proposed adjustment in the Contract Price and/or the Contract Time attributable to the change in the Work, or the method of determining it, the adjustment shall be referred to the dispute resolution process for determination.

Delay

68. If the Contractor is delayed in the performance of the Work by an act or omission of ONTC contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as ONTC and the Contractor shall agree. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential or special damages.
69. If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes or the advice, recommendations and instructions of public health officials directly by ONTC, ONTC's other contractor(s) or ONTC's Representative and relating to the Work or the Work Site and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Contractor and ONTC agrees. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages.
70. If the performance of the Work or the performance of any other obligation(s) of a party to this contract is delayed by Force Majeure, then the Contract Time shall be extended for such reasonable time as ONTC and the Contractor shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the Contractor and ONTC agree to a shorter extension. Neither party shall be entitled to payment for its costs incurred by such delays. Upon reaching agreement on the extension of the Contract Time attributable to the Force Majeure event, ONTC and the Contractor shall execute a Change Order indicating the length of the extension to the Contract Time and confirming that there are no costs payable by either party to the other for the extension of Contract Time.
71. If the Contractor gives notice of a Force Majeure and the non-performance of any obligation affected by such Force Majeure continues for a period longer than 30 days, ONTC may terminate the contract by notice in writing to the Contractor. ONTC shall pay the Contractor for the Work performed to the date of termination.
 - (a) No extension of the Contract Time will be approved unless the Contractor notifies ONTC in writing within 3 Working Days of becoming aware of (or when it ought reasonably to have been aware of) or being notified of any potential delay. For the written notice to be valid under this section it must include specific details about the cause of the delay; the likely impact the delay will have on the Contract Time and details of the extension of time being requested; the likely effect the delay will have on payment; and mitigation efforts, if any, undertaken by the Contractor or, where no mitigation efforts have been undertaken by the Contractor, the reasons why mitigation is either not possible or has not been undertaken by the Contractor.

WORK SITE

Access to Work Site

72. ONTC shall give the Contractor non-exclusive access to the Work Site to enable the Contractor to carry out its obligations under the Contract Documents, subject to the restrictions set out in the Contract Documents.

Conditions

73. The Contractor represents to ONTC that it has familiarized itself with local conditions at and in the vicinity of the Work Site and has examined all reasonably available information relevant to the risks, contingencies and other circumstances having an effect on the Work, the Construction Schedule, the Contract Time or the Contract Price. The Contractor shall investigate and fully familiarize itself with the Work Site, the constraints of the location, weather conditions and ground conditions and all of the environmental undertakings as set out in the Contract Documents or applicable laws.
74. The Contractor is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Contractor by careful investigation undertaken prior to the submission of its proposal or quote.

Concealed or Unknown Conditions

75. The Contractor confirms that, prior to submitting its proposal in the response to the procurement for the Work, it had the opportunity to carefully investigate the Work Site and applied to that investigation the degree of care and skill described in the Standard of Care, given the amount of time provided between the issue of the procurement documents and the actual deadline for submission of responses to the procurement documents, the degree of access provided to the Contractor prior to submission of the response, and the sufficiency and completeness of the information provided by ONTC. The Contractor is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Contractor by such careful investigation undertaken prior to the submission of its response.
76. If ONTC or the Contractor discover conditions, including mould or Environmental Contaminants, at the Work Site which are:
- (a) subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or
 - (b) physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist for such Work,

then the party that discovers such conditions shall give notice to the other party of such conditions before they are disturbed and in no event later than 5 Working Days after first discovering the conditions. The ONTC Representative will investigate the conditions and make a finding regarding whether or not the conditions differ materially and, if so, will issue a change order for the changes in the Contract Time and/or the Contract Price to complete the Work.

77. The Contractor acknowledges that the Designated Substance Survey, if any, was provided to the Contractor by ONTC for information purposes only prior to submission of the Contractor's proposal. The Contractor shall have no remedy against the author of the reports for any damages suffered by it as a result of decisions made or actions taken by the Contractor based on the report.
78. The Contractor confirms that it has conducted its own investigation of the Work Site and satisfied itself of the exact quantities and conditions of the Environmental Contaminants at the Work Site and included in the Contract Price the cost of all the work procedures and practices needed to comply with the applicable federal and provincial laws.
79. The Contractor acknowledges that it has received the Impact Assessment Reports, if any, for the Work that are described in the RFP documents and that it has considered the mitigation measures described in the Impact Assessment Reports in the Contract Price. If the Impact Assessment Reports are not completed prior to the closing of the RFP submission deadline, any adjustments required to the Contract Price shall be determined through a Change Order.

Cleanup

80. The Contractor shall maintain the Work Site in a safe and tidy condition and free from the accumulation of waste Materials and debris, other than that caused by ONTC or other contractors.
81. The costs of disposing of all waste products and debris, including products and debris containing Environmental Contaminants, and excess soil resulting from the Work is included in the Contract Price.
82. Prior to submitting notice for Final Completion, the Contractor shall remove waste Materials and debris, other than that resulting from the work of ONTC or other contractors. The Contractor shall remove Materials, tools, Construction Equipment, and temporary work.
83. Prior to submitting the application for final payment, the Contractor shall remove from the Work Site the remaining Materials, tools, Construction Equipment, Temporary Work and waste Materials and debris, except those resulting from the work of ONTC or other contractors.
84. The Contractor shall comply with all Environmental Laws in disposing of the waste products, debris and excess soil resulting from the Work. The Contractor shall assume all liability and responsibility for any waste products, debris and excess soil, including any such materials containing Environmental Contaminants, which are removed from the Place of the Work by the Contractor and during the transportation of the waste products, debris and excess soils to the appropriate waste disposal site. The Contractor shall submit landfill weigh bills from a waste disposal site as proof that all waste has been disposed of at a certified waste disposal site.

Utilities

85. The Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are discoverable by inspection using the degree of care and skills described in the Standard of Care.

Damage to Work Site

86. The Contractor shall be responsible for the remediation, at its expense, of any damage, including by Environmental Contaminants or mould, to the Work Site, the Work, ONTC's property or third parties' property caused by the Contractor in the performance of the Work.

Environmental Liability

87. The Contractor shall comply with all applicable laws, including Environmental Laws, in the provision of the Work. If the Contractor fails to comply with Environmental Laws relating to the performance of the Work, the Contractor shall be solely responsible for and shall indemnify and hold harmless ONTC from, all costs, claims, fines, fees or other expenses arising from such failure to comply.
88. The Contractor shall not cause or permit any Environmental Contaminants to be located, disposed of, released, discharged or incorporated in, on or under any part of ONTC's land except as required to perform the Work. The Contractor shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Contractor that are not required to provide the Work.
89. The Contractor shall have no responsibility for Environmental Contaminants existing in ONTC's land prior to the Contractor performing the Work and entering upon ONTC's land unless the Contractor causes the release or migration of the Environmental Contaminants while performing the Work.
90. As of the date for the commencement of the Work, the Contractor shall be responsible for taking all reasonable steps to ensure that no person's exposure to the Environmental Contaminants or any other toxic or hazardous substances discovered after the commencement of the Work, exceeds the time weighted levels prescribed by the *Occupational Health and Safety Act* (Ontario) at the Work Site and that no property is damaged or destroyed as the result of exposure to, or the presence of the Environmental Contaminants or any other toxic or hazardous substances discovered after the commencement of the Work.
91. The Contractor shall be responsible for taking all necessary steps, in accordance with applicable law to dispose of, store or otherwise render harmless the Environmental Contaminants.
92. Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Contractor shall remain the property of the Contractor.
93. The Contractor shall comply with the environmental protection requirements and mitigation measures that apply to construction involving work in and around waterbodies and on waterbody banks as set out in OPSS.PROV 182.

Environmental Spills and Releases

94. All spills and releases of Environmental Contaminants in the course of the Work must be immediately reported by the Contractor to ONTC who will report the spill or release to the MOECP SAC. If the ONTC Representative is not available, the Contractor shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.
95. The Contractor shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the Contractor does not take timely action or, if the Contractor is not available, ONTC may direct others to remedy the situation.
96. If the spill or release was the fault of the Contractor, the remedial work shall be completed at the cost of the Contractor and with no additional cost to ONTC and ONTC shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
97. If the spill or release was not the fault of the Contractor, ONTC shall pay for the remedial work.

DELIVERABLES AND INTELLECTUAL PROPERTY

Deliverables

98. All Deliverables shall be the sole and absolute property of ONTC as and when created. The Contractor shall provide the Deliverables in the form required by ONTC.

Contractor's Background IP

99. ONTC acknowledges that the Contractor remains the owner of all Intellectual Property Rights owned by or licensed to the Contractor prior to and after the date of the Purchase Order, other than any Intellectual Property Rights arising from the Work ("**Contractor Background IP**").
100. The Contractor grants to ONTC a fully paid, non-exclusive, worldwide, transferable (with the right to assign and sub-license), royalty free, irrevocable, perpetual licence of the Contractor's Background IP to use, make, have made, import and export any of the Contractor's Background IP to the extent necessary for ONTC to fully enjoy Deliverables for the Work, including for the purposes of repairing, maintaining or servicing (including the supply of replacement parts), or alterations, additions or expansions to the Work or the Work Site.
101. ONTC may sub-licence the Contractor's Background IP to any Person if for the purposes of providing services to, or performing work for, ONTC.

Work IP

102. All Intellectual Property Rights (including the Deliverables) arising from and relating to the Work (the "**Work IP**"), from its creation, vests in ONTC and is the sole and absolute property of ONTC as and when created. The Contractor assigns all of its Intellectual Property Rights and waives all moral rights and shall require Subcontractors to assign their Intellectual Property Rights and waive their moral rights, in and to the Work IP, if any, to ONTC.

103. The Contractor shall maintain the Work IP in confidence unless otherwise agreed in writing by ONTC.

CONFIDENTIAL INFORMATION

Non-Disclosure and Restricted Use

104. Except as otherwise permitted in the Contract Documents, the Contractor shall keep in confidence, any Confidential Information that it now has or that may come into its possession in the course of the performance of the Work, including information marked “Confidential”, and shall not, without ONTC’s prior written consent, disclose the Confidential Information in any manner whatsoever, in whole or in part, and shall not use the Confidential Information for any purpose other than in connection with the Work. The Contractor may reveal or permit access to the Confidential Information only to Contractor Parties who need to know the Confidential Information, who must be advised of the confidential nature of the Confidential Information, who are directed by the Contractor to hold the Confidential Information in confidence and who agree to be bound by and to act in accordance with these Terms. The Contractor shall take all necessary precautions or measures to prevent improper access to, or use or disclosure of, the Confidential Information by such parties and agrees to be jointly and severally responsible for any breach of the terms of the Contract by any Contractor Parties.
105. The Contractor acknowledges that ONTC is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* as amended from time to time.

CONFLICT OF INTEREST

106. The Contractor, all of the Subcontractors, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a Conflict of Interest (actually or potentially, in the sole opinion of ONTC) with the provision of the Work pursuant to the Contract.
107. The Contractor shall disclose to ONTC, 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.

AUDITS

108. ONTC has the right to audit all financial and related records associated with the terms of the Contract Documents, including Deliverables, timesheets, reimbursable out of pocket expenses, materials, goods and Construction Equipment claimed by the Contractor.
109. The Contractor shall at all times during the term of the contract and for a period of 6 years after the expiration or termination of the Contract, keep and maintain records of the Work performed pursuant to the Contract Documents. The Contractor shall at its own expense make such records available for inspection and audit by ONTC at all reasonable times and without prior notice.

TITLE, RISK, INSURANCE AND CONTRACT SECURITY

Title and Risk

110. Title to all Work, including the Deliverables and other items supplied by the Contractor or its Subcontractors, completed or in the course of completion and all Materials for this Work, except Construction Equipment shall become the property of ONTC upon the earlier of payment by ONTC on account for such item or delivery to the Work Site. Notwithstanding the foregoing, until final completion of the Work and ONTC taking possession and control of the Work, the Contractor shall retain all risk with respect to and be responsible for: (a) all items supplied by ONTC, the Contractor or its Subcontractors that are to be incorporated into the Work or used in performing the Work; and (b) any Work completed or in progress.

Insurance

111. The Contractor shall obtain, and for as long as this Contract is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to ONTC:

(a) Commercial General Liability Insurance:

- (i) With no limitations on or exclusions from coverage arising from working on or around railway property;
- (ii) Including "Ontario Northland Transportation Commission" as an additional insured;
- (iii) To a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence;
- (iv) Including bodily injury, personal injury, death and damage to property, including loss of use thereof;
- (v) Including coverage for environmental liability;
- (vi) In a form satisfactory to ONTC; and
- (vii) Endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage.

(b) Automobile Liability Insurance:

- (i) In respect of licensed vehicles,
- (ii) To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence,
- (iii) Including bodily injury, death and damage to property,
- (iv) Endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage, and

(viii) In the following forms: standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor, and standard non-owned automobile form policy including standard contractual liability endorsement.

(c) Pollution Liability Insurance:

(i) With coverage for damages to ONTC's property and adjacent land and watercourse due to a contravention of Environmental Laws or the *Fisheries Act*;

(ii) To a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence; and,

(iii) Endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage.

112. If any of the Contractor's insurance policies expire during the term of this Contract, the Contractor shall renew or replace them and, within sixty (60) days after such expiry, provide to ONTC certificates of the renewed/replaced insurance.

113. The Contractor shall ensure that all the insurance is primary and does not call into contribution any other insurance coverage available to ONTC. The Contractor shall not do or omit to do anything which would impair or invalidate the insurance policies.

114. If the Contractor fails to take out or maintain the above-described insurance, ONTC may, in its discretion, terminate this Contract immediately or take over and maintain such insurance, whereupon the Contractor shall immediately pay to ONTC any premium paid by ONTC for such insurance.

Workers' Compensation

115. The Contractor shall ensure all of its and its Subcontractors' employees, consultants, representatives and agents and visitors attending at the Work Site, or any of them who perform Work but do not attend at the Work Site, are registered for workers' compensation coverage.

116. The Contractor shall provide to ONTC a current certificate under the WSIA confirming that the Contractor has complied with its obligations under the WSIA and whenever a certificate has expired and been replaced with a new, current, certificate, the new certificate shall be provided to ONTC.

WARRANTY

117. The Contractor warrants the work free from Defect for a warranty period of one year from the date of Final Completion of the Work (the "**Warranty Period**").

118. ONTC shall promptly give the Contractor notice of observed Defects which arise during the Warranty Period. Following the receipt of the notice, the Contractor shall remedy, at the Contractor's expense, the Defects in the Work within 10 Working Days of receipt of the notice,

or such other period directed by ONTC, acting reasonably (the “**Remediation Period**”). The Contractor shall correct or pay for damage resulting from such remediation.

119. If the Contractor fails to remedy a Defect within the Remediation Period, ONTC may upon written notice to the Contractor, in its sole discretion, either proceed to remedy the Defect itself or contract a third party to remedy the Defect (including redesign costs, reconstruction costs and costs related to damages arising from such Defect). ONTC shall be entitled to recover from the Contractor the costs thereof or may deduct the money from any monies due or that become due to the Contractor, including any Warranty Holdback.
120. The Contractor further warrants any and all remedial work it performs for a further period of one year from completion of the remedial work.
121. Acceptance of the Work by ONTC shall not relieve the Contractor from any responsibility for Defects.
122. The Contractor shall assign to ONTC all warranties, guarantees or other obligations for Work, services or Materials performed or supplied by any Subcontractor, supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party’s agreement. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of ONTC under the Contract Documents.

SUSPENSION AND TERMINATION

Suspension

123. ONTC may suspend the Work at any time and for any reason upon providing notice to the Contractor and such notice shall have immediate effect, unless stated otherwise. At the end of the suspension period, ONTC and the Contractor may negotiate in good faith any adjustments to the Contract Price, the Contract Time or the Construction Schedule to account for the time in which the Work was suspended. The Contractor shall not be entitled to any adjustment where the suspension was a result of any act or omission of the Contractor.

Termination for Convenience

124. ONTC may terminate this Contract at any time for any or no reason. Such termination shall be effective upon the date specified in ONTC’s Notice in writing advising of the termination of the Contract pursuant to this section. In such event, ONTC shall pay for the actual and verifiable Work performed up to the effective date of termination, including demobilization costs, and for such additional costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, termination fees, penalties or levies, and any claims for loss of profit, lost deposits, or lost opportunity. ONTC shall not be liable to the Contractor for any other claims, costs or damages whatsoever arising from such termination of the Contract. Within 3 Working Days of receiving the Notice of termination by ONTC, the Contractor shall deliver a Notice in writing to each of its Subcontractors confirming the effective date of the termination.

Contractor Default

125. The Contractor is in default under the Contract if any of the following occurs:
- (a) the Contractor becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against it;
 - (b) the Contractor commits a breach of the health and safety plan applicable to the Work Site;
 - (c) the Contractor abandons the Work for a period which exceeds 7 days from receipt by the Contractor of a written request from ONTC to return to the Work Site;
 - (d) the Contractor assigns the Contract or any right or obligation under the Contract or subcontracts the Work without the prior written consent of ONTC; or,
 - (e) the Contractor commits a breach of any of the terms of the Contract (other than a breach already referred to in this section), and upon receiving notice of such breach from ONTC, the Contractor fails to remedy such breach within 7 days after receipt of notice from ONTC of the breach.

If the Contractor is in default, ONTC shall be entitled to immediately terminate this Contract upon providing notice to the Contractor and/or to exercise any one of its rights in section 126.

Remedies of ONTC for Default

126. Upon the occurrence of a Contractor default, provided ONTC has given the Contractor notice, ONTC may, without prejudice to any of its other rights and remedies, do any or all of the following in its sole discretion:
- (a) terminate the Contract in its entirety by written notice having immediate effect and within 5 Working Days publish a notice of termination (Form 8) in accordance with the *Construction Act*;
 - (b) take any action ONTC considers appropriate to rectify or attempt to rectify the Contractor's default but shall not be obligated to do so and all costs and expenses incurred by ONTC in rectifying or attempting to rectify the Contractor's default, together with interest thereon, shall be payable by the Contractor on demand. Such action by ONTC shall not be deemed a termination;
 - (c) take possession of all goods and the Contractor's Construction Equipment, Materials and plant and shall have the right to use the same to complete, or arrange to have completed, the Work;
 - (d) withhold all further payments to the Contractor, subject to ONTC's rights of set off, and use any amounts withheld for any purpose to advance the Work, and upon final

completion, recover from the Contractor any liability incurred or suffered by ONTC as a result of, or arising out of, or in any way in connection with, the Contractor default;

- (e) make a claim against any applicable contract security required to be provided by the Contractor; and,
- (f) recover all legal costs and expenses on a full indemnity basis that were incurred by ONTC associated with the termination.

ONTC Default

127. ONTC shall be in default under the Contract if any of the following occur:

- (a) ONTC becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against it upon which time the Contractor may, without prejudice to any other right or remedy the Contractor may have, terminate the Contract by giving ONTC or receiver or trustee in bankruptcy written notice to that effect and within 5 Working Days publish a notice of termination (Form 8) in accordance with the *Construction Act*; or
- (b) ONTC fails to make an undisputed payment that is due and payable within the payment period in accordance with the Contract and upon receiving notice of such breach from the Contractor, ONTC failing to remedy such breach within 20 Working Days of notice of such breach, in which case, the Contractor, shall be entitled to immediately terminate this Contract upon providing written notice to ONTC and within 5 Working Days publish a notice of termination (Form 8) in accordance with the *Construction Act*.

On Termination

128. If the Contract is terminated under by ONTC for convenience or by the Contractor due to ONTC's default, ONTC shall pay the Contractor all undisputed applications for payment due to the Contractor for Work performed in the relevant period, together with reasonable and auditable demobilization costs and other direct costs the Contractor reasonably incurs and provides satisfactory evidence for in terminating the Contract , including reasonable cancellation fees payable to its Subcontractors. The amount to be paid under this section is the Contractor's sole claim for payment for termination.

129. If the Contract, in whole or in part, is terminated:

- (a) the Contractor shall immediately deliver to ONTC all the Deliverables and all other documents and work product arising in connection with the Work, completed or in progress;
- (b) the Contractor shall cooperate with ONTC to ensure an orderly transition to any contractor replacing the Contractor for the completion of the Work;
- (c) as directed by the ONTC Representative, remove from the Work Site any property of or in the possession or control of the Contractor prior to the effective date of termination

other than property belonging to ONTC or to be incorporated in the Work. ONTC may, without any liability whatsoever and at the Contractor's sole expense, remove or dispose of any such property left at the Work Site after such date; and

- (d) all terms and obligations set forth in the Contract that by their terms or nature continue to apply to the Contractor following termination or expiration of the Contract shall apply.

INDEMNITY AND LIABILITY

Representations

- 130. Except for the representations and warranties and conditions expressly set out in this Contract, ONTC hereby excludes any and all representations, warranties and conditions of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

General Indemnity

- 131. The Contractor shall indemnify ONTC and its officers, directors, employees, consultants, contractors and agents (collectively the "**ONTC Indemnitees**") and save them harmless from and against all losses, claims, liabilities, damages and costs ("**Loss**") which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Contractor or as a result of any breach of the terms of this Contract by the Contractor or by any act or omission of the Contractor or Contractor Parties or those for whom the Contractor is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or those for whom it is in law responsible. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Indemnitees.

Specific Indemnities

- 132. The Contractor shall indemnify ONTC and ONTC Indemnitees and save them harmless from and against all Loss incurred by ONTC arising from:
 - (a) any decision or interpretation by any court or governmental authority that: (i) any of the Contractor Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Contractor Parties under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
 - (b) any health, medical disability or similar claims which the Contractor or Contractor Parties may have during or after the term of this Contract;
 - (c) a claim by any third party against ONTC alleging that the Work IP and its use by ONTC, infringes any Intellectual Property Rights;
 - (d) safety infractions committed by the Contractor under the *Occupational Health and Safety Act*; and,

- (e) exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the Work Site by the Contractor or a Contractor Party and mishandled or handled negligently or improperly.

Exception

- 133. The Contractor shall not be liable for any Loss arising from errors or omissions in any of the information which is supplied to the Contractor by ONTC.

Bodily Injury and Property Damage

- 134. The Contractor shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to ONTC's physical property by and act or omission of the Contractor or a Contractor Party or those for whom it is at law responsible.

Waiver

- 135. The Contractor waives against ONTC and ONTC Indemnitees any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Contract or for any injury to or death of any person or for any loss of or damage to any property belonging to the Contractor or Contractor Parties and for any loss or damage of the Contractor unless caused by the negligent act or omission of ONTC or ONTC Indemnitees.

Limitation of Liability

- 136. Notwithstanding any other provision of this Contract,
 - (a) ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages; and,
 - (b) Any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of issuance of the Purchase Order or at any time during the term of the Contract, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

Survival

- 137. The provisions in this part – Indemnity and Liability shall survive the expiry or termination of this Contract.

DISPUTE RESOLUTION

- 138. Save and except where the Contractor has given an undertaking, in accordance with the *Construction Act*, to refer a dispute to Adjudication, prior to delivering a notice of Adjudication in a form prescribed by the *Construction Act*, the parties agree to first address all unresolved

claims, disputes or controversies of any kind arising out of or in connection with this Contract or the provision of the services (hereafter referred to as the “**Dispute**”) in a tiered approach as follows:

- (a) A Dispute shall be referred to ONTC’s project manager for the Work and a representative of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
- (b) If unresolved, after following the process described in (a), the Dispute shall be referred to the ONTC Director or Vice President who is responsible for the Work and an employee of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
- (c) If unresolved after following the process described in (b), and only at the election of ONTC, the Dispute shall be referred to the President and CEO of ONTC and the most senior executive employee of the Contractor for resolution within a period not to exceed thirty (30) days. If ONTC does not elect, at its sole option, to proceed under this section, the Dispute may proceed under a step described in sections 139, 141 and 142.

- 139. If the Dispute remains unresolved despite the Parties’ attempting to resolve it following the process in section 138(a) to (c), a party may elect to proceed with the Dispute by way of an Adjudication. If a party elects to proceed by way of an Adjudication, the other party shall not be bound to proceed by way of an Adjudication, save and except where the parties are obliged under the *Construction Act*. Where either party has delivered a notice of Adjudication in a form prescribed by the *Construction Act*, the procedures and rules set out under the *Construction Act* and the regulations thereto shall govern the Adjudication.
- 140. Other than where the Contractor is obliged to commence an Adjudication pursuant to an undertaking under the *Construction Act*, neither ONTC nor the Contractor shall commence an Adjudication during the Restricted Period (Adjudication).
- 141. If the Dispute remains unresolved despite the Parties attempting to resolve it following the process in section 138 (a) to (c), or following a determination of the Dispute pursuant to an Adjudication, a party may elect to proceed with the Dispute under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than: (i) ten (10) days following the expiry of the timeline set out in section 138(b) or (c), whichever is the later, or (ii) ten (10) days following the rendering of the adjudicator’s determination following an Adjudication. Where a party elects to proceed with mediation within the timelines prescribed in this section, the other party shall be bound to proceed to mediation. No later than ten (10) days after a party makes an election to proceed to mediation, or such longer period as may be mutually agreed between the parties, the parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.
- 142. If neither party elects to proceed to mediation within the timelines outlined in section 141 or the Parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration by a single arbitrator in accordance with the *Arbitration Act, 1991, S.O. 1991, c. 17* (hereafter referred to as the “**Arbitration Act**”) as amended by an arbitration agreement to be executed by the parties and the arbitrator.

The Parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the *Arbitration Act*. The arbitration proceedings shall take place in Toronto, Ontario, Canada. The language of the arbitration shall be English. The Parties agree that any arbitration award, including with respect to costs, shall be binding on the Parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The Parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.

143. The timelines in this part – Dispute Resolution may be amended by mutual agreement of the Parties.

HEALTH AND SAFETY

144. The Contractor shall be solely responsible for construction safety at the Work Site and for compliance with the rules, regulations and practices required by the applicable laws and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
145. Without limiting the generality of the foregoing, the Contractor shall comply with the occupational health and safety laws and regulations and any orders, recommendations and restrictions made by the federal, provincial or municipal governments and the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting during the COVID-19 pandemic as they apply to the Work Site. If the Work Site is located on ONTC's premises, the Contractor shall comply with all ONTC's policies and directions to ensure the health and safety of ONTC's employees and contractors as well as the Contractor's employees, Subcontractors and Suppliers. The Contractor shall indemnify and hold harmless ONTC for any fines, penalties or other costs imposed or assessed on or incurred by ONTC arising from the Contractor's failure to comply with the applicable health and safety laws, any orders, recommendations and restrictions of the federal, provincial or municipal governments or the advice, recommendations and instructions of public health officials.
146. Prior to the commencement of the Work, the Contractor shall submit to ONTC documentation of the Contractor's health and safety policy and programs and a copy of the Notice of Project filed with the Ministry of Labour naming itself as "Constructor" under the *Ontario Occupational Health and Safety Act*.
147. The Contractor shall ensure that it and its employees and Subcontractors are aware of and, while being on ONTC's property, comply with ONTC's policies, including its Drug and Alcohol Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, C.R.O.R. 2015, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.

PRIOR SERVICES OR WORK

148. Any aspect of the Work provided for herein which has been performed by the Contractor prior to the issuance of the Purchase Order and any payment made by ONTC for such work shall be deemed to be subject to and performed and paid under this Contract.

GENERAL

149. **No Waiver:** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Contract shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of any remittances from the Contractor by ONTC shall not be deemed a waiver of any preceding breach by the Contractor regardless of ONTC's knowledge of such preceding breach at the time of the acceptance of such compensation.
150. **Relationship:** Nothing contained in this Contract shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
151. **Governing Law:** This Contract shall be governed by and constituted in accordance with the laws in force in the Province of Ontario without regard to conflict of laws principles. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Contract or the performance of the obligations hereunder.
152. **Severability:** Should any section or part or parts of a section in this Contract be illegal or unenforceable, it or they shall be considered separate and severable from the Contract and the remaining provisions of this Contract shall remain in full force and effect and shall be binding upon ONTC and the Contractor as though such section or part or parts thereof had never been included in this Contract.
153. **Entire Agreement:** The Contract constitutes the entire agreement and understanding of the parties and supersedes any and all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Contract. No amendment, variation or change to this Contract shall be binding unless the same shall be in writing and signed by the parties.
154. **Survival:** In addition to those provisions which are expressly stated to survive the termination or expiration of this Contract, the provisions of this Contract that are by their nature intended to survive termination or expiration of this Contract shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
155. **Notice:** Any notice, consent, acceptance or approval required or permitted to be given in connection with the Contract shall be in writing and shall be sufficiently given if delivered to

the recipient party if sent to the address of the party provided for that purpose personal delivery, prepaid courier, or email.

156. **Assignment and Enurement:** The Contractor may not assign this Contract (or the proceeds thereof) or subcontract its obligations under this Contract without the express consent of ONTC, which consent may be withheld or conditioned in ONTC's sole and absolute discretion. This Contract enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

Schedule A – Project-Specific Requirements for a Proper Invoice

To satisfy the requirements for a Proper Invoice, the following criteria, as may be applicable in each case, must be included with the Contractor's application for payment:

- (a) be in the form of a written bill, invoice, application for payment, or request for payment;
- (b) be in writing;
- (c) contain the Contractor's name, telephone number and mailing address and contact information of the Contractor's project manager;
- (d) contain the title of the Work and ONTC's contract number or purchase order number under which the work was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- (e) contain the date the written bill, invoice, application for payment, or request for payment is being issued by the Contractor;
- (f) identify the period of time in which the labour and/or materials were supplied to ONTC;
- (g) reference to the provisions of the Contract under which payment is being sought (*e.g.* progress payment / milestone, holdback, final payment, etc.);
- (h) a description, including quantities where appropriate, of the services or materials, or a portion thereof, that were supplied and form the basis of the Contractor's request for payment;
- (i) the amount the Contractor is requesting to be paid by ONTC, set out in a statement, separating out any statutory or other holdbacks, set offs and HST;
- (j) with each application for payment after the first, a Statutory Declaration, in the form prescribed by ONTC, stating that all accounts for labour, subcontracts, Materials, Construction Equipment and other indebtedness which may have been incurred by the Contractor and for which ONTC might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- (k) a current Workplace Safety Insurance Board clearance certificate;
- (l) an updated Construction Schedule in the format(s) required under section 8 of the Terms;
- (m) if requested by ONTC, a current and valid certificate(s) of insurance for the insurance required pursuant to the Contract;
- (n) the following statement: "Provided this Proper Invoice complies with the requirements of the Contract and provided no Notice of Non-Payment is issued by ONTC, payment is due within 28 days from the date this Proper Invoice is received by ONTC.";

- (o) the name, title, telephone number and mailing address of the person at the place of business of the Contractor to whom payment is to be directed;
- (p) in the case of the Contractor's application for final payment;
 - (a) sufficient evidence that the Contractor has delivered all warranties to ONTC;
 - (b) sufficient evidence that the Work Site has been left in a clean and tidy condition, including evidence that any remaining Materials, tools, Construction Equipment, temporary work, and waste products and debris have been removed from the Work Site;
 - (c) an executed, original, Full and Final Release of all claims that may arise as a result of the Work, which Full and Final Release executed by the Contractor shall be in a form approved by ONTC;
- (q) Information identifying the authority, whether in the Contract Documents or otherwise, under which the services or materials were supplied;
- (r) Any other information that is prescribed in the Contract Documents or identified by ONTC as required;
- (s) The amount invoiced to date;
- (t) The percentage of the Contract Price invoiced; and
- (u) The individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the Work.