



555 Oak Street East
North Bay, Ontario
P1B 8L3

555, rue Oak Est
North Bay (Ontario)
P1B 8L3

Tel: 1-800-363-7512
www.ontarionorthland.ca

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Addendum No. 01

File Reference Number: RFP 2024 001

Title: Design, Supply, Installation, Testing and Commissioning of all Materials and Equipment required for the Grade Crossing Warning System Upgrades

RE: Clarifications/Questions

Please refer to the following information / clarifications:

Part 5 – Request for Proposals CCDC 2 – 2020 Supplementary Conditions

The above referenced Part of the RFP Package has now been updated to include ONTC's Supplementary Conditions – CCDC 2 – 2020 – Revised 18 Jan 2024 and ONTC's Special Supplementary Conditions 18 Jan 2024. Please replace Part 5 of the RFP Package with Part 5 attached to this Addendum.

Regards,

Brinda Ranpura
Procurement Contracts Specialist
Brinda.ranpura@ontarionorthland.ca



PART 5

REQUEST FOR PROPOSALS

CCDC 2 – 2020 SUPPLEMENTARY CONDITIONS

AMENDMENTS TO THE AGREEMENT BETWEEN OWNER AND CONTRACTOR

1. ARTICLE A-1 THE WORK

1.1 In Article A-1.1, delete the words “and for which” and “is acting as and hereinafter called the Consultant”.

1.2 In Article A-1.3, delete all of the words after “Contract Documents” and replace them with the following:

“attain Substantial Performance of the Work by the [] day of [] in the year 20[], and attain Ready-for-Takeover by the [] day of [] in the year 20[].”.

2. ARTICLE A-3 CONTRACT DOCUMENTS

2.1 Add the following to the list of Contract Documents in Article A-3.1:

- “Special Provisions, if any
- ONTC Special Supplementary Conditions, if any
- ONTC Supplementary Conditions to CCDC 2 - 2020
- Addenda to the Request for Proposals (“RFP”)
- Schedule 2-A to the RFP - RFP Data Sheet
- Schedule 3-A to the RFP - Scope of Work
- Contractor’s Proposal in Part 4 of the RFP in response to the RFP
- Technical Specifications
- Working Blocks
- Contract Drawings”

3. ARTICLE A-4 CONTRACT PRICE

3.1 Delete paragraph 4.4 and replace it with the following:

“The Contract Price shall remain fixed for the duration of the Contract Time, subject only to adjustments as provided for in the Contract Documents. For certainty, the Contractor assumes all risks in connection with cost increases for Products, Labour, and Construction Equipment prescribed by the Contract Documents for the performance of the Work, and the Contractor assumes all responsibility for liabilities and additional costs that may arise as a result of the Contractor’s inclusion of any Product, Construction Equipment, Supplier, or Subcontractor in its calculation of the Contract Price.”

4. ARTICLE A-5 PAYMENT

4.1 Delete paragraph 5.1 in its entirety, including all subparagraphs thereunder and replace it with the following:

“5.1 Subject to the provisions of the Contract Documents and the Construction Act, the Owner shall:

- .1 make progress payments to the Contractor on account of the Contract Price when due together with such Value Added Taxes as may be applicable to such payments,
- .2 upon Substantial Performance of the Work, as jointly certified by the Owner and the Contractor, and upon the expiry of the holdback period that follows the publication of the certificate of Substantial Performance of the Work, as stipulated in the Construction Act, there being no claims for lien registered against the title to the Place of the Work and no written notices of lien delivered to the Owner, pay the Contractor the unpaid balance of the holdback, together with such Value Added Taxes as may be applicable to such payment, less any amount stated in any Notice of Non-Payment that is published by the Owner in accordance with the Construction Act, and
- .3 after Ready-for-Takeover has been achieved in accordance with the Contract Documents and the Work is complete, there being no claims for lien registered against the title to the Place of the Work and no written notices of lien delivered to the Owner, pay the Contractor the unpaid balance of the Contract Price in accordance with GC 5.5. – FINAL PAYMENT, together with such Value Added Taxes as may be applicable to such payment.”

4.2 Delete Article A-5.2 in its entirety and replace it with the following:

“Interest on late payments, if any, will be in accordance with the Construction Act.”

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

5.1 Delete the text of ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING (retaining the provisions setting out the addresses of the Owner, Contractor and Consultant) and replace it with the following:

“6.1 Notices in Writing between the parties or between them shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier during normal business hours or if sent during normal business hours by e-mail during the transmission of which no indication of failure of receipt is communicated to the sender, and addressed as set out below. Such Notices in Writing will be deemed to be received by the addressee on the next Working Day if sent by e-mail after normal business hours or if sent by overnight commercial courier. Such Notices in Writing will be deemed to be received by the addressee on the fifth Working Day following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this article.”

5.2 In Article A-6.1, substitute the word “Consultant” with the words “Owner’s Project Manager”.

6. ARTICLE A-9 CONFLICT OF INTEREST

6.1 Add new Article A-9 as follows:

“ARTICLE A-9 CONFLICT OF INTEREST

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

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*.”

4. ARTICLE A-10 TIME OF THE ESSENCE / LIQUIDATED DAMAGES

4.1 Add new ARTICLE A-10 TIME OF THE ESSENCE/LIQUIDATED DAMAGES as follows:

10.1 It is agreed that one of the reasons the *Contractor* was selected by the *Owner* for this *Contract* is the *Contractor’s* representation and warranty that it will attain Substantial Performance of the Work and Ready-for-Takeover within the Contract Time stated in Article A-1.3 of this Contract. The Contractor acknowledges that it has been advised by the Owner that it is critical to the Owner that Substantial Performance of the Work and Ready-for-Takeover is achieved within the Contract Time. The Contractor agrees that time is of the essence in the performance of the Contractor’s obligations under this Contract.

10.2 The Contractor further acknowledges its understanding that the Owner is responsible and must account to the Government of Ontario, its customers and passengers and the residents of Northern Ontario. A failure by the Contractor to attain Substantial Performance of the Work and Ready-for-Takeover within the Contract Time will result in damages to the Owner and to the Government of Ontario, its customers and passengers and the residents and businesses in Northern Ontario, which would be difficult or impractical to quantify but would nevertheless have a significant negative impact on the Owner and its ability to provide the services the Owner is obliged to provide to the residents and businesses in Northern Ontario.

10.3 Given the significance of the requirement for the Contractor to achieve Substantial Performance of the Work and Ready-for-Takeover, as described in Article A-10.2, the Contractor further acknowledges and agrees that, without limiting the Owner’s entitlement to any additional or other

damages, if it fails to achieve Substantial Performance of the Work and Ready-for-Takeover within the Contract Time, the Owner will incur substantial damages and the extent of such damages shall be incapable or very difficult of accurate measurement. Nonetheless, the parties acknowledge that as of the effective date of this Contract, the amount of liquidated damages set forth in subparagraph 10.4 below represents a good faith estimate on the part of the parties as to the actual potential damages that the Owner would suffer because of late completion of the Project. It is expressly acknowledged and agreed by and between the parties that the amount of such liquidated damages does not include any penalty. Notwithstanding the foregoing, where the Project is delayed beyond the Contract Time, the Owner shall be entitled to (i) the liquidated damages as calculated pursuant to Article A-10.4, or (ii) in the event that the Contractor claims that this liquidated damages provision is invalid or unenforceable and the Contractor prevails on such a defence, the damages arising from the delay suffered by the Owner including, without limitation, consequential, special, incidental, and indirect damages, costs and other expenses incurred or suffered by the Owner.

- 10.4 The Owner shall require that the Contractor pay to the Owner (or have deducted from Contract payments) liquidated damages at the per diem rate set out in the Contract Documents for each calendar day of delay beyond the prescribed date for Ready-for-Takeover until Ready-for-Takeover is achieved and certified, pursuant to the terms of the Contract. If there is no per diem rate set out in the Contract Documents, the Contractor shall pay to the Owner the Administration Costs incurred by the Owner as a result of the delay.
- 10.5 Liquidated damages will be assessed as incurred and reflected as deductions from amounts that may be due under any applications for payment pending at the time that such liquidated damages are assessed. All liquidated damages not deducted from payments prior to final payment shall be deducted from the final payment to be made by the Owner to the Contractor pursuant to GC 5.5 FINAL PAYMENT and any amount of liquidated damages in excess of the final payment amount, shall be paid by the Contractor to the Owner, within 30 days following a written demand by the Owner for such payment.
- 10.6 The liquidated damages payable under this paragraph are in addition to and without prejudice to any other remedy, action or any other alternative claim that may be available to the Owner.”

AMENDMENTS TO THE DEFINITIONS

5. DEFINITIONS

5.1 Add the following new definition:

“*Administration Costs* means those costs and expenses incurred by the Owner 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:

- (a) additional fees payable by the Owner to a professional service provider required for the Project on a per diem basis according to the professional service provider’s personnel rates;
- (b) the Owner’s personnel costs associated with the delay, in an amount determined by the Owner;
- (c) any additional costs or loss of revenue incurred by the Owner due to the delay.”

5.2 Add the following new definition:

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

5.3 Add the following new definition:

“The *Arbitration Act* means the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended.”

5.4 Add the following new definition:

“Close-out Documentation has the meaning given in GC 5.5.1.2.”

5.5 Add the following new definition:

“Confidential Information” means all information of the Owner that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Contractor, regardless of whether it is identified as confidential or not, which comes into the knowledge, possession or control of the Contractor in connections with this Agreement, but Confidential Information does not include information that:

- .1 is or becomes generally available to the public without fault or breach by the Contractor, but only after that information becomes generally available to the public;
- .2 the Contractor can demonstrate to have been rightfully obtained by the Contractor without any obligation of confidence from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence;
- .3 the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor, free of any obligation of confidence, when disclosed; or
- .4 is independently developed by the Contractor without the use of any of the Owner’s Confidential Information.

5.6 Add the following new definition:

“*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 the Owner.”

5.7 Add the following new definition:

“The *Construction Schedule* or construction schedule means the schedule for the performance of the Work provided by the Contractor pursuant to GC 3.4 – CONSTRUCTION SCHEDULE, including any amendments to the Construction Schedule made pursuant to the Contract Documents.”

5.8 Delete the definition of “Consultant” and replace it with the following:

“The *Consultant* is the Owner’s internal project manager designated by the Owner to be the Owner’s representative for the purposes of the Contract. All references to the Consultant in the Contract Documents shall mean the “Owner” and, unless otherwise provided in the Contract Documents, any requirement for a decision or opinion, in writing or otherwise, by the Consultant shall mean a decision of the Owner. References to the “Engineer” in the Specifications or to the “Contract Administrator” in OPSS shall mean the “Consultant” as defined herein.”

5.9 Delete the definition of “Contract Price” and replace it with the following:

“The *Contract Price* is the amount payable by the Owner to the Contractor for Work to be completed under the Contract in accordance with the method and manner of payment stipulated in the Contract Documents and the lump sum price submitted by the Contractor in its proposal as stipulated in Article A-4.1.”

5.10 Add the following new definition:

“A *Dispute* means all unresolved claims, disputes or controversies of any kind arising out of or in connection with this Contract or the carrying out of the Work.”

5.11 At the end of the definition of “Drawings”, add the following:

“and a waste disposal plan.”

5.12 Add the following new definition:

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

5.13 Add the following new definition:

“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;

5.14 Add the following new definition:

“Estimate means a calculation of the quantity or cost of the Work or part of it depending on the context.”

5.15 Add the following new definition:

“Excess Soil means “excess soil” as that term is defined under section 3 of the *Excess Soil Regulation*.”

5.16 Add the following new definition:

“Excess Soil Regulation means O. Reg. 406/19: On-Site and Excess Soil Management to the Environmental Protection Act, R.S.O. 1990, c. E.19.”

5.17 Add the following new definition:

“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, 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 changes to any acts, orders, legislation, regulations, directives, or priorities of any government or other public authority; provided such event is not caused by the affected party’s negligence, default, failure to exercise reasonable diligence, bankruptcy or insolvency. 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 Project. .

5.18 Add the following new definition:

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.

5.19 Add the following new definition:

Intellectual Property Rights” means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual property rights protected by legislation (such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks), or by common law (such as confidential information and trade secrets). At any time in the future, Intellectual Property Rights shall include any intellectual or industrial property rights protected or protectable at such time under the laws of Canada, any foreign country, or any political subdivision of any country.”

5.20 Add the following new definition:

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.”

5.21 Delete the definition of *“Payment Legislation*” and replace it with *Construction Act* as follows:

“The 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 execution of this Contract. For certainty, the first procurement process for the Project (i.e., the “improvement” as that term is defined in the *Construction Act*) was commenced on or after October 1, 2019 and Parts I.1 (Prompt Payment) and II.1 (Construction Dispute Interim Adjudication) of the *Construction Act* apply to this Contract.”

5.22 Add the following new definition:

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

5.23 Add the following new definition:

“*Proper Invoice Submission Date* has the definition given to it under GC 5.2.2.”

5.24 Add the following new definition:

“*Payment Period* or ‘payment period’ means the fixed segments of time for which the *Contractor* shall be entitled to claim payment for *Work* performed during such period, as agreed upon by the *Owner* and the *Contractor* at the first pre-construction meeting. To be effective, such agreement must be in writing or reflected in the final and approved pre-construction meeting minutes. In the event that the *Owner* and the *Contractor* do not fix the segment of time for each *Payment Period* at the first pre-construction meeting, then each *Payment Period* shall be a one (1) month period during which *Work* was performed, with the start and end dates of each *Payment Period* deemed to be the first (1st) calendar day of the applicable month and the last calendar day of the same month, respectively.”

5.25 Add the following new definition:

“*Pre-Invoice Submission Meeting* has the definition given to it under GC 5.2.1.”

5.26 Amend the definition of *Ready-for-Takeover* by deleting all the words after “as verified” and replacing them with “and approved by the Owner.”

5.27 Add the following new definition:

“The *Restricted Period (Adjudication)* means the (inclusive) period of time between November 15 in one calendar year to January 2 in the next calendar year, in any given year throughout the duration of the Contract.”

5.28 Add the following new definition:

“The *Restricted Period (Proper Invoice)* means the (inclusive) period of time between December 10 to December 28 in any given year throughout the duration of the Contract.”

5.29 Add the following new definition:

“*Statutory Declaration* means the “Ontario Northland Statutory Declaration of Progress Payment Distribution by Contractor” form, attached to the Supplementary Conditions as Schedule “B”.

AMENDMENTS TO THE GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

6. GC 1.1 CONTRACT DOCUMENTS

6.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

6.2 Delete paragraph 1.1.3 and replace it with the following:

“1.1.3 “The Contractor shall review the Contract Documents and shall report promptly to the Owner any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall comply with the standard of care described in paragraph 3.14.1 of the Contract. Except for its obligation to make such review and report the result, the Contractor does not assume any responsibility to the Owner or to the Owner for the accuracy of the Contract Documents. Provided it has exercised the degree of care and skill described in this paragraph 3.4.1, the Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents which the Contractor could not reasonably have discovered. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the work affected until the Contractor has

received corrected or missing information from the Owner. If the Contractor finds discrepancies in and/or omissions from the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor must immediately notify the Owner by means of a written Request for Information (“RFI”) and the Consultant will provide written instructions or explanations. The Owner shall not be responsible for oral instructions.”

6.3 Delete paragraph 1.1.4 and replace it with the following:

“1.1.4 Notwithstanding the foregoing, errors, inconsistencies and/or omissions shall not include lack of reference on the drawings or in the specifications to labour and/or Products that are required or normally recognized within respective trade practices as being necessary for the complete execution of the Work. The Contractor shall not use RFIs, issued during execution of the Work, in and of themselves to establish a change and/or changes in the Work pursuant to Part 6 – CHANGES IN THE WORK. In the event an RFI or the cumulative effect of RFIs leads to what the Contractor considers to be a change in the Work, then the procedure under Part 6 – CHANGES IN THE WORK shall be followed.”

6.4 Amend paragraph 1.1.5 by adding the following to the end of that paragraph:

“The drawings are, in part, diagrammatic and are intended to convey the scope of the Work and indicate general and appropriate locations, arrangement and sizes of materials. The Contractor shall obtain more accurate information about the locations, arrangement and sizes from study and coordination of the drawings and shall become familiar with conditions and spaces affecting these matters before proceeding with the Work. Where site conditions require minor changes in indicated locations and arrangements, the Contractor shall make such changes at no additional cost to the Owner.”

6.5 Delete paragraph 1.1.5.1 in its entirety and replace it with new 1.1.5.1:

“the order of priority of documents, from highest to lowest, shall be:

- Special Provisions, if any
- ONTC Special Supplementary Conditions, if any
- ONTC Supplementary Conditions to CCDC 2
- Agreement between the Owner and the Contractor
- Definitions
- General Conditions
- Addenda to the Request for Proposals (“RFP”)
- Schedule 2-A to the RFP - RFP Data Sheet
- Schedule 3-A to the RFP - Scope of Work
- Contractor’s Proposal in Part 4 of the RFP in response to the RFP
- Technical Specifications
- Working Blocks
- Contract Drawings”

6.6 Add a new subparagraph 1.1.5.6 as follows:

“.6 Schedules of Division 01 - General Requirements of the Specifications shall form part of and be read in conjunction with the technical specification section as listed in the table of contents of the specifications.”

6.7 Add new sentence to the end of paragraph 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 Owner to settle Disputes among the Subcontractors and Suppliers in respect to such divisions.”

6.8 Delete paragraph 1.1.10 in its entirety and substitute new paragraph 1.1.10:

“All deliverables and *Intellectual Property Rights* produced by or resulting from the *Work*, including all *Specifications, Drawings*, models and copies thereof, shall vest in the *Owner* and is the sole and absolute property of the *Owner* as and when created. The *Contractor* hereby irrevocably assigns and conveys and agrees to assign

and convey, without further consideration, all right, title and interest in and to the *Intellectual Property Rights* produced or resulting from the Work, in perpetuity and throughout the world, to the *Owner* and its successors and assigns. This paragraph 1.1.10 shall survive termination of the *Contract*.”

6.9 Add new paragraphs 1.1.12, 1.1.13, 1.1.14, 1.1.15, and 1.1.16 as follows:

“1.1.12 The Owner shall provide the Contractor, without charge, an electronic version of the Contract Documents.”

1.1.13 If an item is shown on one document, and it can be reasonably inferred that it was intended to include work not shown on other related documents, the Contract Price shall nevertheless include for the cost of the item of work, unless the Owner agrees otherwise.

1.1.14 Wherever in the Contract provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval certificate or determination shall be in writing and shall not unreasonably be withheld or delayed.

1.1.15 The Contractor shall keep one copy of the current Contract Documents, Supplemental Instructions, Contemplated Change Orders, Change Orders, Change Directives, reviewed Shop Drawings, reports and records of meetings at the Place of Work in good order and available to the Owner.

1.1.16 The Contractor shall keep one copy of current standards and manufacturers’ literature specified in the Contract Documents at the Place of Work in good order and available to the Owner for the duration of the Work.”

7. GC 1.2 LAW OF THE CONTRACT

7.1 Delete paragraph 1.2.1 in its entirety and substitute new paragraph 1.2.1:

“This Contract shall be governed by and constituted in accordance with the laws in force in the Province of Ontario excluding any 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.”

8. GC 1.4 ASSIGNMENT

8.1 Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1:

“Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent, in the case of the Owner, is at the sole discretion of the Owner. In the event of an assignment of the Contract by the Contractor, such assignment shall not relieve the Contractor from its obligations and liabilities hereunder.”

9. GC 2.1 AUTHORITY OF THE CONSULTANT

9.1 Delete GC 2.1.1 in its entirety and replace it with the following:

“2.1.1 The Owner’s internal project manager shall have the authority to act on behalf of the Owner for all matters arising under the Contract.”

9.2 Delete GC 2.2.2 in its entirety.

10. GC 2.2 ROLE OF THE CONSULTANT

10.1 Delete GC 2.2.3 in its entirety.

10.2 Delete GC 2.2.4 in its entirety.

10.3 Delete GC 2.2.6 in its entirety and replace it with the following:

“2.2.6 If there is a Dispute between the Owner and the Contractor regarding the performance of the Work or the interpretation of the Contract Documents, the parties shall resolve the Dispute in accordance with PART 8 – DISPUTE RESOLUTION.”

10.4 Delete GC 2.2.7 in its entirety.

10.5 Delete GC 2.2.8 in its entirety.

10.6 Delete GC 2.2.9 in its entirety.

10.7 Delete GC 2.2.10 in its entirety.

10.8 Amend paragraph 2.2.12 by adding the following to the end of that paragraph:

“If, in the opinion of the Contractor, the Supplemental Instruction involves an adjustment in the Contract Price or in the Contract Time, it shall, within three (3) Working Days of receipt of a Supplemental Instruction provide the Consultant and the Owner with a written notice to that effect. Failure to provide written notification within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the Supplemental Instruction by the Contractor without adjustment in the Contract Price or Contract Time.”

10.9 Delete paragraph 2.2.18 in its entirety.

11. GC 2.3 REVIEW AND INSPECTION OF THE WORK

11.1 Add new paragraph 2.3.8 as follows:

“Where inspection and testing services are specified, the service provider employed for such services shall be the service provider named by the Owner.”

11.2 Add new paragraph 2.3.9 as follows:

“Where standards of performance are specified and the Work does not comply with the specified standard of performance, the deficiency in the Work shall be corrected as directed by the Consultant. Subsequent testing to ensure that the standard of performance has been attained (including re-testing by Owner), shall be carried out at the Contractor’s expense and shall not be paid from the cash allowances described in GC 4.1.”

12. GC 2.4 DEFECTIVE WORK

12.1 Add new paragraphs 2.4.1.1, 2.4.1.2, and 2.4.1.3 as follows:

.1 Without limiting the foregoing, the Contractor shall rectify, in a manner acceptable to the Owner, all defective work and deficiencies throughout the Work, whether or not they are specifically identified by the Owner.

.2 The Contractor shall prioritize the correction of any defective work which, in the sole discretion of the Owner, adversely affects the day to day operations of the Owner.

.3 All such corrections of defective work and deficiencies shall be at the *Contractor’s* expense.”

12.2 Amend paragraph 2.4.3 by deleting the last sentence and replacing it with the following:

“If the Owner and the Contractor do not agree in the difference in value, they shall resolve the disagreement pursuant to Part 8 – DISPUTE RESOLUTION.”

12.3 Add new paragraph 2.4.4 as follows:

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

13. GC 2.5 EMERGENCY SITUATIONS

13.1 Add new GC 2.5 EMERGENCY SITUATIONS as follows:

- “.1 The Owner has the right to determine the existence of an emergency situation and, when such an emergency situation is deemed to exist, the Owner may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action or, if the Contractor is not available, the Owner may direct others to remedy the situation. Any such action or direction taken by the Owner shall not relieve the Contractor of its responsibilities as the “constructor” pursuant to the Occupational Health and Safety Act (Ontario).
- .2 If the emergency situation was the fault of the Contractor, the remedial work shall be completed at the cost of the Contractor and with no additional cost to the Owner and the Owner shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- .3 If the emergency situation was not the fault of the Contractor, the Owner shall pay for the remedial work.”

14. GC 3.1 CONTROL OF THE WORK

14.1 Add new paragraph 3.1.3 as follows:

“Prior to commencing individual procurement, fabrication and construction activities, the Contractor shall verify, at the Place of the Work, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the Work and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or exact locations are not apparent, the Contractor shall immediately notify the Owner in writing and obtain written instructions from the Owner before proceeding with any part of the affected work.”

14.2 Add new paragraph 3.1.4 as follows:

“The Contractor shall perform the work in a good and workmanlike manner, using new materials, in accordance with all applicable laws and current best practices and standards in the construction industry at the Place of Work. The Contractor acknowledges that both time and quality are of the essence and the Contractor will perform the Work or cause the Subcontractors and Suppliers to perform the Work in accordance with the construction schedule, as amended from time to time, and in an expeditious and professional manner.”

15. GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

15.1 Delete paragraph 3.2.2.1 in its entirety.

15.2 Delete paragraph 3.2.2.2 in its entirety.

15.3 Add new paragraph 3.2.3.5 as follows:

“Subject to GC 9.4 – CONSTRUCTION SAFETY, 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 of the Place of the Work, including all of the responsibilities of the “Constructor” under the *Occupational Health and Safety Act* (Ontario).”

16. GC 3.4 CONSTRUCTION SCHEDULE

16.1 Delete paragraph 3.4.1 in its entirety and substitute the following:

“3.4.1 The Contractor shall:

- .1 within 10 Working Days from the date of contract award, prepare for the Owner’s review and approval, a construction schedule, including identification of the critical path of the Work, the schedule of operations, the proposed methods of construction and sequence of Work, and the time the Contractor proposes to complete the various items of Work within the Contract Time. The schedule shall be designed to ensure conformity with the Contract Time. The schedule will be in a Gantt chart in either .pdf or excel format and include:

- (a) activity sequences and durations;
- (b) special allocation of labour and *Products*;
- (c) processing of *Shop Drawings* and samples;
- (d) delivery of *Products* involving long lead time procurement;
- (e) usage and occupancy requirements of the *Owner* of those portions of the *Work* having usage or occupancy priority;
- (f) *Substantial Performance of the Work*, and *Ready-for-Takeover* reflecting that such milestones will be achieved by no later than the dates specified in Article A-1.3; and
- (g) any other schedule requirements set out in the Contract Documents.

If the construction schedule submitted by the *Contractor* is not accepted by the *Owner*, the *Contractor* shall make revisions to the construction schedule until it is accepted by the *Owner*. Once accepted by the *Owner*, the schedule submitted by the *Contractor* shall become the "*Construction Schedule*." Notwithstanding any other terms of this *Contract*, the *Contractor* shall not be entitled to receive any payment from the *Owner* until a construction schedule has been submitted by the *Contractor* and accepted by the *Owner*. The *Owner* may, at its sole discretion, not issue an order to commence work until the schedule has been received and approved.

- .2 during performance of the *Work* and in accordance with the controls and reporting requirements in the *Contract Documents*, provide for the *Owner's* review and approval, progress reports updating the *Construction Schedule*, reporting on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted. If the schedule is affected by approved *Change Orders*, the *Contractor* shall submit an updated *Construction Schedule*, if requested by the *Owner*, within 7 *Working Days* of the request. This updated schedule shall show how the *Contractor* proposes to perform the balance of the *Work*, so as to complete the *Work* within the *Contract Time*.
- .3 provide progress reports with each application for payment, in the form provided by the *Owner* attached as Schedule C, for review and approval, including an update of the *Construction Schedule* referred to in paragraph 3.4.1."

16.2 Add new paragraph 3.4.2 and 3.4.3 as follows:

"3.4.2 If,

- .1 at any time it should reasonably appear to the *Owner* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, based on critical path methodology, and Notice in Writing of such opinion is given to the *Contractor*; or
- .2 the *Contractor* becomes aware of or notices a slippage in the *Construction Schedule*,

then the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* and shall produce and present to the *Owner* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the *Construction Schedule*.

3.4.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, during construction are deemed NOT to be approved extensions to the *Contract Time*. Revisions to the *Construction Schedule* shall not be made without the prior written consent of the *Owner*. All requests by the *Contractor* for a revision to the *Construction Schedule* that includes an extension to the *Contract Time* or adjustment to the date(s) for *Substantial Performance of the Work* or *Ready-for-Takeover* must be approved by the *Owner* through an executed *Change Order*."

17. GC 3.5 SUPERVISION

17.1 Amend paragraph 3.5.1 by adding at the end of that paragraph:

“..., and upon the Contractor obtaining the Owner’s written consent, which consent will not be unreasonably withheld.”

17.2 Add new paragraph 3.5.3 as follows:

“Notwithstanding paragraph 3.5.2, the representative of the Contractor attending a meeting with the Owner or the Owner’s representative shall be deemed to have authority to act on behalf of the Contractor and bind the Contractor in matters related to this Contract.”

17.3 Add new paragraph 3.5.4 as follows:

“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 on the part of the representative(s) which jeopardizes the safety of the Owner’s operations or the Work or the proper progress of the Work. Immediately upon receipt of the request, the Contractor shall make arrangements to appoint an acceptable replacement. The Contractor shall indemnify and hold the Owner harmless from and against any damages, costs, expenses, claims, injuries and other liabilities suffered by the Owner arising from the conduct of the representative that is being replaced.”

18. GC 3.6 SUBCONTRACTORS AND SUPPLIERS

18.1 Add new paragraph 3.6.1.4:

“ensure the Subcontractors and Suppliers, while working on the Owner’s property, are aware of and comply with the Owner’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. 2022 Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.”

18.2 Delete paragraph 3.6.2 in its entirety and substitute new paragraph 3.6.2

“The Contractor shall not change Subcontractors or Suppliers set out in the Contract Documents without the prior written approval of the Owner which approval will not be unreasonably withheld.”

18.3 Add new paragraph 3.6.7 as follows:

“The responsibility as to which Supplier and/or Subcontractor provides the specific labour, Products and services for each item of work rests solely with the Contractor, within and in accordance with the requirements and limitations listed in the Contract Documents with respect to approval of Suppliers and/or Subcontractors permitted to perform work on the Project.”

19. GC 3.7 LABOUR AND PRODUCTS

19.1 Amend paragraph 3.7.2 by adding the following sentence at the end of that paragraph:

“The Contractor represents and warrants that the Products supplied by the Contractor in accordance with the Contract are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the Products to seizure and/or removal from the Place of the Work.”

19.2 Amend paragraph 3.7.1 by adding the words, “..., agents, Subcontractors and Suppliers ...” after the word “employees” toward the end of line one.

19.3 Add new paragraph 3.7.4 as follows:

“Upon receipt of a written notice from the Owner, the Contractor shall take action to rectify any situation involving tradespersons and labourers whose work is unsatisfactory to the Owner or who are considered by the Owner to be unskilled or otherwise objectionable. If after giving sufficient warning the Contractor is not able to reasonably rectify such situation, then such tradespersons or labourers shall be dismissed from the Place of the Work and the Contractor shall indemnify and hold the Owner harmless from and against any damages, costs, expenses,

claims, injuries and other liabilities suffered by the Owner arising from the dismissal of such labourers or tradespersons.”

19.4 Add new paragraph 3.7.5 as follows:

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

19.5 Add new paragraph 3.7.6 as follows:

“The Contractor shall not employ any persons to perform Work whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the Work. Any costs arising from labour disputes, as a result of the employ of any such person by the Contractor, its Subcontractors or Suppliers shall be at the sole expense of the Contractor.”

19.6 Add new paragraph 3.7.7 as follows:

“The Contractor and the Owner and its representatives shall cooperate and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the work at the Place of the Work, including cooperation to attempt to avoid work stoppages, trade union jurisdictional disputes and other labour disputes.”

20. GC 3.8 SHOP DRAWINGS

20.1 Add new paragraphs 3.8.8, 3.8.9, 3.8.10, 3.8.11 and 3.8.12 as follows:

“3.8.8 The *Owner* will review and return *Shop Drawings* in accordance with the schedule agreed upon in 3.8.2, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Owner* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Owner* shall notify the *Contractor* and they shall meet to review and arrive at a revised schedule for processing such *Shop Drawings* acceptable to the *Owner*. The *Contractor* shall update the *Shop Drawings* schedule to correspond to changes in the construction schedule. Changes in the *Contract Price* or *Contract Time* may be made only as otherwise provided in the *Contract*.

3.8.9 The *Contractor* shall provide *Shop Drawings* and *Submittals* in the form specified, or if not specified, as directed by the *Owner*. *Shop Drawings* provided by the *Contractor* to the *Owner* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them. Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the Place of the Work and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.10 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Contractor* for the authority’s approval.

3.8.11 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Owner* in writing of any revisions to the *Shop Drawings* other than those requested by the *Owner*.

3.8.12 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.”

21. GC 3.9 USE OF THE WORK

21.1 Add new GC 3.9 – USE OF THE WORK as follows:

“GC 3.9 USE OF THE WORK

3.9.1 The Contractor shall confine Construction Equipment, Temporary Work, storage of Products, waste products and debris, and operations of employees and Subcontractors to limits indicated by laws,

ordinances, permits, or the Contract Documents and shall not unreasonably encumber the Place of the Work.

- 3.9.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.
- 3.9.3 The Owner shall have the right to enter or occupy the Place of the Work in whole or in part for the purpose of placing fittings and equipment, or for other use before Substantial Performance of the Work, if, in the opinion of the Owner, such entry and occupation does not prevent or substantially interfere with the Contractor in the performance of the Contract within the Contract Time. Such entry or occupation shall neither be considered as acceptance of the Work or in any way relieve the Contractor from its responsibility to complete the Contract.”

22. GC 3.10 CUTTING AND REMEDIAL WORK

- 22.1 Add new GC 3.10 – CUTTING AND REMEDIAL WORK as follows:

“GC 3.10 CUTTING AND REMEDIAL WORK

- 3.10.1 The Contractor shall perform the cutting and remedial work required to make the affected parts of the Work come together properly. Such cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.
- 3.10.2 The Contractor shall coordinate the Work to ensure all cutting and remedial work required is kept to a minimum.”

23. GC 3.11 CLEANUP

- 23.1 Add new GC 3.11 – CLEANUP as follows:

“GC 3.11 CLEANUP

- 3.11.1 The Contractor shall comply with all requirements for cleanup at the Place of the Work as specified in the Contract Documents. The Contractor shall provide to the Owner for approval a waste disposal plan, and a waste reduction plan if required by Environmental Laws, for the waste products, debris and any excess soils generated by the Work, which plan shall comply with all Environmental Laws and the Specifications. 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.
- 3.11.2 Before applying for Substantial Performance of the Work, the Contractor shall remove waste products and debris and shall leave the Place of the Work clean and suitable for use or occupancy by the Owner. All products, tools, Construction Equipment and Temporary Work not required for the performance of any remaining Work shall be removed by the Contractor.
- 3.11.3 As a condition precedent to final payment, the Contractor shall remove any remaining products, tools, Construction Equipment, Temporary Work, waste products and debris from the Place of the Work to the satisfaction of the Owner.
- 3.11.4 In performing work to correct deficiencies or work under warranty following Substantial Performance of the Work, the Contractor shall maintain the Place of the Work in a tidy condition and shall immediately remove waste products and debris.
- 3.11.5 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.
- 3.11.6 In the event that the Contractor fails to remove waste and debris as provided in this GC 3.11, then the Owner may give the Contractor twenty-four (24) hours’ written notice to meet its obligations respecting

clean up. Should the Contractor fail to meet its obligations pursuant to this GC 3.11 within the twenty-four (24) hour period next following delivery of the notice, the Owner may remove such waste and debris and deduct from payments otherwise due to the Contractor, the Owner's costs for such clean up, including a reasonable mark-up for Administration Costs."

24. GC 3.12 PERFORMANCE BY CONTRACTOR

24.1 Add new GC 3.12 – PERFORMANCE BY CONTRACTOR as follows:

"GC 3.12 PERFORMANCE BY CONTRACTOR

3.12.1 In performing its obligations, duties and responsibilities under this Contract, the Contractor shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The Contractor acknowledges and agrees that, throughout this Contract, the Contractor's obligations, duties and responsibilities shall be judged, evaluated and interpreted in accordance with this standard. The Contractor shall exercise the same standard of care in respect of any Products, personnel or procedures which it may recommend to the Owner or employ on the Project.

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 its designated supervisor and project manager, 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."

.1 3.12.3 The Owner has a Vendor Performance Policy which requires the Owner to complete an evaluation of the Contractor's performance of its obligations under this Contract. The performance evaluation of the Contractor for the supply of these Services 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>."

25. 3.13 EXCESS SOIL MANAGEMENT

25.1 Add new GC 3.13 – EXCESS SOIL MANAGEMENT as follows:

"GC 3.13 EXCESS SOIL MANAGEMENT

3.13.1 The *Contractor* shall be solely responsible for the proper management of all *Excess Soil* at the *Place of the Work* and for performance of the *Work* in compliance with the rules, regulations and practices required by the *Excess Soil Regulation* until such time as *Ready-for-Takeover* is achieved. Without restricting the generality of the previous sentence, the *Contractor's* responsibility under this GC 3.13 includes the designation, transportation, tracking, temporary and/or final placement, record keeping, and reporting of all *Excess Soil* in connection with the *Work* all in compliance with the *Excess Soil Regulation*.

3.13.2 The *Contractor* shall indemnify and save harmless the *Owner*, their agents, officers, directors, administrators, governors, employees, consultants, successors and assigns from and against the consequences of any and all infractions committed by the *Contractor*, or those for whom it is responsible at law, under the *Excess Soil Regulation*, or any environmental protection legislation, including the payment of legal fees and disbursements on a substantial indemnity basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance."

26. GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

26.1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER in its entirety including all paragraphs thereunder and replace it with "Intentionally left blank."

26.2 GC 5.2 APPLICATIONS FOR PAYMENT

26.3 Delete paragraph 5.2.1 in its entirety and substitute new paragraph 5.2.1:

“5.2.1 On a *Working Day* that is not more than 10 calendar days after the end of each *Payment Period*, a representative of the *Contractor* and the *Owner* shall attend a meeting to discuss and review the *Work* completed during the *Payment Period*, including quantities, if applicable (the “**Pre-Invoice Submission Meeting**”). The *Contractor* shall bring with it to the *Pre-Invoice Submission Meeting* the following:

- .1 a draft of its anticipated application for payment for the applicable *Payment Period*;
- .2 the schedule of values submitted in accordance with GC 5.2.4, and approved by the *Owner* in accordance with GC 5.2.5;
- .3 *Subcontractor* and *Supplier* invoices and supporting materials;
- .4 receipts for reimbursable expenses (where expressly permitted by the *Contract*, if at all);
- .5 accounts and records documenting the cost of performing the *Work* attributable to any *Change Order* or *Change Directive*;
- .6 any visual documentation (photos, videos, diagrams) evidencing the progress of the *Work*; and
- .7 any other documents reasonably required by the *Contract Documents* or the *Owner*.”

26.4 Delete paragraph 5.2.2 in its entirety and substitute new paragraph 5.2.2:

“5.2.2 Within 5 calendar days following the *Pre-Invoice Submission Meeting*, the *Contractor* shall deliver to the *Owner* its application for payment that complies with the requirements of GC 5.2.6 for *Work* performed during a *Payment Period* (the “**Proper Invoice Submission Date**”), provided that if the fifth (5th) calendar day following the *Pre-Invoice Submission Meeting* falls on a calendar day that is not *Working Day*, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Working Day*. However, the following shall apply to the delivery of all *Contractor* applications for payment:

- .1 If the *Contractor* fails to deliver its application for payment, at the interval prescribed in GC 5.2.2, subject to written approval by the *Owner*, the *Contractor* shall not be entitled to submit its application for payment until the next prescribed interval. Should the *Owner* decide to accept an application for payment submitted after the applicable *Proper Invoice Submission Date* (which the *Owner* is under no obligation to do), such acceptance shall not be construed as a waiver of any of the *Owner*’s rights, or as a waiver or release of the *Contractor*’s obligations to strictly comply with the requirements prescribed in this GC 5.2 – APPLICATIONS FOR PAYMENT;
- .2 If an application for payment is delivered by the *Contractor* to the *Owner* on a day that is prior to an eligible *Proper Invoice Submission Date*, the application for payment will not be considered or reviewed by the *Owner* until the earliest eligible *Proper Invoice Submission Date* as identified in GC 5.2.2, at which point the application for payment will be deemed to have been received by the *Owner* for the purpose of review and evaluation;
- .3 Notwithstanding any other provision of this *Contract*, the *Contractor* shall not deliver an application for payment for consideration as a *Proper Invoice* by the *Owner*, during the *Restricted Period (Proper Invoice)*;
- .4 The *Owner* and the *Contractor* hereby consent to the giving and receiving of *Proper Invoices* electronically and in accordance with the requirements of this GC 5.2 – APPLICATIONS FOR PAYMENTS.”

26.5 Amend paragraph 5.2.3 by adding the following to the end of that paragraph:

“but no amount claimed shall include Products delivered to the Place of the Work unless the Products are free and clear of all security interests, liens, and other claims of third parties, subject to claims for lien pursuant to the *Construction Act*.”

26.6 Amend paragraph 5.2.4 by deleting the words “the Consultant, at least 15 calendar days” and replacing them with “the Owner at least 30 calendar days”

- and -

add the words “in a form acceptable to the Owner,” after the words “Contract Price”.

26.7 Delete paragraph 5.2.6 in its entirety and substitute new paragraph 5.2.6:

“5.2.6 Each application for payment submitted pursuant to GC 5.2.2 shall:

- .1 be in a form prescribed, or otherwise approved in writing, by the *Owner*;
- .2 include all of the requirements for a *Proper Invoice* prescribed by the *Construction Act* and this *Contract*;
- .3 be delivered to the *Owner* in the same manner as a *Notice in Writing*; and
- .4 unless otherwise directed in writing by the *Owner*, by email to pay.inv@ontarionorthland.ca and to the *Owner's* representative listed in Article A-6.”

26.8 Amend paragraph 5.2.8 by adding the following new sentence at the end of that paragraph:

“Any Products delivered to the Place of the Work but not yet incorporated into the Work shall remain at the risk of the Contractor notwithstanding the title has passed to the Owner pursuant to GC 13.1 – OWNERSHIP OF MATERIALS.”

26.9 Add new paragraph 5.2.9 as follows:

“5.2.9 The Contractor shall prepare and maintain current as-built Drawings which shall consist of the Drawings and Specifications revised by the Contractor during the Work, showing changes to the Drawings and Specifications, which current as-built Drawings shall be maintained by the Contractor and made available to the Owner for review with each application for progress payment. The Owner reserves the right to retain a reasonable amount for the value of the as-built Drawings not presented for review.”

26.10 Add new paragraph 5.2.10 as follows:

“5.2.10 Upon receipt of an application for payment submitted for payment by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENT, the *Owner* will assess whether all of the requirements for a *Proper Invoice* are satisfied and, if the application for payment does not meet the requirements, the *Owner* will return the application for payment to the *Contractor* with reasons setting out why the application for payment does not meet the requirements for a *Proper Invoice* and the *Contractor* may resubmit the application for payment with all required information within three (3) *Working Days* of the *Contractor's* receipt of the *Owner's* reasons. For clarity,

- .1 if an application for payment does not include all of the requirements for a *Proper Invoice* required by GC 5.2.6.2, it shall not be considered a “Proper Invoice” for the purposes of the *Construction Act* and the *Owner* shall have no obligation to make a payment and the time periods set out in GC 5.3 - PAYMENTS and in Section 6.4 of the *Construction Act* shall not apply until the *Contractor* has submitted an application for payment that includes all information required by GC 5.2.6.2;
- .2 if the *Contractor* fails, refuses, or neglects to resubmits its application for payment within three (3) *Working Days* after it is returned in accordance with this GC 5.2.10, the *Contractor* shall be deemed to have failed to deliver its application for payment and GC 5.2.2.1 shall apply;
- .3 where the *Contractor* disagrees with the *Owner's* assessment that some of the of the requirements for a *Proper Invoice* required by GC 5.2.6.2 are missing from its application for payment, nothing in this GC 5.2.10 shall prevent the *Contractor* from resubmitting the same application for payment without any additional or new information; and
- .4 the *Owner* reserves the right, in its sole, absolute and unfettered discretion, to waive an error or minor irregularity in any application for payment delivered by the *Contractor* for the purposes of deeming an application for payment a “Proper Invoice” within the meaning of the *Construction Act*, but the *Owner* shall be under no obligation to exercise this right.”

27. GC 5.3 PAYMENT

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

“5.3.1 After receipt by the Owner of an application for payment submitted by the Contractor in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:

.1 the Owner will either:

- (a) issue a certificate for payment, with a copy to the Contractor, in the amount applied for in the Proper Invoice, or
- (b) issue a certificate for payment, with a copy to the Contractor, for an amount determined by the Owner to be properly due to the Contractor after applying any credits, withheld amounts, or other set-offs which the Owner is entitled to notwithstanding any notice of dispute or disagreement that the Contractor may have served, along with the Owner’s reasons why an amount other than what is claimed in the Proper Invoice is properly due to the Contractor, which finding the Owner may accept or amend prior to the Owner issuing a Notice of Non-Payment, if any, in accordance with GC 5.3.2;

.2 the Owner shall make payment to the Contractor, on account as provided in Article A-5,

- (a) in the amount stated in the certificate for payment, or
- (b) in the amount stated in the certificate for payment less such amount stated in the Owner’s Notice of Non-Payment issued pursuant to GC 5.3.2,

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.”

27.2 Add new paragraph 5.3.2 as follows:

“5.3.2 In the event that the application for payment delivered by the Contractor pursuant to GC 5.2 – APPLICATIONS FOR PAYMENT does not include the requirements for a Proper Invoice or if the Owner disputes the amount claimed as payable in the Proper Invoice, then the Owner shall within 14 calendar days of receipt of the application for payment, issue a Notice of Non-Payment (Form 1.1).”

27.3 Add new paragraph 5.3.3 as follows:

“5.3.3 Where the Owner has delivered a Notice of Non-Payment, as specified under GC 5.3.2, the Owner 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, the Owner and the Contractor cannot resolve the dispute, either party may issue a notice of adjudication in a form prescribed under the Construction Act, in which case the Owner and the Contractor will agree to submit the dispute to Adjudication as set out under PART 8 – DISPUTE RESOLUTION. The amounts disputed and described under the Notice of Non-Payment shall be held by the Owner until all disputed amounts of the relevant Proper Invoice have been resolved pursuant to PART 8 – DISPUTE RESOLUTION. Any portion of the Proper Invoice which is not the subject of the Notice of Non-Payment shall be payable within the time period set out in paragraph 5.3.1.2.”

27.4 Add new paragraph 5.3.4 as follows:

“5.3.4 Without limitation, the Owner shall be entitled to deduct from or, set off against, any payment of the Contract Price and any other amounts payable by the Owner to the Contractor under the Contract:

- .1 any amount expended by the Owner in exercising the Owner’s rights under this Contract to perform any of the Contractor’s obligations that the Contractor has failed to perform;
- .2 any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Owner as a result of the failure of the Contractor to perform any of its obligations under the Contract; or

.3 any other amount owing from the Contractor to the Owner under this Contract.”

27.5 Add new paragraph 5.3.5 as follows:

“5.3.5 The Contractor represents, warrants, and covenants to the Owner 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 paragraph 5.3.5 will be made available to the Owner within 5 Working Days following receipt by the Contractor of a Notice in Writing making such request.”

28. GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

28.1 Delete paragraph 5.4.1.2 in its entirety and replace it with the following:

“.2 jointly with the Contractor, state the date of Substantial Performance of the Work, or a designated portion of the Work, in a certificate.”

28.2 Delete paragraph 5.4.2 in its entirety and replace it with the following:

“5.4.2 After the date of Substantial Performance of the Work is established, the Contractor and all Subcontractors who have completed their subcontracts shall complete, on a commercially reasonable efforts basis, within thirty (30) days, all deficient work including providing the required *Close-Out Documentation*, unless the reasons for any delay is acceptable to the Owner. All deficient work not completed within the above time may be completed by the Owner and the cost of this work may at the option of the Owner be deducted from the Contractor’s next application for payment, or otherwise recoverable upon written demand by the Owner to the Contractor.”

28.3 Delete paragraph 5.4.3 and replace it with the following:

“5.4.3 Immediately following the issuance of a certificate of Substantial Performance of the Work, the Contractor shall publish the certificate referred to in paragraph 5.4.1.2 in the manner provided in the *Construction Act*. Failing valid publication by the Contractor within 3 Working Days following the issuance of the certificate, the Owner shall be at liberty to publish the certificate and back-charge the Contractor for its reasonable costs for doing so.”

28.4 Delete paragraph 5.4.4 and replace it with the following:

“5.4.4 After publication of the certificate of the Substantial Performance of the Work, the Contractor shall submit an application for payment of the outstanding Construction Act holdback amount, which application for payment shall:

- .1 include all of the requirements listed in Schedule A to these Supplementary Conditions, as applicable to the application for payment of the holdback amount; and
- .2 include a statement that the Contractor has not received any written notices of lien or any claims for liens from any Subcontractor or Supplier.

After the receipt of a complete application for payment of the holdback amount from the Contractor, the Owner will issue a certificate for payment of the holdback amount, provided that such amount is subject to and will only become due and payable in accordance with GC 5.4.5 and the *Construction Act*.”

28.5 Delete paragraph 5.4.5 and replace it with the following:

“5.4.5 The *Construction Act* holdback amount shall become due and payable the day immediately following the expiration of the holdback period prescribed by the *Construction Act*, subject to the occurrence of any of the following:

- .1 the preservation of a lien in respect of the *Project* that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*;

- .2 receipt by the *Owner* of a written notice of lien that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*; or
- .3 prior to the expiry of 40 calendar days following the publication of the certificate of *Substantial Performance of the Work*, the *Owner* publishes a *Notice of Non-Payment* of holdback in accordance with the *Construction Act*, setting out the amount of holdback that will not be paid, which may include non-payment to secure the correction of deficiencies and/or the completion of the *Work*.”

28.6 Add new paragraph 5.4.7 as follows:

“5.4.7 Where the *Construction Act* allows for release of *Construction Act* holdback on subcontract work which is 100% complete prior to the release of holdback contemplated under GC 5.4.5, the *Contractor* may make application to the *Owner* and the *Consultant* by written request for a review by the *Consultant* to determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may in its discretion require, including:

- .1 Description of the scope of *Work* included in the subcontract.
- .2 Declaration of Last Supply by the *Subcontractor* as prescribed in subsection 31(5) of the *Construction Act* (Form 7).
- .3 Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the *Construction Act* (Form 10).
- .4 Workplace Safety & Insurance Board clearance certificate for the *Contractor*, the *Subcontractor* concerned, and any other *Subcontractors* and *Suppliers* who have provided any services to the *Subcontractor*.
- .5 Statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B - 2018.
- .6 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the *Construction Act* holdback of the completed subcontracts.
- .7 Confirmation by the bonding company that it has been notified of the intent to claim early release of holdback and does not object.
- .8 Sufficient evidence to the *Owner's* reasonable satisfaction that, as of the date of the *Contractor's* application, no claims for lien have been preserved against the *Place of the Work* that have not been vacated by the posting of security, discharged, or otherwise addressed in accordance with GC 5.8 – CONSTRUCTION LIENS.”

29. GC 5.5 FINAL PAYMENT

29.1 Delete GC 5.5 – FINAL PAYMENT in its entirety and substitute the following:

“5.5.1 When *Ready-for-Takeover* has been achieved in accordance with GC 12.1 – READY-FOR-TAKEOVER and the *Contractor* considers the *Work* is complete, and after the *Contractor* and the *Owner* have attended a *Pre-Invoice Submission Meeting* analogous to the requirement in GC 5.2.1, the *Contractor* may submit an application for final payment to the *Owner* and the *Contractor* shall:

- .1 include all of the requirements set out in GC 5.2.1, including without limitation those requirements listed in Schedule A to these Supplementary Conditions that are specific to an application for final payment;
- .2 ensure that all specified as-built drawings, warranties, records, operation and maintenance manuals, data books, literature maintenance sheets, list of outstanding work and deficiency list, Certificate of Clearance from WSIB, and proof of publication of the certificate of Substantial Performance of the *Work* is submitted to the *Owner* (collectively, the “**Close-Out Documentation**”). Such submissions shall constitute requirements for the *Proper Invoice* for final payment; and

- .3 if applicable, (a) written confirmation from the *Owner* that the deficiencies or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2 have been fully rectified as of the date of the *Contractor's* application for final payment, and/or (b) written confirmation, signed by the *Owner* and the *Contractor*, that the *Contract Price* has been reduced by a specified amount in exchange for the *Owner* releasing the *Contractor* of its obligation to rectify the certain outstanding deficiencies and/or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2, as detailed in such written confirmation.”
- 5.5.2 After receipt by the *Owner* of an application for final payment submitted by the *Contractor* in accordance with paragraph 5.5.1:
- .1 the *Owner* will either:
- (a) issue, with a copy to the *Contractor*, a certificate for payment, in the amount applied for in the *Proper Invoice*, or
- (b) issue, with a copy to the *Contractor*, a certificate for payment for an amount determined by the *Owner* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs which the *Owner* is entitled to notwithstanding any notice of dispute or disagreement that the *Contractor* may have served, along with the *Owner's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor*, which finding the *Owner* may accept or amend prior to the *Owner* issuing a *Notice of Non-Payment*, if any, in accordance with GC 5.5.3;
- .2 the *Owner* shall make payment to the *Contractor*, on account as provided in Article A-5,
- (a) in the amount stated in the certificate for payment, or
- (b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.5.3,
- 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.”
- 5.5.3 In the event that the application for final payment delivered by the *Contractor* does not include the requirements of GC 5.5.1 (including the requirements for a *Proper Invoice*) or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment*. Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under this GC 5.5.3, the *Owner* 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*, the *Owner* and *Contractor* cannot resolve the dispute, either party may issue a notice of Adjudication in a form prescribed under the *Construction Act*. The *Owner* and *Contractor* will then submit the dispute to Adjudication as set out under PART 8 – DISPUTE RESOLUTION.
- 5.5.4 The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed portions of the *Proper Invoice* for final payment have been resolved in accordance with PART 8 – DISPUTE RESOLUTION. Any portion of the *Proper Invoice* which is not the subject of a *Notice of Non-Payment* shall be payable within the time period set out in paragraph 5.5.2.2.
- 5.5.5 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the Place of the Work, the *Owner* shall make payment, to the *Contractor* in accordance with paragraph 5.5.2.2.
- 5.5.6 Notwithstanding anything else in this GC 5.5 – FINAL PAYMENT the *Owner* shall retain a finishing holdback as provided for in the *Construction Act*, which shall be released to the *Contractor* upon expiry of the lien period provided for under the *Construction Act*, provided no construction liens have been registered.
- 5.5.7 As additional requirements for release of finishing construction lien holdback, the *Contractor* shall submit the following documentation:

- .1 a written declaration that no claims for lien or written notices of lien have been received by it;
- .2 a Statutory Declaration in the form set out in Schedule B that all accounts for labour, subcontracts, Products, construction machinery and equipment, and other indebtedness which may have been incurred by the Contractor and for which the Owner might in any way be held responsible have been paid in full up to the previous progress payment, except for amounts properly retained as a holdback or as an identified amount in dispute; and
- .3 a Workplace Safety & Insurance Board Clearance Certificate.”

30. GC 5.6 DEFERRED WORK

30.1 Add new paragraph 5.6.2 as follows:

“5.6.2 Upon notice to the Contractor, the Owner may, subject to the Owner’s requirement to issue a Notice of Non-Payment under the *Construction Act*, withhold or retain all or any portion of any payment due to the Contractor under this Contract to ensure the performance of the Work or to protect the Owner’s rights in respect of the events set out in this paragraph 5.6.2, but only such portion of any payment as is reasonably necessary for such purpose. The Owner may make such withholding or retention upon the occurrence and continuance of any of the following events:

- .1 the Contractor is in default of any of its material obligations under this Contract;
- .2 all or any part of such payment is attributable to Work which is defective or not performed in accordance with the Contract Documents;
- .3 the Contractor has improperly failed to make prompt payments to its Subcontractors and Suppliers respecting Work for which the Owner has made payment to the Contractor; or
- .4 the amounts described in section 17(3) of the *Construction Act*.”

30.2 Add new paragraph 5.6.3 as follows:

“5.6.3 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 the Owner shall not be withheld or delayed by the Owner on account thereof, but the Owner may withhold, until the remaining portion of the Work is finished, only such an amount that the Owner determines is sufficient and reasonable to cover the cost of performing such remaining work.”

30.3 Add new paragraph 5.6.4 as follows:

“5.6.4 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, the Owner may, without limiting the remedies available to it under this Contract and subject to the Owner’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 the Owner.”

30.4 Add new paragraph 5.6.5 as follows:

“5.6.5 In addition to any rights the Owner has pursuant to the Construction Act and subject to the Owner’s requirement to issue a Notice of Non-Payment under the Construction Act, if a lien is registered against the Place of the Work or served upon the Owner, or an action commenced against the Owner, by any Subcontractor, the Owner having made all payments currently due in accordance with the payment terms of the Contract Documents, the Owner shall have the right to withhold from any money otherwise due to the Contractor, the full amount claimed in the lien action plus an additional amount sufficient to satisfy all of the Owner expenses relating to such lien action, including legal and consulting costs. These funds, less expenses incurred, shall be released to the Contractor upon the full discharge of all liens and dismissal of all actions against the Owner.”

31. GC 5.8 CONSTRUCTION LIENS

31.1 Add new GC 5.8 – CONSTRUCTION LIENS as follows:

“GC 5.8 – CONSTRUCTION LIENS

- 5.8.1 Notwithstanding anything else in this PART 5 – PAYMENT, in the event a claim for lien is registered against title to the Place of the Work by the Contractor, a Subcontractor or a Supplier, or served on the Owner with regard to the Project by a Subcontractor or a Supplier, or the Owner receives a written notice of or claim for lien from a Subcontractor or a Supplier, the Owner shall be entitled to withhold any payment otherwise due to the Contractor until such time as such claims have been dealt with as provided below.
- 5.8.2 In the event that a claim for lien or a written notice of a lien is received by the Owner in relation to the Project, the Contractor shall, within ten (10) calendar days, at its sole expense, arrange for the vacating or the discharge of the claim for lien and/or the withdrawal of the written notice of lien or have the lien vacated pursuant to the *Construction Act*. If the Contractor commences an application to the Court to have the lien vacated, the Contractor shall provide the Owner with copies of all court documents submitted by the Contractor and the Order issued by the Court. If the lien is only vacated, the Contractor shall, if requested, undertake the Owner’s defence of any subsequent action commenced in the respect of the lien at the Contractor’s expense.
- 5.8.3 If the Contractor fails or refuses to take such steps as required under paragraph 5.8.2, the Owner shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the claim for lien or the withdrawal of the written notice of lien, and all costs incurred by the Owner in doing so (including, without limitation, legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be the responsibility of the Contractor, and the Owner may deduct such amounts from the amounts otherwise due or owing to the Contractor.
- 5.8.4 Without limiting any of the foregoing, the Contractor shall satisfy all judgments and pay all costs resulting from any liens or any actions brought by a Subcontractor or Supplier in connection with any liens, or in connection with any other claim or lawsuit brought against the Owner by any person that provided services or materials to the Project which constituted part of the Work, and the Contractor shall indemnify the Owner for any and all costs (including, without limitation, legal fees on a solicitor and client basis) the Owner may incur in connection with such claims or actions.
- 5.8.5 Section 20(1) of the Construction Act does not apply to this Contract 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.”

32. GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

32.1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“This requirement is of the essence and it is the express intention of the parties that any claims by the Contractor for a change in the Contract Price and/or Contract Time shall not be approved unless there has been compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the Work and no claims that the Owner has been unjustly enriched by an alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, should be the basis for a claim for additional payment under this Contract or a claim for any extension of the Contract Time.”

32.2 Add new paragraph 6.1.3 as follows:

“The Contractor agrees that changes resulting from construction coordination, including but not limited to site surface conditions, site coordination, and Subcontractor and Supplier coordination, are included in the Contract Price and shall not entitle the Contractor to claim an addition to the Contract Price in relation to coordination.”

33. GC 6.2 CHANGE ORDER

33.1 Add new paragraph 6.2.3 as follows:

“The Contractor shall not be entitled to any additional compensation arising out of changes to the Work aside from the amounts determined and agreed to under this GC 6.2, or as provided in GC 6.3 – CHANGE DIRECTIVE.

The Contractor's fee for overhead and profit related to a Change Order or Change Directive shall be as set out in the Contract Documents."

33.2 Add new paragraph 6.2.4 as follows:

"Change Orders are not valid and binding upon the Owner unless approved and executed in accordance with the Owner's internal approval processes."

34. GC 6.3 CHANGE DIRECTIVE

34.1 Amend paragraph 6.3.6 in the second line by adding the word "actual" before the word "cost".

34.2 Delete paragraph 6.3.6.3 in its entirety and substitute the following:

".3 The Contractor's fee shall be as specified in paragraphs 6.2.3 and 6.2.4 and the Contractor's fee for overhead and profit shall be as set out in the Contract Documents."

34.3 Amend paragraph 6.3.7 by adding the word "actual" before the word "cost" in line 1.

34.4 Amend GC 6.3.7.6 by adding the following to the end of the paragraph:

“, provided that such amounts are not caused by negligent acts, omissions, or default of the Contractor or Subcontractor;”

34.5 Delete GC 6.3.7.17 in its entirety including all subparagraphs.

34.6 Amend paragraph 6.3.12 by deleting the words "the adjustment shall be referred to the Consultant for determination" and replacing them with "the Dispute shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

35. GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

35.1 Delete paragraph 6.4.2 in its entirety and replace it with the following:

"The Owner will promptly investigate such conditions. If the Owner determines that the conditions differ materially and would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Owner will issue instructions for a change in the Work as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. If the Owner determines that the conditions at the Place of the Work are not materially different or that no change in the Contract Price or the Contract Time is justified, the Owner will provide its reasons for this determination to the Contractor in writing."

35.2 Delete paragraph 6.4.3 in its entirety and replace it with the following:

"If the Contractor disputes the Owner's determination in paragraph 6.4.2, the Dispute shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

35.3 Amend paragraph 6.4.4 by deleting the words "and GC 9.5 – MOULD" and substituting the words "GC 9.5 – MOULD and GC 9.6 – IMPACT ASSESSMENT."

35.4 Add new paragraph 6.4.5 as follows:

"The Contractor acknowledges that it has received the Impact Assessment Reports for the Project 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 in accordance with GC 9.6.2.3."

35.5 Add new paragraph 6.4.6 as follows:

"The Contractor confirms that, prior to submitting its response to the RFP for the Project, it had the opportunity to carefully investigate the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.12.1, given the amount of time provided between the issue of the RFP documents and the actual

submission deadline for the RFP, the degree of access provided to the Contractor prior to submission of the response, and the sufficiency and completeness of the information provided by the Owner. 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.”

36. GC 6.5 DELAYS

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

“If the Contractor is delayed in the performance of the Work by an act or omission of the Owner or anyone employed or engaged by the Owner directly, contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as the Owner determines. The Contractor shall be reimbursed by the Owner for its reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages.”

36.2 Delete paragraph 6.5.2 in its entirety and substitute:

“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 the Owner, the Owner’s other contractor(s) and relating to the Work or the Place of the Work 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 Owner determines in consultation with the Contractor. The Contractor shall be reimbursed by the Owner for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages.”

36.3 Delete paragraph 6.5.3 in its entirety and substitute:

“6.5.3.1 If the performance of the Work or the performance of any other obligation(s) of party to this Contract is delayed by Force Majeure, then the Contract Time shall be extended for such reasonable time as the Owner 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 the Owner 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, the Owner 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.

6.5.3.2 Notwithstanding the foregoing, the Owner may issue a Change Directive requiring the Contractor to undertake those specific actions identified in the Change Directive as the Contractor can reasonably and safely initiate to remove or relieve either the Force Majeure or its direct or indirect effects on the Project, in which case the Contract Price will be adjusted in accordance with paragraph 6.3.7. If the Contractor fails within the time period specified in the Change Directive to take such action, then the Owner may, at its sole and absolute discretion and after it has given written notice to the Contractor, take some or all of such actions to partially or wholly remove or relieve such Force Majeure or its direct or indirect effects, and thereafter require the Contractor to resume the performance of the Work.”

36.4 Delete paragraph 6.5.4 in its entirety and substitute new paragraph 6.5.4:

“No extension of the Contract Time will be approved unless the Contractor notifies the Owner in writing within 3 Working Days of the date upon which the Contractor ought reasonably to have been aware of the delay contemplated in paragraphs 6.5.1, 6.5.2 or 6.5.3. For the written notice to be valid under this paragraph 6.5.4 it must include specific details about:

- .1 the cause of the delay;
- .2 the likely impact the delay will have on the Contract Time and details of the extension of time being requested; and
- .3 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.”

36.5 Add new paragraph 6.5.6 as follows:

“6.5.6 If the Contractor delays the performance of the Work and such delay is for a cause within the Contractor’s control, the Contractor shall pay to the Owner the per diem rate for liquidated damages specified in Article 10 of the Agreement for each day of delay if Ready-for-Takeover is not achieved in accordance with the time specified in Article A-1.3. If the per diem rate for liquidated damages is not specified in the Contract Documents, the Contractor shall pay to the Owner the Administration Costs incurred by the Owner as a result of the delay.”

36.6 Add new paragraph 6.5.7 as follows:

“6.5.7 If the Contractor is delayed in the performance of the Work due to the replacement of a representative or a worker pursuant to GC 3.5.4 or 3.6.2, the Contractor shall pay to the Owner the per diem rate for liquidated damages specified in Article 10 of the Agreement for each day of delay if Ready-for-Takeover is not achieved in accordance with the time specified in Article A-1.3. If the per diem rate for liquidated damages is not specified in the Contract Documents, the Contractor shall pay to the Owner the Administration Costs incurred by the Owner as a result of the delay.

36.7 Add new paragraph 6.5.8 as follows:

“6.5.8 If the Contractor disputes the determination by the Owner in paragraph 6.5.1 or paragraph 6.5.2, the Dispute shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION.”

37. GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

37.1 Amend paragraph 6.6.1 by deleting the words “and to the Consultant.”

37.2 Amend paragraphs 6.6.3 and 6.6.4 by deleting the word “Consultant” and replacing it with “other party.”

37.3 Delete paragraphs 6.6.5 and 6.6.6 in their entirety and replace them with the following:

“The other party, with respect to a claim made by a party under paragraph 6.6.1, shall make a determination by providing Notice in Writing to the claiming party within 30 Working Days after receipt of the claim by the other party, or within such other time period as may be agreed by the parties. If such determination is not acceptable to the claiming party, the claim shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION.”

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

38.1 Delete paragraph 7.1.2 in its entirety and replace with the following:

“If the Contractor neglects to prosecute the Work properly including failing or neglecting to comply with the requirements in GC 3.5 – CONSTRUCTION SCHEDULE or otherwise fails to comply with the requirements of the Contract to a substantial degree and the Owner determines that sufficient cause exists to justify such action, the Owner may, without prejudice to any other right or remedy the Owner may have, give the Contractor Notice in Writing that the Contractor is in default of the Contractor’s contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such Notice in Writing.”.

38.2 Amend paragraph 7.1.3.1 as follows:

Insert after the word “commences” the words “and is diligently proceeding with”.

38.3 Revise paragraph 7.1.3.2 by substituting the words “an acceptable schedule” with “a schedule acceptable to the Owner”.

38.4 Amend paragraph 7.1.4.1 by deleting the words “provided the Consultant has certified such cost to the Owner and Contractor”.

38.5 Amend paragraph 7.1.4.2 by adding to the end of the paragraph the words “and within 5 Working Days publish a notice of termination (form 8) in accordance with the *Construction Act*.”

38.6 Amend paragraph 7.1.5.3 by substituting the words “the difference” at the end of paragraph 7.1.5.3 with the words “on the expiry of the warranty period specified in paragraph 12.3.1 for that portion of the Work performed by the Contractor, provided that such payment shall be made only in accordance with the requirements set out in GC 5.5 – FINAL PAYMENT”.

38.7 Amend paragraph 7.1.5.4 by substituting the words “the difference” at the end of paragraph 7.1.5.4 with the words “for that portion of the Work performed by the Contractor, provided that such payment shall be made only in accordance with the requirements set out in GC 5.8 – CONSTRUCTION LIENS”.

38.8 Add new paragraph 7.1.7 as follows:

“The Owner may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the Work or terminate the Contract by giving written notice to that effect to the Contractor identifying the reason for the suspension and the expected length of the suspension. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other.”

38.9 Add new paragraph 7.1.8 as follows:

“The Contractor upon receiving notice of suspension or termination from the Owner shall suspend all operations as soon as reasonably possible except work which, in the Contractor’s opinion is necessary for the safety of personnel and for the care and preservation of the Work, the materials and plant. In the event of such suspension, the Contractor shall be reimbursed by the Owner for the reasonable costs incurred by the Contractor for such protection. Subject to any directions in the notice of suspension or termination, the Contractor shall discontinue ordering materials, facilities and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available.”

38.10 Add new paragraph 7.1.9 as follows:

“During the period of suspension, the Contractor shall not remove from the Place of the Work any part of the Work, or any Product or materials without the consent of the Owner.”

38.11 Add new paragraph 7.1.10 as follows:

“If the Work should be suspended for a period of 30 days or less, the Contractor, upon the expiration of the period of suspension, shall resume the performance of the Work in accordance with the Contract Documents. If the suspension was not due to an act or an omission of the Contractor, there shall be an equitable adjustment to the Contract Time and the Contract Price as agreed upon by the Owner and the Contractor.”

38.12 Add new paragraph 7.1.11 as follows:

“If, after 30 days from the date of notice of suspension of the Work the Owner and the Contractor agree to continue with and complete the Work, the Contractor shall resume operations and complete the Work in accordance with any terms and conditions agreed upon by the Owner and the Contractor.”

38.13 Add new paragraph 7.1.12 as follows:

“The Owner may terminate this Contract at any time for any or no reason. Such termination shall be effective upon the date specified in the Owner’s Notice in Writing advising of the termination of the Contract pursuant to this paragraph 7.1.12. In such event, the Owner 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. The Owner 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 termination by the Owner, the Contractor shall deliver a Notice in Writing to each of its Subcontractors and Suppliers confirming the effective date of the termination.”

39. GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

39.1 Amend paragraph 7.2.1 by adding to the end of the paragraph the words “and within 5 Working Days publish a notice of termination (form 8) in accordance with the *Construction Act*.”

39.2 Amend paragraph 7.2.2, by:

(i) adding the following after the words “public authority” in the second line:

“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 the Owner, the Owner’s other contractor(s) and relating to the Work or the Place of the Work,”; and,

(ii) adding the following to the end of the paragraph:

“unless an acceptable arrangement for an extension of the Contract Time is agreed to by the Contractor and the Owner.”

39.3 Delete paragraph 7.2.3.1 in its entirety and replace them with “Intentionally left blank”.

39.4 Delete paragraph 7.2.3.3 in its entirety and substitute new paragraph 7.2.3.3:

“.3 the Owner fails to pay the Contractor when due the amount certified by the Owner or awarded by arbitration or a Court, except where the Owner has a bona fide claim for set off; or”

39.5 Amend paragraph 7.2.3.4 by deleting the words following the word “degree” and replacing it with and the Contractor confirms by detailed written statement to the Owner that sufficient cause exists. Such detailed written statement must contain particulars, including references to the Contract, and supporting documentation demonstrating the alleged default by the Owner.”..

39.6 Amend paragraph 7.2.4 by adding to the end of the paragraph the words “and within 5 Working Days publish a notice of termination (form 8) in accordance with the *Construction Act*.”

39.7 Delete 7.2.5 in its entirety and replace it with the following:

“If the Contractor terminates the Contract under the conditions described in this GC 7.2, the Contractor shall be entitled to be paid for all Work performed to the date of termination. The Contractor shall also be entitled to recover the costs associated with termination, including the costs of demobilization, losses sustained on Products and construction machinery and equipment. The Contractor shall not be entitled to any recovery for any indirect, special or consequential losses.”

40. GC 8.1 AUTHORITY OF THE CONSULTANT

40.1 Amend paragraph 8.1.1 by deleting the words “which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 – ROLE OF THE CONSULTANT.”

40.2 Delete paragraph 8.1.2 in its entirety.

41. GC 8.2 ADJUDICATION

41.1 Delete GC 8.2 – ADJUDICATION in its entirety, including all subparagraphs thereunder.

42. GC 8.3 NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

42.1 Delete GC 8.3 – NEGOTIATION, MEDIATION, AND ARBITRATION, including all paragraphs thereunder and substitute the following:

“GC 8.3 – NEGOTIATION, MEDIATION, ARBITRATION AND ADJUDICATION

“8.3.1 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 Disputes in a tiered approach as follows:

.1 A Dispute shall be referred to the Owner’s project manager for the Project and a representative of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.

- .2 If unresolved, after following the process described in paragraph 8.3.1.1, the Dispute shall be referred to the Owner's Director or Vice President who is responsible for the Project and an employee of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
 - .3 If unresolved after following the process described in paragraph 8.3.1.3, and only at the election of the Owner, the Dispute shall be referred to the President and CEO of the Owner and the most senior executive employee of the Contractor for resolution within a period not to exceed thirty (30) days. If the Owner does not elect, at its sole option, to proceed under this paragraph 8.3.1.3, the Dispute may proceed to under either step as described in paragraphs 8.3.2 or 8.3.3.
- 8.3.2 If the Dispute remains unresolved despite the Parties' attempting to resolve it following the process in paragraph 8.3.1, 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*. The following procedures shall apply to any *Adjudications* the parties engage in under the *Construction Act*:
- .1 any hearings shall be held in the offices of the *Owner*, or, if such offices are unavailable, another venue as the parties may agree and which is acceptable to the adjudicator;
 - .2 the *Adjudication* shall be conducted in English;
 - .3 each party may be represented by counsel throughout an *Adjudication*;
 - .4 there shall not be any oral communications with respect to issues in dispute that are the subject of an *Adjudication* between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and
 - .5 a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time.
- 8.3.3 Any documents or information disclosed by the parties during an *Adjudication* are confidential and the parties shall not use such documents or information for any purpose other than the *Adjudication* in which they are disclosed and shall not disclose such documents and information to any third party, unless otherwise required by law, save and except the adjudicator.
- 8.3.4 In respect of any claim or dispute, if the *Contractor* fails to comply with any of the notice requirements set out in the *Contract Documents* then the Contractor shall be barred from advancing such claim(s) or dispute(s) and shall have no entitlement whatsoever in respect of such claim(s) or dispute(s) (including to an increase in payment under the *Contract*, or an extension of *Contract Time*) and by failing to comply with the notice requirements waives the right to make any such claim(s) or dispute(s) in an *Adjudication* or in any other form of dispute resolution available under this *Contract* or at law. This GC 8.3.4 shall operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an *Adjudication* or other form of dispute resolution and the *Owner* may rely on this GC 8.3.4 as a complete defence to any such claims or disputes.
- 8.3.5 The parties hereby acknowledge and agree:
- .1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the *Owner* to withhold, deduct or retain from monies otherwise owed to the *Contractor* under the *Contract* may be referred to, and included as part of, *Adjudications* under the *Construction Act*;
 - .2 that disputes related to the termination or abandonment of the *Contract*, as well as any disputes that arise or are advanced following the termination or abandonment of the *Contract*, shall not be referred to *Adjudication* under the *Construction Act*;
 - .3 that notice(s) of *Adjudication*, with respect to any dispute or claim relating to the *Project*, shall not be given, and no *Adjudication* shall be commenced following *Ready-for-Takeover*, abandonment, or termination of the *Contract*;
 - .4 that any *Adjudication* between the *Contractor* and a *Subcontractor* or a *Supplier* that relates to an *Adjudication* between the *Owner* and the *Contractor* shall be joined together to be adjudicated by a single adjudicator, provided that the adjudicator agrees to do so, and the *Contractor* shall include a

provision in each of its subcontracts that contain an equivalent obligation to this GC 8.2.6.4; and

.5 that, other than where the *Contractor* is obliged to commence an *Adjudication* pursuant to an undertaking under the *Construction Act*, neither the *Owner* nor the *Contractor* shall commence an *Adjudication* during the *Restricted Period (Adjudication)*.

8.3.6 If the Dispute remains unresolved despite the Parties attempting to resolve it following the process in paragraph 8.3.1, or following a determination of the Dispute pursuant to an Adjudication under paragraph 8.3.2, 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 paragraphs 8.3.1.2 or 8.3.1.3, 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 paragraph 8.3.4, 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.

8.3.7 If neither party elects to proceed to mediation within the timelines outlined in paragraph 8.3.2 or 8.3.4, 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* 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.

8.3.8 The timelines in paragraphs 8.3.1, 8.3.2 and 8.3.6 may be amended by mutual agreement of the parties."

43. GC 8.4 RETENTION OF RIGHTS

43.1 Add new paragraph 8.4.3 as follows:

"8.4.3 If the Owner gives the notice in writing described in paragraph 8.3.6 to have a dispute resolved by arbitration, the Contractor agrees that this paragraph 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute as otherwise resolved between the parties. In no event shall the Contractor be deprived of its right to enforce its lien against the Project should the Owner fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.4.3 shall prevent the Contractor from taking the steps required by the *Construction Act* to preserve and/or perfect a lien to which it may be entitled."

44. GC 9.1 PROTECTION OF WORK AND PROPERTY

Amend paragraph 9.1.1.1 by adding the following words at the end of that paragraph:

"...which the Contractor could not reasonably have discovered applying the degree of care and skill described in paragraph 3.4.1 to its review of the Contract Documents."

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

"Before commencing any work, the Contractor shall determine the locations of all underground utilities and structures indicated in the Contract Documents or that are discoverable by applying to an inspection of the Place of Work the degree of care and skill described in paragraph 3.12.1."

44.2 Add new paragraph 9.1.5 as follows:

"The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge 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

the Owner. However, where there is danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger.”

45. GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

45.1 Amend paragraph 9.2.7.3 by deleting the words “Consultant may recommend in consultation with the Contractor and” and replacing them with the words “Owner may determine in consultation with”.

45.2 Add new paragraph 9.2.10 as follows:

“The Contractor shall indemnify and hold harmless the Owner, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the Place of the Work by the Contractor, or anyone for whom the Contractor is in law responsible, and mishandled or handled negligently or improperly or which are otherwise mishandled or handled negligently or improperly by the Contractor, or anyone for whom the Contractor is in law responsible, thereby creating exposure to toxic or hazardous substances or materials. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 13.1 – INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.”

46. GC 9.4 CONSTRUCTION SAFETY

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

“9.4.1 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. 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 Place of the Work. If the Place of the Work is located on the Owner’s premises, the Contractor shall comply with all the Owner’s policies and directions to ensure the health and safety of the Owner’s employees and contractors as well as the Contractor’s employees, Subcontractors and Suppliers. The Contractor shall indemnify and hold harmless the Owner for any fines, penalties or other costs imposed or assessed on or incurred by the Owner 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. ”

46.2 Amend GC 9.4.2 by adding the following words after “and the Contractor”:

“, Subcontractors and Suppliers”.

46.3 Amend GC 9.4.3 by adding the following words after “and the *Contractor*”:

“, *Subcontractors and Suppliers*”.

46.4 Delete paragraph 9.4.4 in its entirety and replace it with the following:

“9.4.4 Prior to the commencement of the Work, the Contractor shall submit to the Owner:

- .1 a current WSIB 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 of the Contractor’s in-house safety-related programs; and
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “Constructor” under the *Occupational Health and Safety Act*.”

46.5 Delete paragraph 9.4.5 in its entirety and replace it with the following:

“The Contractor shall indemnify and save harmless the Owner, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor under the *Occupational Health and Safety Act* and any breaches of the *Emergency Management and Civil Protection Act* and related orders, recommendations or regulations, including the payment of legal fees and disbursements on a full indemnity basis.”

46.6 Add new paragraph 9.4.6 as follows:

“9.4.6 The Contractor shall ensure that it and its employees, Subcontractors and Suppliers are aware of and, while being on the Owner’s property, comply with the Owner’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.”

46.7 Add new paragraph 9.4.7 as follows:

“9.4.7 In the event of an emergency threatening health, life or property, the Contractor shall take such action as may be necessary to save lives and protect persons from injury and to protect and preserve the property. The Contractor shall notify the Owner of such emergency as promptly as is practical under the circumstances.”

47. GC 9.5 MOULD

47.1 Amend paragraph 9.5.3.3 by deleting the words “Consultant may recommend in consultation with the Contractor and” and replacing them with the words “Owner may determine in consultation with”.

48. GC 9.6 IMPACT ASSESSMENT

48.1 Add new GC 9.6 – IMPACT ASSESSMENT as follows:

“GC 9.6 IMPACT ASSESSMENT

9.6.1 The Contractor shall be responsible for:

- .1 ensuring that any potential impacts and areas of concern identified in the Contract Documents or Impact Assessment Reports, if provided, are mitigated during the Work; and,
- .2 identifying any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the Work and during the Work.

9.6.2 If the Contractor or Owner observes or reasonably suspects the presence of any impacts described in paragraph 9.6.1.2 that are not mentioned or accounted for in the Contract Documents or Impact Assessment Reports, if any, and related mitigation plans,

- .1 the observing party shall immediately report the circumstances to the other party;
- .2 the Contractor shall immediately take reasonable steps, including stopping the Work if necessary, to ensure that any potential impacts are mitigated; and,
- .3 if the Owner and Contractor do not agree on the existence, significance or mitigation measures for the impact, the Owner shall retain and pay for an independent qualified expert to investigate and determine the issue and the parties will enter into a Change Order if the mitigation measures will cause an increase or decrease in the Contractor’s cost or time to perform the Work.

9.6.3 If the Contractor fails to comply with the requirements in paragraph 9.6.2, the Contractor shall:

- .1 be responsible for all costs incurred by the Owner or the Contractor to mitigate the damage caused due to the failure;

- .2 not be entitled to request a Change Order relating to the failure to comply; and
- .3 indemnify the Owner and hold it harmless from any claims, damages, costs, fines or other expenses, including reasonable legal fees and expenses, relating to or arising from the Contractor's failure to comply with paragraph 9.6.2."

49. GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

49.1 Add new GC 9.7 – ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES as follows:

"GC 9.7 ENVIRONMENTAL PROTECTION FOR CONSTRUCTION IN AND AROUND WATERBODIES

- 9.7.1 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.
- 9.7.2 Pursuant to section 38(4) of the *Fisheries Act*, the Contractor has an obligation to notify the Department of Fisheries & Oceans("DFO") when the Work results in the unauthorized death of fish or a harmful alteration, disruption or destruction ("HADD") of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The notification shall be done using the form attached as Schedule D. The Contractor shall also notify the Owner of any such incidents. Failure to notify DFO of such incidents is a federal offence.
- 9.7.3 In accordance with the Fisheries Act, notification must be made without delay to DFO after the Contractor ensures the immediate health and safety risks are managed at the Place of the Work. Updates to DFO may be provided at a later time, if required.
- 9.7.4 All spills and sediment releases into a waterbody during the Work must be immediately reported by the Contractor to the Consultant and the Owner who must report the release to the Spills Action Centre ("SAC") operated by the Ministry of Environment, Conservation and Parks ("MECP") at 800-288-6060. If the Owner is not available, the Contractor shall report the incident to SAC. The Contractor shall take all reasonable measures to mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it."

50. GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

50.1 Add new GC 9.8 – ENVIRONMENTAL SPILLS AND RELEASES as follows:

"GC 9.8 ENVIRONMENTAL SPILLS AND RELEASES

- 9.8.1 All spills and releases of hazardous substances in the course of the Work must be immediately reported by the Contractor to the Owner who will report the spill or release to the MOECP SAC. If the Owner is not available, the Contractor shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.
- 9.8.2 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, the Owner may direct others to remedy the situation.
- 9.8.3 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 the Owner and the Owner shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties.
- 9.8.4 If the spill or release was not the fault of the Contractor, the Owner shall pay for the remedial work."

51. GC 10.1 TAXES AND DUTIES

51.1 Amend paragraph 10.1.2 by adding the following sentence at the end of that paragraph:

“For greater certainty, the Contractor shall not be entitled to any mark up for overhead or profit on any increase in such taxes and duties and the Owner shall not be entitled to any credit relating to mark up for overhead or profit on any decrease in such taxes.”

51.2 Add new paragraph 10.1.3 as follows:

“Where an exemption or a recovery of sales taxes, customs duties, excise taxes or Value Added Taxes, rebates, or monies from incentive programs is applicable to the Contract, the Contractor shall, at the request of the Owner or the Owner’s representative, assist, join in, or make application for any exemption, recovery or refund of all such taxes, duties, rebates and incentives and all amounts recovered or exemptions obtained shall be for the sole benefit of the Owner. The Contractor agrees to endorse over the Owner any cheques received from the federal or provincial governments, or any other taxing or other authority, as may be required to give effect to this paragraph 10.1.3.”

51.3 Add new paragraph 10.1.4 as follows:

“The Contractor shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and Value Added Taxes paid.”

51.4 Add new paragraph 10.1.5 as follows:

“Any refund of taxes, including without limitation, any government sales tax, customs duty, excise tax or Value Added Tax, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the Owner.”

51.5 Add new paragraph 10.1.6 as follows:

“The Contractor agrees to cooperate with the Owner and to obtain from all Subcontractors and Suppliers cooperation with the Owner in the application for any rebates, incentives or refund or exemption of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such rebates, incentives, refund or exemption and providing to the Owner copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications. All such rebates, incentives or refunds shall either be paid to the Owner, or shall be a credit to the Owner against the Contract Price, in the Owner’s discretion.”

51.6 Add new paragraph 10.1.7 as follows:

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

52. GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

52.1 Delete paragraph 10.2.2 in its entirety and substitute the following:

“The Owner has Crown immunity from the *Building Code Act* and the *Planning Act* and will not be obtaining building permits or development approvals. The Owner shall obtain and pay for any permanent easements required for the completion of the Work. The Contractor shall be responsible for all other permissions for access to land.”

52.2 Add to the end of paragraph 10.2.4. the following:

“Whenever standards of law, ordinances, rules, regulations, codes and orders relating to the Work differ, the most stringent standards shall govern.”

52.3 Amend paragraph 10.2.5 by adding the words, “Subject to paragraph 3.4.1” to the beginning of the paragraph.

- and -

Substitute the word “Owner” for the word “Consultant”

-and-

Add the following to the end of the second sentence:

“...and no further Work on the affected components of the Contract shall proceed until these changes to the Contract Documents have been obtained by the Contractor from the Owner.”

52.4 Amend paragraph 10.2.6 by adding the following sentence at the end of that paragraph:

“In the event the Owner suffers loss or damage as a result of the Contractor’s failure to comply with paragraph 10.2.5, and notwithstanding any limitations described in paragraph 13.1.1, the Contractor agrees to indemnify and to hold harmless the Owner from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure by the Contractor.”

52.5 Amend paragraph 10.2.7 by adding the words “which changes were not, or could not have reasonably been known to the Owner or the Contractor, as applicable, at the time of deadline for submission of responses to the RFP and which changes did not arise as a result of a public emergency or other Force Majeure event” to the second line, after the words “authorities having jurisdiction”.

52.6 Add new paragraph 10.2.8 as follows:

“The Contractor shall furnish necessary certificates as evidence that the Work installed conforms with laws and regulations of authorities having jurisdiction, including certificates of compliance for Owner’s occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance of the Work.”

53. GC 10.3 PATENT FEES

41.1 Delete paragraph 10.3.2 in its entirety.

54. GC 10.4 WORKERS’ COMPENSATION

54.1 Add new paragraph 10.4.2 as follows:

“10.4.2 The Contractor shall be solely responsible for its employees and officers and for its Subcontractors and their officers and employees, including ensuring that all required employer filings, contributions, deductions, and payments are made or remitted, as the case may be, with respect to applicable employer health taxes and under the *Employment Insurance Act*, the Canada Pension Plan, the Ontario *Workplace Safety and Insurance Act, 1997*, and all equivalent legislation in any other applicable jurisdiction. Without limiting the generality of the foregoing, the Contractor shall indemnify, defend and hold harmless the Owner, its directors, officers, and employees from all claims, demands, actions, suits or proceedings arising from any health, medical, disability or similar claims which Contractor’s employees or officers or any of its Subcontractors or their officers or employees may make against the Owner, its directors, officers, or employees during or after the Contract Time, whether or not such claims are attributable to the Contractor’s or Subcontractor’s performance of the Work or related to the Contractor’s obligations under this Contract.”

55. GC 11.1 INSURANCE

55.1 Delete all references to “the Consultant” in GC 11.1.

55.2 Amend GC 11.1.1.6 (1) by deleting the words “as the Consultant may recommend in consultation with the Contractor” and replacing them with “as the Owner determines, acting reasonably.”

55.3 Add new paragraphs 11.1.9 and 11.1.10 as follows:

“11.1.9 The minimum limits of insurance in this GC 11 – INSURANCE AND CONTRACT SECURITY and in CCDC 41 December 2020 shall be varied to provide the following:

- .1 General Liability Insurance shall have a deductible amount per occurrence of not more than \$50,000;
- .2 Contractor’s Pollution Liability Insurance shall have a deductible amount per occurrence of not more than \$50,000; and;

.3 Broad Form Property Insurance shall have a deductible amount not more than \$50,000.

11.1.10 The General Liability insurance shall not include any exclusion relating to working in the vicinity of railway operations.”

56. GC 11.2 CONTRACT SECURITY

56.1 Add new GC 11.2 – CONTRACT SECURITY as follows:

“GC 11.2 CONTRACT SECURITY

11.2.1 The Contractor shall provide a performance bond and a labour and materials payment bond, each issued by a bonding company acceptable to Owner and licensed to issue such instruments in the Place of the Work, in the amounts and forms as follows:

- .1 Amount of performance bond shall be equal to not less than 50% of the Contract Price in the form prescribed by the *Construction Act*.
- .2 Amount of labour and material payment bond shall be equal to not less than 50% of the Contract Price in the form prescribed by the *Construction Act*.

11.2.2 The bonds provided in accordance with paragraph 11.2.1 shall guarantee the faithful performance of the Contract in accordance with the Contract Documents, including the requirements for warranties provided for the GC 12.3 – WARRANTY, and the payment of all obligations incurred in the event of the Contractor’s default, including but not limited to the following:

- .1 the payment of legal, accounting, architectural, engineering and other professional services expenses incurred by the Owner in determining the extent of Work executed and any additional Work required as a result of the interruption of the Work, and its completion; and
- .2 the payment of additional expenses to the Owner in the form of security guard services, light, heat, power, loss of use of premises, and other related costs, payable over the period between the default of the Contract and completion of the Work.

11.2.3 Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the Owner for and against costs and expenses (including legal and consultant services and court costs) arising out of or as a consequence of any default of the Contractor under this Contract.

11.2.4 The Contractor shall be responsible for notifying the surety company of any changes made to the Contract Documents or the Contract Price during the course of the Work.

11.2.5 The premiums for bonds required by the Contract Documents shall be included in the Contract Price.

11.2.6 Should the Owner require additional bonds by the Contractor or any of his Subcontractors, after the receipt of bids for the Work, the Contract Price shall be increased by the actual costs attributable to providing such bonds. The Contractor shall promptly provide the Owner with any such bonds that may be required.”

57. GC 12.1 READY-FOR-TAKEOVER

57.1 Delete GC 12.1.1 in its entirety and replace it with the following:

“12.1.1 *Ready-for-Takeover* shall be achieved when all of the following has occurred, as verified and approved by the Owner:

- .1 *Substantial Performance of the Work* has been achieved, as verified by the Owner;
- .2 the appropriate permits (if any) for the *Place of the Work* have been obtained from the authorities having jurisdiction;
- .3 the *Work* to be performed under the *Contract* has satisfied the requirements for deemed completion in accordance with Section 2(3) of the *Construction Act*,

- .4 final cleaning and waste removal, as required by the *Contract Documents*;
- .5 the *Contractor* has delivered to the *Owner* all inspection certificates from authorities having jurisdiction with respect to any component of the *Work* which has been completed;
- .6 subject only to GC 12.1.2, the entire *Work* has been completed to the requirements of the *Contract Documents*, including completion of all items on the punch list prepared at the time of *Substantial Performance of the Work* and the *Work* is being used for its intended purpose, and is so certified by the *Consultant*;
- .7 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* in a collated and organized matter, all *Close-Out Documentation* and any other materials or documentation required by the *Contract Documents*;
- .8 subject only to GC 12.1.2, all *Products*, systems and components of the *Project* have been commissioned and certified for operation and accepted by the *Owner*, and
- .9 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* full and complete *As-built Drawings* and *Specifications* revised by the *Contractor* to reflect the as-built state of the *Work*, clearly showing changes to the *Drawings* and *Specifications* from the original *Contract Documents*, all of which have been approved by the *Owner* acting reasonably.”

57.2 Delete GC 12.1.2 in its entirety and replace it with the following:

“12.1.2 The *Owner* may, in its sole, absolute, and unfettered discretion, waive compliance with a requirement, or a part thereof, for achieving *Ready-for-Takeover* set out in GC 12.1.1.6 to 12.1.1.9 (inclusive). Where the *Owner* exercises the discretion afforded under this GC 12.1.2, the *Contractor* shall be required to comply with GC 5.5.1.3 as part of its application for final payment and the *Owner* and the *Contractor* shall establish a reasonable date for completing the *Work*.”

57.3 Delete GC 12.1.3 in its entirety and replace it with the following:

“12.1.3 When the *Contractor* considers the *Work* has attained *Ready-for-Takeover*, it shall submit a written application to the *Owner* for review.”

57.4 In GC 12.1.4, delete the words “list and” from the second line.

57.5 Delete GC 12.1.5 in its entirety and replace it with the following:

“12.1.5 Following the confirmation of the date of *Ready-for-Takeover* by the *Owner*, the *Contractor* may submit a final application for payment in accordance with GC 5.5 – FINAL PAYMENT.”

57.6 Delete GC 12.1.6 in its entirety.

58. GC 12.2 EARLY OCCUPANCY BY THE OWNER

58.1 Delete GC 12.2 – EARLY OCCUPANCY BY THE OWNER in its entirety.

59. GC 12.3 WARRANTY

59.1 Amend paragraph 1.3.2 by adding the words, “Subject to paragraph 1.1.3...” at the beginning of that paragraph.

59.2 Delete paragraphs 12.3.4, 12.3.5 and 12.3.6 and substitute the following paragraphs:

“12.3.4 The *Contractor* shall correct promptly, at no additional cost to the *Owner*, defects or deficiencies in the *Work* that appear, prior to and during the warranty period. Any *Work* repaired or replaced during the warranty period shall be re-warranted for an additional 12 months from the date of completion of the repair or replacement. Notwithstanding the expiration of the warranty period, the *Contractor* shall not be relieved of its obligations to correct any defects or deficiencies in the *Work* of which notice has been given to the *Contractor* prior to the expiration of the Warranty Period.

- 12.3.5 The Contractor shall, within fourteen (14) days after receiving written instructions from the Owner, unless otherwise agreed to by the Owner, make good, in a permanent manner satisfactory to the Owner, any defects or deficiencies discovered in the work.
- 12.3.6 The decision of the Owner shall be final as to the existence of such defects or deficiencies, the necessity of remedying same, and the remedial measures required.
- 12.3.7 If the Contractor fails to do the work to correct the defects or deficiencies, the Owner shall be entitled to carry out such work by its own forces or by other contractors and if such work is work which the Contractor should have carried out at the Contractor's own expense, the Owner shall be entitled to recover from the Contractor the cost thereof or may deduct the same from any monies due or that become due to the Contractor, including the warranty holdback.
- 12.3.8 Any insurance, contract security, surety or deposit required by the Contract Documents shall remain in full effect at the expense of the Contractor during the warranty period.
- 12.3.9 The Contractor shall be responsible for the costs for inspection and testing for the correction of defects or deficiencies. The Owner shall have the right to deduct the cost of the inspection and testing from any monies owed to the Contractor.
- 12.3.10 The Owner may hold back, if set out in the Contract Documents, on each application for payment, advance payment or progress draw, 2.5% of the total amount payable under each such application for payment, advance payment or progress draw as security for the Contractor's performance of its warranty obligations. In the event the Contractor fails to correct a defect or deficiency during the warranty period within the required time and/or fails to pay for the redesign, reconstruction and other costs related to damages arising from a defect or deficiency, the Owner shall have the right to use the warranty holdback, or such part of it still being held by the Owner to pay for the costs of remedying the defect or deficiency and any redesign, reconstruction or other costs relating to the defect or deficiency. If the costs are greater than the amount of the warranty holdback, the Contractor shall pay the additional costs upon receipt of an invoice from the Owner. The Contractor shall have the right to invoice the Owner for the balance of the warranty holdback at the end of the warranty period or extended warranty period as described in paragraph 12.3.4.
- 12.3.11 The Contractor shall assign to the Owner all warranties, guarantees or other obligations for Work, services or Products performed or supplied by any Subcontractor, Supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party's contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the Owner under the Contract Documents. Until the expiry of the relevant warranty periods enforceable against the Contractor, the Owner shall have in its custody all warranties, guarantees and other obligations to third parties respecting the Work.
- 12.3.12 The Contractor's obligations under this GC 12.3 shall continue notwithstanding any withholding of payment made by the Owner under GC 5.8 – WITHHOLDING OF PAYMENT or by performance by the Owner directly or through other forces of the Contractor's obligations under this Contract, where the Contractor is in default in the performance of such obligations.”

60. GC 13.1 INDEMNIFICATION

- 60.1 Delete GC 13.1 – INDEMNIFICATION in its entirety and substitute the following:

“13.1.1 The Contractor shall indemnify and hold harmless the Owner and its directors, officers, employees, contractors and agents (collectively the “Owner's Indemnitees”) from and against all loss, liability, damage, fines, cost, legal cost and disbursement whatsoever arising out of or related to the Work or the Contract Documents (“Loss”), by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with, anything done or omitted to be done by the Contractor in the course of the performance of the Contractor's obligations under the Contract Documents or otherwise in connection with the Work. The Contractor shall, at the Owner's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with the Owner in the defence, including providing Owner with prompt Notice of any possible Loss and providing the Owner with all information and material relevant to the possible Loss.

- 13.1.2 GC 13.1 – INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.
- 13.1.3 The Contractor shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to the Owner's or a third party's physical property by the Contractor's act or omission.
- 13.14 The Contractor shall be liable for any claims arising from any personal injuries to or death of any of the Contractor's employees, subcontractors or suppliers or from any loss of or damage to any property belonging to the Contractor or its employees, subcontractors or suppliers during the performance of the Work unless caused by the negligent act or omission of Owner.
- 13.15 Notwithstanding any other provision of the Contract Documents:
- (a) The Owner 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 the Owner has been advised of the possibility of such damages; and,
 - (b) Any express or implied reference to the Owner providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Owner or the Province of Ontario, whether at the time of execution of this Agreement or at any time during the performance of the Work and the Warranty Period, 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.
- 13.16 The Contractor shall indemnify the Owner and the Owner Indemnitees and save them harmless from and against all Loss incurred by the Owner arising from:
- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Contractor's employees are an employee of the Owner; or (ii) the Owner is liable to pay statutory contributions or deductions in respect of any of the Contractor's employees 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's employees may have during or after the term of this Agreement;
 - (c) a claim by any third party against the Owner alleging that the Deliverables and their use by the Owner, infringes any Intellectual Property Rights;
 - (d) safety infractions committed by the Contractor under the Occupational Health and Safety Act or any other laws, guidelines or public health orders regulating health and safety at the Work Site;
 - (e) any claims against the Owner for the failure of the Contractor to protect the confidentiality of Confidential Information;
 - (f) 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 the Contractor mishandled or handled negligently or improperly the substances or materials;
 - (g) a claim from adjacent landowners or other third parties regarding damage to their property due to the Work; and
 - (h) the release into the environment of materials resulting from the Work that contain Environmental Contaminants during the transportation of such materials from the Work Site to the approved waste disposal site.

61. GC 13.2 WAIVER OF CLAIMS

61.1 Delete GC 13.2 – WAIVER OF CLAIMS in its entirety and substitute the following:

“13.2.1 Waiver of Claims by Owner

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

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;
- .3 those arising from the provisions of paragraph 9.6.1 of GC 9.6 – IMPACT ASSESSMENTS and arising from the Contractor failing to comply with the mitigation plans in the Impact Assessment Reports or failing to assess impacts and implement mitigation plans for impacts that arise during the Work;
- .4 those arising from the provisions of paragraph 9.2.5 of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the Contractor bringing or introducing any toxic or hazardous substances and materials to the Place of the Work after the Contractor commences the Work;
- .5 those arising from the provisions of paragraph 9.5.1 of GC 9.5 – MOULD and arising from the Contractor bringing or introducing mould to the Place of the Work; or
- .6 those made in writing within a period of six (6) years from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, arising from the Contractor’s performance of the Contract with respect to material defects or deficiencies in the Work.

13.2.2 Waiver of Claims by Contractor

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

- .1 those made in writing prior to the Contractor’s application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.5 – MOULD, or GC 10.3 – PATENT FEES.

13.2.3 GC 13.2 – WAIVER OF CLAIMS shall govern over the provisions of paragraph 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES.”

62. PART 14 OTHER PROVISIONS

62.1 Add new PART 14 as follows:

“PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

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

GC 14.2 CONTRACTOR DISCHARGE OF LIABILITIES

14.2.1 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 14.3 DAILY REPORTS/DAILY LOGS

- 14.3.1 The Contractor shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the Contractor, Subcontractors, Suppliers and any other forces on site and also record the general nature of Project activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the Place of the Work who are not part of the day-to-day work force.
- 14.3.2 The Contractor shall also maintain records, either at its head office or at the Place of the Work, recording manpower and material resourcing on the Project, including records which document the activities of the Contractor in connection with GC 3.4 – CONSTRUCTION SCHEDULE, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.4 – CONSTRUCTION SCHEDULE.

GC 14.4 CONFIDENTIAL INFORMATION

- 14.4.1 The Contractor must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Work or the Owner's Confidential Information without the prior written approval of the Owner.
- 14.4.2 The Contractor must not, and must ensure that the Contractor's personnel do not, without the prior written approval of ONTC:
- .1 use Confidential Information other than as necessary for the purposes of fulfilling the Contractor's obligations under this Contract; or
 - .2 disclose the Confidential Information, other than to the Contractor's personnel who need the information to enable the Contractor to perform its obligations under this Contract, to the Contractor's legal advisors, accountants or auditors, or where disclosure is required by law (including disclosure to any stock exchange).
- 14.4.3 The Contractor must, within 10 Working Days (or any other period agreed in writing by ONTC) after a direction by the Owner to do so, return or destroy all Confidential Information in the Contractor's possession, custody or control.
- 14.4.4 If the Owner or the Contractor is required by law to disclose Confidential Information, it shall promptly notify the other party so that that party may intervene to prevent the disclosure.
- 14.4.5 The Contractor specifically acknowledges that Owner is subject to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 4, and that the Owner may be compelled by law to disclose certain Confidential Information.
- 14.4.6 The rights and obligations under this Part continue after the termination of this Contract.

GC 14.5 GENERAL

- 14.5.1 Nothing contained in this Agreement 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.
- 14.5.2 In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
- 14.5.3 This Agreement may be executed with electronic signatures or may be executed and delivered by electronic transmission and the Parties may rely upon all such signatures as though they were original signatures. This Agreement may be executed in counterpart and all such counterparts shall, for all purposes, constitute one agreement binding on the parties."

**Schedule A to the Supplementary Conditions
Requirements for a “Proper Invoice”**

To satisfy the requirements for a Proper Invoice, the Contractor’s application for payment must satisfy the following criteria:

- .1 is in the form of a written bill, invoice, application for payment, or request for payment;
- .2 is in writing;
- .3 contains the Contractor’s name, telephone number and mailing address and contact information of the Contractor’s project manager;
- .4 contains the title of the Project and the Owner’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;
- .5 contains the date the written bill, invoice, application for payment, or request for payment is being issued by the Contractor;
- .6 identifies the period of time in which the Work, labour, services, Products and/or materials were supplied to the Owner;
- .7 reference to the provisions of the Contract under which payment is being sought (e.g. progress payment / milestone, holdback, final payment, etc.);
- .8 a description, including quantities where appropriate, of the labour, services, Products, or materials, or a portion thereof, that were supplied and form the basis of the Contractor’s request for payment;
- .9 the amount the Contractor is requesting to be paid by the Owner, set out in a statement, based on the schedule of values approved under paragraph 5.2.5, separating out any statutory or other holdbacks, set-offs and HST;
- .10 with each application for payment after the first, a written statement that all accounts for labour, services, subcontracts, materials, equipment, Products, and other indebtedness which may have been incurred by the Contractor and for which the Owner 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;
- .11 with the applications for payment of holdback and for final payment, a Statutory Declaration in the form provided by the Owner attached as Schedule B stating that all accounts for labour, services, subcontracts, materials, equipment, Products, and other indebtedness which may have been incurred by the Contractor and for which the Owner 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;
- .12 a current Workplace Safety Insurance Board clearance certificate;
- .13 the progress report required under GC 3.4 CONSTRUCTION SCHEDULE, in the form provided by the Owner attached as Schedule C;
- .14 an updated Construction Schedule in native and .pdf formats;
- .15 if requested by the Owner, a current and valid certificate(s) of insurance for the insurance required under GC 11.1 – INSURANCE;
- .16 the following statement: “Provided this Proper Invoice complies with the requirements of the Contract and provided no Notice of Non-Payment is issued by the Owner, payment is due within 28 days from the date this Proper Invoice is received by the Owner.”;
- .17 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;
- .18 in the case of the Contractor’s application for final payment;
 - (a) sufficient evidence that the Contractor has delivered all warranties to the Owner;

- (b) sufficient evidence that the Place of the Work has been left in a clean and tidy condition, including evidence that any remaining materials, tools, equipment, temporary work, and waste products and debris have been removed from the Place of the Work;
 - (c) landfill waybills for the disposal of the waste products, debris and excess soil removed from the Place of Work in accordance with the waste disposal plan; and
 - (d) 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 the Owner;
- .19 information identifying the authority, whether in the Contract Documents or otherwise, under which the services or materials were supplied;
- .20 any other information that is prescribed in Article A-3, if any, or identified by the Owner as required;
- .21 the amount invoiced to date;
- .22 the percentage of the Contract Price invoiced; and
- .23 the individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the Project.

Schedule "B" to the Supplementary Conditions



Statutory Declaration of Progress Payment Distribution by Contractor

To be made by the Contractor **prior to payment**
as a condition for release of holdback.

The last application for progress
payment for which the Declarant has
received payment is No. _____
dated _____.

Identification of Contract :

Name of Contract (Location and description of the Work as it appears in the Contract Documents)

Date of Contract : Day : _____ Month : _____ Year : _____

Name of Owner : Ontario Northland Transportation Commission

Name of Contractor:

Name of Declarant : _____ **Position or Title :** (of office held with Contractor)

Declaration

I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the Contractor named in the Contract identified above, and as such have the authority to bind the Contractor, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Contractor in the performance of the work as required by the Contract, and for which the Owner might in any way be held responsible, have been paid in full as required by the Contract up to and including the latest progress payment received, as identified above, except for:

Holdback monies properly retained,

Payments deferred by agreement, or

Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from who payment has been withheld.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me in _____

City/Town Province

on _____.

Date

Signature of Declarant

A Commissioner for Oaths or Notary Public

Schedule "C" to the Supplementary Conditions

Project Status Report	
Project Title:	
Reporting Period:	Date:
Project Details:	
Planned Budget: Indicate the original contract value	Current Approved Budget: Indicate the original contract value plus approved change orders
Planned Completion: Indicate the contract schedule completion date	Current Project Completion: Fill in revised date if schedule extension approved through change order
Planned Project Percent Complete: How far should they have progressed by this date?	Actual Project Percent Complete: What is their actual percent complete?
Executive Summary	
Provide a summary of what happened during the period, any concerns, risks or wins and plans for the upcoming period.	
Work Completed in the Period	
List	
List	
List	

List

List

Work Planned for Next Period

List

List

List

List

Issues and Concerns

Use this area to identify any concerns related to the project.

Status of Progress

Include a graph to show progress or eliminate this section.

SCHEDULE D:

DUTY TO NOTIFY/EMERGENCY WORKS NOTIFICATION FORM

ONTC DUTY TO NOTIFY / EMERGENCY WORKS NOTIFICATION FORM

SUBMISSION REQUIREMENTS

Contact DFO By Phone 1-855-852-8320 **AND** submit this form to fisheriesprotection@dfo-mpo.gc.ca

Submit this form to the consultant and the ONTC Project Manager: Esmail Zougari, esmail.zougari@ontarionorthland.ca and to ONTC Legal : legal@ontarionorthland.ca

MNRF Office: Contact Area MNRF Office

PART 1: NOTIFICATION DETAILS

Type of Notification: DUTY TO NOTIFY EMERGENCY WORK

Date of Notification:	Time of Notification:
ONTC Contract #:	DFO PATH File # (if applicable):

PART 2: REPORTING INFORMATION

Name of Person Reporting:	Name of Field Contact:
Telephone #:	Telephone #:
Email:	Email:

PART 3: INCIDENT INFORMATION

Bank failure Culvert failure
Erosion and Sediment Control Measures Failure Beaver dam breach
Other (specify): Hwy shoulder failure

Date of Incident:	Time of Incident:
Location of Site:	Geographic Coordinates (Lat/Long):
Nearest Community (city/town):	Name of Waterbody(ies): Type (watercourse, lake/pond, ditch):

Indicate if any of the following impacts have occurred or are about to occur:

Fish Kill (if yes, approximately how many): _____ Sediment deposition in channel

Bank failure Obstruction of fish passage through:

Modification of flows Channel Culvert

Other (specify):

Immediate Actions Taken:
 (Describe the activities/works that are being / have been immediately implemented. e.g. mitigation measures, damming / pumping etc.)

Photos: Attached
 (Where feasible, it is recommended that the photos be submitted with the form or as follow up)

PART 4: EMERGENCY WORKS

Description of Proposed Emergency Works:
 (Be as specific as possible. Describe what work will be undertaken within the next two weeks.
 E.g. culvert replacement (include existing and new culvert diameter / length / type), slope restoration (include material / method),:

Mitigation measures:
 (Describe what measures have been or will be implemented to address the immediate issue. E.g. sediment fence, turbidity curtain, check dam, fish salvage etc.):

Indicate which of the works will be followed (if applicable):
 Beaver Dam Removal Culvert Maintenance
 Bridge Maintenance Like-for-like culvert replacement
 Ditch maintenance within 30 m of a Temporary watercourse crossing waterbody
 Riparian vegetation maintenance in existing right-of-way

The Emergency Works are (check one):
 Temporary (additional work will be required) Final (no additional work required)

Proposed Start Date: (YYYY/MM/DD)	Proposed End Date: (YYYY/MM/DD)
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PART 5: OTHER AGENCIES NOTIFIED

Other Agency(ies) Notified: Yes <input type="checkbox"/> No <input type="checkbox"/>	Agency(ies) Notified:
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Date Notified:	Incident Report No. (if issued by notified Authority):
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END OF SUPPLEMENTARY CONDITIONS

ONTARIO NORTHLAND - SPECIAL SUPPLEMENTARY CONDITIONS 18 JAN 2024
GRADE CROSSING UPGRADES - 2024

These Special Supplementary Conditions amend the provisions of the CCDC 2-2020 – Stipulated Price Contract as amended by the Ontario Northland Supplementary Conditions – CCDC 2 – 2020 – REV 15 JAN 2024 and provide new Special Supplementary Conditions (the “**Special Supplementary Conditions**”).

1. SPECIAL SUPPLEMENTARY CONDITION 1 - ARTICLE A-1 THE WORK

1.1 Delete paragraph A-1.3 in its entirety and replace it with the following:

“commence the *Work* on the date the Contractor is advised by the Owner that the Contractor has been awarded the Contract (the “*Award Date*”) and, subject to adjustment in the *Contract Time* as provided for in the *Contract Documents*, attain *Ready-for-Takeover* by the 1st day of November 2024 (the “*Initial Period*”). The *Owner* may extend the *Contract Time* for two additional one year periods, being 1 November 2024 to 31 October 2025 for the first extension period (the “*First Extension Period*”) and 1 November 2025 to 31 October 2026 for the second extension period (the “*Second Extension Period*”), by providing the *Contractor* with written *Notice* of the *Owner’s* intention prior to 30 September 2024 for the *First Extension Period* and prior to 30 September 2025 for the *Second Extension Period*. The scope and schedule for the *Work* to be completed by the Contractor during the *First Extension Period* and the *Second Extension Period*, if the *Contract Time* is extended, shall be negotiated by the parties prior to the *Work* commencing in each extension period. The parties shall execute a *Change Order* to confirm the scope and schedule of the *Work* for the *Initial Period*, and for the *First Extension Period* and the *Second Extension Period* if the *Contract Time* is extended.”

2. SPECIAL SUPPLEMENTARY CONDITION 2 – THE WORK

2.1 Within 10 *Working Days* after the award of the Contract to the Contractor in the initial year of the *Contract*, and at the time agreed by the *Owner* and *Contractor* in the *First Extension Period* and the *Second Extension Period*, if any, the *Owner* shall provide the *Contractor* with the list of locations where *Work* will be performed in that year and a description of the *Work* for each location. The *Contract Price* for each year shall be calculated based on the number of locations and the mobilization and demobilization costs associated with the locations. The parties shall execute a *Change Order* for the list of locations and the revised *Contract Price*.

3. SPECIAL SUPPLEMENTARY CONDITION 3 – GC 11.2 CONTRACT SECURITY

3.1 Add new paragraphs 11.2.7 and 11.2.8:

11.2.7 “Upon finalization of the *Change Order* in the *Initial Period* and the *First Extension Period* and *Second Extension Period*, if the *Contract Time* is extended, the *Contractor* shall provide the *Owner* with new bonds reflecting the revised *Contract Price* in accordance with paragraph 11.2.1.

11.2.8 If the *Owner* takes early occupancy of a grade crossing pursuant to Special Supplementary Condition 5 and GC 12.2, the *Contract Price* for the purpose of paragraph 11.2.1 shall be reduced upon the expiry of the warranty period for that grade crossing described in GC 12.2.3.3 and the *Contractor* may obtain revised bonds reflecting the new *Contract Price*.

4. SPECIAL SUPPLEMENTARY CONDITION 4 – DESIGN SERVICES

4.1 Add new definitions as follows:

“*Design Services*” means the professional design and related services required by the *Contract Documents* to complete and deliver the *Design Plans*.

“*Design Drawings*” means the detailed design drawings and plans for the construction of the Work in each location to be prepared by the *Contractor* and approved by the *Owner* and includes the *Shop Drawings*, preliminary design, working drawings, *Product* listing and specifications prepared by the *Contractor*.

4.2 In accordance with the milestone dates below, after receiving the list of locations from the *Owner*, the *Contractor* shall provide the *Design Drawings* and other submittals for each location to the *Owner* for approval in accordance with GC 3.8 SHOP DRAWINGS with the words “Shop Drawings” in GC 3.8 replaced by “Design Drawings.

Milestone Dates:

<i>Contract Award</i>	Within 2 weeks of the closing date for the RFP.
<i>Contractor</i> to provide the preliminary Design Drawings including advance BOM submissions for review	Within 10 <i>Working Days</i> after Award Date
<i>Owner</i> to advise of specific locations for the Work in the initial year.	Within 10 <i>Working Days</i> after Award Date
<i>Contractor</i> to submit detailed <i>Design Drawings</i> to <i>Owner</i> for review	Within 20 <i>Working Days</i> after Award Date
<i>Owner</i> review of detailed <i>Design Drawings</i>	5 to 10 <i>Working Days</i> after submission
<i>Contractor</i> to make corrections to the <i>Design Drawings</i> , if required.	5 <i>Working Days</i> after <i>Owner</i> advises of required corrections.
<i>Contractor</i> to submit Work and test plan to <i>Owner</i> for review.	Within 20 <i>Working Days</i> prior to mobilization.
Mobilization to <i>Place of the Work</i> by <i>Contractor</i>	Spring of each year
Completion of field Work by <i>Contractor</i>	November 1 of each year

4.3 If the *Design Drawings* identify additional components are required for a grade crossing which were not included in the per grade crossing price provided in the *Contractor’s* submission in response to the RFP for the *Project* and such additional components are approved by the *Owner*, the parties shall execute a *Change Order* for an increase in the *Contract Price* using the price for such additional components included in the *Contractor’s* submission in response to the RFP for the *Project*.”

5. SPECIAL SUPPLEMENTARY CONDITION 5 – GC 12.2 EARLY OCCUPANCY BY THE OWNER

5.1 Delete Supplementary Condition 58 in its entirety.

5.2 Delete GC 12.2.1 in its entirety and replace it with the following:

"The *Owner* may take occupancy of each grade crossing prior to *Ready-for-Takeover* being achieved for the *Project* upon:

- .1 the *Work* on that grade crossing achieving *Substantial Performance*; and
 - .2 the *Contractor* providing to the *Owner* the prerequisites for attaining *Ready-for-Takeover* described in paragraphs GC 12.1.1.2, 12.1.1.4 to 12.1.1.9 and GC 12.1.2. to GC 12.1.4. (as amended by Supplementary Condition 57) for that grade crossing."
- 5.3 Delete GC 12.2.2 in its entirety.