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**February 10, 2026**

**Addendum No. 01**

**File Reference Number: RFP 2026 002**

**Title: North Bay Car Shop Track 3 Pit Extension**

**RE: Clarifications/Questions**

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**CLARIFICATIONS:**

**Item 1:** Please see attached revised Draft Agreement (Addendum No. 01).

The RFP Documents have been revised and sections affected are noted below. The revised RFP sections supersede all previous RFP Document versions for the said documents.

<b>Delete Document:</b>	<b>Replace with Revised Document:</b>
Draft Agreement	Draft Agreement (Addendum No. 01)

This Addendum hereby forms part of the RFP.

Regards,

Nicole Laplante  
Procurement Contracts Specialist  
[nicole.laplante@ontarionorthland.ca](mailto:nicole.laplante@ontarionorthland.ca)

**THIS AGREEMENT** made as of **XX**, 2025

**BETWEEN:**

ONTARIO NORTHLAND TRANSPORTATION COMMISSION  
("ONTC")

**AND:**

**XXX**  
(the "**Contractor**")

**THE PARTIES AGREE AS FOLLOWS:**

**Contract Documents**

1. The following documents are included in this Agreement and form the Contract Documents:
  - (a) this Agreement;
  - (b) Addenda to the RFP, if any;
  - (c) Schedule A – (the "**Scope of Work**"), comprised of:
    - i. the document identified as Appendix B in the RFP (RFP Particulars);
    - ii. the document identified as Appendix H in the RFP (Policies and Procedures);
    - iii. the document identified as Appendix I in the RFP (Technical Specifications); and
    - iv. the document identified as Appendix J in the RFP (Issue for Tender Drawings).
  - (d) Schedule B – (the "**Contractor's Submission**"), comprised of:
    - i. the document identified as Appendix C in the RFP (Submission Form);
    - ii. the document identified as Appendix D in the RFP (Schedule of Prices);
    - iii. The document identified as Appendix E in the RFP (Domestic Supply Chain Plan);
    - iv. the document identified as Appendix G in the RFP (Health, Safety and Environmental); and
    - v. the Contractor's Technical Proposal.
  - (e) Schedule C – Project-Specific Requirements for a Proper Invoice; and
  - (f) Special Provisions, if any,  
(collectively, the "**Contract Documents**").

**Precedence of Contract Documents**

2. If there is any conflict or inconsistency between the Contract Documents, unless otherwise provided, such documents will prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
  - (a) Special Provisions, if any;
  - (b) this Agreement;
  - (c) Addenda to the RFP, if any;
  - (d) Schedule A – Scope of Work;

- (e) Schedule C – Project-Specific Requirements for a Proper Invoice; and
- (f) Schedule B – Contractor’s Submission.

**The Work**

- 3. The Contractor shall perform the Work required by the Contract Documents for the extension of the Track 3 work pit at the North Bay Car Shop located at 915 McIntyre Street East, North Bay, ON.
- 4. The Contractor shall perform the Work in accordance with the requirements of the Contract Documents and the Standard of Care.
- 5. ONTC shall have the right to amend the Work to have some of the Work completed by its own forces.

**Contract Price**

- 6. The “**Contract Price**” is \$XXX plus applicable taxes, more particularly described in Schedule B, subject to adjustment in accordance with the Change Order process in the Contract Documents.

**Contract Time**

- 7. Subject to adjustment(s) approved in accordance with the Contract Documents, the Contractor shall commence the Work on the 1<sup>st</sup> day of June, 2026 and shall achieve Substantial Performance of the Work on or before the XX day of August, 2026 (the “**Contract Time**”).

**DEFINITIONS AND INTERPRETATION**

- 8. In the Contract Documents,
  - “**Acceptance**” and “**Accepted**” means ONTC acknowledges that the work for a Submittal has been completed and that the Submittal on its face conforms to the requirements of the Contract Documents. Acceptance does not mean confirmation by ONTC that the Submittal does not contain error or omissions, defects, deficiencies or deviations from the Contract Documents. Wherever the words “acceptance” and “accepted” are used in the Contract Documents, they shall have the meaning set out in this definition even if the words are not capitalized.
  - “**Adjudication**” means construction dispute interim adjudication as defined under the *Construction Act*.
  - “**Agreement**” means this agreement and all attached Schedules.
  - “**As-Built Drawings**” means a set of drawings that are marked-up during construction by the Contractor that show how the structures and other parts of the Work were actually constructed versus how the structures and other parts of the Work were originally designed and “**As-Built Record Drawings**” means the As-Built Drawings prepared by the Contractor following completion of the Work that are Submitted to ONTC with the Close-Out Documentation.
  - “**Authority Having Jurisdiction**” means the federal, provincial or municipal entity that is responsible for enforcing codes, standards and regulations relating to building construction or has the power to pass regulations to direct, specify and govern elements or activities of construction projects such as codes, safety, health or standards of manufacture or installation.
  - “**Change Directive**” means a written instruction prepared by the ONTC Representative and signed by ONTC directing the Contractor to proceed with a change in the Work within the general scope of the Contract Documents prior to ONTC and the Contractor agreeing upon adjustments, if any, in the Contract Price and/or the Contract Time.
  - “**Change Order**” means a written amendment to the Contract Documents prepared by the ONTC Representative and signed by ONTC and the Contractor stating their agreement on:

- (a) a change in the Work;
- (b) the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
- (c) the extent of the adjustment in the Contract Time, if any.

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

**“Conflict of Interest”** means any actual or potential conflict of interest including, but not limited to:

- (a) situations or circumstances that could compromise the ability of the Contractor to perform its obligations under the Contract Documents; and
- (b) the offer or giving of a benefit of any kind by or on behalf of the Contractor to anyone employed by or otherwise connected with ONTC.

**“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 Agreement. For certainty, Parts I.1 (Prompt Payment) and II.1 (Construction Dispute Interim Adjudication) of the *Construction Act* apply to this Agreement.

**“Construction Documents”** means the Drawings, Specifications, and other documents prepared by or on behalf of the Contractor, based on and in compliance with the Contract Documents.

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

**“Construction Schedule”** means the schedule for the performance of the Work provided by the Contractor pursuant to section 32, including any amendments to the Construction Schedule made pursuant to the Contract Documents.

**“Contractor Parties”** means the directors, officers, employees, agents, consultants, invitees, Subcontractors and representatives of the Contractor.

**“Defect”** or **“Defective Work”** means failure to perform or deliver any of the Work in conformity with the quantity, quality, specifications and/or other requirements set out in the Contract Documents.

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

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

**“Environmental Laws”** means all applicable federal, provincial, territorial, municipal and local laws, common laws and principles thereof, and orders, directives and decisions rendered or issued by an Authority Having Jurisdiction relating to Environmental Contaminants or the protection of human health, natural resources or the environment;

**“Force Majeure”** means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or government priorities of any Authority Having Jurisdiction; provided such event is not caused by the affected party’s negligence or failure to exercise reasonable diligence. A Force Majeure

event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Project.

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

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

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

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

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

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

**“Project”** means the total construction contemplated by ONTC, as described in section 3 and elsewhere in the Contract Documents, of which the Work may be the whole of the Project or a part.

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

**“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 Agreement.

**“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 Agreement.

**“RFP”** means ONTC Request for Proposals No. RFP 2026 002 for the extension of the Track 3 work pit at the North Bay Car Shop located at 915 McIntyre Street East, North Bay, ON.

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

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

**“Standard of Care”** has the meaning set out in section 10.

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

**“Submittal(s)”** means all documentation prepared by the Contractor and submitted to the ONTC for review and Acceptance in accordance with the Contract Documents.

**“Substantial Performance of the Work”** or **“Substantial Performance”** means when the requirements of section 2(1) and, if applicable, section 2(2) of the *Construction Act* are certified as achieved or deemed achieved, in accordance with the *Construction Act*.

“**Supplemental Instruction**” means an instruction, not involving an adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the ONTC Representative to supplement the Contract Documents as required for the performance of the Work.

“**Taxes**” means any and all taxes, levies, import duties, customs duties, stamp duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any governmental authority, together with interest, fines and penalties, including occupational, excise, unemployment, ownership, sales, gross receipts, income taxes, payroll taxes, employer contributions (both statutory and otherwise) and workers’ compensation payments and contributions, but does not include Harmonized Sales Tax (HST).

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

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

“**Work Site**” means the designated site(s) or location(s) of the Work identified in the Contract Documents, including without limitation the location specified in section 3.

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

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

## CONTRACTOR’S OBLIGATIONS

### Standard of Care

10. The Contractor shall:
- (a) perform the Work in accordance with all applicable laws, the Contract Documents, all applicable professional standards, and in an efficient and workmanlike manner, using only qualified, skillful and careful workers;
  - (b) in performing the Work and its obligations under the Agreement, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor performing work of a similar nature to the Work;
  - (c) ensure any Construction Equipment used by Contractor Parties at the Work Site will be in safe working condition, will comply with all laws applicable to such equipment and will be operated by suitably qualified and competent personnel; and
  - (d) while being on ONTC’s property, comply with ONTC’s policies, including its Fit for Duty policy, (the “**Standard of Care**”).
11. The Contractor acknowledges and agrees that the performance of the Contractor’s obligations, duties and responsibilities under this Agreement shall be judged against the Standard of Care. The Contractor shall exercise the Standard of Care when recommending the use of Materials, personnel or procedures to ONTC.
12. Where the Work does not comply with the specified Standard of Care, the deficiency in the Work shall be corrected as directed by the ONTC Representative. Subsequent testing to ensure that the Standard of Care has been attained (including re-testing by ONTC), shall be carried out at the Contractor’s expense.

### Vendor Performance Evaluation

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

### Anti-Corruption, Forced Labour and Sanctions

14. The Contractor warrants that no bribe, gift or other inducement has been paid, promised or offered to any official or employee of ONTC, the Ministry of Transportation, the Government of Ontario or any other government official relating to ONTC entering into this Agreement with the Contractor.
15. The Contractor warrants that it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the Contractor becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this Agreement, the Contractor shall report the incident to ONTC immediately.
16. The Contractor warrants that it is unaware of any forced labour or child labour being used at any step of the production of goods produced, purchased or distributed by it in Canada or elsewhere or for the production of goods imported by the Contractor. The Contractor warrants that it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the Contractor shall comply with the reporting requirements under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023 c.9.
17. In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the United Nations Act, the Special Economic Measures Act (SEMA), or the Export and Import Permits Act. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The Contractor shall comply with any such regulations that are in force on the effective date of the Contract and will require such compliance by its first-tier subcontractors. ONTC relies on such undertaking from the Contractor to enter into this Contract, and any breach of such undertaking shall entitle ONTC to terminate this Contract for default and to recover damages from the Contractor, including excess re-procurement costs.

### Communications

18. ONTC or the Government of Ontario will lead and make any announcements relating to this Contract and the Work. The Contractor shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement, in relation to this Contract or the Work unless prior written consent is given by ONTC. Should the Contractor be contacted by any media outlet or other person or entity wishing to make any form of publication or announcement, or seeking any information, in relation to this Contract or the Work, the Contractor shall provide no comment and shall immediately notify ONTC. The Contractor shall immediately notify ONTC if it becomes aware of any publication or announcement relating to the Contract or the Work.

### **Time of the Essence**

19. The parties agree that time is of the essence in this agreement and that the Contractor must achieve Substantial Performance within the Contract Time, which deadline may only be amended by a fully executed Change Order, if any.
20. The Contractor acknowledges that ONTC will suffer damages if Substantial Performance is not achieved within the Contract Time for reasons other than Force Majeure or if the Work contains Defects that delay Substantial Performance. The Contractor shall be responsible for all damages suffered by ONTC as a result of the failure to achieve Substantial Performance within the Contract Time or a delay in Substantial Performance due to Defects. The Contractor acknowledges and agrees that, without limiting ONTC's entitlement to any additional or other damages, if the Contractor fails to achieve Substantial Performance of the Work within the Contract Time, ONTC 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, liquidated damages at the per diem rate specified in the Contract Documents for each calendar day of delay represents a good faith estimate on the part of the parties as to the actual potential damages that ONTC would suffer because of late completion of the Work. If there is no per diem rate set out in the Contract Documents, the Contractor shall pay to ONTC the Administration Costs incurred by ONTC as a result of the delay. 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 Work is delayed beyond the Contract Time, ONTC shall be entitled to (i) the liquidated damages as calculated pursuant to this section, or (ii) in the event that the Contractor claims that this liquidated damages provision is invalid or unenforceable and the Contractor prevails in such a defence, the damages arising from the delay suffered by ONTC including, without limitation, consequential, special, incidental, and indirect damages, costs and other expenses incurred or suffered by ONTC.

### **Contractor's Responsibilities**

21. The Contractor shall be solely responsible for the construction means, methods, techniques, sequences, and procedures with respect to the Work and shall direct and supervise the Work so as to ensure conformity with the Contract Documents.
22. The Contractor is solely responsible for the quality of the Work and shall undertake any quality control activities specified in the Contract Documents or, if none are specified, as may be reasonably required to ensure such quality.
23. The Contractor shall provide access to the Work that ONTC may reasonably require to verify the progress of the Work and their conformity to the requirements of the Contract Documents.
24. The Contractor shall furnish promptly to ONTC, on request, a copy of certificates, test reports and inspection reports relating to the Work.
25. The Contractor shall submit the proposed Construction Documents to ONTC to review in orderly sequence and sufficiently in advance so as to cause no delay. ONTC and the Contractor shall jointly prepare a schedule of the dates for submission and return of proposed Construction Documents. At a minimum, ONTC shall have not less than 10 days after each submission to review the Construction Documents and either approve or reject the Construction Documents. Any deficiencies in the Construction Documents shall be remedied by the Contractor promptly after notification by ONTC of the deficiency.
26. At the time of submission the Contractor shall advise ONTC in writing of any significant deviations in the proposed Construction Documents from the requirements of the Contract Documents. ONTC may or may not accept such deviations. Accepted deviations will be recorded in a Change Order.

27. The Contractor shall:
- (a) promptly after signing the Agreement, prepare and submit to ONTC a Work schedule that indicates the timing of the major activities of the Work and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the Work will be performed in conformity with the schedule; and
  - (b) monitor the progress of the Work relative to the schedule and update the schedule on a monthly basis or as stipulated by the Contract Documents.
28. The Contractor shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the place of the Work while work is being performed. The appointed representative shall not be changed except for valid reason.

### **EXECUTION OF THE WORK**

29. The Contractor is solely responsible for the execution of the Work and shall perform the Work in accordance with the requirements of the Contract Documents. In particular, the Work to be performed by the Contractor includes:
- (a) scheduling the Work in accordance with the Contract Time and monitoring and reporting on the progress of the Work relative to the Contract Time and ensuring that each critical path activity or milestone is completed by the applicable dates in the Construction Schedule and in accordance with the Contract Time;
  - (b) coordinating and taking responsibility for the scheduling and supervising of Subcontractors;
  - (c) before the Work is commenced, ensuring that the Drawings and methods of working proposed or specified by the Contractor are provided to the ONTC Representative; and
  - (d) consulting with the ONTC Representative throughout the performance of the Work.
30. For greater certainty, the Contractor shall be the “importer of record” of and shall be responsible for all Taxes including import duties on all Materials, equipment, parts or any other items forming part of the Work.

### **Construction Schedule**

31. The Contractor shall prepare, and update as required or requested, a construction schedule, including identification of the critical path of the Work and the schedule of operations, indicating the proposed methods of construction and sequence of work and the times the Contractor proposes to complete the various items of work (i.e. milestones) within the Contract Time (the “Construction Schedule”). The Construction Schedule, if not submitted with the Contractor’s Submission, shall be submitted to the ONTC Representative within 10 Working Days from the date of the contract award.
32. The Contractor shall, during performance of the Work and in accordance with the controls and reporting requirements in the Contract Documents, provide for the ONTC Representative’s review and Acceptance 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. These updated Construction Schedules shall be provided at least every 30 days. If the Construction Schedule is affected by approved Changes, the Contractor shall submit an updated Construction Schedule, if requested by the ONTC Representative, within 7 Working Days of the request. This updated Construction Schedule shall show how the Contractor proposes to perform the balance of the Work and complete the Work within the Contract Time. ONTC may, at its sole discretion, not issue an order to commence work until the Construction Schedule has been received and Accepted.

### **Schedule Slippage**

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

### **Permits, Licenses, Approvals**

34. ONTC has Crown immunity from the *Building Code Act* and the *Planning Act* and will not be obtaining building permits or development approvals for the Work. The Contractor shall, at the Contractor's expense, obtain prior to commencement of the Work and maintain all permits, licenses, approvals, consents and other forms of authorizations necessary for the performance the Work and required in accordance with applicable laws.

### **Labour and Materials**

35. The Contractor shall provide and pay for labour, Materials, tools and Construction Equipment, transportation and other services necessary for the performance of the Work in accordance with the Contract Documents. The Contractor shall not be entitled to a change in the Contract Price due to any increase in the cost of labour, Materials, tools, Construction Equipment, utilities, transportation, or other facilities or services, whether or not the Contract Time is extended.
36. Unless otherwise specified in the Contract Documents, Materials provided shall be new. Substitutions for Materials which are specified by their proprietary names, part numbers, or catalogue numbers shall be of the same quality as the specified Materials and substituted Materials shall be Accepted by the ONTC Representative prior to their use. The Contractor shall use all Materials in strict accordance with the manufacturer's directions except when specified otherwise.
37. Unless otherwise specified, all materials existing at the Work Site at the time of commencement of the Work shall remain the property of the ONTC. All work and Materials delivered to the Work Site by the Contractor shall be the property of the ONTC. The Contractor shall remove all surplus or rejected Materials as its property when notified to do so by ONTC.

### **Documents at the Work Site**

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

### **Shop Drawings**

39. The Contractor shall provide Shop Drawings in the form directed by the ONTC Representative, as required in the Contract Documents and sufficiently in advance to ensure no delay in the Work.
40. The Contractor shall review all Shop Drawings before providing them to the ONTC Representative and shall confirm that review by stamp, date and signature of the person responsible for the review.
41. The review of the Shop Drawings by ONTC shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Contract Documents.

42. Certain specifications 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 Work Site and shall have expertise in the area of practice reflected in the Shop Drawings.
43. Where ONTC has advised the Contractor, by notice in writing, that designs or Specifications fail to comply with ONTC's requirements, the Contractor shall ensure that the design documents or proposed Construction Documents are promptly corrected or altered, and shall promptly correct defective work that has been rejected by notice in writing by ONTC as failing to conform to the Contract Documents whether or not the defective work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, design, use of defective products, or damage through carelessness or other act or omission of the Contractor.

#### **Effect of Review and Approval**

44. Notwithstanding any other provision of the Agreement, no direction, request, Acceptance or approval by ONTC, or anyone on its behalf, nor any failure of ONTC to do so, will lessen or relieve the Contractor from performing and fulfilling its obligations or satisfying any liability under the Agreement or be construed as an acceptance of all or part of the Work or as a Change Order.

#### **Cutting and Remedial Work**

45. The Contractor shall perform the cutting and remedial work required to make the affected parts of the Work come together properly. The Contractor shall co-ordinate the Work to ensure that the cutting and remedial work is kept to a minimum. Cutting and remedial work shall be performed by specialists familiar with the Materials affected and shall be performed in a manner to neither damage nor endanger the Work.

### **PAYMENT AND COMPLETION OF THE WORK**

#### **Contract Price**

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

#### **Applications for Payment**

47. The Contractor shall submit an application for payment on account of the Contract Price plus HST by email to [pay.inv@ontarionorthland.ca](mailto:pay.inv@ontarionorthland.ca) and to the ONTC Representative monthly with all necessary backup and support requirements set out in the Contract Documents or reasonably identified by ONTC. All applications for payment must be sent to the ONTC Representative within 30 days after the end of each month unless otherwise agreed by the parties. If the Contractor fails to deliver its application for payment, at the interval prescribed in this section or agreed to by the parties, subject to written approval by the ONTC Representative, the Contractor shall not be entitled to submit an application for payment until the next prescribed interval.
48. The Contractor shall submit to the ONTC Representative, at least 30 calendar days before delivering its first application for payment, a schedule of values for the parts of the Work, aggregating the total amount of the Contract Price, in a form acceptable to ONTC, to facilitate evaluation of each application for payment. When accepted by the ONTC Representative, the schedule of values shall be used as the basis for evaluating the Contractor's applications for payment.

49. Each application for payment delivered by the Contractor in accordance with sections 47 and 48 shall include all of the requirements for a Proper Invoice as set out in Schedule C.
50. ONTC may, prior to the time it is required to issue payment in respect of an application for payment, request any additional information or backup from the Contractor in respect of the application for payment.
51. The Contractor shall not claim for or be entitled to payment for the correction or re-performance of any Defective Work, including labour and time of any Contractor Parties for such correction or re-performance.
52. Notwithstanding any other provision of this Agreement, the Contractor shall not deliver an application for payment, for consideration as a Proper Invoice by ONTC, during the Restricted Period (Proper Invoice).

### **Progress Payments**

53. After receipt by the ONTC Representative of an application for payment submitted by the Contractor in accordance with sections 47 to 49:
  - (a) the ONTC Representative will assess whether all the criteria for a Proper Invoice are satisfied and, if not, the ONTC Representative will return the application for payment to the Contractor with the reasons why the application for payment is not a Proper Invoice,
  - (b) ONTC reserves the right, in its sole, absolute, and unfettered discretion to permit the Contractor to correct an error or minor irregularity in an application for payment submitted by the Contractor in accordance with sections 47 through 49, and to permit the Contractor to re-submit the application for payment before the next interval prescribed by section 47; however, ONTC shall be under no obligation to exercise this right and the date of resubmission of the application for payment shall be deemed to be the date of receipt by ONTC of the Proper Invoice, provided that the requirements of the Proper Invoice are then satisfied;
  - (c) within 14 calendar days of receipt of a Proper Invoice (or on the next Working Day if the 14th day is not a Working Day), in the event that ONTC disputes the amount claimed as payable in the Proper Invoice, ONTC shall deliver to the Contractor an executed Notice of Non-Payment (Form 1.1); and
  - (d) ONTC shall make payment to the Contractor, on account as provided in section 46, 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.
54. Where ONTC has delivered a Notice of Non-Payment, as specified under section 53(c), ONTC and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a Notice of Non-Payment, ONTC and the Contractor cannot resolve the dispute, either party may issue a notice of Adjudication pursuant to the *Construction Act*, in which case ONTC and the Contractor will agree to submit the dispute to Adjudication in accordance with the Dispute Resolutions provisions of this Agreement.
55. The amounts disputed and described under the Notice of Non-Payment shall be held by ONTC until all disputed amounts of the relevant Proper Invoice have been resolved pursuant to the Dispute Resolution provisions of this Agreement. Any portion of the Proper Invoice which is not the subject of the Notice of Non-Payment shall be payable within the period set out in section 53(d).
56. Without limitation, ONTC shall be entitled to deduct from or, set off against, any payment of the Contract Price and any other amounts payable by ONTC to the Contractor under the Contract Documents:

- (a) any amount expended by ONTC in exercising ONTC's rights under the Contract Documents to perform any of the Contractor's obligations that the Contractor has failed to perform;
  - (b) any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by ONTC as a result of the failure of the Contractor to perform any of its obligations under the Contract Documents; and
  - (c) any other amount owing from the Contractor to ONTC under the Contract Documents.
57. The Contractor represents, warrants, and covenants to ONTC that it is familiar with its prompt payment and trust obligations under the *Construction Act* and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the *Construction Act* including, without limitation, section 8.1 of the *Construction Act*. Evidence of the Contractor's compliance under this section will be made available to ONTC within 5 Working Days following receipt by the Contractor of a written notice making such request.

### Final Completion

58. ONTC will consider the Work is complete when, except for any obligations of the Contractor relating to the warranty, the Work has been fully completed in accordance with the Agreement, including all Defects remedied to meet the Standard of Care and the requirements of the Contract Documents and all obligations of the Contractor to Subcontractors and anyone else related to the Work are fully satisfied.
59. When the Work has, in the opinion of the Contractor reached final completion, the Contractor shall submit an application for final payment, including the following:
- (a) the documents described in Schedule C;
  - (b) a complete statement of accounts, including any Change Orders applicable to the Work;
  - (c) a complete statement of all money that the Contractor considers to be due from ONTC arising out of or in connection with the Work, the Contract Documents or any alleged breach of the Contract Documents, including details of how the amount claimed in the application for final payment is calculated; and
  - (d) confirmation that all Submittals and approvals of all Authorities Having Jurisdiction as required by the Contract Documents have been delivered to ONTC.
60. After receipt by the ONTC Representative of an application for final payment submitted by the Contractor in accordance with section 59:
- (a) the ONTC Representative will assess whether all of the criteria for a Proper Invoice are satisfied and, if not, within 2 Working Days of receipt, the ONTC Representative will return the application for payment to the Contractor with reasons setting out why the application for final payment is not a Proper Invoice;
  - (b) within 14 calendar days of receipt of the Proper Invoice (or on the next Working Day if the 14th day is not a Working Day), if ONTC disputes the amount claimed as payable in the Proper Invoice, ONTC shall deliver to the Contractor an executed Notice of Non-Payment (Form 1.1); and
  - (c) ONTC shall make payment to the Contractor as provided in section 46, 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.
61. Where ONTC has delivered a Notice of Non-Payment, as specified under section 60(b), ONTC and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 10 calendar days following the issuance of a Notice of Non-Payment, ONTC and Contractor cannot resolve the dispute, either party may issue a notice of Adjudication in a form prescribed under the *Construction*

Act. ONTC and Contractor will then submit the dispute to Adjudication in accordance with the Dispute Resolution provisions of this Agreement.

62. The amounts disputed and described under the Notice of Non-Payment shall be held by ONTC until all disputed portions of the Proper Invoice for final payment have been resolved in accordance with the Dispute Resolution provisions of this Agreement. 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 section 60(c).

### **Taxes**

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

### **Payment on Account**

64. A payment made pursuant to the Agreement does not prejudice the right of either party to dispute whether the paid amount is the amount properly due and payable nor does it conclusively constitute evidence of the value of the Work or whether the Work has been executed satisfactorily.

### **Liens**

65. The Contractor shall not permit a Subcontractor to assert any right to a construction, builder's, mechanic's or unpaid vendor's lien for unpaid work or supply of Materials (a "lien") or to issue a written notice of lien pursuant to the Construction Act.
66. The Contractor shall, at its cost, promptly discharge, release or vacate or obtain a withdrawal of any lien that is the subject of a claim for lien or a written notice of lien relating to the Work Site or any of ONTC's property or buildings by a Subcontractor. If such lien is not discharged or withdrawn within 7 calendar days of the service of the written notice of lien or of the registration of the claim for lien, then without prejudice to any other rights or remedies it may have, ONTC may take whatever steps it deems necessary and appropriate to discharge or obtain a withdrawal of the lien, including payment of any amount owing or claimed thereunder, and seek immediate recovery from the Contractor for the amount of any such payment and any associated costs, including legal costs, all of which shall be payable on demand.
67. Without limiting any of the foregoing, the Contractor shall satisfy all judgments and pay all costs resulting from any construction liens or any actions brought in connection with any liens, or in connection with any other claim or lawsuit brought against ONTC by any person that provided services or Materials to the Project which constituted part of the Work, and the Contractor shall indemnify ONTC for any and all costs (including, without limitation, legal fees on a solicitor and client basis) ONTC may incur in connection with such claims or actions.
68. In the event that a Subcontractor registers a claim for lien with respect to all or part of the Work Site or delivers a claim for lien or a written notice of lien to ONTC, ONTC shall have the right to withhold, in addition to the statutory holdback, the full amount of the claim for lien plus either: (a) \$250,000 if the claim for lien is in excess of \$1,000,000 or (b) 25% of the value of the claim for lien and to bring a motion to vacate the claim for lien and any associated certificate of action in respect of that claim for lien, in accordance with Section 44 of the *Construction Act*, by paying into court as security the amount withheld.
69. Section 20(1) of the *Construction Act* does not apply to this Agreement and no general lien arises under or in respect of the Work and liens shall arise and expire on a per property basis.

### **Withholding from Payment**

70. All or part of any payment under an application for payment may be withheld by ONTC or set-off against the payments owing to the Contractor for:
  - (a) all amounts due from the Contractor to ONTC (including under any indemnity in this Agreement);
  - (b) any amount that ONTC is required to withhold or deduct by the Construction Act or applicable laws;
  - (c) the amount of any liens for which ONTC has received a written notice of lien or a copy of a claim for lien relating to the Work; or
  - (d) Defective Work including non-compliance with health and safety rules and policies (until it has been re-performed or otherwise remedied to ONTC's satisfaction at the Contractor's sole expense).
71. If because of climatic or other conditions reasonably beyond the control of the Contractor, there are items of work that cannot be performed, payment in full for that portion of the Work which has been performed as certified by ONTC Representative shall not be withheld or delayed by ONTC on account thereof, but ONTC may withhold, until the remaining portion of the Work is finished, only such an amount that the ONTC Representative determines is sufficient and reasonable to cover the cost of performing such remaining work.
72. In the event of deficiencies or delays in the Work that the Contractor fails or refuses to address upon receiving notice of same in accordance with the requirements of the Contract Documents, then ONTC may, without limiting the remedies available to it under this Agreement and subject to ONTC's requirement to issue a Notice of Non-Payment under the *Construction Act*, retain and set off as against any payments that would otherwise be owing to the Contractor, the reasonable costs of rectifying such deficiencies or delays as determined by ONTC Representative.
73. In addition to any rights ONTC has pursuant to the *Construction Act* and subject to ONTC's requirement to issue a Notice of Non-Payment under the *Construction Act*, if a lien is registered or an action commenced against ONTC, ONTC 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 ONTC's 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 ONTC.

## **CONTRACT ADMINISTRATION**

### **The ONTC Representative**

74. ONTC shall appoint, and may replace, the ONTC Representative for the Project by written notice to the Contractor. The ONTC Representative will have the authority to act on behalf of ONTC for all matters arising under the Contract.
75. The ONTC Representative will visit the Work Site at intervals appropriate to the progress of the Work to become familiar with the progress and quality of the work and to determine if the Work is proceeding in general conformity with the Contract Documents.
76. Based on the ONTC Representative's observations and evaluation of the Contractor's applications for payment, within 7 calendar days of receipt of the Contractor's Proper Invoice, the ONTC Representative will determine the amounts owing to the Contractor under the Contract Documents and will recommend the applications for payment. If ONTC determines that the amount payable to the Contractor differs from the amount stated in a Proper Invoice, ONTC shall prepare the applicable Notice of Non-Payment for the amount in dispute.

77. If there is a dispute between ONTC 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 the Dispute Resolution provisions in this Agreement.
78. The ONTC Representative will have the authority to reject any portion of the Work (including any Materials) which in the ONTC Representative's opinion does not conform to the requirements of the Contract Documents. Whenever the ONTC Representative considers it necessary or advisable, the ONTC Representative will have authority to require inspection or testing of Work, whether or not such work is fabricated, installed or completed.

### **Review and Inspection of the Work**

79. ONTC shall have access to the Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by ONTC and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Work Site, ONTC shall be given access to such Work whenever it is in progress upon reasonable notice and at its cost.
80. If any part of the Work is designated for tests, inspections or approvals in the Contract Documents or by the applicable laws, the Contractor shall give ONTC reasonable notification of when the part of the Work will be ready for review and inspection. The Contractor shall arrange for and shall give ONTC reasonable notification of the date and time of inspections by other authorities.
81. The Contractor shall furnish promptly to ONTC copies of any certificates and inspection reports relating to the Work.
82. If the Contractor covers, or permits to be covered, any part of the Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Work, have the inspections or tests satisfactorily completed, and make good and cover such Work at the Contractor's sole expense.
83. ONTC may order any portion or portions of the Work to be examined to confirm that such Work is in accordance with the requirements of the Contract Documents. If the portion or portions of the Work are not in accordance with the requirements of the Contract Documents, the Contractor shall correct the Work and pay the cost of examination and correction. If such Work is in accordance with the requirements of the Contract Documents, ONTC shall pay the cost of examination.
84. The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is required in the Contract Documents or by applicable laws to be performed by the Contractor.

### **Defective Work**

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

## EMPLOYEES AND SUBCONTRACTORS

### Contractor Parties

87. The Contractor shall assign to the Work only competent, appropriately qualified, experienced and skilled Contractor Parties to perform the Work and ensure that the Work is performed under the supervision of appropriately qualified and experienced personnel.
88. All parts of the Work required by applicable laws to be performed by licensed or registered professional engineers or architects shall be performed by licensed or registered professional engineers and architects. All Submittals must, to the extent required by the applicable laws, be reviewed by professional engineers registered to practice professional engineering in the jurisdiction in which the Work Site is located and bear such engineer's signature and stamp.
89. The Contractor shall be solely liable to pay all salaries, wages, overtime, bonuses, allowances, profit sharing, pensions, and other remuneration of the Contractor Parties, including payment of costs related to employee benefits, and for the deduction and remittance of all applicable employment-related taxes, premiums, dues and other burdens to the appropriate governmental authorities. The Contractor shall not be entitled to claim, nor shall ONTC be obliged to pay or reimburse the Contractor, for any monies whatsoever in respect of or in connection with any such payments, save and except where expressly included in the Contract Price.
90. The Contractor shall ensure the Contractor Parties, while working on ONTC's property, are aware of and comply with applicable laws, ONTC's policies, including its Drug and Alcohol Policy, and the Ontario Northland Operating Manual, including the Current Summary Bulletin, the current Ontario Northland Timetable, C.R.O.R. 2015, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.

### Subcontracting

91. The Contractor shall not enter into a subcontract for any part of the Work except as disclosed in any quote or response of the Contractor to an ONTC procurement document or, in any other case, without the prior written approval of ONTC. The Contractor shall provide to ONTC as part of the Contractor's request for approval, a description of that part of the Work to be subcontracted and the name and address of the proposed Subcontractor, and such other information as ONTC may request.
92. The Contractor shall not change Subcontractors without the prior written approval of ONTC, which approval will not be unreasonably withheld.
93. The Contractor shall ensure that any subcontract with the Subcontractor:
  - (a) enables the Contractor to terminate the subcontract for convenience and without cause and without creating any liability to ONTC except as provided in section 165;
  - (b) contains a term that ensures that ONTC obtains the benefit of any warranties to be provided by the Subcontractor to the Contractor;
  - (c) incorporates the relevant terms and conditions of the Contract Documents into the subcontract, including the requirement for insurance, with the Contractor and ONTC as a named insured; and
  - (d) requires the Subcontractor to perform their Work in accordance with the Contract Documents.
94. The Contractor shall be responsible to ONTC for the performance of all Subcontractors' Work. The Contractor is responsible for the acts, omissions and defaults of the Subcontractor and the employees, consultants, representatives and agents of the Subcontractor as if they were acts, omissions or defaults of the Contractor.

95. Nothing in the Contract Documents creates any contractual relationship between ONTC and any Subcontractor, except to the extent that Subcontractor warranties shall be directly enforceable by ONTC.

#### **CHANGES IN THE WORK**

96. ONTC may at any time make any change in, addition to, or deletion from the Work or the Contract Time by issuing a Change Order or Change Directive.
97. The Contractor shall not perform a change in the Work without a Change Order authorized by both parties or a Change Directive. 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 the provisions of this Part. 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 ONTC 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 Agreement or a claim for any extension of the Contract Time.
98. When a change in the work is proposed or requested, the Contractor shall present to ONTC for its acceptance a description of the change in the work and the Contractor's claim for an adjustment in the Contract Price and/or Contract Time, supported by appropriate documentation, all in a form acceptable to ONTC. If approved by ONTC, a Change Order shall be issued to the Contractor, amending the Contract Price and/or Contract Time, as appropriate.
99. If ONTC requires the Contractor to proceed with a change prior to ONTC and the Contractor agreeing on a Change Order, ONTC shall issue a Change Directive to the Contractor authorizing the change and the Contractor shall proceed with implementation and performance of the change. If at any time after the commencement of the change directed by a Change Directive, ONTC and the Contractor reach agreement with respect to the change, this agreement shall be recorded in a Change Order signed by both the Contractor and ONTC and such Change Order shall supersede the Change Directive.
100. If ONTC and the Contractor do not agree on the proposed adjustment in the Contract Price and/or the Contract Time attributable to the change in the Work, or the method of determining it, the adjustment shall be referred to the dispute resolution process for determination.
101. If, subsequent to the time of deadline for submission of responses for the procurement, changes are made to applicable laws, ordinances, rules, regulations or codes of authorities having jurisdiction, which changes were not, or could not have reasonably been known to ONTC or the Contractor, as applicable, at the time of the deadline for submission of responses to the procurement and which changes did not arise as a result of a public emergency or other Force Majeure event, which affect the cost of the Work, either party may submit a claim for a change in the Contract Price.

#### **Delay**

102. If the Contractor is delayed in the performance of the Work by an act or omission of ONTC contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as ONTC determines. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential or special damages.
103. If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes or the advice, recommendations and instructions of public health officials directly by ONTC or ONTC's other contractor(s) and relating to the Work or the

Work Site and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the ONTC determines in consultation with the Contractor. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages.

104. If the performance of the Work or the performance of any other obligation(s) of a party to this contract is delayed by Force Majeure, then the Contract Time shall be extended for such reasonable time as ONTC and the Contractor shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the Contractor and ONTC agree to a shorter extension. Neither party shall be entitled to payment for its costs incurred by such delays. Upon reaching agreement on the extension of the Contract Time attributable to the Force Majeure event, ONTC and the Contractor shall execute a Change Order indicating the length of the extension to the Contract Time and confirming that there are no costs payable by either party to the other for the extension of Contract Time.
105. Notwithstanding the foregoing, ONTC 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 Change Directive provisions of this Agreement. If the Contractor fails within the time period specified in the Change Directive to take such action, then ONTC 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.
106. If the Contractor gives notice of a Force Majeure and the non-performance of any obligation affected by such Force Majeure continues for a period longer than 30 days, ONTC may terminate the Agreement by notice in writing to the Contractor. ONTC shall pay the Contractor for the Work performed to the date of termination.
107. No extension of the Contract Time will be approved unless the Contractor notifies ONTC in writing within 3 Working Days of becoming aware of (or when it ought reasonably to have been aware of) or being notified of any potential delay contemplated in sections 102, 103, or 104. For the written notice to be valid under this section it must include specific details about:
  - (a) the cause of the delay;
  - (b) the likely impact the delay will have on the Contract Time and details of the extension of time being requested;
  - (c) the likely effect the delay will have on payment; and
  - (d) 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.
108. If the Contractor is delayed in the performance of the Work and such delay is for a cause within the Contractor's control, or due to the replacement of a Contractor Party, the Contractor shall pay to ONTC the per diem rate for liquidated damages specified in the Contract Documents for each day of delay. If the per diem rate for liquidated damages is not specified in the Contract Documents, the Contractor shall pay to ONTC the direct and indirect costs incurred by ONTC as a result of the delay.

## WORK SITE

### Access to Work Site

### Concealed or Unknown Conditions

109. The Contractor represents to ONTC that, prior to submitting its proposal in the response to the procurement for the Project, it had the opportunity to carefully investigate the Work Site and examined all reasonably available information relevant to the risks, contingencies and other circumstances having an effect on the Work, the Construction Schedule, the Contract Time or the Contract Price, and applied to that investigation the degree of care and skill described in the Standard of Care. 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.
110. If ONTC or the Contractor discover conditions, including mould or Environmental Contaminants, at the Work Site which are:
- (a) subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents; or
  - (b) physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist for such Work,
- then the party that discovers such conditions shall give notice to the other party of such conditions before they are disturbed and in no event later than 5 Working Days after first discovering the conditions. The ONTC Representative will investigate the conditions and determine if the conditions differ materially and, if so, will issue a change order for the changes in the Contract Time and/or the Contract Price to complete the Work.
111. The Contractor acknowledges that the Designated Substance Survey, if any, was provided to the Contractor by ONTC for information purposes only prior to submission of the Contractor's proposal. The Contractor shall have no remedy against the author of the reports for any damages suffered by it as a result of decisions made or actions taken by the Contractor based on the report.
112. The Contractor confirms that it has conducted its own investigation of the Work Site and satisfied itself of the exact quantities and conditions of the Environmental Contaminants at the Work Site and included in the Contract Price the cost of all the work procedures and practices needed to comply with the applicable federal and provincial laws.
113. The Contractor acknowledges that it has received the Impact Assessment Reports, if any, for the Project that are described in the procurement 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 procurement, any adjustments required to the Contract Price based on the Impact Assessments shall be determined through a Change Order.

### Cleanup

114. The Contractor shall maintain the Work Site in a safe and tidy condition and free from the accumulation of waste Materials and debris, other than that caused by ONTC or other contractors.
115. Prior to commencing the Work, the Contractor shall provide to ONTC for approval a waste management 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.

116. Prior to submitting notice for Substantial Performance of the Work, the Contractor shall remove waste Materials and debris, other than that resulting from the work of ONTC or other contractors. The Contractor shall remove Materials, tools, Construction Equipment, and temporary work not required for the performance of the remaining Work.
117. Prior to submitting the application for final payment, the Contractor shall remove from the Work Site the remaining Materials, tools, Construction Equipment, Temporary Work and waste Materials and debris, except those resulting from the work of ONTC or other contractors.
118. The Contractor shall comply with all Environmental Laws in disposing of the waste products, debris and excess soil resulting from the Work. The Contractor shall assume all liability and responsibility for any waste products, debris and excess soil, including any such materials containing Environmental Contaminants, which are removed from the Place of the Work by the Contractor and during the transportation of the waste products, debris and excess soils to the appropriate waste disposal site. The Contractor shall submit landfill weigh bills from a waste disposal site as proof that all waste has been disposed of at a certified waste disposal site.

#### **Utilities**

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

#### **Damage to the Work Site**

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

#### **Environmental Liability**

121. The Contractor shall comply with all applicable laws, including Environmental Laws, in the provision of the Work. If the Contractor fails to comply with Environmental Laws relating to the performance of the Work, the Contractor shall be solely responsible for and shall indemnify and hold harmless ONTC from, all costs, claims, fines, fees or other expenses arising from such failure to comply.
122. The Contractor shall not cause or permit any Environmental Contaminants to be located, disposed of, released, discharged or incorporated in, on or under any part of ONTC's land except as required to perform the Work. The Contractor shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Contractor that are not required to provide the Work.
123. The Contractor shall have no responsibility for Environmental Contaminants existing in ONTC's land prior to the Contractor performing the Work and entering upon ONTC's land unless the Contractor causes the release or migration of the Environmental Contaminants while performing the Work.
124. As of the date for the commencement of the Work, the Contractor shall be responsible for taking all reasonable steps to ensure that no person's exposure to the Environmental Contaminants or any other toxic or hazardous substances discovered after the commencement of the Work, exceeds the time weighted levels prescribed by the *Occupational Health and Safety Act* (Ontario) at the Work Site and that no property is damaged or destroyed as the result of exposure to, or the presence of the

Environmental Contaminants or any other toxic or hazardous substances discovered after the commencement of the Work.

125. The Contractor shall be responsible for taking all necessary steps, in accordance with applicable law to dispose of, store or otherwise render harmless the Environmental Contaminants.
126. Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Contractor shall remain the property of the Contractor.

### **Environmental Protection for Construction In and Around Waterbodies**

127. 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.
128. 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 Contractor shall also notify ONTC of any such incidents. Failure to notify DFO of such incidents is a federal offence.
129. 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 Work Site. Updates to DFO may be provided at a later time, if required.
130. All spills and sediment releases into a waterbody during the Work must be immediately reported by the Contractor to ONTC 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 ONTC Representative 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.

### **Environmental Spills and Releases**

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

### **Impact Assessments**

135. The Contractor shall be responsible for:
  - (a) 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

- (b) 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.
136. If the Contractor or ONTC observes or reasonably suspects the presence of any impacts described above that are not mentioned or accounted for in the Contract Documents or Impact Assessment Reports, if any, and related mitigation plans,
- (a) the observing party shall immediately report the circumstances to the other party;
  - (b) the Contractor shall immediately take reasonable steps, including stopping the Work if necessary, to ensure that any potential impacts are mitigated; and
  - (c) if ONTC and the Contractor do not agree on the existence, significance or mitigation measures for the impact, ONTC 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.
137. If the Contractor fails to comply with the requirements in section 136, the Contractor shall:
- (a) be responsible for all costs incurred by ONTC or the Contractor to mitigate the damage caused due to the failure;
  - (b) not be entitled to request a Change Order relating to the failure to comply; and
  - (c) indemnify ONTC 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 section 136.

## **SUBMITTALS AND INTELLECTUAL PROPERTY**

### **Submittals**

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

### **Contractor's Background IP**

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

### **Work IP**

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

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

### **CONFIDENTIAL INFORMATION**

#### **Non-Disclosure and Restricted Use**

144. Except as otherwise permitted in the Contract Documents, the Contractor shall keep in confidence, any Confidential Information that it now has or that may come into its possession in the course of the Agreement, including information marked "Confidential", and shall not, without ONTC's prior written consent, disclose the Confidential Information in any manner whatsoever, in whole or in part, and shall not use the Confidential Information for any purpose other than in connection with the Project. The Contractor may reveal or permit access to the Confidential Information only to Contractor Parties who need to know the Confidential Information, who must be advised of the confidential nature of the Confidential Information, who are directed by the Contractor to hold the Confidential Information in confidence and who agree to be bound by and to act in accordance with the terms and conditions of the Agreement. The Contractor shall take all necessary precautions or measures to prevent improper access to, or use or disclosure of, the Confidential Information by such parties and agrees to be jointly and severally responsible for any breach of the Agreement by any Contractor Parties.

145. The Contractor acknowledges that ONTC is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* as amended from time to time.

### **CONFLICT OF INTEREST**

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

147. The Contractor shall disclose to ONTC, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a Conflict of Interest or a potential Conflict of Interest, including the retention of any Subcontractor or Supplier that is directly or indirectly affiliated with or related to the Contractor.

### **AUDITS**

148. ONTC has the right to audit all financial and related records associated with the terms of the Agreement and the Contract Documents, including Submittals, timesheets, reimbursable out of pocket expenses, materials, goods and Construction Equipment claimed by the Contractor.

149. The Contractor shall at all times during the term of the Agreement and for a period of 6 years after the expiration or termination of the Agreement, keep and maintain records of the Work performed pursuant to the Agreement. The Contractor shall at its own expense make such records available for inspection and audit by ONTC at all reasonable times and without prior notice.

### **TITLE, RISK AND INSURANCE**

#### **Title and Risk**

150. Title to all Work, including the Submittals and other items supplied by the Contractor or its Subcontractors, completed or in the course of completion and all Materials for this Project, except Construction Equipment shall become the property of ONTC upon the earlier of payment by ONTC on account for such item or delivery to the Work Site. Notwithstanding the foregoing, until final completion of the Work and ONTC taking possession and control of the Work, the Contractor shall retain all risk with respect to and be responsible for: (a) all items supplied by ONTC, the Contractor

or its Subcontractors that are to be incorporated into the Work or used in performing the Work; and  
(b) any Work completed or in progress.

## Insurance

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

### (a) Commercial General Liability Insurance:

- (i) with no limitations on or exclusions from coverage arising from working on or around railway property;
- (ii) including "Ontario Northland Transportation Commission" as an additional insured;
- (iii) to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence;
- (iv) including bodily injury, personal injury, death, damage to property, including loss of use thereof and product liability;
- (v) without any restriction related to working on or near railway property;
- (vi) including coverage for environmental liability;
- (vii) in a form satisfactory to ONTC; and
- (viii) endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage.

### (b) Automobile Liability Insurance:

- (i) in respect of licensed vehicles,
- (ii) to a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence,
- (iii) including bodily injury, death and damage to property,
- (iv) endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage, and
- (v) in the following forms: standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor, and standard non-owned automobile form policy including standard contractual liability endorsement.

### (c) Pollution Liability Insurance:

- (i) with coverage for damages to ONTC's property and adjacent land and watercourse due to a contravention of Environmental Laws or the *Fisheries Act*;
- (ii) to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence; and
- (iii) endorsed to endeavour to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage.

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

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

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

### **Workers' Compensation**

155. The Contractor shall ensure all its and its Subcontractors' employees, consultants, representatives and agents and visitors attending at the Work Site, or any of them who perform Work but do not attend at the Work Site, are registered for workers' compensation coverage.
156. The Contractor shall provide to ONTC a current certificate under the WSIA confirming that the Contractor has complied with its obligations under the WSIA and whenever a certificate has expired and been replaced with a new, current, certificate, the new certificate shall be provided to ONTC.

### **WARRANTY**

157. The Contractor warrants the work free from Defect for a warranty period of two years from the date of Substantial Performance of the Work or, if Substantial Performance of the Work was not certified, two years from the date of final completion of the Work (the "**Warranty Period**").
158. ONTC shall promptly give the Contractor notice of observed Defects which arise during the Warranty Period. Following the receipt of the notice, the Contractor shall remedy, at the Contractor's expense, the Defects in the Work within 10 Working Days of receipt of the notice, or such other period directed by ONTC, acting reasonably (the "**Remediation Period**"). The Contractor shall correct or pay for damage resulting from such remediation.
159. If the Contractor fails to remedy a Defect within the Remediation Period, ONTC may upon written notice to the Contractor, in its sole discretion, either proceed to remedy the Defect itself or contract a third party to remedy the Defect (including redesign costs, reconstruction costs and costs related to damages arising from such Defect). ONTC shall be entitled to recover from the Contractor the costs thereof or may deduct the money from any monies due or that become due to the Contractor, including any Warranty Holdback.
160. The Contractor further warrants any and all remedial work it performs for a further period of two years from completion of the remedial work.
161. ONTC may hold back, 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 (the "**Warranty Holdback**"). In the event the Contractor fails to correct a Defect 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, ONTC shall have the right to use the Warranty Holdback money, or such part of it still being held by ONTC, to pay for the costs of remedying the Defect and any redesign, reconstruction or other costs relating to the Defect. 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 ONTC. The Contractor shall have the right to invoice ONTC for the balance of the Warranty Holdback at the end of the warranty period or extended warranty period.
162. Acceptance of the Work by ONTC shall not relieve the Contractor from any responsibility for Defects.
163. The Contractor shall assign to ONTC all warranties, guarantees or other obligations for Work, services or Materials performed or supplied by any Subcontractor, supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law

or by the terms of that party's agreement. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of ONTC under the Contract Documents.

## SUSPENSION AND TERMINATION

### Suspension

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

### Termination for Convenience

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

### Contractor Default

166. The Contractor is in default under the Contract Documents if any of the following occurs:

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

If the Contractor is in default, ONTC shall be entitled to immediately terminate this Agreement upon providing notice to the Contractor and/or to exercise any one of its rights in section 167.

### Remedies of ONTC for Default

167. Upon the occurrence of a Contractor default, provided ONTC has given the Contractor notice, ONTC may, without prejudice to any of its other rights and remedies, do any or all of the following in its sole discretion:

- (a) terminate the Agreement in its entirety by written notice having immediate effect and within 5 Working Days publish a notice of termination (Form 8) in accordance with the *Construction Act*;

- (b) take any action ONTC considers appropriate to rectify or attempt to rectify the Contractor's default but shall not be obligated to do so and all costs and expenses incurred by ONTC in rectifying or attempting to rectify the Contractor's default, together with interest thereon, shall be payable by the Contractor on demand. Such action by ONTC shall not be deemed a termination;
- (c) take possession of all goods and the Contractor's Construction Equipment, Materials and plant and shall have the right to use the same to complete, or arrange to have completed, the Work;
- (d) withhold all further payments to the Contractor, subject to ONTC's rights of set off, and use any amounts withheld for any purpose to advance the Project, and upon final completion, recover from the Contractor any liability incurred or suffered by ONTC as a result of, or arising out of, or in any way in connection with, the Contractor default;
- (e) make a claim against any applicable contract security required to be provided by the Contractor; and
- (f) recover all legal costs and expenses on a full indemnity basis that were incurred by ONTC associated with the termination.

### **ONTC Default**

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

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

### **On Termination**

169. If the Agreement is terminated under sections 165 or 168, ONTC shall pay the Contractor all undisputed applications for payment due to the Contractor for Work performed in the relevant period, together with reasonable and auditable demobilization costs and other direct costs the Contractor reasonably incurs and provides satisfactory evidence for in terminating the Agreement, including reasonable cancellation fees payable to its Subcontractors. The amount to be paid under this section is the Contractor's sole claim for payment for termination.

170. If the Agreement, in whole or in part, is terminated:

- (a) The Contractor shall immediately deliver to ONTC all the Submittals and all other documents and work product arising in connection with the Work, completed or in progress;
- (b) the Contractor shall effect an orderly transition to any contractor replacing the Contractor for the completion of the Work;
- (c) as directed by the ONTC Representative, subject to section 167(c), remove from the Work Site any property of or in the possession or control of the Contractor prior to the effective date of termination other than property belonging to ONTC or to be incorporated in the Work. ONTC may, without any liability whatsoever and at the Contractor's sole expense, remove or dispose of any such property left at the Work Site after such date; and

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

## INDEMNITY AND LIABILITY

### General Indemnities

171. The Contractor shall indemnify ONTC and its officers, directors, employees, consultants, contractors and agents (collectively the “**ONTC Indemnitees**”) and save them harmless from and against all losses, claims, liabilities, damages and costs (“**Loss**”) which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Contractor or as a result of any breach of the terms of this Agreement by the Contractor or by any act or omission of the Contractor or Contractor Parties or those for whom the Contractor is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or those for whom it is in law responsible. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Indemnitees.
172. The Contractor shall indemnify ONTC and ONTC Indemnitees and save them harmless from and against all Loss incurred by ONTC arising from:
- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Contractor Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Contractor Parties under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
  - (b) any health, medical disability or similar claims which the Contractor or Contractor Parties may have during or after the term of this Agreement;
  - (c) a claim by any third party against ONTC alleging that the Work IP and its use by ONTC, infringes any Intellectual Property Rights;
  - (d) safety infractions committed by the Contractor under the *Occupational Health and Safety Act*; and
  - (e) exposure to, or the presence of, toxic or hazardous substances or materials which were either brought on to the Work Site by the Contractor or a Contractor Party and mishandled or handled negligently or improperly.

### Exception

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

### Bodily Injury and Property Damage

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

### Waiver

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

## Limitation of Liability

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

## Survival

177. The provisions in this part – Indemnity and Liability shall survive the expiry or termination of this Agreement.

## DISPUTE RESOLUTION

178. Save and except where the Contractor has given an undertaking, in accordance with the *Construction Act*, to refer a dispute to Adjudication, prior to delivering a notice of Adjudication in a form prescribed by the *Construction Act*, the parties agree to first address all unresolved claims, disputes or controversies of any kind arising out of or in connection with this Agreement or the provision of the services (hereafter referred to as the “**Dispute**”) in a tiered approach as follows:
- (a) A Dispute shall be referred to ONTC’s project manager for the Project and a representative of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
  - (b) If unresolved, after following the process described in (a), the Dispute shall be referred to the ONTC Director or Vice President who is responsible for the Project and an employee of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
  - (c) If unresolved after following the process described in (b), and only at the election of ONTC, the Dispute shall be referred to the CEO of ONTC and the most senior executive employee of the Contractor for resolution within a period not to exceed thirty (30) days. If ONTC does not elect, at its sole option, to proceed under this section, the Dispute may proceed under either step described in sections 179, 181 or 182.
179. If the Dispute remains unresolved despite the parties’ attempting to resolve it following the process in section 178(a) to (c), a party may elect to proceed with the Dispute by way of an Adjudication. If a party elects to proceed by way of an Adjudication, the other party shall not be bound to proceed by way of an Adjudication, save and except where the parties are obliged under the *Construction Act*. Where either party has delivered a notice of Adjudication in a form prescribed by the *Construction Act*, the procedures and rules set out under the *Construction Act* and the regulations thereto shall govern the Adjudication.
180. Other than where the Contractor is obliged to commence an Adjudication pursuant to an undertaking under the *Construction Act*, neither ONTC nor the Contractor shall commence an Adjudication during the Restricted Period (Adjudication).

181. If the Dispute remains unresolved despite the parties attempting to resolve it following the process in section 178(a) to (c), or following a determination of the Dispute pursuant to an Adjudication, a party may elect to proceed with the Dispute under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than: (i) ten (10) days following the expiry of the timeline set out in section 178(b) or (c), whichever is the later, or (ii) ten (10) days following the rendering of the adjudicator's determination following an Adjudication. Where a party elects to proceed with mediation within the timelines prescribed in this section, the other party shall be bound to proceed to mediation. No later than ten (10) days after a party makes an election to proceed to mediation, or such longer period as may be mutually agreed between the parties, the parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.
182. If neither party elects to proceed to mediation within the timelines outlined in section 181, or the parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration by a single arbitrator in accordance with the Arbitration Act, 1991, S.O. 1991, c. 17 (hereafter referred to as the "Arbitration Act") as amended by an arbitration agreement to be executed by the parties and the arbitrator. The parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the Arbitration Act. The arbitration proceedings shall take place in Toronto, Ontario, Canada. The language of the arbitration shall be English. The parties agree that any arbitration award, including with respect to costs, shall be binding on the parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.
183. The timelines in this part – Dispute Resolution may be amended by mutual agreement of the parties.

#### **HEALTH AND SAFETY**

184. The Contractor shall be solely responsible for construction safety at the Work Site and for compliance with the rules, regulations and practices required by the applicable laws and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
185. 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 as they apply to the Work Site. If the Work Site is located on ONTC's premises, the Contractor shall comply with all ONTC's policies and directions to ensure the health and safety of ONTC's employees and contractors as well as the Contractor Parties. The Contractor shall indemnify and hold harmless ONTC for any fines, penalties or other costs imposed or assessed on or incurred by ONTC arising from the Contractor's failure to comply with the applicable health and safety laws, any orders, recommendations and restrictions of the federal, provincial or municipal governments or the advice, recommendations and instructions of public health officials.
186. Prior to the commencement of the Work, the Contractor shall submit to ONTC documentation of the Contractor's health and safety policy and programs and a copy of the Notice of Project filed with the Ministry of Labour naming itself as "Constructor" under the Ontario *Occupational Health and Safety Act*.
187. The Contractor shall ensure that it and its employees and Subcontractors are aware of and, while being on ONTC's property, comply with ONTC's policies, including its Drug and Alcohol Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, C.R.O.R. 2015, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable.

### PRIOR SERVICES OR WORK

188. Any aspect of the Work provided for herein which has been performed by the Contractor prior to the execution of this Agreement and any payment made by ONTC for such work shall be deemed to be subject to and performed and paid under this Agreement.

### GENERAL

189. **No Waiver:** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of any remittances from the Contractor by ONTC shall not be deemed a waiver of any preceding breach by the Contractor regardless of ONTC's knowledge of such preceding breach at the time of the acceptance of such compensation.
190. **Relationship:** 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.
191. **Governing Law:** This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario without regard to conflict of laws principles. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
192. **Severability:** Should any section or part or parts of any section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon ONTC and the Service Provider as though such section or part or parts thereof had never been included in this Agreement.
193. **Entire Agreement:** This Agreement constitutes the entire agreement and understanding of the parties and supersedes any and all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
194. **Survival:** 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.
195. **Counterparts and Electronic Delivery:** This Agreement may be executed and delivered by facsimile or electronic transmission and the parties may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.
196. **Notice:** Any notice, consent, acceptance or approval required or permitted to be given in connection with the Contract Documents shall be in writing and shall be sufficiently given if delivered to the recipient party if sent to the address of the party set out below by personal delivery, courier or email.

**To ONTC:**

Ontario Northland Transportation Commission  
555 Oak Street East  
North Bay, ON P1B 8L3  
Attention: Sharon Zwaan  
E: [Sharon.zwaan@ontarionorthland.ca](mailto:Sharon.zwaan@ontarionorthland.ca) with copy to [legal@ontarionorthland.ca](mailto:legal@ontarionorthland.ca)  
T: 705-472-4500 Ext. 207

**To Contractor:**

[Contractor]  
[Address]  
Attention:  
E:  
T:

Any notice delivered or transmitted to a party shall be deemed to have been given and received on the day it is delivered or transmitted, provided that if it is delivered or transmitted on a day that is not a Working Day, then the notice shall be deemed to have been given and received on the next Working Day. Any party may, from time to time, change its contact information by giving notice to the other party in accordance with this section.

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

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**ONTARIO NORTHLAND  
TRANSPORTATION COMMISSION**

Per: \_\_\_\_\_  
Name: Chad Evans  
Title: Chief Executive Officer

Date: \_\_\_\_\_

*I have authority to bind the Corporation.*

**XXX**

Per: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

*I have authority to bind the Corporation.*

**Schedule A – Scope of Work**

**Schedule B – Contractor’s Submission**

**Schedule C – Project-Specific Requirements for a  
Proper Invoice**

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

- (a) Be in the form of a written bill, invoice, application for payment, or request for payment;
- (b) Be in writing;
- (c) Contain the Contractor's name, telephone number and mailing address and contact information of the Contractor's project manager;
- (d) Contain the title of the Project and ONTC's contract number or purchase order number under which the work was performed and the related request for qualification, tender, or request for proposal number, as applicable;
- (e) Contain the date the written bill, invoice, application for payment, or request for payment is being issued by the Contractor;
- (f) Identify the period of time in which the labour and/or materials were supplied to ONTC;
- (g) Reference to the provisions of the Agreement under which payment is being sought (e.g. progress payment / milestone, holdback, final payment, etc.);
- (h) A description, including quantities where appropriate, of the services or materials, or a portion thereof, that were supplied and form the basis of the Contractor's request for payment;
- (i) The amount the Contractor is requesting to be paid by ONTC, set out in a statement based on the schedule of values approved under section 48 of the Agreement, separating out any statutory or other holdbacks, set-offs and HST;
- (j) With each application for payment after the first, a Statutory Declaration, in the form prescribed by ONTC, stating that all accounts for labour, subcontracts, Materials, Construction Equipment and other indebtedness which may have been incurred by the Contractor and for which ONTC might in any way be held responsible have been paid in full up to the previous application for payment, except for amounts properly retained as a holdback or as an identified amount in dispute;
- (k) A current Workplace Safety Insurance Board clearance certificate;
- (l) An updated Construction Schedule in the format(s) required under sections 32 and 33 of the Agreement;
- (m) If requested by ONTC, a current and valid certificate(s) of insurance for the insurance required pursuant to the Agreement;
- (n) The following statement: "Provided this Proper Invoice complies with the requirements of the Agreement and provided no Notice of Non-Payment is issued by ONTC, payment is due within 28 days from the date this Proper Invoice is received by ONTC.";
- (o) The name, title, telephone number and mailing address of the person at the place of business of the Contractor to whom payment is to be directed;
- (p) In the case of the Contractor's application for final payment;
  - (i) Sufficient evidence that the Contractor has delivered all warranties to ONTC;
  - (ii) Sufficient evidence that the Work Site has been left in a clean and tidy condition, including evidence that any remaining Materials, tools, Construction Equipment, temporary work, and waste products and debris have been removed from the Work Site;

- (iii) An executed, original, Full and Final Release of all claims that may arise as a result of the Work, which Full and Final Release executed by the Contractor shall be in a form approved by ONTC;
- (q) Information identifying the authority, whether in the Contract Documents or otherwise, under which the services or materials were supplied;
- (r) Any other information that is prescribed in Schedule A or identified by ONTC as required;
- (s) The amount invoiced to date;
- (t) The percentage of the Contract Price invoiced; and
- (u) The individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the Project.