SUPPLEMENTARY CONDITIONS
CCDC 2 – 2020 STIPULATED PRICE CONTRACT
(Major Capital Projects)

These Supplementary Conditions modify, delete and/or add to the Agreement between Owner and Contractor, the Definitions, and the General Conditions of the Stipulated Price Contract, Standard Construction Document CCDC 2 – 2020.

SC 1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC 1.1 ARTICLE A-5 PAYMENT

1.1.1 Delete paragraph 5.2 and replace it with the following:

"5.2 Should either party fail to make payments as they become due under this *Contract* or in an award by arbitration, adjudication or court, interest will begin to accrue on the amount that is not paid from the date when it is due until the date it is paid at the prejudgment interest rate prescribed by the Courts of Justice Act (Ontario)."

SC 1.2 ARTICLE A-9 TIME IS OF THE ESSENCE

1.2.1 Add a new Article A-9 as follows:

"**ARTICLE A-9 TIME IS OF THE ESSENCE**

9.1 The *Contractor* represents and warrants that it will attain *Ready-for-Takeover* by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK, as such date may be adjusted in accordance with this *Contract*, and agrees that time shall be of the essence in the performance of the *Contractor's* obligations under this *Contract*."

SC 1.3 ARTICLE A-10 EXECUTION OF THE CONTRACT

1.3.1 Add a new Article A-10 as follows:

"**ARTICLE A-10 EXECUTION OF THE CONTRACT**

10.1 This *Contract* may be executed in counterparts, including by electronic means, and each counterpart shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Delivery by e-mail of a PDF copy of any executed counterpart shall be deemed to be an original and of full force and effect and equally as effective as delivery of a manually executed original counterpart thereof."

SC 2. DEFINITIONS

2.1.1 Amend the following Definition:

(a) Amend the Definition of "*Consultant*" by adding the following to the end:

"For purposes of this *Contract*, the terms "*Consultant*", "Architect" and "Engineer", wherever used in the *Contract Documents*, shall be considered synonymous."

(b) Amend the Definition of "*Owner*" by adding the following to the end:

"For purposes of this *Contract*, the term "*Owner*", wherever used in the *Contract Documents*, shall include the *Owner's* designated representative and/or project manager."

2.1.2 Add the following new Definitions:

(a) **Act**

"*Act* means the Construction Act (Ontario), as amended."

(b) **As-Built Drawings**

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

As-Built Drawings shall be in computer-aided design (CAD) format approved by the Owner, as well as in paper and PDF formats."

(c) **Environmental Programs**

"*Environmental Programs* means the environmental plans, programs, procedures and requirements of the *Owner*. The *Environmental Programs* incorporate the *Owner's* infection control program including measures to suppress dust and noise and to avoid conditions likely to propagate mould or fungus of any kind."

(d) **OHSA**

"*OHSA* means the Occupational Health and Safety Act (Ontario), as amended, and all rules and regulations passed under it."

(e) **Proper Invoice**

"*Proper Invoice* means an application for payment given by the *Contractor* to the *Owner* that fully complies with the requirements of GC 5.1A – PROPER INVOICE."

(f) **Submittals**

"*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as:

- *Shop Drawings*, samples, models, manuals, mock-ups to indicate details or characteristics before the portion of the *Work* that they represent can be incorporated into the *Work*; and
- *As-Built Drawings* and manuals to provide instructions to the operation and maintenance of the *Work*."

(g) **Vaccination Policy**

"*Vaccination Policy* means the *Owner's* Vaccination Policy, available at "https://www.queensu.ca/procurement/suppliers/covid-19-vaccination-requirements-suppliers", as it may be updated from time to time."

(h) **WSIB**

"*WSIB* means the Ontario Workplace Safety & Insurance Board."

SC 3. GENERAL CONDITIONS

SC 3.1 GC 1.1 CONTRACT DOCUMENTS

3.1.1 Amend paragraph 1.1.2 by adding the following to the end:

"The intent of the *Contract Documents* is to include all labour, *Products*, materials, *Construction Equipment* and services necessary or normally considered necessary for the performance of the *Work* in accordance with the *Contract Documents*. Any item of *Work* mentioned in the *Contract Documents* or reasonably inferable from the *Contract Documents* but not otherwise shown or described, shall be provided by the *Contractor* as if shown or otherwise described or inferable. Any items omitted from the *Contract Documents* which are reasonably necessary or inferable for the completion of the *Work* or related work, shall be considered a portion of the *Work* and included in the scope of *Work* to be performed under this *Contract*."

3.1.2 Amend paragraph 1.1.5 as follows:

(a) amend paragraph 1.1.5.1 by changing the order of the first four bullet points so that, as reordered, the bullet points read as follows:

"1.1.5.1 the order of priority of documents, from highest to lowest, shall be

- Supplementary Conditions,
- the Agreement between *Owner* and the *Contractor*,
- the Definitions,
- the General Conditions"

(b) add to the end of paragraph 1.1.5 the following:

"Notwithstanding the foregoing, if there is a conflict or discrepancy between *Drawings* or between *Drawings* and *Specifications* or any other *Contract Documents* in relation to the *Products* to be supplied or the amount of labour or materials required to complete a particular item of *Work*, the *Contractor* shall supply and shall include in the *Work* the *Products*, labour and materials which would provide the greatest benefit to the *Owner*, as determined by the *Owner*."

3.1.3 Amend paragraph 1.1.9 by adding new paragraphs 1.1.9.1 and 1.1.9.2 as follows:

"1.1.9.1 The *Specifications* shall be read as a whole and are the minimum construction requirements. Neither the organization nor the division of the *Specifications* nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* in respect to such organization or division.

1.1.9.2 The *Drawings* are intended to convey the scope of the *Work* and indicate elevations and general and approximate locations, arrangement and sizes of fixtures, equipment, outlets, utilities and underground services. The *Contractor* shall obtain more accurate information and shall satisfy itself as to the conditions of the pre-grade elevations and the locations, arrangement and sizes of fixtures, equipment, outlets, utilities and underground services from study and coordination of the *Drawings*, including *Shop Drawings*, and shall satisfy itself and become familiar with conditions and spaces affecting these matters before proceeding with the *Work*. Where site conditions require reasonable minor changes in indicated locations and arrangements, the *Contractor* shall make such changes at no additional cost to the *Owner*. Similarly, where known conditions or existing conditions that reasonably could have been foreseen interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work* at no additional cost to the *Owner*. The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible."

3.1.4 Amend paragraph 1.1.11 by deleting the words "at the *Owner's* expense".

SC 3.2 GC 1.3 RIGHTS AND REMEDIES

3.2.1 Add a new paragraph 1.3.3 as follows:

"1.3.3 To be effective, a waiver of a right, remedy, duty or obligation under this *Contract* must be expressly written by an authorized representative of the party. For greater certainty, actions of the *Owner* which shall not constitute a waiver include, but are not limited to, the following:

.1 making partial payments to the *Contractor*;

.2 any partial or entire use or occupancy of the *Project* by the *Owner*;

.3 final acceptance of the *Work* by the *Owner*;

.4 failure of the *Owner* or its representatives to object to known defects;

.5 specifying a list of defects will not be held a waiver of defects not listed."

SC 3.3 GC 2.4 DEFECTIVE WORK

3.3.1 Amend paragraph 2.4.1 by adding new paragraphs 2.4.1.1 and 2.4.1.2 as follows:

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

2.4.1.2 The *Contractor* shall give priority to the correction of any defective work or deficiencies identified as priorities by the *Owner* or the *Consultant*."

SC 3.4 GC 3.1 CONTROL OF THE WORK

3.4.1 Add new paragraphs 3.1.3 through 3.1.6 as follows:

"3.1.3 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. The *Contractor* shall perform the *Work* in accordance with modern practice and in accordance with applicable laws, ordinances, rules, regulations or codes relating to the performance of the *Work*. Without limiting the generality of the foregoing, the *Contractor* is responsible for coordinating the *Work* so that no part shall be left in an unfinished or incomplete condition.

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

3.1.5 The *Contractor*, without in any way limiting its responsibilities under this *Contract*, shall:

.1 perform the *Work* so as to avoid disturbing the occupants of any structures at the *Place of the Work* or any adjacent structures or the public in general,

.2 respect and comply with local regulations and all *Owner's* requirements regarding permitted work hours, noise levels and work conditions,

.3 take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise, to avoid conditions likely to propagate mould or fungus of any kind, and shall take all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of any adjacent structures at the *Place of the Work* or any adjacent structures and the public in general, and/or to maintain access to and the operation of such structures,

.4 take precautions not to allow any unauthorized visitors entry to the *Place of the Work.*

The *Contractor* shall not permit any worker or *Subcontractors* or *Suppliers* to use any existing facilities including, without limitation, elevators, lavatories, toilets, entrances, and parking areas other than those designated by the *Owner*.

3.1.6 Prior to commencing the *Work* the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and shall obtain written instructions before proceeding with any part of the affected *Work*. Failure to do so shall be at the sole risk and cost of the *Contractor*."

SC 3.5 GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.5.1 Amend paragraph 3.2.2 by deleting the word "*Owner*" in the second line and replacing it with the word "*Contractor*".

3.5.2 Delete paragraphs 3.2.2.2 and 3.2.2.3.

3.5.3 Amend paragraph 3.2.3.4 by adding the following to the end:

"Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the deficiencies in the work of *Other Contractors* or *Owner's* own forces except for those deficiencies not then reasonably discoverable; and"

3.5.4 Add a new paragraph 3.2.3.5 as follows:

"3.2.3.5 assume overall responsibility for compliance with all aspects of the applicable health and construction safety legislation at the *Place of the Work*, including all of the responsibilities of the "constructor" under the *OHSA*."

3.5.5 Add a new paragraph 3.2.7 as follows:

"3.2.7 The placement, installation, application and connection of work by the *Owner's* own forces or by *Other Contractors* on and to the *Work* shall not relieve the *Contractor* of its responsibility to provide and maintain the warranties specified in this *Contract*. If the *Contractor* is of the view that the work of *Other Contractors* or the work of the *Owner's* own forces will compromise, void or nullify any of the warranties to be provided pursuant to this *Contract*, the *Contractor* shall immediately give *Notice in Writing* to the *Owner* and shall include in such notice the reasons why, in the *Contractor's* view, a warranty or warranties will be compromised, voided or nullified, together with the *Contractor's* recommendations for avoiding such result."

SC 3.6 GC 3.4 CONSTRUCTION SCHEDULE

3.6.1 Delete paragraph 3.4.1 and replace it with the following:

"3.4.1 The *Contractor* shall:

.1 within ten (10) *Working Days* of entering into this *Contract*, or within such further time agreed to by the *Owner*, submit to the *Owner* and the *Consultant*, for the *Owner's* approval, a construction schedule that indicates the timing of major activities and critical milestone dates for the *Work*, demonstrating that the *Work* will be performed in conformity with the *Contract Time*. Such schedule:

(a) shall, when required by the *Specifications* to be generated using construction scheduling software, be prepared using the software "Microsoft Project" or "Primavera", unless otherwise agreed to in writing by the *Owner*, and

(b) shall be provided in native editable electronic format approved by the *Owner* and shall include and show all logic links between activities, and shall also be provided in paper form, and

(c) shall be prepared in collaboration with, and supported by, the *Subcontractors* and *Suppliers* whose activities affect the critical path of the *Work*, and

(d) shall include and make provision for statutory holidays, weather conditions that are normally experienced at the *Place of the Work*, and the rectification of defects and deficiencies; and

(e) shall provide sufficient detail of the critical events and their inter-relationship and shall include a baseline schedule indicating the critical path for the *Project*; and

.2 provide the expertise and resources, including manpower and *Construction Equipment*, as are necessary to maintain progress under the construction schedule or any successor or revised schedule approved by the *Owner*; and

.3 monitor the adequacy of *Subcontractor* and *Supplier* personnel and equipment and the availability of *Products* and supplies to meet the construction schedule and take appropriate action when requirements of a contract with a *Subcontractor* or *Supplier* are not being met; and

.4 monitor the progress of the *Work* on a weekly basis relative to the construction schedule, update the schedule on a monthly basis, and advise the *Owner* and the *Consultant* in writing of any variation from the baseline or slippage in the schedule; and

.5 at each bi-weekly site meeting, provide to the *Owner* and the *Consultant* a written report on the activities completed in the last week and indicating the activities planned to be undertaken in the next two (2) weeks, including manpower loading.

3.4.2 If at any time it should appear that the actual progress of the *Work* is behind schedule or is likely to fall behind schedule, the *Contractor* shall immediately notify the *Owner* in writing and shall take appropriate steps, at the *Contractor's* own expense, to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Consultant*, for review and approval, a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule.

3.4.3 If after applying the expertise and resources required under paragraphs 3.4.1.2 and 3.4.2 the *Contractor* forms the opinion that the slippage in the construction schedule cannot be recovered, the *Contractor* shall advise the *Owner* and the *Consultant* of any revisions required to the schedule.

3.4.4 The *Contractor* shall not change the scheduled *Ready-for-Takeover* date without the *Owner's* prior written approval."

SC 3.7 GC 3.5 SUPERVISION

3.7.1 Delete paragraph 3.5.1 and replace it with the following:

"3.5.1 The *Contractor* shall provide all necessary supervision and shall appoint a full-time superintendent who shall be in full time attendance at the *Place of the Work* while the *Work* is being performed. The superintendent shall not be changed by the *Contractor* without prior consultation with and written agreement of the *Owner*."

3.7.2 Add a new paragraph 3.5.3 as follows:

"3.5.3 If the *Contractor* has identified key team members or personnel ("*Key Personnel*") in its response to a request for qualifications, request for proposals, request for tenders, or other procurement process issued by the *Owner*, the *Contractor* shall employ such *Key Personnel* on the *Project*. The *Contractor* shall not change, substitute, replace or reassign any of the *Key Personnel* without the prior approval of the *Owner*, which shall not be unreasonably withheld. In the event of an approved change in *Key Personnel*,

the *Contractor* shall promptly appoint a replacement person of comparable or greater experience, subject to the *Owner's* approval. The *Contractor* shall provide all relevant information on each proposed replacement person, including a current resume and synopsis of the individual's roles on previous projects. All costs associated with the transition of new staff onto the *Project* shall be at the sole cost and expense of the *Contractor*."

SC 3.8 GC 3.6 SUBCONTRACTORS AND SUPPLIERS

3.8.1 Add a new paragraph 3.6.1.4 as follows:

"3.6.1.4 ensure that all *Subcontractors* and *Suppliers* and anyone employed or engaged by them directly or indirectly have the qualifications, technical skills, levels of experience and knowledge required (including with respect to all applicable construction safety rules and regulations), and all applicable permits, licenses and approvals necessary to perform the work assigned to them in accordance with the terms of the *Contract*."

3.8.2 Amend paragraph 3.6.2 as follows:

(a) delete the words "before signing the *Contract*" in the third line; and

(b) add the following to the end:

"The *Contractor* agrees not to change *Subcontractors* without the prior written consent of the *Owner*, which consent will not be unreasonably withheld."

3.8.3 Amend paragraph 3.6.3 by deleting the words "before the *Owner* has signed the *Contract*" in the first line.

3.8.4 Add new paragraphs 3.6.7 and 3.6.8 as follows:

"3.6.7 If the *Contractor* intends to change any of the *Subcontractors* or *Suppliers*, the *Contractor* shall advise the *Owner* in writing, giving the *Contractor*'s reasons for the proposed change. No change of *Subcontractors* or *Suppliers* may be made without the prior written approval of the *Owner*.

3.6.8 Notwithstanding paragraph 3.6.5, the *Owner* may assign to the *Contractor*, and the *Contractor* shall accept the assignment of, any contract procured by the *Owner* for *Work* or *Products* required on the *Project* that has been pre-tendered or pre-negotiated by or on behalf of the *Owner*. In such event the *Contract Price* shall be increased by the balance of the contract price remaining under such assigned contract."

SC 3.9 GC 3.7 LABOUR AND PRODUCTS

3.9.1 Amend paragraph 3.7.1 as follows:

(a) insert the words "agents, *Subcontractor*s and *Suppliers*" after the word "employees" in the first line; and

(b) add the following to the end:

"Without in any way limiting the generality of the foregoing, the *Contractor* shall prepare and implement the job site rules more particularly described in the *Contract Documents*. If no job site rules are described in the *Contract Documents*, the *Contractor* shall draft job site rules for the review and approval of the *Owner*. Any such job site rules prepared by the *Contractor* shall be consistent with the *Contractor*'s duties and obligations under *OHSA* and shall also include provisions making smoking and the consumption of alcohol or non-prescription drugs on the *Project* site the subject of discipline proceedings and/or termination of employment."

3.9.2 Amend paragraph 3.7.3 by adding the following to the end:

"The *Contractor* represents and warrants that the *Products* supplied are not subject to any conditional sales contracts and are not subject to any security rights claimed or obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*."

3.9.3 Add new paragraphs 3.7.4 through 3.7.8 as follows:

"3.7.4 The *Contractor* shall ensure that all materials and *Products* are delivered to the *Project* site in original containers and packages with labels and seals intact and that they are protected from the elements and visible for inspection by the *Owner* and/or the *Consultant*.

3.7.5 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and *Other Contractors*) in such ways as to avoid dangerous conditions, deterioration, damage or contamination to the *Products*, persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*.

3.7.6 The *Owner* or the *Consultant*, acting reasonably, shall have the right to order the *Contractor* to remove from the *Project*, without cost to the *Owner*, any representative or employee of the *Contractor* or a *Subcontractor* or *Supplier* whose conduct, in the opinion of the *Owner* or the *Consultant*, jeopardizes the safety or security of the *Project*, any person, the *Owner's* operations, is a detriment to the *Project*, or may be considered as harassment in the workplace. Immediately upon receipt of such order the *Contractor* shall make arrangements for the appointment of a replacement representative or employee acceptable to the *Owner*.

3.7.7 The *Contractor* shall not, and shall ensure that its *Subcontractors* and *Suppliers* do not, employ any person on the *Project* whose labour affiliation, or lack thereof, is incompatible with other labour employed on the *Project*. All costs arising from labour disputes arising from the *Contractor's* failure to comply with this paragraph shall be at the sole expense of the *Contractor*.

3.7.8 The *Contractor* shall cooperate with the *Owner*, the *Consultant* and their representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes, and other labour disputes."

SC 3.10 GC 3.8 SHOP DRAWINGS AND OTHER SUBMITTALS

3.10.1 Amend the title of GC 3.8 by adding the words "AND OTHER SUBMITTALS" after "SHOP DRAWINGS".

3.10.2 Amend paragraphs 3.8.1, 3.8.2, 3.8.3, 3.8.5, 3.8.6 and 3.8.7 by adding the words "and *Submittals*" after the words "*Shop Drawings*" wherever they appear in those paragraphs, and amend paragraphs 3.8.3.2 and 3.8.5 by adding the words "and *Submittal*" after the words "*Shop Drawing*" wherever they appear in those paragraphs.

3.10.3 Further amend paragraph 3.8.1 by adding the following to the end:

"Prior to the first application for payment, the *Contractor* shall prepare a schedule of the dates for submission, review and return of *Shop Drawings* and *Submittals* and submit it to the *Consultant* for review and approval."

3.10.4 Add new paragraphs 3.8.8 to 3.8.11 as follows:

"3.8.8 Reviewed *Shop Drawings* and *Submittals* shall not authorize a change in the *Contract Price* or the *Contract Time*, unless there is a scope of work or design change initiated by the *Owner*.

3.8.9 The *Contractor* shall not use the term "by others" on *Shop Drawings* or *Submittals*, but shall identify the responsible trade, *Subcontractor* or *Supplier* where such work is within the scope of the *Work*.

3.8.10 Where *Specifications* require the *Shop Drawings* to bear the seal and signature of a professional, such professional shall be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.11 The *Consultant's* review of *Shop Drawings* and *Submittals* will be for general detail and arrangement only. The *Consultant's* review shall not relieve the *Contractor* from its responsibility for deviations from the *Contract Documents*, unless the *Contractor* in writing has notified the *Consultant* of such deviations at the time of submission of the *Shop Drawings* and *Submittals* and the *Consultant* has given written approval to the specific deviations. The *Consultant's* review shall not relieve the *Contractor* from responsibility for defective *Work* resulting from errors or omissions of any kind on the reviewed *Shop Drawings* and *Submittals* and shall not constitute authorization to the *Contractor* to perform additional *Work* or changed *Work*. The *Contractor* is solely responsible for dimensions to be confirmed and correlated at the job site, for information that pertains solely to fabrication processes, and for techniques of construction and installation."

SC 3.11 GC 3.9 USE OF THE WORK

3.11.1 Add a new GC 3.9 as follows:

"**GC 3.9 USE OF THE WORK**

3.9.1 The *Contractor* shall confine *Construction Equipment, Temporary Work,* storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

3.9.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

3.9.3 The *Owner* shall have the right to enter, occupy, take possession of or use for any intended purpose any portion or all of the undelivered portion of the *Project*, even though *Ready-for-Takeover* may not have been attained, provided that such entry, occupation, taking of possession or use will not interfere, in any material way, with the progress of the *Work*. The entry, occupation, taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner's* acknowledgement or acceptance of the *Work* or *Project*, nor shall it entitle the *Contractor* to an adjustment in the *Contract Time* or *Contract Price*, nor shall it relieve the *Contractor* of any of its obligations under the *Contract*, including the *Contractor's* designation and obligations as "constructor" under *OHSA* and the *Contractor's* obligations respecting construction health and safety, and all of the *Contractor's* obligations, rules, regulations and practices shall continue to apply notwithstanding such entry, occupation, taking of possession or use."

SC 3.12 GC 3.11 STANDARD OF CARE

3.12.1 Add a new GC 3.11 as follows:

"**GC 3.11 STANDARD OF CARE**

3.11.1 In performing this *Contract* the *Contractor* shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care, skill, judgment and diligence in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may employ on the *Project*.

3.11.2 The *Contractor* represents, covenants and warrants to the *Owner* that:

.1 The personnel it assigns to the *Project* are appropriately experienced and trained;

.2 It has sufficient qualified and competent personnel to replace its designated supervisor, superintendent and project manager, subject to the *Owner's* approval, in the event of incapacity, removal or resignation; and

.3 There are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform this *Contract*."

SC 3.13 GC 4.1 CASH ALLOWANCES

3.13.1 Add a new paragraph 4.1.8 as follows:

"4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* estimated to cost over $50,000, excluding *Value Added Taxes*, to be paid for from cash allowances."

SC 3.14 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

3.14.1 Delete GC 5.1.

SC 3.15 GC 5.1A PROPER INVOICE

3.15.1 Add a new GC 5.1A as follows:

"**GC 5.1A PROPER INVOICE**

5.1A.1 In this *Contract* a *Proper Invoice* shall mean an application for payment made by the *Contractor* that:

.1 is given to the *Owner* by e-mail sent to "payables@queensu.ca" and is sent concurrently to the *Consultant* or as the *Owner* may otherwise direct; and

.2 includes all of the following:

.1 the *Contractor's* name and address and HST registration number;

.2 the date of the application for payment and the period during which the services or materials were supplied;

.3 information identifying the authority, whether in the *Contract* or otherwise, under which the services or materials were supplied;

.4 a description, including quantities where appropriate, of the services and materials that were supplied;

.5 the amount payable for the services or materials that were supplied, and the payment terms;

.6 the name, title, telephone number and mailing address of the person to whom payment is to be sent;

.7 the *Owner's* purchase order number, project number and the *Owner's* project manager's name;

.8 a statement based on the schedule of values for the *Work*, including a log recording all *Change Orders* and *Change Directives*;

.9 where the application includes amounts charged on the basis of hourly rates, documentation in support of the amount claimed, including dates that services were performed, identity of the person(s) involved, the hours spent, and a description of the services performed;

.10 where the application includes amounts expended under a cash allowance, documentation in support of the amount claimed, including copies of all invoices and charges incurred;

.11 where the application is for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, evidence to establish the value and delivery of such *Products*;

.12 for all applications for payment except the final payment, an updated construction schedule, in editable format, that complies with the requirements of paragraph 3.4.1.1 of GC 3.4 – CONSTRUCTION SCHEDULE;

.13 a current valid clearance certificate issued by the *WSIB*;

.14 confirmation that the *Contractor's* attestation form referred to in paragraph 9.4.11 of GC 9.4 – CONSTRUCTION SAFETY has been updated in accordance with the *Vaccination Policy*;

.15 for the second and all subsequent applications for payment, a CCDC 9A Statutory Declaration stating that all accounts for services and materials and other indebtedness incurred by the *Contractor* for which the *Owner* may in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified matter in dispute."

SC 3.16 GC 5.2 APPLICATIONS FOR PAYMENT

3.16.1 Delete paragraphs 5.2.1 and 5.2.2 and replace them with the following:

"5.2.1 Subject to paragraph 5.2.2, *Proper Invoices* for progress payment shall be given monthly to the *Owner* as the *Work* progresses on a day of the month agreed to in writing by the parties.

5.2.2 The *Contractor* shall not give a *Proper Invoice* for progress payment between the date certified as the date of *Substantial Performance of the Work* and the date that the *Contract* is completed."

3.16.2 Amend paragraph 5.2.3 by adding the following to the end:

"No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties."

3.16.3 Amend paragraph 5.2.4 by adding the following to the end:

"Such schedule of values shall include a line item which assigns an appropriate portion of the *Contract Price* for quality control and closeout of the *Work*."

3.16.4 Amend paragraph 5.2.5 by inserting the words ", or as directed by the *Consultant*" after the words "as specified in the *Contract*".

3.16.5 Amend paragraph 5.2.6 by adding the following to the end:

", as modified by paragraph 5.1A.1.2 of GC 5.1A – PROPER INVOICE."

3.16.6 Delete paragraph 5.2.7.

3.16.7 Amend paragraph 5.2.8 by adding the following to the end:

"Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to GC 14.1 – OWNERSHIP OF MATERIALS."

3.16.8 Add a new paragraph 5.2.9 as follows:

"5.2.9 The *Contractor* shall prepare and maintain current *As-Built Drawings* during the course of the *Work*, which shall be maintained by the *Contractor* and made available to the *Consultant* and the *Owner* for review with each application for progress payment. The *Consultant* may retain a reasonable amount from any payment for the value of the *As-Built Drawings* not presented for review."

SC 3.17 GC 5.3 PAYMENT

3.17.1 Delete paragraph 5.3.1 and replace it with the following:

"5.3.1 The *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the date the *Owner* receives a *Proper Invoice*, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due.

5.3.2 Subject to the *Owner's* right to give notice of non-payment in accordance with the *Act*, and subject to the holdback provisions of the *Act*, the *Owner* will pay the amount payable under a *Proper Invoice* no later than 28 days after the date the *Owner* receives the *Proper Invoice*. Provided that:

.1 the *Contractor* shall not submit a *Proper Invoice* on any day specified in paragraph 5.2.2 of GC 5.2 – APPLICATIONS FOR PAYMENT; and

.2 the *Owner's* obligation to make payment shall not arise unless and until the *Contractor's* application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE.

For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of an application for payment where:

.3 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or

.4 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*; and/or

.5 the amount applied for exceeds the amount stated in the certificate for payment issued by the *Consultant* pursuant to paragraph 5.3.1."

SC 3.18 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

3.18.1 Delete paragraphs 5.4.2 through 5.4.6 and replace them with the following:

"5.4.2 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*:

.1 shall, in consultation with the *Owner* and the *Consultant*, establish reasonable dates for finishing the *Work* and correcting deficient *Work*; and

.2 shall cause the certificate to be published in the manner prescribed by the *Act* and shall immediately thereafter deliver a copy of the published certificate to the *Owner*.

5.4.3 The *Contractor* shall submit an application for payment of the lien holdback amount which shall include all of the following.

.1 a written request for the release of the holdback amount;

.2 a declaration that no written notices of lien have been received by the *Contractor*;

.3 a current valid clearance certificate issued by the *WSIB*; and

.4 a CCDC 9A Statutory Declaration stating that all accounts for services and materials and other indebtedness incurred by the *Contractor* for which the *Owner* may in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified matter in dispute.

5.4.4 Subject to the *Owner's* right to give notice of non-payment of holdback in accordance with the *Act*, the *Owner* will pay the amount authorized by the certificate for payment of the holdback in accordance with the provisions of the *Act*. For certainty, and without limitation, the *Owner* may refuse to pay a portion of the holdback where the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*."

SC 3.19 GC 5.5 FINAL PAYMENT

3.19.1 Delete paragraph 5.5.1 and replace it with the following:

"5.5.1 When the *Contractor* considers that the *Contract* is completed, the *Contractor* shall deliver a *Proper Invoice* for final payment, as provided in GC 5.1A – PROPER INVOICE."

3.19.2 Delete paragraphs 5.5.3 and 5.5.4 and replace them with the following:

"5.5.3 Subject to the *Owner's* right to give notice of non-payment in accordance with the *Act*, the *Owner* will pay the amount payable under a *Proper Invoice* for final payment no later than 28 days after the date the *Owner* receives the *Proper Invoice*. Provided that the *Owner's* obligation to make payment shall not arise unless and until the *Contractor's* application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE. For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of an application for final payment where:

.1 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or

.2 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*; and/or

.3 the amount applied for exceeds the amount stated in the certificate for payment issued by the *Consultant* pursuant to paragraph 5.5.2."

SC 3.20 GC 5.8 WITHHOLDING OF PAYMENT

3.20.1 Add a new GC 5.8 as follows:

"**GC 5.8 WITHHOLDING OF PAYMENT**

5.8.1 Notwithstanding any provision in the *Contract Documents* to the contrary, the *Owner* may withhold payment of any amount claimed in an application for payment, in a *Proper Invoice*, or in any certificate for payment to the extent required to offset any claims the *Owner* may have against the *Contractor*, or to offset previous over-payment made to the *Contractor*, or for damages or costs incurred by the *Owner*, or to the extent as may be necessary to protect and/or indemnify the *Owner* from loss, claims and/or damage, including as a result of:

.1 the *Contractor's* failure to perform any of its material obligations, or where the *Contractor* is otherwise in default under the *Contract Documents*;

.2 defective *Work* not remedied;

.3 damage done to work performed by *Other Contractors* or by the *Owner*'s own forces, to the extent caused by the *Contractor* or any *Subcontractors*;

.4 the *Contractor's* failure to make prompt payments to *Subcontractors* and *Suppliers* respecting *Work* for which the *Owner* has made payment to the *Contractor*;

.5 claims or reasonable evidence indicating possible commencement of claims for which the *Contractor* may be responsible to indemnify the *Owner*;

.6 the *Contractor's* failure to remove any liens arising from the *Work* or to otherwise satisfy its obligations under GC 14.2 – LIENS AND ACTIONS.

5.8.2 Where the *Owner* has withheld payment to the *Contractor* pursuant to the provisions of this *Contract*, the *Owner* shall be entitled to apply the funds withheld toward the costs of any required remedial work, completion costs, or toward damages or losses suffered and for which the *Owner* is entitled to compensation under this *Contract*, including legal costs and expenses."

SC 3.21 GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

3.21.1 Amend paragraph 6.1.2 by adding the following to the end:

"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 be barred unless there is strict compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the *Contract* or the *Work*, and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether or not there is any such unjust enrichment, shall be the basis of a claim for damages or for a change in the *Contract Price* or *Contract Time*. Without limiting the generality of the foregoing, under circumstances of expediency the *Contractor* shall proceed with a change in the *Work* without first obtaining a *Change Order* or a *Change Directive* where it has received from the *Owner* or the *Owner's* authorized representative some form of written or e-mail direction agreeing to the change, in which case such change, and the value of such change, if any, will be determined pursuant to GC 6.2 or GC 6.3, at the option of the *Owner*."

3.21.2 Add new paragraphs 6.1.3 and 6.1.4 as follows:

"6.1.3 The *Consultant* from time to time may issue *Supplemental Instructions* solely for the purposes of clarifying the *Contract Documents*. The *Contractor* shall not be permitted to apply costs against *Supplemental Instructions*, however, if the *Contractor* believes a *Supplemental Instruction* will result in either a change to the *Contract Price* or *Contract Time*, the *Contractor* shall, within ten (10) *Working Days* of receipt of the *Supplemental Instruction*, provide the *Owner* and the *Consultant* with a *Notice in Writing* to that effect and shall await further instructions. The *Contractor's* failure to provide such *Notice in Writing* within the time stipulated in this paragraph shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor* without adjustment to the *Contract Price* or *Contract Time*.

6.1.4 The *Contractor* agrees that changes resulting from construction or *Subcontractor* or *Supplier* coordination are included in the *Contract Price* and shall not entitle the *Contractor* to claim any increase to the *Contract Price*."

SC 3.22 GC 6.2 CHANGE ORDER

3.22.1 Add new paragraphs 6.2.3 to 6.2.6 as follows:

"6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the *Owner*:

.1 by estimate and acceptance of a lump sum. The lump sum shall include overhead, profit and other reasonable charges of the *Contractor* and shall be the total cost to the *Owner*; or

.2 by unit prices established in the *Contract* or subsequently agreed upon. Unit prices shall include all costs related to *Products*, labour, equipment, delivery and handling, statutory charges, overhead and profit, other related charges, and shall include all applicable duties (excluding *Value Added Taxes*), measured in place prior to excavation, or compacted/complete in place, and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity; or

.3 by actual credits and cost to the *Owner*. The cost to the *Owner* shall be the actual cost of labour charged at the prevailing rates at the *Place of the Work* plus statutory charges on labour including workers' compensation, employment insurance, Canada Pension, vacation pay, medical and health benefits, together with the actual costs, without mark-up, of *Products* utilized in the change, plus the percentage fee set out in the table below for overhead and profit after all credits included in the

change have been deducted. For certainty, no mark-up or other charges shall be permitted for overhead and profit where the change results in a net decrease (credit) to the *Contract Price*.

(a) On *Work* performed by the *Contractor's* own forces, the *Contractor* may charge the following maximum mark-ups as a combined percentage fee for overhead and profit (all amounts exclude *Value Added Taxes*):

Change in *Contract Price*	***Contractor* Mark-Up**
Credit of $0 or more	0%
Increase of $0 to less than $50,000	10%
Increase of $50,000 or more	5%

Interpretive Note: The mark-ups in the above table are flat not graduated. For example, a change valued at $60,000 attracts a mark-up of 5%. The table is not intended to provide one mark-up for the first $49,999 of the change and a lower mark-up for the balance.

(b) On *Work* performed by *Subcontractors*, the *Subcontractors* may charge the following maximum mark-ups as a combined percentage fee for overhead and profit, and the *Contractor* may charge the following maximum mark-ups as a combined percentage fee for overhead and profit on *Work* performed by *Subcontractors* (all amounts exclude *Value Added Taxes*):

Change in *Contract Price*	***Subcontractor* Mark-Up**	***Contractor* Mark-Up**
Credit of $0 or more	0%	0%
Increase of $0 to less than $50,000	10%	5%
Increase of $50,000 or more	5%	5%

Interpretive Note: The mark-ups in the above table are flat not graduated. For example, a Subcontractor performed change valued at $60,000 attracts a mark-up of 5% for the Subcontractor and 5% for the Contractor. The table is not intended to provide one set of mark-ups for the first $49,999 of the change and a different set of mark-ups for the balance.

6.2.4 The fee mark-ups referred to in paragraph 6.2.3.3 shall constitute the only compensation the *Contractor* shall be entitled to for any and all overhead, profit, general expenses, incidental and administrative costs whatsoever related to the change including, but not limited to, costs relating to superintendence and supervision, general cleanup, *Shop Drawing* production, estimating, site office and head office expenses and personnel, administration costs, workers' tools, temporary facilities and controls, record drawings, *As-Built Drawings*, warranty, insurance, bonding, job safety costs, and coordination of any and all *Work*-related activities.

6.2.5 No claim whatsoever for a change in the *Contract Time*, delay, prolongation charges, remobilization or otherwise shall be permitted with respect to a change, unless first authorized by the *Consultant* and approved by the *Owner* and set out in a *Change Order*. For certainty, an adjustment to the *Contract Time* will be considered only when the *Contractor* demonstrates to the *Owner* that a change in the *Work* affects the critical path of the *Work*. Any costs associated with an adjustment to the *Contract Time* shall be identified by the *Contractor* and shall be limited to the reasonable direct costs directly attributable to the adjustment to the *Contract Time*.

6.2.6 The *Contractor* shall not be entitled to any additional compensation or an adjustment to the *Contract Time* arising out of changes to the *Work* aside from the amounts stated in a *Change Order*. In no event shall the *Owner* be liable to the *Contractor* for any costs, including indirect, impact or consequential costs, arising out of changes to the *Work* beyond the agreed upon amount of the *Change Order*."

SC 3.23 GC 6.3 CHANGE DIRECTIVE

3.23.1 Delete paragraph 6.3.6.3 and replace it with the following:

"6.3.6.3 The *Contractor's* fee shall be equal to the applicable percentage mark-up rates set out in paragraph 6.2.3.3 of GC 6.2 – CHANGE ORDER or as otherwise agreed by the parties."

3.23.2 Amend paragraph 6.3.7 as follows:

(a) insert the words "Subject to paragraph 6.3.14," at the beginning; and

(b) amend paragraph 6.3.7.1 by deleting sub-paragraphs (1), (2), (3) and (4) and replacing them with the following:

"(1) performing the *Work*, including necessary supervisory services;
(2) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *As-Built Drawings*; or
(3) including clerical staff engaged in processing changes in the *Work*."

(c) delete subparagraphs 6.3.7.5, 6.3.7.12 to and including 6.3.7.15, and 6.3.7.17 to and including 6.3.7.19.

3.23.3 Amend paragraph 6.3.12 by adding the following to the beginning:

"An adjustment of the *Contract Time* will be considered only where the change affects the critical path of the *Work*."

3.23.4 Add a new paragraph 6.3.14 as follows:

"6.3.14 Without limitation, the following shall not form part of the cost of performing the work attributable to a *Change Directive*, and shall not be recoverable by the *Contractor*:

.1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel and the contributions, assessments or taxes referred to in paragraph 6.3.7.1;

.2 capital expenses and interest on capital;

.3 general clean-up, except where the performance of the work attributed to the *Change Directive* causes specific additional clean-up requirements;

.4 wages paid for field supervision of *Subcontractors*;

.5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* or that are otherwise deemed unreasonable by the *Consultant*;

.6 costs or expenses attributable to the negligence, improper work, deficiencies, or breaches of contract by the *Contractor*;

.7 costs of quality assurance, such as inspection and testing services, charges levied by authorities having jurisdiction, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*; and

.8 the costs of the items listed in paragraph 6.2.4 of GC 6.2 – CHANGE ORDER."

SC 3.24 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

3.24.1 Add a new paragraph 6.4.0 as follows:

"6.4.0 The *Contractor* confirms that, before signing this *Contract*, it carefully investigated and examined the surface of the *Place of the Work*, the *Contract Documents* and any other documents made available by the *Owner*, and applied to such investigation and examinations the degree of care, skill, judgment and diligence described in paragraph 3.11.1 of GC 3.11 – STANDARD OF CARE. If the *Contractor* has not conducted the investigations and examinations described in this paragraph, it is deemed to assume all risk of the surface conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult to perform than was contemplated at the time the *Contract* was entered into. No allowances will be made for additional costs and no claims by the *Contractor* will be considered for an adjustment in the *Contract Price* or *Contract Time* in connection with surface conditions which were reasonably apparent or which could reasonably have been discovered by such investigations or examinations made before the signing of the *Contract*."

3.24.2 Amend paragraph 6.4.2 by inserting the words "and were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0" after the word "materially" in the second line.

SC 3.25 GC 6.5 DELAYS

3.25.1 Amend paragraph 6.5.1 as follows:

(a) delete the word "If" at the beginning of the paragraph and replace it with the following:

"If the *Contractor* believes that an action or omission of the *Owner*, *Consultant*, or anyone employed or engaged by them directly or indirectly may, if not corrected, result in the *Contractor* being delayed in the performance of the *Work*, the *Contractor* shall immediately give the *Owner Notice in Writing* and shall describe the steps which need to be taken and by whom so as to avoid the potential delay in the *Contractor's* performance of the *Work*. If, despite having given such notice,"

(b) delete the last sentence and replace it with the following:

"The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. Provided that this paragraph 6.5.1 shall not apply to a delay arising from a direction issued pursuant to paragraph 6.5.11."

3.25.2 Amend paragraph 6.5.2 by deleting the last sentence and replacing it with the following:

"The *Contractor* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. Provided that this paragraph 6.5.2 shall not apply where the stop work order is issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic, in which case any resulting delay shall be governed by paragraph 6.5.3."

3.25.3 Add a new paragraph 6.5.3.0 as follows:

"6.5.3.0 acts, orders, legislation, regulations or directives of any court, government or other public authority, including stop work orders or *Project* closures or suspensions, made or issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic,"

3.25.4 Amend paragraph 6.5.4 by adding the following to the end:

"For greater certainty, it is the intention of the parties that an extension for delay will be considered only when the *Contractor* demonstrates that the delay affects the critical path of the *Work* and that the *Contractor* has made reasonable efforts to mitigate the delay, and any adjustment to the *Contract Time* shall only be to the extent that the critical path of the *Work* is affected. Without in any way limiting the generality of the foregoing, it is a condition precedent to the *Contractor's* claim for extension of the *Contract Time* and for additional compensation or reimbursement of costs that the notice provisions in this paragraph be strictly adhered to in each instance, except where the event of delay itself reasonably precludes strict adherence to such notice provisions. If the *Contractor* fails to comply with such notice provisions, it shall be deemed to have waived the right to claim for the effects of delay."

3.25.5 Add new paragraphs 6.5.6 to 6.5.11 as follows:

"6.5.6 The *Contractor* shall take all reasonable steps to reschedule the *Work* and to minimize the effect of the delay referred to in paragraphs 6.5.1, 6.5.2 and 6.5.3. If the *Contractor* fails to do so, the extension of the *Contract Time* and/or any amounts payable to the *Contractor* pursuant to paragraphs 6.5.1, 6.5.2 and/or 6.5.3 will be reduced accordingly.

6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of the *Work* as a result of the delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the *Contractor* shall be reimbursed by the *Owner* for the reasonable direct costs incurred by the *Contractor* for such care, maintenance and protection, but excluding the *Contractor's* head office personnel and overhead costs.

6.5.8 If the *Contractor* is delayed in the performance of the *Work* by any of the events described in paragraph 6.5.3 or as a result of a direction issued pursuant to paragraph 6.5.11 for a period of thirty calendar days

or longer, the *Owner* may terminate the *Contract* by giving *Notice in Writing* to that effect. In such event, the *Owner* shall pay for the *Work* performed up to the effective date of termination, including mobilization and demobilization costs, and for such additional costs, if any, directly flowing from such termination which are a reasonable consequence of the termination, but excluding the costs of the *Contractor's* head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any loss of profit or loss of opportunity costs and damages arising from or caused by such termination, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*.

6.5.9 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Owner*. The *Contractor* shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of the *Work* as a result of the delay described in this paragraph, at its sole cost and expense. In addition, the *Owner* shall be reimbursed by the *Contractor* for all reasonable costs and expenses incurred by the *Owner* as a result of such delay including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any other consultants, project managers, contractors, or others employed or engaged by the *Owner*.

6.5.10 If there is a stoppage of *Work* for any reason, the *Contractor* shall provide protection for footings, foundations and any other part of the *Work* likely to become damaged during the time between the *Work* stoppage and *Work* resumption. The *Contractor* shall be entitled to be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such measures, provided the *Work* stoppage was not a result of an act or omission of the *Contractor* or any person for whom the *Contractor* is at law responsible.

6.5.11 Without limiting the other obligations of the *Contractor*, the *Owner* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* if the *Owner* determines that there is an imminent risk to the safety of persons or property at the *Place of the Work*. If the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the site. The *Contractor* shall not be entitled to an extension of the *Contract Time* unless the *Contractor* gives *Notice in Writing* to the *Owner* not later than 10 *Working Days* after the commencement of the delay, and unless the *Contractor* demonstrates that the resulting delay, if any, affects the critical path of the *Work*, and any adjustment to the *Contract Time* shall only be to the extent that the critical path of the *Work* is affected. The *Contractor* shall not be entitled to any additional payment where the *Owner's* direction is given as a result of or in order to comply with acts, orders, legislation, regulations or directives of any court, government or other public authority caused by actions or omissions of the *Contractor*, including stop work orders or *Project* closures or suspensions, made or issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic."

SC 3.26 GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

3.26.1 Delete paragraph 7.1.2 and replace it with the following:

"7.1.2 If the *Contractor* neglects to prosecute the *Work* properly, or fails or neglects to maintain the construction schedule, or otherwise fails to comply with the requirements of the *Contract* to a material extent, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to provide a remediation plan within 5 days acceptable to the *Owner* where the *Consultant* agrees that the default cannot be remedied within 5 days, or correct the default in the 5 *Working Days* immediately following the receipt of such notice, but without affecting in any respect the liability of the *Contractor* in respect of earlier defaults."

3.26.2 Add a new paragraph 7.1.5A as follows:

"7.1.5A If the *Owner* terminates the *Contractor's* right to continue with the *Work* in whole or in part or terminates the *Contract* as provided in paragraphs 7.1.1 and 7.1.4, the *Contractor* shall deliver to the *Owner*, within 5 days of the effective date of the termination, all of the materials listed in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER in the possession of or available to the *Contractor*."

SC 3.27 GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

3.27.1 Amend paragraph 7.2.2 by replacing 20 *Working Days* with 60 *Working Days*.

3.27.2 Amend paragraph 7.2.3 as follows:

(a) delete paragraphs 7.2.3.1 and 7.2.3.2;

(b) delete paragraphs 7.2.3.3 and 7.2.3.4 and replace them with the following:

"7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amounts awarded by arbitration or a court; provided that this paragraph shall not apply to the *Owner's* withholding of payments in accordance with the *Contract Documents*, or

7.2.3.4 the *Owner* fails to comply with the requirements of the *Contract* to a substantial degree and the *Consultant* gives a written statement to the *Owner* and the *Contractor* that provides detail of such failure to comply and confirms to the *Contractor* and the *Owner* that sufficient cause exists to justify the *Contractor's* action."

3.27.3 Delete paragraph 7.2.5 and replace it with the following:

"7.2.5 If the default cannot be corrected within the 5 *Working Day*s specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it

.1 commences the correction of the default within the specified time; and

.2 provides the *Contractor* with an acceptable schedule for such correction; and

.3 completes the correction in accordance with such schedule.

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall ensure the *Work* and the *Place of the Work* are left in a safe and secure condition as required by authorities having jurisdiction and the *Contract Documents*, and shall be entitled to be paid for all *Work* performed to the date of termination. Subject to the *Contractor's* obligation to mitigate costs, the *Contractor* shall also be entitled to recover the costs directly flowing from and which are a reasonable consequence of the termination, but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such termination, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*. Such payment is further subject to the *Owner's* right to claim damages or set off for any costs or any loss or damage suffered or which will be suffered by the *Owner*. The *Owner* shall not be liable to the *Contractor* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*."

SC 3.28 GC 8.4 RETENTION OF RIGHTS

3.28.1 Add a new paragraph 8.4.3 as follows:

"8.4.3 If the *Owner* gives the *Notice in Writing* described in paragraph 8.3.6 to have a dispute resolved by arbitration, the *Contractor* agrees that this paragraph 8.4.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. Provided that nothing in this paragraph shall prevent the *Contractor* from taking the steps required by the *Act* to preserve and/or perfect a lien to which it may be entitled."

SC 3.29 GC 9.1 PROTECTION OF WORK AND PROPERTY

3.29.1 Delete paragraph 9.1.1.1 and replace it with the following:

"9.1.1.1 errors or omissions in the *Contract Documents* which the *Contractor* could not reasonably have discovered applying the degree of care and skill described in this *Contract*; or"

3.29.2 Amend paragraph 9.1.2 by deleting the words "reasonably apparent in" and replacing them with "reasonably discoverable from" in the second line.

3.29.3 Add a new paragraph 9.1.5 as follows:

"9.1.5 Without in any way limiting the *Contractor*'s obligations under this GC 9.1, should the *Contractor* or any *Subcontractor* or *Supplier* cause loss or damage to property, including roads, buildings, structures, paving, grass, sod, trees or other plantings, whether owned by the *Owner* or others, and whether at the *Place of the Work* or adjoining it, the *Contractor* shall be liable for the cost of making good such damage and for the repair and any replacement cost of the grass, sod, trees or other plantings damaged, including the cost of any arborist or other consultant, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Contractor*."

SC 3.30 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

3.30.1 Amend paragraph 9.2.3 by deleting the words "The *Owner*" in the first line and replacing them with "The *Contractor*".

3.30.2 Amend paragraph 9.2.5.3 by adding the following after the words "*Place of the Work*" in line two:

"and no property is damaged or destroyed as a result of exposure to or the presence of the toxic or hazardous substances,"

3.30.3 Add a new paragraph 9.2.5.5 as follows:

"9.2.5.5 take all necessary steps to mitigate the impact on *Contract Time* and *Contract Price*."

3.30.4 Amend paragraph 9.2.7.3 by adding the following after the words "as a result of the delay" at the end:

", but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*"

3.30.5 Delete paragraph 9.2.7.4.

3.30.6 Amend paragraph 9.2.8 by adding the following after the word "responsible" in the second line:

"or that any toxic or hazardous substances already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements, and which were disclosed by the *Owner* in the *Contract Documents*) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,"

3.30.7 Add new paragraphs 9.2.10 and 9.2.11 as follows:

"9.2.10 Without limiting its other obligations under this GC 9.2, the *Contractor* acknowledges that its obligations under the *Contract* include compliance with the *Environmental Programs*. The *Contractor* acknowledges that the *Owner* may suffer loss and damage should the *Contractor* fail to comply with the *Environmental Programs* and agrees to indemnify and hold harmless the *Owner* with respect to any loss or damage to which the *Owner* is exposed by the *Contractor*'s failure to comply. The *Contractor* acknowledges that should it fail to comply with the *Environmental Programs*, such failure will constitute a failure to comply with the requirements of the *Contract* in a material way within the meaning of paragraph 7.1.2 of GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT.

9.2.11 The *Contractor* shall indemnify the *Owner* and its officers, directors, trustees, governors, employees and agents in respect of any loss, costs, expense or fine which might be imposed in respect of any failure by the *Contractor* to satisfy its obligations under this GC 9.2 and, without limiting the general nature of this indemnity, the *Contractor* shall indemnify the *Owner*, its officers, directors, trustees, governors, employees and agents in respect of any loss, costs, expense or fine if the *Project* is made subject to an order from a court or government agency requiring remediation of any contamination caused as a result of the *Work* performed by the *Contractor* or its *Subcontractors* or *Suppliers*."

SC 3.31 GC 9.4 CONSTRUCTION SAFETY

3.31.1 Add new paragraphs 9.4.6 to 9.4.12 as follows:

"9.4.6 Without limiting the generality of paragraph 9.4.1, the *Contractor* shall be and shall assume all of the responsibilities of the "constructor" under *OHSA* for the *Project* and shall file the "Notice of Project" with the appropriate government agency naming the *Contractor* as the "constructor".

9.4.7 The *Contractor* shall be solely and exclusively responsible for controlling the workplace and the *Place of the Work* and shall take all steps to effectively direct and supervise the *Work* in order to ensure conformity and compliance with OHSA and all other applicable construction health and safety requirements, regulations, industry standards and guidelines, including COVID-19 protocols for construction sites and post secondary institutions. The *Contractor* represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Contractor's* employees, *Subcontractors*, *Suppliers* and all others attending at the *Place of the Work*, including the *Owner's* representatives, the *Owner's* own forces, and *Other Contractors*. No comments, suggestions or instructions from the *Owner*, the *Consultant* or any other representative of the *Owner* are to be relied upon or assumed to reduce or replace the *Contractor's* designation as the "constructor" or its responsibility for construction safety on the *Project*.

9.4.8 The *Contractor* shall ensure that every person entering the *Place of the Work* is fully vaccinated against COVID-19 and fully complies with the *Vaccination Policy*. The *Contractor* shall maintain records at its head office confirming that it has verified proof of vaccination for each person entering the *Place of the Work* and shall, upon request by the *Owner*, provide evidence of compliance with this paragraph.

9.4.9 The *Contractor* shall ensure that each of the contracts entered into with *Subcontractors* contain the same obligations with respect to the *Vaccination Policy* and verification of vaccination as set out in paragraph 9.4.8.

9.4.10 Without limiting the generality of paragraph 9.4.7, any employee of the *Contractor* or any of the *Subcontractors* or *Suppliers* who is unvaccinated against COVID-19 presents an immediate risk to staff and students attending at the *Place of the Work* and, in addition to any other rights it may have under this contract, the *Owner* may require that the *Contractor*, without any cost or expense to the *Owner*, replace any such employee or restrict access to the *Place of the Work* to that employee and the *Contractor* shall find or cause the *Subcontractor* or *Supplier* to find substitute employees to perform the *Work* so as not to jeopardize the safety of staff and students or cause delay to the *Work*.

9.4.11 The *Contractor* shall complete and submit the attestation form required by and in accordance with the *Vaccination Policy* at the commencement of the *Project* and at any time changes are made to the staffing of the *Work*.

9.4.12 The *Contractor* shall indemnify and save harmless the *Owner* and its officers, directors, trustees, governors, employees and agents from and against any and all liability, costs, expenses, charges, fines, damages and all other consequences arising from any and all safety infractions on the *Project*, including the payment of legal fees and disbursements on a full indemnity basis."

SC 3.32 GC 9.5 MOULD

3.32.1 Amend paragraph 9.5.3.3 by adding the following after the words "as a result of the delay" at the end:

", but excluding the costs of the *Contractor's* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Contractor* or any *Subcontractor* or *Supplier*, and"

SC 3.33 GC 10.1 TAXES AND DUTIES

3.33.1 Amend paragraph 10.1.2 by adding the following to the end:

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

3.33.2 Add new paragraphs 10.1.3, 10.1.4, 10.1.5 and 10.1.6 as follows:

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

10.1.4 The *Contractor* shall maintain accurate records of equipment, material and component costs reflecting the sales taxes, customs duties, excise taxes and *Value Added Taxes* paid.

10.1.5 Any refund of taxes including, without limitation, any government sales tax, customs duty, excise tax or *Value Added Tax*, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to cooperate with the *Owner* and to cause all *Subcontractor*s and *Suppliers* to cooperate with the *Owner* in the application for any refund of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications or exemptions or refunds. All such refunds shall either be paid to the *Owner* or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.

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

SC 3.34 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

3.34.1 Amend paragraph 10.2.4 by adding the following to the end:

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

3.34.2 Amend paragraph 10.2.5 by deleting the word "The" in the first line and replacing it with the words "Subject to paragraph 1.1.12 of GC 1.1 – CONTRACT DOCUMENTS, the".

3.34.3 Amend paragraph 10.2.6 as follows:

(a) delete the words "performs work knowing it to be" and replace them with "performs work when it knew or ought to have known that such work is"; and

(b) delete the words "bear the" in the third line and replace them with "indemnify and save the Owner harmless against all".

3.34.4 Amend paragraph 10.2.7 by adding the following to the end:

", provided that any claims arising from any delays due to such changes will be dealt with in accordance with GC 6.5 – DELAYS."

SC 3.35 GC 11.1 INSURANCE

3.35.1 Delete GC 11.1 – INSURANCE and replace it with the following:

"**GC 11.1 INSURANCE**

11.1.1 Without restricting the generality of GC 13.1 – INDEMNIFICATION, GC 13.2 – WAIVER OF CLAIMS and GC 12.3 – WARRANTY, or the responsibility of the *Contractor* under this *Contract*, insurance coverage will be arranged and paid for as set out in this GC 11.1 – INSURANCE.

11.1.2 Project-Specific Insurance.

.1 The *Owner* will purchase and maintain the following types of insurance policies issued by insurance companies licensed to carry on business in Canada:

.1 "All Risks" Builders' Risk and Boiler and Machinery Insurance Coverage, to be maintained continuously from commencement of the *Work* until *Ready-for-Takeover*.

(1) This policy shall cover all risks of direct physical loss or damage to the *Project*, including the perils of earthquake and flood, subject to customary exclusions and warranties. It shall cover all property forming part of the *Project*, including goods and materials to be incorporated in the *Project* while at the *Project* site or while in off-site storage. It shall not provide coverage for contractors' equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the construction operations.

(2) It shall be written in the joint names of the *Owner, Contractor, Subcontractors* of all tier and the *Consultant* engaged on the *Project*, and exclude any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Project* site and who do not perform any installation or construction work at the *Project* site.

(3) It shall provide for a limit of coverage not less than the estimated final completed value of the *Project*, with a specified sub-limit for property in off-site storage and specified sub-limit for transit risk. It may also contain other sub-limits usual to this type of insurance. It shall contain a waiver of the insurer's subrogation rights against all insureds and their officers, employees, servants, and agents, with the exception of architects, engineers, manufacturers and consultants for their errors or omissions in professional services. Furthermore, it shall provide that, in the event of loss or damage, payment shall be made to the *Owner* as trustee for the benefit of any and all insureds.

(4) Each claim under this insurance policy shall be subject to a maximum deductible of $50,000 except for earthquake, flood, water damage and other extensions of cover as notified by the *Owner*, which shall be subject to higher deductibles.

.2 Wrap-Up Liability Policy, to be maintained continuously from commencement of the *Work* until *Ready-for-Takeover*, with the products and completed operations liability coverage shall be for not less than 24 months after *Ready-for-Takeover*.

(1) This policy shall cover the risks of liability for bodily injury, including death and property damage arising from activities at the *Project* site, subject to customary exclusions. It shall be written in the joint names of the *Owner, Contractor*, *Subcontractors* of all tier and *Consultant* engaged on the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Project* site and who do not perform any installation or construction work at the *Project* site. It shall provide for a limit of liability not less than $25,000,000 per occurrence for bodily injury, death, and damage to property including loss of use thereof, and a deductible of not more than $50,000 per occurrence for bodily injury, death and damage to property including loss of use thereof, and a deductible of not more than $100,000 per occurrence except for Products and Completed Operations Liability which may be subject to higher deductibles.

(2) This policy shall include the following coverage features:

1. Premises and Operations Liability;
2. Owners' and Contractors' Protective Liability;
3. Products and Completed Operations Liability (Aggregate Limit);
4. Blanket Contractual Liability;
5. Cross Liability and Severability of Interests Clause;
6. Contingent Employer's Liability;
7. Personal Injury Liability;
8. "Occurrence" basis coverage for Bodily Injury and Property Damage;
9. "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations coverage;
10. "Broad Form" Loss of Use of Property coverage;
11. Coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunnelling, and all work below ground surface;
12. Non-Owned Automobile Liability insurance, including third party liability arising from use and operation of hired vehicles;
13. Sudden and Accidental limited pollution coverage – IBC 2313 Form 240 hour detection and reporting.

.2 The *Owner* shall promptly provide a certificate of insurance to any insured party upon request as evidence of the *Project*-specific policies procured by the *Owner*.

.3 The *Owner* does not represent that the *Project*-specific insurance policies described in paragraph 11.1.2.1 will be sufficient to protect the *Contractor* or any other insured party against all of their responsibilities under this *Contract*. The *Contractor* and any other insured parties may obtain such additional insurance as they may consider necessary at their own expense.

.4 The *Contractor* shall co-operate, and shall cause each *Subcontractor* of any tier to co-operate, with the *Owner* and the *Consultant* in the administration of the *Project*-specific insurance policies described in paragraph 11.1.2.1, including promptly notifying the *Owner* of any claim or event or circumstance that may result in a claim. The *Contractor* shall comply, and shall cause each *Subcontractor* of any tier to comply, with reasonable written procedures issued by the *Owner* from time to time relative to the administration of the insurance program for the *Project*.

.5 In consideration of the *Owner* providing and paying for the *Project*-specific insurance policies described in paragraph 11.1.2.1, the *Contractor* shall confirm and require all *Subcontractors* to confirm that their contract price does not include any allowance for insurance premiums, whether payable by the *Contractor* or *Subcontractors*, in respect of risks covered by such insurance policies provided by the *Owner*, and to declare the amounts of insurance premiums which have been deducted from their contract price in respect of such insurance policies normally purchased and maintained by them. For greater clarity, such premium deductions should be made for the following types of insurance normally carried by the *Contractor* and *Subcontractors*:

.1 Commercial General Liability insurance covering all operations (except for the cost of off-site liability, difference in conditions, difference in limits and completed operations coverage after the expiry of the coverage under the Wrap-Up Liability policy);

.2 Builder's Risk insurance and/or Installation Floater insurance covering all projects on a blanket basis or on a project-specific basis.

11.1.3 Other Insurance.

.1 The *Contractor* shall purchase and maintain the following types of insurance policies issued by insurance companies licensed to carry on business in Canada. The *Contractor* shall also require such insurance to be purchased and maintained, as applicable, by all *Subcontractors* engaged on the *Project*. Unless specified otherwise, the duration of each such insurance policy shall be from the date of commencement of the *Work* until the *Project* has been finally accepted by the *Owner*.

.1 Automobile Insurance. This insurance shall cover all licensed vehicles owned or leased for period in excess of 30 days by the *Contractor*. It shall provide for third party liability limits not less than $10,000,000 inclusive for bodily injury and property damage plus statutory accident benefits.

.2 Contractor's Equipment Insurance.

(1) This policy shall cover all tools and equipment used at the *Project* site by or on behalf of the *Contractor* against all risks of direct physical loss or damage, including the perils of earthquake and flood, subject to customary exclusions. This insurance shall be maintained continuously from commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted.

(2) This policy shall contain a waiver of subrogation against the *Owner*, *Contractor*, and *Consultants* engaged on the *Project*, and shall provide for 30 days prior written notice of cancellation or material change to be given by the insurers to the *Owner*.

.3 Commercial General Liability Insurance.

(1) This policy shall cover the risks of liability for bodily injury and property damage arising from the operations and activities on and away from the *Project* site by the *Contractor* and shall include coverage for those for whom it is legally liable. This policy shall be subject to limits of liability not less than $10,000,000 per occurrence and a deductible of not more than $25,000 per occurrence. It shall include all of the coverage features listed in paragraph 11.1.2.1.2.(2) in addition to coverage for difference in conditions and difference in limits in relation to the insurance coverage described in paragraph 11.1.2.1.2.

(2) This insurance shall be maintained continuously from commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted by the *Owner*.

(3) The products and completed operations liability coverage shall cover the risks of liability for bodily injury and property damage arising from the operations, activities and *Work* performed on and away from the *Project* site and shall be maintained for 72 months after the *Project* has been finally accepted by the *Owner*.

(4) This insurance shall be secondary, with regards to operations and activities on the *Project* site, to the Wrap-Up Liability insurance described in paragraph 11.1.2.1.2 for the time that such Wrap-Up Liability insurance is maintained, after which this insurance shall become primary. This insurance shall be primary with regards to operations and activities away from the *Project* site.

.4 Contractor's Pollution Liability Insurance. This policy shall cover claims for bodily injury, property damage, clean-up costs and related legal defence expenses for pollution conditions that result from, or are disrupted by, the services rendered in performance at the *Project* site. This policy shall have limits of not less than $5,000,000 per occurrence and in the aggregate, and a deductible of not more than $25,000 per occurrence. Coverage shall include extensions for transported cargo and off-site disposal. The completed operations coverage shall be for not less than 72 months after acceptance of the *Project* by the *Owner*.

.5 Aircraft, Unmanned Aircraft (Drone) and Watercraft Liability. If the *Work* at the *Project* site involves the use of owned or non-owned aircraft or watercraft directly or indirectly in the performance of the *Work*, appropriate Aircraft Liability and/or Watercraft Liability insurance must be purchased and maintained for the duration of such operations by the party responsible for such operations. This policy shall provide limits of liability not less than $5,000,000 per occurrence insuring against claims for bodily injury, including death and for property damage arising out of the use of such aircraft, drone or watercraft.

.6 Marine Cargo and Charterer's Liability Insurance.

(1) If any property forming part of the *Project*, including goods and materials to be incorporated into the *Project*, is required to be transported by vessels as ocean marine cargo, appropriate Ocean Marine Cargo insurance must be purchased to cover such cargo for full replacement value, including transits and storage where applicable. At the discretion of the *Owner*, delay-in start-up coverage may be required.

(2) In addition, if an entire vessel is chartered for shipping equipment then Charterer's Liability insurance must be purchased in amounts sufficient to protect and indemnify the *Owner* for all liability arising out of the chartering of such vessel.

(3) This insurance must be purchased and maintained for the duration of such operations by the party responsible for such operations.

.2 The *Contractor* shall:

.1 purchase and maintain any additional insurance which it is required to carry by law or which it considers necessary to cover risks not otherwise covered by insurance specified in paragraph 11.1.3.1; and

.2 purchase and maintain, and cause each *Subcontractor* of any tier to purchase and maintain, such other insurance or amendments to the foregoing policies, as the *Owner* may reasonably require and direct.

.3 All insurance policies described in paragraph 11.1.3.1 to be maintained by the *Contractor* and *Subcontractor* of any tier shall be issued by insurance companies licensed to carry on business in Canada and reasonably acceptable to the *Owner*. Such policies shall contain terms, conditions, exclusions, limits and deductibles reasonably acceptable to the *Owner*.

.4 Prior to commencement of the *Work* and upon the placement, renewal, amendment or extension of all or any part of the insurance policies described in paragraph 11.1.3.1, the *Contractor* shall promptly provide the *Owner* with certificates of insurance and, if requested by the *Owner*, true copies of the policies certified by an authorized representative of the insurers including all amending endorsements applicable to this *Contract*.

.5 If the *Contractor* fails to provide evidence that insurance policies described in paragraph 11.1.3.1 have been purchased or maintained, then the *Owner* shall have the right to purchase and maintain

such insurance and the cost thereof shall be paid by the *Contractor* to the *Owner* on demand or the *Owner* may deduct the cost thereof from the amount which is due or may become due to the *Contractor*.

.6 Each policy of insurance described in paragraph 11.1.3.1 that is maintained by the *Contractor* and *Subcontractors* shall provide that 30 days' prior written notice be given to the *Owner* before any policy is suspended, materially altered or cancelled.

.7 Each policy of insurance described in paragraph 11.1.3.1 that is maintained by the *Contractor* and *Subcontractors* (other than the policy described in paragraph 11.1.3.1.1 (Automobile Insurance) and paragraph 11.1.3.1.2 (Contractor's Equipment Insurance)) shall name the *Owner* and the *Consultant* as additional insureds and/or loss payees as applicable and as their interests may appear.

.8 In addition to the policy of insurance described in paragraph 11.1.3.1.2 (Contractor's Equipment Insurance), to the extent available, all other policies listed in paragraph 11.1.3.1 (other than the policy described in paragraph 11.1.3.1.1 (Automobile Insurance)) shall contain a waiver of subrogation rights which the insurers may have against the *Owner* whether the damage is caused by the act, omission or negligence of any of such persons.

.9 If a claim is made on another project that could jeopardize the insurance coverage available for the *Project* under any of the policies described in paragraph 11.1.3.1, the *Contractor* shall provide prompt notice of such claim to the *Owner*.

11.1.4 The *Contractor* shall not do or omit to do, or authorize or permit a *Subcontractor* to do or omit to do, anything that would prejudice or result in loss of coverage under any policy of insurance required to be placed or maintained by the *Owner*, *Contractor* or any *Subcontractor* of any tier.

11.1.5 The *Contractor* hereby waives all rights of recourse against the *Owner* in respect of loss or damage to the *Contractor's* owned, leased or hired property. The *Contractor* shall also include a provision in its contracts with *Subcontractors* requiring *Subcontractors* them to waive all rights of recourse against the *Owner* in respect of loss or damage to the owned, leased or hired property of the *Contractor* and *Subcontractors*.

11.1.6 The *Contractor* shall be responsible for paying all deductible amounts under all policies of insurance to be maintained under this *Contract*, regardless of whether such policies are maintained by or on behalf of the *Contractor* or the *Owner*.

11.1.7 The *Owner* shall not pay for nor be charged any amount whatsoever by the *Contractor* for "Subguard" or other subcontractor default insurance coverage or premiums.

11.1.8 The provisions of this GC 11.1 – INSURANCE do not diminish, limit or otherwise affect the liability of the *Contractor* to the *Owner* under or in relation to any other provisions of the *Contract*."

SC 3.36 GC 12.1 READY-FOR-TAKEOVER

3.36.1 Delete paragraph 12.1.1.5 and replace it with the following:

"12.1.1.5 The delivery to the *Owner* of the final *As-Built Drawings*."

3.36.2 Amend paragraph 12.1.1.6 by deleting the words "Startup, testing required" and replacing them with "Startup, testing and commissioning required".

3.36.3 Add a new paragraph 12.1.1.9 as follows:

"12.1.1.9 Confirmation by the *Consultant* that the aggregate cost of completing the remaining *Work* and correcting known defects and deficiencies is the lesser of $5,000 and 1% of the *Contract Price*."

3.36.4 Amend paragraph 12.1.5 by adding the following to the end:

", which shall be no later than thirty (30) days after *Ready-for-Takeover*."

3.36.5 Delete paragraph 12.1.6.

SC 3.37 GC 12.3 WARRANTY

3.37.1 Amend paragraph 12.3.1 by adding the following to the end:

"Notwithstanding the foregoing, if an item of *Work* is not completed at *Ready-for-Takeover*, except for extended warranties as described in paragraph 12.3.6, the warranty period for such item of *Work* shall be one year from the date that such item of *Work* has been completed and accepted in writing by the *Owner*."

3.37.2 Add a new paragraph 12.3.1A as follows:

"12.3.1A Where the *Project* is phased and the *Specifications* instruct the *Contractor* that the *Work* will be completed in stages or phases and turned over to the *Owner* for permanent use and occupancy prior to *Ready-for-Takeover*, the warranty for such stage or phase shall commence, for the particular phase or stage only, on the date the *Owner* takes possession of the phase or stage for permanent use or occupancy and issues a *Notice in Writing* to that effect. Provided that if an item of *Work* is not completed on the date the *Owner* issues such *Notice in Writing*, the warranty period for such item of *Work* shall commence from the date that such item of *Work* is completed and accepted in writing by the *Owner*."

3.37.3 Amend paragraph 12.3.3 by adding the following to the end:

"The *Contractor* shall correct all remedial and warranty work identified in the *Notice in Writing* within 30 days of receipt of such notice, or within such other time as the parties may agree, failing which the *Owner* may engage others to perform the work necessary to complete and rectify such warranty work at the risk and cost of the *Contractor*."

3.37.4 Amend paragraph 12.3.4 by adding the following to the end:

"The *Contractor* shall perform all remedial and warranty work at its own cost and expense and at a time convenient to the *Owner*, which may be outside of normal working hours. Prior to performing the remedial and warranty work the *Contractor* shall provide, for the *Owner's* review and approval, a proposed schedule for the performance of such work."

SC 3.38 GC13.1 INDEMNIFICATION

3.38.1 Delete paragraphs 13.1.1 through 13.1.6 and replace them with the following:

"13.1.1 The *Contractor* shall defend, indemnify and hold harmless the *Owner* and its agents, employees, officers, directors, trustees, governors and representatives from and against all claims, demands, damages, losses, expenses, costs including legal fees, actions, causes of action, suits, charges or other proceedings (collectively "Claims"), by whomsoever made, brought or prosecuted in any manner, to the extent arising out of, resulting from or attributable to, directly or indirectly, the *Contractor's*, or any *Subcontractor's* negligent performance or non-performance of the *Contract*, including *Claims* arising out of the condition of the *Work*, the *Project* site, adjoining land, driveways, streets or alleys used in connection with the performance of the *Work,* regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the *Owner* from all *Claims* made by any party other than the *Contractor* itself, financial or otherwise, relating to the *Work* performed by the *Contractor*.

13.1.2 The *Owner* shall indemnify and hold harmless the *Contractor* and its agents and employees from and against all *Claims* arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*."

SC 3.39 GC 13.2 WAIVER OF CLAIMS

3.39.1 Delete paragraphs 13.2.1 through 13.2.10 and replace them with the following:

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

.1 those made in writing prior to the date of the final payment and still unsettled;

.2 those arising from the provisions of GC 13.1 – INDEMNIFICATION or GC 12.3 – WARRANTY;

.3 those arising from GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the *Contractor* bringing or introducing any toxic or hazardous substances to the *Place of the Work* after the *Contractor* commences the *Work*;

.4 those made by *Notice in Writing* within a period of six years from *Ready-for-Takeover*, or within such shorter period as may be prescribed in any limitation statute of the province or territory of the *Place of the Work* and arising from any liability of the *Contractor* for damages resulting from the *Contractor's* performance of the *Contract* or substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible. As used herein, "substantial defects or deficiencies" means any defect or deficiency in the *Work* where the reasonable cost of repair of such defect or deficiency, either individually or in the aggregate, exceeds:

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

.2 if the *Contract Price* is more than $2,000,000, the sum of $100,000, before *Value Added Taxes*.

13.2.2 As of the date of submission by the *Contractor* of the application for final payment, the *Contractor* expressly waives and releases the *Owner* from all claims which it has or reasonably ought to have knowledge of that could be advanced against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

.1 those for which *Notice in Writing* was given prior to the *Contractor's* application for *Ready-for-Takeover* and still unsettled; and

.2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES or GC 10.3 – PATENT FEES."

SC 3.40 PART 14 – OTHER PROVISIONS

3.40.1 Add a new "**PART 14 – OTHER PROVISIONS**" as follows:

"**PART 14 OTHER PROVISIONS**

GC 14.1 OWNERSHIP OF MATERIALS

14.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time this *Contract* is entered into shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* or to a pre-approved off-site storage area by the *Contractor* shall be the property of the *Owner.* The *Contractor* shall remove all surplus or rejected materials from the *Place of the Work* as its property when notified in writing to do so by the *Consultant*.

GC 14.2 LIENS AND ACTIONS

14.2.1 Provided that the Owner has made payments to the Contractor as required hereunder, the *Contractor* shall save and keep the *Owner* and the *Place of the Work* free from all construction liens and all other liens whatsoever arising out of the *Work*. If any lien is claimed, filed or registered or any written notice of a lien is received by reason of any *Work* supplied or claimed to have been supplied by or through a *Subcontractor* or *Supplier*, the *Contractor* shall, at its own expense, within ten (10) *Working Days* of being notified of the lien or written notice of a lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of a lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the *Owner* may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or written notice of a lien.

14.2.2 If a lien action is commenced arising out of a lien described in paragraph 14.2.1, the *Contractor* shall take all reasonable steps to remove the *Owner* from such action, and shall indemnify the *Owner* and hold it harmless in such action.

14.2.3 All amounts, including legal costs on a full indemnity basis, disbursements, interest, borrowing, premium or other bonding costs and/or charges incurred by the *Owner* in releasing, vacating, discharging and/or otherwise dealing with a *Subcontractor* or *Supplier* lien, written notice of a lien and/or defending or otherwise dealing with a lien action, shall be charged to the *Contractor* and shall be set off and deducted from any amount owing to the *Contractor*. If there is no amount owing by the *Owner* to the *Contractor* at that time, then the *Contractor* shall reimburse the *Owner* for all amounts incurred by the *Owner*.

GC 14.3 CONTRACTOR LIABILITY FOR DAMAGES

14.3.1 Notwithstanding any other provision in this *Contract*, in the event the *Owner*, as a result of the *Contractor's* act or omission or breach of this *Contract*, incurs damages, costs, fees or expenses, including costs of additional services performed by the *Consultant* and including legal fees, whether or not such act, omission or breach results in any lien, lien action or other legal proceeding, and whether or

not such act, omission or breach results in the *Owner* taking any of the steps provided for in GC 7.1, all such damages, costs, fees (including legal fees on a full indemnity basis) and expenses shall be charged to the *Contractor* and the *Owner* shall be entitled to set off and deduct all such damages, costs, fees (including legal fees on a full indemnity basis) and expenses from any amount owing to the *Contractor*. If there is no amount owing by the *Owner* to the *Contractor* at that time, then the *Contractor* shall reimburse the *Owner* for all of the said damages, costs, fees and expenses.

GC 14.4 DAILY REPORTS / DAILY LOGS

14.4.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare and maintain a daily site log or diary recording, at least, the following: (a) daily weather conditions and temperatures at the *Place of the Work*, (b) the number of workers of the *Contractor, Subcontractors, Suppliers* and any other forces at the *Place of the Work*, (c) the *Construction Equipment* at the *Place of the Work*, (d) the descriptions and quantities of *Products* delivered and utilized, and (e) the general nature of *Project* activities. Such log or diary shall also record any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day workforce. The *Contractor* shall also take or arrange for the taking of *Project* photographs to record the progress of the *Work.*

14.4.2 The *Contractor* shall maintain, either at its head office or at the *Project* site, records recording manpower and material resourcing on the *Project*, including the records identified in paragraph 14.4.1 and records which document the activities of the *Contractor.*

14.4.3 Upon request by the *Owner* or the *Consultant*, the *Contractor* shall make available for inspection and copying all of the records generated pursuant to this GC 14.4, along with any other routine *Project* records ordinarily maintained by the *Contractor*.

GC 14.5 PUBLIC STATEMENTS

14.5.1 The *Contractor* shall not publish, issue or make any statements or news release, electronic or otherwise, concerning the *Contract*, the *Work*, or the *Project*, and shall not use the *Owner's* name, logo, etc. without the prior express written consent of the *Owner*. For greater certainty, the *Contractor* shall obtain the prior written approval of the *Owner* for any public advertising, written public sales promotions, press release or other general publicity matter, in which the name or logo of the *Owner* is mentioned or used, or in which words are used from which any connection with the *Owner* may be inferred. The *Contractor* will not erect or permit the erection of any sign or advertising without the prior written approval of the *Owner*.

GC 14.6 AMENDMENTS TO THE CONTRACT

14.6.1 Except for the written or e-mail direction referred to in paragraph 6.1.2 of GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, no alteration or amendment to this *Contract*, no course of conduct or dealing between the parties, and no express or implied acceptance of alterations or amendments to the *Contract* shall be binding unless it is in writing and signed by each party.

14.6.2 No waiver by or on behalf of a party of any breach of a provision of this *Contract* shall be binding upon the party unless it is expressed in writing and duly executed by the party or signed by its fully authorized representative, and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character. No waiver shall be inferred from or implied by the conduct of any party.

GC 14.7 BONDING

14.7.1 If the *Contract Price* is $500,000 or more the *Contractor* shall, prior to commencing the *Work*, deliver to the *Owner* a performance bond and a labour and material payment bond in the forms specified in the *Act*, each in the amount of fifty per cent (50%) of the *Contract Price*, and each issued by a duly licensed surety company authorized to transact the business of suretyship in Ontario.

14.7.2 Such bonds shall be maintained in good standing until the fulfillment of the *Contract*. All premiums and other costs of the bonds are included in the *Contract Price*.

GC 14.8 COMPLIANCE WITH SITE PLAN AGREEMENT

14.8.1 The *Contractor* shall review the site plan agreement for the *Project* and shall ensure that all *Work* is performed in compliance with the site plan agreement.

14.8.2 If the *Contractor* discovers any error, inconsistency or omission in the *Contract Documents* as they relate to the site plan agreement for the *Project*, or if the *Contractor* has any doubt as to the meaning or intent or any part of the site plan agreement, the *Contractor* shall immediate notify the *Consultant*, who

will provide written instructions or explanation. Neither the *Owner* nor the *Consultant* shall be responsible for verbal instructions.

14.8.3 The *Contractor* shall indemnify and save harmless the *Owner* and its officers, directors, trustees, governors, employees and agents from and against any and all liability, costs, expenses, charges, fines, damages and all other consequences arising from any and all site plan agreement infractions on the *Project*, including the payment of legal fees and disbursements on a full indemnity basis, save and except if the *Contractor* acted in accordance with the written instructions provided by the *Consultant* pursuant to paragraph 14.8.2."

GC 14.9 CONFIDENTIAL INFORMATION

14.9.1 "*Confidential Information*" shall mean all information or materials, regardless of format, that the *Owner*, or anyone on its behalf, furnishes to the *Contractor* and that is either confidential, proprietary or otherwise not generally available to the public, and includes all analyses, compilations, summaries, forecasts, studies, plans, projections, or other documents prepared by the *Contractor* which contain or reflect such information. Notwithstanding the foregoing, *Confidential Information* shall not include information that:

.1 is or becomes generally available to the public without breach by the *Contractor*;

.2 the *Contractor* can demonstrate was rightfully obtained from a third party who had the right to transfer or disclose this information to the *Contractor* free of any obligation of confidence;

.3 the *Contractor* can demonstrate to have known or to have been in the possession of at the time of disclosure, free of any obligations of confidence; or

.4 the *Contractor* can demonstrate was independently developed by the *Contractor* without the use of any *Confidential Information*.

14.9.2 The *Contractor* shall, both during and for two (2) years following the completion or termination of this *Contract*, maintain the confidentiality and security of all *Confidential Information* and shall not directly or indirectly disclose, destroy, exploit or use any *Confidential Information*, except where required by law, without first receiving written consent from the *Owner*. Any breaches of confidentiality shall be immediately reported to the *Owner* by *Notice in Writing*.

14.9.3 The *Contractor* agrees that this GC 14.9 and the confidentiality covenant contained herein shall survive the expiration or termination of this *Contract*.

END OF SUPPLEMENTARY CONDITIONS