CONSTRUCTION AGREEMENT

REQUEST FOR TENDER

RFT #TZC T 51 (2022-09)

CONTRACT #2205-B-1

for

CONSTRUCTION

of

CORE WOODS HILL AODA RAMP

NOTICE RE: CONSTRUCTION ACT

* Parts I.1 (Prompt Payment) and II.1 (Adjudication) of the Construction Act apply with respect to this Agreement and all subcontracts thereunder.

* All claims for lien (Form 12) must be completed and submitted through the City of Toronto's website at www.toronto.ca/liens, pursuant to section 34(3.1) of the Construction Act and section 11.1 of O. Reg 304/18.

Version 1.3

TABLE OF CONTENTS

Page

AGREEMENT 1

1. THE WORK 1
2. CONTRACT PRICE 1
3. DOCUMENTS COMPRISING THE AGREEMENT 2

SCHEDULE A – INFORMATION SHEET 4

SCHEDULE B – PRICING FORM 10

SCHEDULE C – DEFINITIONS 11

SCHEDULE D – GENERAL CONDITIONS 24

1. GENERAL PROVISIONS 24

GC 1.1 Interpretation 24
GC 1.2 Entire Agreement And Amendments 26
GC 1.3 Law of the Agreement and Interpretation 27
GC 1.4 Rights and Remedies 28
GC 1.5 Assignment and Succession 28
GC 1.6 Receipt of and Addresses for Notices and Documentation 29
GC 1.7 Conflicts of Interest 30
GC 1.8 Miscellaneous 30

2. ADMINISTRATION OF THE AGREEMENT 30

GC 2.1 Authority of the Contract Administrator and the Owner Representative 30
GC 2.2 Role of the Contract Administrator 31
GC 2.3 Review and Inspection of the Work 33
GC 2.4 Emergency Situations 35
GC 2.5 Deficiencies 36
GC 2.6 Contractor Records 37

3. EXECUTION OF THE WORK 37

GC 3.1 Control and Commencement of the Work 37
GC 3.2 Supplemental Instructions 38
GC 3.3 Construction by Owner or Other Contractors 38
GC 3.4 Temporary Work 40
GC 3.5 Construction Schedule 40
GC 3.6 Document Review and Examination of Site 41
GC 3.7 Supervision 42
GC 3.8 Subcontractors and Suppliers 44
GC 3.9 Labour and Products 46
GC 3.10 Documents at the Site 48
GC 3.11 Shop Drawings 48

Page

GC 3.12 Use of the Work 50
GC 3.13 Standard of Care, Quality Assurance and Quality Control 50
GC 3.14 Use and Occupancy of the Work Prior to Substantial Performance of the Work 50
GC 3.15 Access to Properties Adjoining the Work and Interruption of Operations 51

4. PROTECTION OF PERSONS, WORK AND PROPERTY 52

GC 4.1 Protection of Work and Property 52
GC 4.2 Health and Safety 54
GC 4.3 Hazardous Materials 56
GC 4.4 Mould 58
GC 4.5 Artifacts and Fossils 59

5. CONTRACT PRICE AND PAYMENT 59

GC 5.1 Contract Price 59
GC 5.2 Owner's Obligation to Pay 60
GC 5.3 Proper Invoices 60
GC 5.4 Progress Payment 65
GC 5.5 Substantial Performance of the Work 66
GC 5.6 Payment of Lien Holdback Upon Substantial Performance of the Work 67
GC 5.7 Payments Upon Total Performance of the Work 68
GC 5.8 Final Acceptance Certificate 70
GC 5.9 Contractor Discharge of Liabilities 70
GC 5.10 Owner's Set-off 70

6. ALLOWANCES 71

GC 6.1 Allowances 71

7. CHANGES IN THE WORK 72

GC 7.1 Owner's Right to Make Changes 72
GC 7.2 Change Order 73
GC 7.3 Change Directive 74
GC 7.4 Concealed or Unknown Conditions 74
GC 7.5 Delays 75
GC 7.6 Delay Liquidated Damages 78
GC 7.7 Claims Procedure 79
GC 7.8 Service Standards for Contractor in Responding to Third Party Claimants 81

8. INSURANCE, CONTRACT SECURITY, BONDS AND CONTRACTUAL HOLDBACK 83

GC 8.1 Insurance 83
GC 8.2 Contract Security 87
GC 8.3 Surety Bonds 87
GC 8.4 Contractual Holdback 88

Page

9. INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY 89

GC 9.1 Indemnification 89
GC 9.2 Waiver of Claims 91
GC 9.3 Warranty 92

10. GOVERNING REGULATIONS 93

GC 10.1 Laws, Notices, Permits, and Fees 93
GC 10.2 Taxes and Duties 95
GC 10.3 Patent Fees 96
GC 10.4 Workers' Compensation 96

11. DEFAULT, TERMINATION AND SUSPENSION 96

GC 11.1 Owner's Right to Perform the Work, Terminate the Contractor's Right to Continue with the Work, Terminate the Agreement or Suspend the Work 3
GC 11.2 Contractor's Right to Terminate the agreement 101
GC 11.3 Other Termination Obligations 102

12. DISPUTE RESOLUTION 102

GC 12.1 Dispute Resolution 102
GC 12.2 Adjudication 103
GC 12.3 Negotiations 106
GC 12.4 Mediation 107
GC 12.5 Arbitration 107
GC 12.6 Rights of Both Parties 108

13. OTHER PROVISIONS 108

GC 13.1 Ownership of Existing Materials and Equipment 108
GC 13.2 Construction Liens 108
GC 13.3 Ownership of Contractor Documents 109
GC 13.4 Owner Supplied Material 109
GC 13.5 Confidential Information and Personal Information 110

Page

[Note to Finalization before RFT: For Schedule E, choose either Section 3 - Changes in the Work on a Time and Material Basis – Vertical Approach OR Section 3 - Changes in the Work on a Time and Material Basis – Linear Approach. Delete version of Section 3 that is not applicable from the below table of contents and these instructions. Update Page numbers.]

SCHEDULE E – VALUING CHANGES IN THE WORK…….....114

1. CHANGES IN THE WORK BASED ON UNIT PRICES SET OUT IN THE AGREEMENT…….....114
2. CHANGES IN THE WORK ON A NEGOTIATED FIXED PRICE OR NEGOTIATED UNIT PRICE BASIS……...114
3. CHANGES IN THE WORK ON A TIME AND MATERIAL BASIS – LINEAR APPROACH…….…… …….....116

SCHEDULE F – OWNER POLICIES, PROCEDURES, BY-LAWS AND OTHER REQUIREMENTS……..129

SCHEDULE G – FORMS…… 124

Form 1 SAMPLE PROPER INVOICE…. 125
Form 2 CERTIFICATE OF INSURANCE……..… 126
Form 3 TAX STATUTORY DECLARATION 128
Form 4 NOTICE OF ADJUDICATION 129

SCHEDULE H – DRAWINGS AND SPECIFICATIONS……..131

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement entered into on the Effective Date

between

The Board of Management of the Toronto Zoo

("Owner")

and

● [Note to Finalization before Execution: Insert Legal Name of Contractor]

("Contractor")

WHEREAS Parts I.1 (Prompt Payment) and II.1 (Adjudication) of the Construction Act apply with respect to this Agreement and all subcontracts thereunder as the Owner commenced a procurement process for the improvement that is subject of the Agreement ("**Procurement Process**") on or after October 1, 2019;

AND WHEREAS ● [Note to Finalization before Execution: Complete recitals];

NOW THEREFORE in consideration of the mutual covenants herein contained, the Owner and the Contractor agree as follows:

1. THE WORK

The Contractor shall:

1.1 perform the Work required by the Agreement for the Project located at the Site; and

1.2 do and fulfill everything indicated by the Agreement; and

1.3 commence the Work on the Commencement Date and, subject to adjustment in Contract Time as provided for in the Agreement, attain Substantial Performance of the Work, by the Scheduled Date for Substantial Performance of the Work, and otherwise perform the Work in accordance with the Construction Schedule.

2. CONTRACT PRICE

2.1 The price for the Work (including any changes in the Work), which excludes Value Added Taxes, is the sum of, if applicable:

.1 in respect of the Fixed Price Work, the Fixed Price; plus

.2 in respect of the Unit Price Work, the Total Price of Unit Price Work; plus

.3 in respect of T&M Changes in the Work recorded in a Change Order, the T&M Price,

(the "**Contract Price**")**.**

2.2 Value Added Taxes in the percentage amount of thirteen percent (13%) are payable by the Owner to the Contractor.

2.3 The Contract Price shall only be subject to adjustment as provided in the Agreement.

2.4 All amounts in the Agreement are expressed and payable in Canadian currency, unless expressly noted otherwise.

3. DOCUMENTS COMPRISING THE AGREEMENT

3.1 The following documents whether attached hereto or referred to herein form an integral part of the Agreement:

- Schedule A – Information Sheet
- Schedule B – Pricing Form
- Schedule C – Definitions
- Schedule D – General Conditions
- Schedule E – Valuing Changes in the Work
- Schedule F – Owner Policies, Procedures, By-Laws and Other Requirements
- Schedule G – Forms
    - Form 1 – Proper Invoice
    - Form 2 – Certificate of Insurance
    - Form 3 – Tax Statutory Declaration
    - Form 4 – Notice of Adjudication
- Schedule H – Drawings and Specifications
- Construction Schedule
- Supplemental Instructions
- any other document identified elsewhere in the Agreement as a document forming part of the Agreement.

The parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

The Board of Management of the Toronto Zoo

● [Note to Finalization before Execution: Authority stamp to be completed by the Owner]

By:

Name: ●
Title: ●
I have authority to bind the corporation

By:

Name: ●
Title: ●
I have authority to bind the corporation

● [Note to Finalization before Execution: Insert Legal Name of Contractor]

By:

Name: ●
Title: ●
I have authority to bind the corporation

By:

Name: ●
Title: ●
I have authority to bind the corporation

[Note to Finalization before RFT/Execution: If the Contractor is an individual, use the following signature block. Delete signature block not used. Consult Legal Services if needed.]

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

Name

SCHEDULE A

INFORMATION SHEET

[Note to Finalization before RFT: Complete appropriate rows in Sections A, B, C, D & E, and delete instructions in blue and all instructions in red]

[Note to Finalization before Execution: Revise A.3, A.4, A.5 and A.6 with information provided after award.]

The following table provides information cross-referenced in the provisions of the Agreement. All reference to GCs are located in Schedule D – General Conditions.

Row	Input Information	Reference	Description
A. Names and Information			
A.1	Project	Sch. C, Definition 79 & GC 3.8.2.3(1)	
A.2	Site	Definition 90	
A.3	Notice information	GC 1.6.1.2, GC 1.6.1.3 & GC 1.6.1.4	● **[Before RFT: state "*To be provided after award".*** **Before execution: state the contact information for the Contractor, Owner Representative, Contract Administrator and Owner, for the purposes of sending Notices in Writing]**
A.4	Identity of Contract Administrator	Sch. C, Definition 24	● **[Before RFT: state "*To be provided after award".*** **Before execution: state the name of the Contract Administrator (whether third party architect/engineer or Owner employee).]**
A.5	Identity of Owner Representative	Sch. C, Definition 70	● **[Before RFT: state "*To be provided after award".*** **Before execution: state the name of the Owner Representative. Note that for internally managed contracts, this will be the same as the Contract Administrator. For externally managed projects, this will be the internal City staff member who is liaising with the Contract Administrator.]**
A.6	Approved Subcontractors	GC 3.8.3, GC 3.8.3.1 & GC 3.8.3.2	● **[If there are no Subcontractors associated with the Project, state "*Not Applicable*";** **If Subcontractors will be used:**

Row	Input Information	Reference	Description
			• **Before RFT: state "*To be entered after award*"; and** • **Before execution, and after the subcontractors have been cleared through the Fair Wage Office: list the Subcontractors here along with the types of work they will be doing. If this list is lengthy, include list as an attachment to the Information Sheet instead.]**
B. Pricing, Markups and Liquidated Damages			
B.1	Contractor's Markup for negotiated fixed price and negotiated unit price changes in the Work performed by Contractor	Sch. E, s. 2.2.3.1	Not Applicable Note: All markups for Labour and Equipment shall be included in the Unit Bid Prices. No additional markups will be paid.
B.2	Total Cumulative Markup allowed for Contractor, Subcontractors, Suppliers and Sub-subcontractors on negotiated fixed price and negotiated unit price changes in the Work performed by Subcontractors, Suppliers or Sub-subcontractors (and not performed by the Contractor)	Sch. E, s. 2.2.3.2	Zero percent (0%)
B.3	T&M Percentage Markup for changes in the Work performed by Contractor	Sch. E, s. 3.3.1	Ten percent (10%) **If the Agreement uses the T&M language for "Linear Approach": state "*Not Applicable*".**
B.4	Total Cumulative T&M Percentage Markup allowed for Contractor, Subcontractors, Suppliers and Sub-	Sch. E, s. 3.3.2	Fifteen percent (15%) **If the Agreement uses the T&M language for "Linear Approach": state "*Not Applicable*".**

Row	Input Information	Reference	Description
	subcontractors on changes in the Work performed by Subcontractors, Suppliers or Sub-subcontractors (and not performed by the Contractor)		
B.5	Markup for Cash Allowance overages	GC 6.1.4	Ten percent (10%)
B.6	Amounts of Delay Liquidated Damages	GC 7.6.1	**$500 per Calendar Day that is a weekday;** **$500 per Calendar Day that is a weekend day.**
B.7	Changes in the Work on a Time & Material Basis	Sch. E, s. 3	**● [State either *Vertical Approach*' or *'Linear Approach*'.** **Note: Schedule E provides language for TWO approaches to valuing T&M work: (1) Vertical Approach and (2) Linear Approach. Only ONE approach is to be included in the finalized Agreement.]**
B.8	Schedule A Schedule of Prices for Changes in the Work	Sch. B	Not applicable
B.9	Invoice Period	Sch. C, Definition 54	No change to default Invoice Period
B.10	Giving of a Proper Invoice	GC 5.3.1	Proper invoices shall be given to the Owner by referencing GC 1.6.1.1
C. Dates, Time Periods and Deadlines			
C.1	Effective Date	Sch. C, Definition 40	**● [Before RFT: state "*To be finalized after award*".** **Before execution, state ONE of the following two dates:** • **For contracts up to $500,000: the date on the letter of award to the successful bidder**

Row	Input Information	Reference	Description
			• **For contracts $500,000 and above: the date that the applicable committee (Bid Award Panel, Infrastructure and Environment Committee, etc.) adopts the staff report providing the award recommendation]**
C.2	Commencement Date	Sch. C, Definition 17 & GC 3.1.6	● **[Before RFT, state:** **(1) a specific date (if known); or** **(2) an estimated number of Calendar Days or Working Days after the Effective Date; or** **(3) "*To be provided after execution of Agreement by Notice in Writing to the Contractor"*** **Note: The purpose of this is to give bidders an idea of when work is expected to begin, as timing can affect pricing.]**
C.3	Key Work Milestones	Sch. C, Definition 55	Not applicable
C.4	Scheduled Date for Substantial Performance of the Work	Sch. C, Definition 86	● **[State a specific a date if a specific date is input for the Commencement Date in row C.2. Otherwise, state a number of Calendar Days or Working Days after the Commencement Date.]**
C.5	Scheduled Date for Total Performance of the Work	Sch. C, Definition 87	● **[State a specific date if a specific date is input for the Scheduled Date for Substantial Performance of the Work in row C.4. Otherwise, state a number of Calendar Days or Working Days after the Commencement Date.]**
C.6	Warranty Period	Sch. C, Definition 113	No change to default Warranty Period **Can add "unless otherwise stated in the specifications (Part 3) of the tender package**
C.7	Working Days	Sch. C, Definition 115	No change to default Working Days
C.8	Number of Days for Contract Administrator to Issue a Certificate for Payment	GC 5.4.1.2	28 Calendar Days after receipt of a Proper Invoice
C.9	Deadline to acknowledge a	GC 7.2.1	No change to default of 10 Working Days

Row	Input Information	Reference	Description
	Contemplated Change Order		
C.10	Deadline to respond to a Change Directive	GC 7.3.5	5 Working Days
C.11	Suspension Period for Stop Work Orders	GC 11.2.1	No change to default of 60 Working Days
D. Insurance, Contract Security, Bonds and Contractual Holdback			
D.1	Insurance Coverages	GC 8.1.1.1, GC 8.1.1.2, GC 8.1.1.3 & GC 8.1.3	Automobile Liability Insurance shall have limits of not less than two million dollars ($2,000,000). Pollution Liability Insurance coverage is not required.
D.2	Additional Contract Security	GC 8.2.1	Not Applicable
D.3	Amount of the Contractual Holdback	GC 8.4.1	Not Applicable
D.4	Percentage by which Contractual Holdback is Reduced after Total Performance of the Work	GC 8.4.3	Not Applicable
D.5	Surety Bonds	GC 8.3.1	No change to requirements in GC 8.3.1
E. Miscellaneous			
E.1.	Alternate order of priority of the Agreement Documents	GC 1.1.7.1	*No change to default order of priority*
E.2.	Allowable Portion of the Work for Subcontracting	GC 3.8.1	Not Applicable
E.3.	Accuracy of Utilities and Structures	GC 4.1.4.1	Contractor to rely on accuracy of positions of Utilities and Structures provided in the Agreement, subject to the following tolerances: on any drawing, 2 meters horizontally, and 1 metre vertically

Row	Input Information	Reference	Description
E.4.	Fair Wage Schedule	Sch. F, if applicable	Fair Wage Policy is applicable. Use the City of Toronto's Fair Wage Policy available at https://www.toronto.ca/business-economy/doing-business-with-the-city/understanding-the-procurement-process/fair-wage-office-policy/fair-wage-policy/
E.5.	Workforce Development Plan	Sch. F, if included	There is <u>no requirement</u> for a Workforce Development Plan under this Agreement.

SCHEDULE B

PRICING FORM

Pricing Form is provided within the Tender Posting (Part 5) on the Toronto Zoo's Website

[Note to Finalization before Execution: Attach Pricing Form]

SCHEDULE C

DEFINITIONS

The following Definitions shall apply to the Agreement.

1. Adjudicable Dispute
A dispute respecting an Adjudicable Matter and that complies with GC 12.1.2.

2. Adjudicable Matter
Any matter:

1. referred to in s. 13.5(1) of the Construction Act, other than in paragraph 7;
2. that is prescribed under the Construction Act as referable to adjudication; or
3. agreed to by the parties pursuant to GC 12.2.1.2.

3. Adjudication
Adjudication means a construction dispute interim adjudication under Part B.1 of the Construction Act.

4. Adjudicator
Adjudicator means an individual who is qualified by the Authority as an adjudicator.

5. Agreement
Agreement means the agreement between Owner and Contractor and the Schedules attached thereto, as the same may be amended, supplemented, restated or replaced from time to time in writing upon the mutual agreement of the parties or as may be otherwise provided for in the Agreement.

6. Allowance
Allowance means a Cash Allowance or Provisional Allowance, as applicable.

7. As-Built Drawings
As-Built Drawings has the meaning set out in GC 3.10.2.

8. Authority
Authority means the Authorized Nominating Authority designated under the Construction Act.

9. Calendar Day
Calendar Day means a calendar day.

10. Cash Allowance
Cash Allowance means the allowances, if any, identified in the Pricing Form for known items included in the Work where the actual cost was unknown at the time of tender. The Contractor's overhead and profit is excluded from Cash Allowance and is carried in other pricing as set out in GC 6.1.2.

11. Certificate of Recognition (COR™)

Certificate of Recognition (COR™) means the nationally recognized occupational health and safety certification granted to qualifying firms by the Infrastructure Health and Safety Association (IHSA) of Ontario or its successor.

12. Change Directive

A Change Directive means a written instruction, which shall be deemed incorporated into and forming part of the Agreement, prepared by the Contract Administrator and signed by the Owner directing the Contractor to proceed with a change in the Work prior to or in the absence of the Owner and the Contractor agreeing upon adjustments in the Contract Price and the Contract Time.

13. Change Order

A Change Order means a written amendment to the Agreement, which shall be deemed incorporated into and forming part of the Agreement, prepared by the Contract Administrator and signed by the Owner and the Contractor stating their agreement upon:

1. a change in the Work;
2. the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
3. the extent of the adjustment in the Contract Time, if any.

14. City

City means the City of Toronto. The words “City” or “City of Toronto” wherever used in the Agreement shall be regarded as synonymous.

15. Claims

Claims means any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), and Losses in respect of the foregoing matters.

16. Claim Notice

Claim Notice has the meaning set out in GC 7.7.1.

17. Commencement Date

Commencement Date means the commencement date for the performance of the Work as set out in row C.2 of the Information Sheet, or if no such date is set out, the date described in the Notice in Writing issued by the Owner to the Contractor, pursuant to GC 3.1.6 directing the Contractor to commence the performance of the Work.

18. Confidential Information

Confidential Information means any and all (as the context requires) information of the disclosing party (including information in respect of or in connection with the Project or the performance of the Work) that is confidential to the disclosing party, or would reasonably be considered confidential, and that is disclosed orally or in writing by or on behalf of the disclosing party, to the receiving party pursuant to the Agreement, including

during the performance of the Work, regardless of whether the Information is specifically identified or marked as “Confidential”, “Restricted” or “Secret”. For the purposes of the Agreement, all Personal Information shall constitute Confidential Information.

19. Conflict of Interest

Conflict of Interest means any situation or circumstance where in relation to the performance of its obligations under the Agreement, the Contractor’s other commitments, relationships or financial interests:

1. could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or

2. could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

20. Construction Act

Construction Act means the *Construction Act*, RSO 1990, c. C 30.

21. Construction Equipment

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

22. Construction Schedule

Construction Schedule has the meaning set out in GC 3.5.1.1.

23. Contemplated Change Order

Contemplated Change Order has the meaning set out in GC 7.2.1.

24. Contract Administrator

Contract Administrator means the Person designated by the Owner in row A.4 of the Information Sheet to be the Owner’s day to day administrator for the purposes of the Agreement or such other Person as may be designated by the Owner, from time to time. The words “Engineer”, “Architect” or “Consultant” wherever used in the Agreement shall be regarded as synonymous with the Contract Administrator, unless identified otherwise in row A.4 of the Information Sheet or if the Owner notifies the Contractor otherwise in writing.

25. Contract Price

Contract Price has the meaning set out in paragraph 2.1 of Section 2 of the Agreement – CONTRACT PRICE.

26. Contract Time

Contract Time means the time stipulated in paragraph 1.3 of Section 1 of the Agreement - THE WORK from the Commencement Date to the Scheduled Date for Substantial Performance of the Work.

27. Contractor
Contractor means the Person identified as such on page 1 of the Agreement. The term Contractor means the Contractor or the Contractor's authorized representative as designated to the Owner in writing.

28. Contractor Parties
Contractor Parties means the Contractor, Subcontractors, Suppliers and Sub-subcontractors and their respective Personnel.

29. Contractor Project Manager
Contractor Project Manager has the meaning set out in GC 3.7.3.1.

30. Contractor Records
Contractor Records means the Contractor's books, payrolls, accounts, invoices, purchase orders, receipts or other information or documentation.

31. Contractor Site Supervisor
Contractor Site Supervisor has the meaning set out in GC 3.7.3.2.

32. Contractual Holdback
Contractual Holdback has the meaning set out in GC 8.4.1.

33. Contractor Prepared Documents
Contractor Prepared Documents has the meaning set out in GC 13.3.1.

34. Current Schedule
Current Schedule means the Contractor's most up-to-date working schedule, prepared based on the Construction Schedule, indicating for a specific reporting period the actual progress of the Work and forecasting of future progress and performance to complete the Work.

35. Daily Contractor Work Records
Daily Contractor Work Records mean daily Contractor Records detailing labour (including the number and categories of Personnel and hours worked or on standby) and Construction Equipment (including types and quantities) employed and Product (including descriptions and quantities) used.

36. Deficiency or Deficient
Deficiency or Deficient means any aspect of the Work (including Products) that fails to comply with, or conform to, the requirements of the Agreement including Laws and the Standard of Care, whether or not such non-compliance or non-conformances occur, or are discovered, prior to or during the Warranty Period. Deficiency or Deficient includes deficiencies in application, engineering, manufacture, installation, construction, workmanship or materials (to the extent the Work includes such elements) and deficiencies in Products.

37. Delay Liquidated Damages
Delay Liquidated Damages has the meaning set out in GC 7.6.1.

38. Dispute

Dispute means all disputes between the parties arising out of or in connection with the Agreement including as to:

1. the interpretation, application or administration of the Agreement;
2. findings or determinations under the Agreement, including under GC 7.7.6; or
3. the performance of the Work.

39. Drawings

Drawings means the graphic and pictorial portions of the Agreement as attached or listed in Schedule H – Drawings and Specifications or elsewhere in the Agreement wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams, as the same may be amended, supplemented or replaced from time to time by the Owner.

40. Effective Date

Effective Date means the effective date of the Agreement as set out in row C.1 of the Information Sheet.

41. Equivalent OHS Certification

Equivalent OHS Certification means an occupational health and safety certification issued to qualifying firms by an independent third-party organization and accepted by the Owner (in the Owner's sole discretion) as equivalent to the Certificate of Recognition (COR ™).

42. Estimate of Units

Estimate of Units means an estimate of the total units performed during the identified period for each item of the Unit Price Work, as may be amended by the Contract Administrator or Owner Representative.

43. Estimate of Units for Completion

Estimate of Units for Completion means the Estimate of Units as of the Effective Date for the total performance of the applicable item of Unit Price Work, as may be set out in the Pricing Form.

44. Extended Warranty Periods

Extended Warranty Periods has the meaning set out in GC 9.3.6.

45. Fair Wage Policy

Fair Wage Policy means the Owner’s Fair Wage Policy, if any such policy is identified in Schedule F - Owner Policies, Procedures, By-Laws and Other Requirements.

46. Final Acceptance Certificate

Final Acceptance Certificate has the meaning set out in GC 5.8.1.

47. Fixed Price

Fixed Price means the fixed price for the Fixed Price Work set out in the Pricing Form, and as may be adjusted by Change Order.

48. Fixed Price Work
Fixed Price Work means the portion of the Work paid for on a Fixed Price basis.

49. GC
GC means the General Conditions.

50. Governmental Authority
Governmental Authority means any federal, provincial or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, each having jurisdiction in the relevant circumstances, including, for clarity, any Person acting under the authority of any Governmental Authority and, with respect to taxes, whether domestic or foreign.

51. Hazardous Material
Hazardous Material means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, coal tar and any other biological or chemical agent, substance or material named, described, declared or defined to be hazardous, toxic, or a contaminant or pollutant in, or pursuant to, any applicable Laws.

52. Highway
Highway means a common and public highway, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

53. Indemnitees
Indemnitees has the meaning set out in GC 9.1.1.

54. Invoice Period
Unless otherwise specified in row B.9 of the Information Sheet, Invoice Period means the one-month long period which commences on the Commencement Date and ends on the day prior to the same date as the Commencement Date in the next successive calendar month and each subsequent one-month long period thereafter.

55. Key Work Milestones
Key Work Milestones means the major milestones for the performance of the Work as set out in row C.3 of the Information Sheet, if any, as such milestones may be revised by Change Order or Change Directive.

56. Laws
Laws means all:

1. laws, orders-in-council, by-laws, codes, rules, regulations and statutes of any Governmental Authority;

2. orders, decisions, judgments, injunctions, decrees, awards, directives, rulings and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;

3. legally enforceable consents, approvals, policies and guidelines of any Governmental Authority; and

4. any requirements under or prescribed by applicable common law,

which are applicable to the Owner, Contractor, the Project, Site, Work or obligations under the Agreement.

57. Lien Holdback
Lien Holdback means the ten percent (10%) holdback retained pursuant to Part IV of the Construction Act.

58. Losses
Losses means any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs.

59. Major Item
Major Item means any item of Unit Price Work that has a value, calculated on the basis of its Estimate of Units for Completion multiplied by its Unit Price, which is equal to or greater than the lesser of:

1. $100,000; and

2. 5% of the estimated Total Price of Unit Price Work (calculated using the Estimate of Units for Completion for all items of Unit Price Work).

60. MFIPPA
MFIPPA means the *Municipal Freedom of Information and Protection of Privacy Act*.

61. Notice in Writing
A Notice in Writing means a written communication between the parties or between them and the Contract Administrator that is transmitted in accordance with the provisions of GC 1.6.1 and GC 1.6.2.

62. Notice of Adjudication
Notice of Adjudication means a written notice of Adjudication, which:

1. complies with Section 13.7(1) of the Construction Act; and

2. is substantially in the form attached as Form 4 of Schedule G – Forms, including the submission of all applicable attachments.

63. Notice of Negotiations
Notice of Negotiations has the meaning set out in GC 12.3.1.

64. OHSA
OHSA means the *Occupational Health and Safety Act* (Ontario).

65. OPS
OPS means the Ontario Provincial Standards.

66. Other Work
Other Work has the meaning set out in GC 4.2.1.3.

67. Owner
The Owner means the City of Toronto or its agency, board or commission as more particularly set out on page 1 of the Agreement.

68. Owner Documents
Owner Documents means, collectively, the Owner Prepared Documents and Contractor Prepared Documents.

69. Owner Prepared Documents
Owner Prepared Documents has the meaning set out in GC 1.1.11.

70. Owner Representative
The Owner Representative means the Person designated by the Owner in row A.5 of the Information Sheet to have the authority to bind the Owner for the purposes of the Agreement or such other Person as may be designated by the Owner, from time to time.

71. Owner Supplied Material
Owner Supplied Material means the material and/or equipment identified or referenced in the Drawings, Specifications or elsewhere in the Agreement as supplied by the Owner for incorporation into the Project, which is to be installed, tested, commissioned and otherwise dealt with, as applicable, by the Contractor in accordance with the Agreement.

72. Owner's Policies, Procedures and By-laws
Owner's Policies, Procedures and By-Laws means the policies and procedures of the Owner and the by-laws of the City of Toronto, as may be amended, supplemented or replaced from time to time, including the policies, procedures and by-laws referenced in Schedule F - Owner Policies, Procedures, By-Laws and Other Requirements.

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

74. Personal Information
Personal Information means all information captured by the definition of "personal information" contained in MFIPPA, regardless of whether MFIPPA is applicable to such information.

75. Personnel
Personnel means with respect to a Person, its employees, invitees, directors, officers, representatives and agents, and any other person for whom the Person is directly or indirectly responsible under contract or law.

76. Pricing Form
Pricing Form means the pricing form set out in Schedule B – Pricing Form.

77. Procurement Process
Procurement Process has the meaning set out in the recitals to the Agreement.

78. Product
Product or Products means products, goods, material, machinery, devices, equipment, and fixtures forming the Work or any part thereof, but does not include Construction Equipment and Owner Supplied Material.

79. Project
Project means the project as described in row A.1 of the Information Sheet, of which the Work may be the whole or a part.

80. Proper Invoice
Proper Invoice means an invoice from the Contractor to the Owner on account as provided in 5.2 - OWNER'S OBLIGATION TO PAY, which is in compliance with the requirements of 5.3.

81. Provide
Provide means to supply and install.

82. Provisional Allowance
Provisional Allowance means the allowances, if any, identified in a schedule of prices in the Pricing Form for alterations, extras and deductions. Provisional Allowance items include overhead and profit.

83. QA/QC Plan
QA/QC Plan has the meaning set out in GC 3.13.2.

84. Recovery Plan
Recovery Plan has the meaning set out in GC 7.5.6.1.

85. Rules
Rules means the *Rules of Civil Procedure*, RRO 1990, Reg 194.

86. Scheduled Date for Substantial Performance of the Work
Scheduled Date for Substantial Performance of the Work means the scheduled date for Substantial Performance of the Work as set out in row C.4 of the Information Sheet, or if no such date is set out, the number of Calendar Days or Working Days after the Commencement Date specified in row C.4 of the Information Sheet.

87. Scheduled Date for Total Performance of the Work
Scheduled Date for Total Performance of the Work means the scheduled date for Total Performance of the Work as set out in row C.5 of the Information Sheet, or if no such date is set out, the number of Calendar Days or Working Days after the Commencement Date specified in row C.5 of the Information Sheet.

88. Schedules
Schedules means the schedules to the Agreement listed in paragraph 3.1 of Section 3 of the Agreement – DOCUMENTS COMPRISING THE AGREEMENT and includes any appendices thereto.

89. Shop Drawings
Shop Drawings means the drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, and other data which the Contractor provides to illustrate details of portions of the Work.

90. Site
Site means the designated site or location of the Work identified in row A.2 of the Information Sheet.

91. Special Specification
Special Specification means a Specification containing requirements specific to the Work that are not included in any Standard Specification or which are intended to amend, supplement or replace part or all of a Standard Specification, as the same may be amended, supplemented or replaced from time to time by the Owner.

92. Specifications
Specifications means that portion of the Agreement as attached or listed in Schedule H – Drawings and Specifications or elsewhere in the Agreement, wherever located and whenever issued, consisting of the written descriptions, requirements, instructions and standards for Products, systems, performance, installation, workmanship, quality, and the services necessary for the performance of the Work, as the same may be amended, supplemented or replaced from time to time by the Owner.

93. Standard Drawing
Standard Drawing means a Drawing listed in the Schedule H – Drawings and Specifications as a standard drawing, as the same may be amended, supplemented or replaced from time to time by the Owner. The City of Toronto's Standard Drawings can be found on-line at www.toronto.ca/ecs-standards. Any of the OPS' Standard Drawings can be acquired from the OPS. Information about OPS can be found at www.ops.on.ca.

94. Standard of Care
Standard of Care has the meaning set out in GC 3.13.1.

95. Standard Specification
Standard Specification means a Specification listed in Schedule H – Drawings and Specifications as a standard Specification, as the same may be amended, supplemented or replaced from time to time by the Owner. The City of Toronto's Standard Specifications can be found on-line at www.toronto.ca/ecs-standards. Any of the OPS' Standard Specifications can be acquired from the OPS.

96. Subcontractor
Subcontractor means a Person having a direct contract with the Contractor to perform a part or parts of the Work at the Site.

97. Subject Matter of Indemnity
Subject Matter of Indemnity has the meaning set out in GC 9.1.1.

98. Submittals
Submittals means documents or items required by the Agreement to be provided by the Contractor in accordance with the Agreement such as:

1. Shop Drawings, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and

2. As-Built Drawings and manuals to provide instructions as to the operation and maintenance of the Work.

99. Substantial Performance of the Work
Substantial Performance of the Work means:

1. the requirements set out in the Construction Act for a contract to be “substantially performed” have been met, including the Work being ready for use. For clarity, the Work shall not be “ready for use” until it has satisfied all the requirements for “ready for use” in the Specifications or elsewhere in the Agreement; and

2. the Contractor has submitted to the Contract Administrator all items required by the Specifications for Substantial Performance of the Work.

100. Substitution
Substitution has the meaning set out in GC 3.9.4.2.

101. Sub-subcontractor
Sub-subcontractor means a Person having a direct contract with a Subcontractor or Supplier or any other subcontractor or supplier at any tier, to perform a part or parts of the Work, or to supply Products. For greater certainty, Sub-subcontractors do not include the Subcontractors or the Suppliers.

102. Supplemental Instruction
A Supplemental Instruction means an instruction issued in writing, not involving adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, which are consistent with the intent of the Agreement and issued by the Contract Administrator to supplement the Agreement as required for the performance of the Work.

103. Supplier
Supplier means a Person having a direct contract with the Contractor to supply Products.

104. Temporary Work
Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding Construction Equipment, required for the execution of the Work but not incorporated into the Work.

105. Total Performance of the Work or Totally Performed
Total Performance of the Work or Totally Performed means when the entire Work (except for the correction of Deficiencies that are identified after the receipt of the Proper Invoice for payment, in accordance with 5.7) has been fully and totally performed to the requirements of the Agreement (including completion in accordance with the Construction Act and the correction of all Deficiencies that were identified prior to the receipt of such Proper Invoice) as certified by the Contract Administrator in the certificate of payment issued to the Owner pursuant to GC 5.7.1.4.

106. Total Price of Unit Price Work
Total Price of Unit Price Work means the aggregate amount of, for all items of Unit Price Work, the total units required by the Owner under the Agreement for each item of Unit Price Work multiplied by the Unit Price of each such item.

107. T&M Changes in the Work
T&M Changes in the Work means changes in the Work performed on a time and material basis in accordance with Section 3 of Schedule E – Valuing Changes in the Work.

108. T&M Price
T&M has the meaning set out in section 3.1 of Schedule E – Valuing Changes in the Work.

109. Unit Price
Unit Price means the unit price for an item of Unit Price Work set out in the Pricing Form.

110. Unit Price Work
Unit Price Work means the portion of the Work paid for on a Unit Price basis.

111. Utilities and Structures
Utilities and Structures has the meaning set out in GC 4.1.4.1.

112. Value Added Taxes
Value Added Taxes means such sum as shall be levied upon the Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Contract Price and includes the Goods and Services Tax, the Harmonized Sales Tax, and any similar tax, the collection of which have been imposed on the Contractor by the tax legislation.

113. Warranty Period
Warranty Period means the warranty period under the Agreement in respect of the Work (except for the Extended Warranty Periods as described in GC 9.3.6), which is two (2) years from the date of Substantial Performance of the Work or such other period as may be specified in row C.6 of the Information Sheet or elsewhere in the Agreement.

114. Work
The Work means the total construction, Products, installation, commissioning, checkout, start-up, testing and related services, deliverables and other obligations as set out in,

required by, reasonably inferable from or described in the Agreement. For clarity, the Work does not include the supply of Owner Supplied Material.

115. Working Day

Unless otherwise specified in row C.7 of the Information Sheet, Working Day means a Calendar Day other than:

1. a Saturday, Sunday, statutory holiday that is observed by the construction industry in the area of the Site; or

2. a Calendar Day identified by the City of Toronto as a designated or statutory holiday.

116. WSIB

WSIB means the Workplace Safety & Insurance Board.

SCHEDULE D

GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1 INTERPRETATION

1.1.1 The intent of the Agreement is to include the labour, Products and services required for the performance and completion of the Work by the Contractor in accordance with the Agreement or properly inferable from them.

1.1.2 If, subsequent to the Effective Date, changes are made by the Owner to any Standard Specifications, Special Specifications, Standard Drawings or any other Drawing or Specification which affect the cost of the performance of the Work or Contract Time, any claim by the Contractor must be submitted in accordance with the requirements of 7.7 - CLAIMS PROCEDURE and the Owner may submit a change in accordance with the requirements of 7.1 – OWNER'S RIGHT TO MAKE CHANGES.

1.1.3 Subject to any rights or remedies which may be available to the Owner, nothing contained in the Agreement shall create any contractual relationship between:

.1 the Owner and a Contractor Party performing any portion of the Work;

.2 the Contract Administrator and a Contractor Party performing any portion of the Work; or

.3 the Owner Representative and a Contractor Party performing any portion of the Work.

1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the Agreement in accordance with such recognized meanings.

1.1.5 In the Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all gender.

1.1.6 Neither the organization of the Specifications nor the arrangement of Drawings shall control the Contractor in dividing the Work among Subcontractors and Suppliers.

1.1.7 Subject to GC 1.1.9, if there is an inconsistency or a conflict within the Agreement:

.1 the order of priority of documents, from highest to lowest, shall be, unless otherwise provided for in row E.1 of the Information Sheet:

(1) any amendment to the Agreement made in accordance with the terms and conditions of the Agreement, shall take precedence only over those specific provisions of the Agreement expressly amended, in order of most recent date issued (if any),

(2) Schedule A - Information Sheet and Schedule B – Pricing Form,

(3) the Agreement (excluding the Schedules),

(4) the Schedules of Agreement in the following order: Schedule F – Owner Policies, Procedures, By-Laws and Other Requirements, Schedule D – General Conditions and all remaining Schedules other than Schedule H – Drawings and Specifications,

(5) Supplemental Instructions,

(6) the summary of the Work as described in the Specifications,

(7) the Specifications (other than the summary of the Work and the material and finishing schedules in the Specifications),

(8) material and finishing schedules in the Drawings and Specifications,

(9) the Drawings (other than the material and finishing schedules in the Drawings),

(10) Construction Schedule, and

(11) any other document identified elsewhere in the Agreement as a document forming part of the Agreement

.2 Drawings of larger scale shall govern over those of smaller scale of the same date;

.3 dimensions shown on Drawings shall govern over dimensions scaled from Drawings;

.4 detailed Drawings shall govern over general Drawings;

.5 later dated documents shall govern over earlier documents of the same type; and

.6 Special Specifications shall govern over Standard Specifications.

1.1.8 Subject to GC 1.1.9, if there is an inconsistency or a conflict within the contents of Standard Specifications and Standard Drawings, the order of priority from highest to lowest shall be:

.1 City of Toronto Standard Specifications and City of Toronto Standard Drawings, including any amendments; then

.2 OPS Standard Specifications and OPS Standard Drawings, including any amendments; then

.3 other Standard Specifications and Standard Drawings referenced in the City of Toronto Standard Specifications and City of Toronto Standard Drawings or OPS Standard Specifications and OPS Standard Drawings, including, as applicable, those produced by Canadian Standards Association, Canadian General

Standards Board, American Society for Testing and Materials and American National Standards Institute.

1.1.9 Notwithstanding GC 1.1.7 and 1.1.8, any provision within the Agreement establishing a higher standard of safety, reliability, durability, performance, service or quality shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance, service or quality.

1.1.10 The Owner shall provide the Contractor, without charge, one (1) electronic copy and up to three (3) hard copies of the Agreement other than the specifications of Canadian, United States of America or internationally recognized standards associations (including the Standard Specifications and Standard Drawings), in which case, such documents are the responsibility of the Contractor to obtain as the case may be. If requested by the Contractor, the Owner shall provide additional copies and the Contractor shall be responsible for the cost of printing, handling and shipping.

1.1.11 All Specifications, Drawings, models and other applicable Agreement documents and any other correspondence, data, plans, drawings, specifications, reports, estimates, summaries, photographs, models, mock-ups, information and documentation in any form, and copies thereof, furnished by the Contract Administrator or the Owner (collectively, the "**Owner Prepared Documents**") are not the property of the Contractor. All Owner Prepared Documents furnished by the Contract Administrator or Owner are to be used by the Contractor only with respect to the Work and are not to be used on other work. The Owner Prepared Documents are not to be copied or altered in any manner by the Contractor without the written authorization of the Contract Administrator or the Owner.

1.1.12 The Owner may issue to the Contractor one or more purchase orders in respect of the Work and/or Agreement. Any such purchase order shall be solely for the convenience of the Owner in administering its internal procedures, and notwithstanding any of the provisions set out in such purchase order, shall not create any binding obligations of either party or in any way be deemed to amend, restate, supplement or replace any of the Agreement or otherwise be considered to form a part of the Agreement.

1.2 ENTIRE AGREEMENT AND AMENDMENTS

1.2.1 The Agreement embodies and constitutes the sole and entire agreement between the parties hereto. There are no terms, obligations, covenants or conditions between the parties hereto, other than as contained herein. The Agreement is complementary and what is required by any:

.1 part thereof shall be considered as being required by the whole; and

.2 one document forming a part of the Agreement shall be as binding as if required by all. The Agreement supersedes all prior negotiations, representations or agreements, either written or verbal, relating in any manner to the Work, including the documents from the Procurement Process.

1.2.2 The Agreement may be amended only as provided in the Agreement. No amendment of the Agreement shall be valid unless executed by an instrument in writing by the parties, except as provided for in the Agreement. Neither the Agreement, nor any term hereof, can be amended in whole or in part, except by such instrument in writing, except as provided for in the Agreement, and no subsequent verbal agreement shall have any validity whatsoever.

1.2.3 Unless expressly provided otherwise in the Agreement including GC 2.4.1:

.1 no verbal arrangement or agreement, relating to the Work, the Agreement or any other matter concerning the Agreement or Work, will be of any force or effect unless it is in writing and signed by duly authorized representative of the Owner; and

.2 the Owner and the Contract Administrator shall not be bound by any verbal communication or representation or conduct whatsoever, including any instruction, amendment or clarification of the Agreement, or any representation, information, advice, inference or suggestion, from any Person (including but not limited to an elected official, Personnel, independent contractor or any other Person acting on the behalf of or at the direction of the Owner or Owner Representative or other representative of the Owner including the Contract Administrator) concerning the Agreement, or any other matter concerning the Agreement or Work. Where in the Agreement a reference is made to the express written agreement, approval or consent of the Owner or the Contract Administrator, it shall be understood that the Owner or the Contract Administrator, as applicable, shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition that deviates from or amends a provision set out in the Agreement, unless that deviation or amendment is expressly confirmed in the executed Agreement or in a written and express amendment to the Agreement by a duly authorized representative of the Owner.

1.3 LAW OF THE AGREEMENT AND INTERPRETATION

1.3.1 The laws of the Province of Ontario and the federal laws of Canada applicable therein shall govern the interpretation of the Agreement.

1.3.2 The phrase “includes”, “include” or “including” means “includes, without limitation” or “including” or “include, without limitation,”.

1.3.3 If any provision of the Agreement or its application to any party or circumstance is unenforceable, the provision shall be ineffective only to the extent of the unenforceability without: (.1) invalidating the remaining provisions of the Agreement; (.2) changing the fundamental nature of the obligations assumed by the parties; and (.3) affecting its application to other parties or circumstances.

1.3.4 Except as otherwise expressly provided for in the Agreement, any reference in the Agreement to a statute or code or rule promulgated under a statute or to any provision of a statute, code or rule promulgated under a statute shall be a reference to the statute, code, rule or provision, as amended, supplemented, re-enacted or

replaced from time to time. Any reference to a statute shall be a reference to the statute and its underlying regulations.

1.3.5 The terms of the Agreement, which expressly or by their nature are intended to survive the termination or discharge of the Agreement (including all indemnities, representations and warranties of the Contractor) shall survive such termination or discharge.

1.3.6 For the purposes of the Agreement, all documents and communications pertaining to the Agreement shall be in the English language.

1.4 RIGHTS AND REMEDIES

1.4.1 Except as expressly provided in the Agreement, the duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by Laws.

1.4.2 No act or failure to act by the Owner, the Contract Administrator or Contractor shall, except as may be specifically agreed:

.1 constitute a waiver of any right or duty afforded any of them under the Agreement;

.2 constitute an approval of or acquiescence in any breach, default or non-observance thereunder; or

.3 operate as a waiver of any such right or duty of the Owner in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way such right or duty in respect of any such continuing or subsequent default, breach or non-observance.

1.4.3 The Contractor acknowledges and agrees that the exercise by the Owner of any of its rights or remedies under the Agreement, including the Owner's rights and remedies under 11. DEFAULT, TERMINATION AND SUSPENSION shall not result in irreparable harm to the Contractor and the Contractor shall not seek any order for injunctive relief, specific performance, certiorari or mandamus from any arbitral tribunal or court of law in relation to such exercise.

1.5 ASSIGNMENT AND SUCCESSION

1.5.1 The Contractor shall not assign the Agreement, either in whole or in part, without the written consent of the Owner, which consent may be withheld or given subject to such terms and conditions as the Owner deems appropriate.

1.5.2 Notwithstanding the foregoing, the Contractor acknowledges and agrees that the Owner may assign the Agreement, or any portion thereof, without the consent of the Contractor.

1.5.3 The Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

1.6 RECEIPT OF AND ADDRESSES FOR NOTICES AND DOCUMENTATION

1.6.1 Subject to GC 1.6.3, the parties agree that any Notice in Writing required to be given or that may be given under this Agreement shall be given in writing only by one of the following methods:

.1 electronic mail to the name and address set out in row A.3 of the Information Sheet, including the name and telephone number of a person at the sender to contact in the event of a transmission problem;

.2 delivery by hand to the name and address set out in row A.3 of the Information Sheet;

.3 registered mail to the name and address set out in row A.3 of the Information Sheet; or

.4 courier to the name and address set out set out in row A.3 of the Information Sheet.

1.6.2 For purposes of this Agreement:

.1 a Notice in Writing sent by electronic mail which is transmitted prior to 5:00 p.m. on a Working Day, shall be deemed to have been received by the recipient on that Calendar Day, or on the next Working Day, if delivered after 5:00 p.m. or on a Calendar Day which is not a Working Day; provided that during the transmission of which no indication of failure of receipt is communicated to the sender;

.2 a Notice in Writing delivered by hand or courier prior to 5:00 p.m. on a Working Day, shall be deemed to have been received by the recipient on such Calendar Day of delivery, or on the next Working Day, if delivered after 5:00 p.m. or on a Calendar Day which is not a Working Day; or

.3 a Notice in Writing which is sent by registered mail is deemed to be received by the party to whom the Notice in Writing is addressed on the fifth (5th) Working Day after the date of mailing, where the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing.

1.6.3 Notwithstanding GC 1.6.1, the parties agree that documents and notices required to be given or that may be given under the Construction Act shall be given in writing by a means or method permitted for under the Construction Act unless such means or methods are stipulated elsewhere in the Agreement.

1.6.4 Either Party may change its address or other contact particulars as set out in GC 1.6.1 by giving a Notice in Writing to the other in the manner set out in GC 1.6.1.

1.7 CONFLICTS OF INTEREST

1.7.1 The Contractor shall:

.1 avoid any Conflict of Interest in the performance of its contractual obligations;

.2 disclose to the Owner without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations;

.3 comply with any reasonable requirements prescribed by the Owner to resolve any Conflict of Interest; and

.4 comply with the other requirements of Chapter 195, Purchasing, of the Toronto Municipal Code in respect of conflicts of interest and unfair advantages (as defined therein).

For clarity, the Owner shall be entitled to exercise any rights or remedies which may be available to the City of Toronto pursuant to Chapter 195, Purchasing, of the Toronto Municipal Code in respect of conflicts of interest and unfair advantages (as defined therein).

1.8 MISCELLANEOUS

1.8.1 The Contractor is an independent contractor and is not an agent of the Owner.

1.8.2 The Contractor shall not publish, issue or make any statements or news release, electronic, graphic, pictorial or otherwise, concerning the Agreement, the Work, or the Project, without the express prior written consent of the Owner.

2. ADMINISTRATION OF THE AGREEMENT

2.1 AUTHORITY OF THE CONTRACT ADMINISTRATOR AND THE OWNER REPRESENTATIVE

2.1.1 The Contract Administrator shall have no authority to bind the Owner, unless otherwise provided for in writing by the Owner.

2.1.2 The Owner Representative shall be the Owner's representative during construction and until the issuance by the Contract Administrator of the Final Acceptance Certificate. Only the Owner Representative shall have the authority to bind the Owner for the purposes of the Agreement. The Owner Representative may be a Personnel of the Owner or any other Person including the same Person as the Contract Administrator.

2.1.3 The Owner Representative will execute Change Orders and Change Directives as provided in 7.2 - CHANGE ORDER and 7.3 - CHANGE DIRECTIVE.

2.1.4 All instructions and documents issued to the Contractor will be issued by the Contract Administrator or the Owner Representative, as the case may be, and the Contractor shall not recognize instructions issued by other Personnel of the Owner or any other

document issued by other Personnel of the Owner as amending, supplementing or clarifying the Agreement.

2.2 ROLE OF THE CONTRACT ADMINISTRATOR

2.2.1 The Contract Administrator will provide administration of the Agreement as described in the Agreement. The Contract Administrator may be a third party, including an architect or engineer or other consultant, or a Personnel of the Owner.

2.2.2 The Contract Administrator will visit the Site at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Agreement.

2.2.3 If the Owner and the Contract Administrator agree, the Contract Administrator will provide at the Site, one or more project representatives to assist in carrying out the Contract Administrator's responsibilities.

2.2.4 The Contract Administrator will promptly inform the Owner of the date of receipt of Proper Invoices as provided in 5.4 - PROGRESS PAYMENT.

2.2.5 The Contract Administrator will review the Work for its conformity with the Agreement and record the necessary data to establish payment quantities under the schedule of quantities and Unit Prices for Unit Price Work or to assess the value of the Work completed in the case of Fixed Price Work. Based on such records and the Contract Administrator's evaluation of the Proper Invoices, the Contract Administrator will determine the amounts owing to the Contractor under the Agreement and will issue certificates for payment as provided in 5. CONTRACT PRICE AND PAYMENT.

2.2.6 The Contract Administrator will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for health and safety precautions and programs required in connection with the Work in accordance with the applicable health and safety Laws or general construction practice. The Contract Administrator will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement. The Contract Administrator will not have control over, charge of or be responsible for the acts or omissions of the Contractor Parties performing portions of the Work.

2.2.7 The Contract Administrator will be, in the first instance, the interpreter of the requirements of the Agreement.

2.2.8 Matters in question relating to the performance of the Work or the interpretation of the Agreement shall be initially referred in writing to the Contract Administrator by the party raising the question for interpretations and findings and copied to the other party.

2.2.9 Interpretations and findings of the Contract Administrator shall be consistent with the intent of the Agreement. In making such interpretations and findings, the Contract Administrator will not show partiality to either the Owner or the Contractor.

2.2.10 The Contract Administrator's interpretations and findings will be given in writing to the parties within a reasonable time and shall be subject to either party's right to dispute such interpretations and findings in accordance with 12. DISPUTE RESOLUTION.

2.2.11 The Contract Administrator will investigate all Claim Notices made by the Contractor pursuant to 7.7 - CLAIMS PROCEDURE and will make findings as set out in 7.7 - CLAIMS PROCEDURE and issue appropriate instructions.

2.2.12 During the progress of the Work the Contract Administrator will provide Supplemental Instructions to the Contractor with reasonable promptness or in accordance with a schedule for such Supplemental Instructions agreed to by the Contract Administrator and the Contractor.

2.2.13 The Contract Administrator will review and take appropriate action upon Shop Drawings, samples and other Contractor's Submittals and submissions, in accordance with the Agreement.

2.2.14 The Contract Administrator will prepare Change Orders and Change Directives as provided in 7.2 - CHANGE ORDER and 7.3 - CHANGE DIRECTIVE. For clarity, Change Directives must be signed by the Owner and Change Orders must be signed by both the Owner and the Contractor.

2.2.15 The Contract Administrator and the Contractor will jointly conduct reviews of the Work to determine the date of Substantial Performance of the Work and Total Performance of the Work as provided in 5.5 - SUBSTANTIAL PERFORMANCE OF THE WORK and 5.7 - PAYMENTS UPON TOTAL PERFORMANCE OF THE WORK, respectively.

2.2.16 All certificates issued by the Contract Administrator will be to the best of the Contract Administrator's knowledge, information and belief. By issuing any certificate, the Contract Administrator does not guarantee the Work is correct or complete.

2.2.17 The Contract Administrator will receive and review written warranties and related documents required by the Agreement and provided by the Contractor.

2.2.18 If the Contract Administrator observes that any Personnel of the Contractor, Subcontractors, Suppliers or Sub-subcontractors is potentially incompetent, disorderly or a detriment to the Project, then the Contract Administrator shall provide Notice in Writing to the Contractor and the Contractor, at the Contractor's cost and without any extension of the Contract Time, shall, in accordance with its obligations under the Agreement, immediately remove such Personnel from the Site if the Contractor determines that such Personnel should be immediately removed from the Site. If such Personnel is removed, the Contractor, at the Contractor's cost and without any extension of the Contract Time, shall provide replacement Personnel acceptable to the Contract Administrator. Such incompetent, disorderly or detrimental Personnel shall not return to the Site without the prior written consent of the Contract Administrator.

2.2.19 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary, for the following reasons:

.1 for the Contractor to remedy its non-compliance with the provisions of the Agreement;

.2 to facilitate the checking of any portion of the Contractor's construction layout;

.3 to facilitate the inspection of any portion of the Work by the Contract Administrator.

The Contractor shall not be entitled to any increase in the Contract Price or extension of the Contract Time in these circumstances.

2.3 REVIEW AND INSPECTION OF THE WORK

2.3.1 The Owner and the Contract Administrator shall have access to the Work at all times. The Contractor shall provide sufficient, safe and proper facilities and assistance at all times for the review of the Work by the Contract Administrator and Owner and the inspection of the Work by Governmental Authorities and quasi-governmental authorities. If parts of the Work are in preparation at locations other than the Site, the Owner and the Contract Administrator shall be given access to such Work whenever it is in progress.

2.3.2 If tests, inspections or approvals for the Work are required by the Agreement, or by the Contract Administrator's instructions, or by Laws, the Contractor shall give the Contract Administrator no less than three (3) Working Days notification of when the Work will be ready for review and inspection and make available for inspection or testing a sample of any Product. All inspection, sampling, and testing of Products shall be carried out on a random basis in accordance with the standard inspection or testing methods required for the Product. The Contractor shall arrange for and shall give the Contract Administrator reasonable notification of the date and time of inspections by other authorities and shall notify the Contract Administrator of the sources of supply of Products sufficiently in advance of the Product shipping dates to enable the Contract Administrator to perform any required inspection, sampling and testing. The Contractor shall obtain for the Contract Administrator the right to enter onto the premises of the Product manufacturer or supplier to carry out such inspection, sampling and testing. The Owner shall not be responsible for any delays to the performance of the Work where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling and testing.

2.3.3 The Contractor shall furnish promptly to the Contract Administrator, and in no event later than within fourteen (14) Calendar Days after receipt thereof, two copies of certificates and inspection reports relating to the Work prepared by Governmental Authorities and quasi-governmental authorities.

2.3.4 If the Contractor covers, or permits to be covered, Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Work, have the inspections or tests satisfactorily completed, and make good covering Work at the Contractor's cost and without any extension of the Contract Time.

2.3.5 Subject to GC 2.3.4, the Contract Administrator may order any portion or portions of the Work to be examined to confirm that such Work is in accordance with the requirements of the Agreement. If the Work is not in accordance with the requirements of the Agreement, the Contractor shall correct the Work and pay the cost of examination and correction and without any extension of the Contract Time. If the Work is in accordance with the requirements of the Agreement, the Owner shall pay the cost of examination and restoration.

2.3.6 The Contractor shall pay the cost of making any test or inspection whether to be performed by the Contractor, Contract Administrator, Owner, Governmental Authorities or quasi-governmental authorities, including the cost of samples required for such test or inspection, if such test or inspection is required by the Agreement or is required by Laws.

2.3.7 If any portion or portions of the Work is found to be Deficient in initial tests or inspections as determined by the Contractor, Owner, Contract Administrator, Governmental Authorities or quasi-governmental authorities, the costs of re-testing and re-inspections shall be borne by the Contractor and with no adjustment in the Contract Price or any extension of the Contract Time.

2.3.8 The Contractor shall provide any documentation requested by the Owner, where that documentation relates to any of the Work. The Contractor shall ensure that all such documentation is provided no later than ten (10) Calendar Days following the receipt of any such request.

2.3.9 The Contract Administrator and Owner will each have authority to reject any portion of the Work which in the Contract Administrator's or Owner's opinion is Deficient. Whenever the Contract Administrator or Owner considers it necessary or advisable, the Contract Administrator or Owner will have authority to require inspection or testing of Work, whether or not such Work is fabricated, installed or completed.

2.3.10 Any review, inspection, comment, acceptance, approval**,** audit, survey or rejection, or failure to review, inspect, comment, accept, approve, audit, survey or reject, by the Owner or the Contract Administrator of the Work (including Products or any documents prepared by the Contractor, Subcontractors, Suppliers or Sub-subcontractors, in whole or in part) or the issuance of any certificates or the making of any payment by the Owner or the presence of the Owner or the Contract Administrator at the Site or the receipt or taking delivery by the Owner of any Products, shall not:

.1 constitute acceptance of the Work (including Products) or any Deficiencies or relieve the Contractor of its responsibility therefor;

.2 impose on the Owner or the Contract Administrator the responsibility for the sequencing, scheduling or progress of the Work;

.3 be deemed to confirm that any schedule is a reasonable plan for providing the Work in accordance with the relevant Construction Schedule;

.4 constitute an approval, disapproval, endorsement or confirmation of any Work (including Products or any document prepared by the Contractor, Subcontractors, Suppliers or Sub-subcontractors, in whole or in part) or an acknowledgment by the Owner or the Contract Administrator that any Work (including Products and such documents) satisfies the requirements of the Agreement;

.5 affect or change the Contractor's obligation to perform the Work in accordance with the Agreement and relieve the Contractor from any liability arising from its failure to properly perform the Work;

.6 give rise to any duty or responsibility of the Owner or the Contract Administrator to the Contractor Parties performing any of the Work; or

.7 except as otherwise provided in the Agreement, have the effect of waiving or diminishing any obligation of, or limiting any liability of, the Contractor or of transferring any obligation under the Agreement from the Contractor to the Owner or the Contract Administrator or otherwise have the effect of amending the Agreement.

Any review or approval by the Owner and/or Contract Administrator is intended only to ascertain that the document or the performance of the Contractor's duties, liabilities, responsibilities or obligations under the Agreement including the Work generally meets the intention of the Agreement and is not an assurance or confirmation of the adequacy, quality, fitness, suitability or correctness of the Contractor's obligations, responsibilities, duties and liabilities under the Agreement including the Work, for which the Contractor is solely responsible in accordance with the Agreement.

2.3.11 Any Deficiencies arising from Work done by the Contractor without consulting the Contract Administrator or the Owner when the Work required the acceptance of or review with same, or when the Contractor should have sought the acceptance of Contract Administrator or Owner, shall be corrected at the cost of the Contractor (without increase in the Fixed Price or Unit Prices) and without any extension of the Contract Time.

2.4 EMERGENCY SITUATIONS

2.4.1 If the Contract Administrator or Owner determines, in their sole and absolute discretion, that there is an emergency situation, then the Contract Administrator or Owner, as applicable, may instruct the Contractor to take action to remedy the situation verbally or in writing. If such instruction is verbal, the Contract Administrator or Owner, as applicable, shall provide timely confirmation of such instruction in writing. If the Contractor does not take timely action, or if the Contractor is not available, the Contract Administrator or Owner may direct others to remedy the situation. If the emergency situation is the fault of the Contractor, the remedial Work shall be done at the cost of the Contractor and without any extension of the Contract Time.

2.5 DEFICIENCIES

2.5.1 The Contractor shall promptly correct all Deficiencies, including Deficiencies that have been identified by the Contract Administrator and/or Owner, at the Contractor's cost (and with no adjustment in the Fixed Price or Unit Prices) and without any extension of the Contract Time, whether or not the Deficiency has been incorporated in the Work and whether or not the Deficiency is the result of poor workmanship, use of Deficient products or damage through carelessness or other act or omission of a Contractor Personnel, provided that:

.1 the Contractor shall correct, in a manner acceptable to the Owner or the Contract Administrator, all Deficiencies, whether or not they are specifically identified by the Contract Administrator or Owner; and

.2 the Contractor shall prioritize the correction of any Deficiencies which, in the sole discretion of the Owner, adversely affects the work or operations of the Owner or other contractors or there is a risk of bodily injury to any individual or physical loss of or damage to property.

2.5.2 The Contractor shall remove rejected Products from the Site expeditiously after the notification to that effect from the Contract Administrator or Owner. Where the Contractor fails to comply with such notice, the Contract Administrator or Owner may cause the rejected Products to be removed from the Site and disposed of in what the Contract Administrator or Owner considers to be the most appropriate manner, and the Contractor shall pay the costs of disposal.

2.5.3 The Contractor shall promptly make good damage or destruction to the Owner's or other contractors' work, other property of the Owner, or any other property as a result of Deficiencies or the correction of Deficiencies at the Contractor's cost (and with no adjustment in the Fixed Price or Unit Prices) and without any extension of the Contract Time.

2.5.4 If the Contractor fails to promptly carry out the correction of Deficiencies or make good damage or destruction to the Owner's or other contractors' work, other property of the Owner, or any other property as required by this 2.5 – DEFICIENCIES, the Owner may correct the Deficiencies or make good such work or property and hold the Contractor responsible for all costs thereof.

2.5.5 If in the opinion of the Contract Administrator or Owner it is not expedient to correct a Deficiency, the Owner may, in accordance with 5.10 – OWNER'S SET-OFF, set-off the greater of (i) the difference in value between the Work as performed and that called for by the Agreement and (ii) the cost to correct such Deficiency. If the Owner and the Contractor do not agree on the difference in value or the cost to correct such Deficiency, they shall refer the matter to the Contract Administrator for determination.

2.5.6 No payment by the Owner under the Agreement nor partial or entire use or occupancy of the Work by the Owner shall constitute an acceptance of any portion of the Work (including Products) which is Deficient.

2.6 CONTRACTOR RECORDS

2.6.1 Prior to the issuance of the final certificate for payment, and thereafter until the later of two (2) years after the end of the Warranty Period, or all Claims in respect of the Agreement being settled, the Contractor shall maintain and keep accurate Contractor Records in respect of Work (including in respect of Fixed Price Work, Construction Equipment, Products, component costs reflecting the taxes and customs duties, including excise taxes and changes in the Work). Without limiting the generality of the foregoing, the Contractor Records shall be of sufficient detail to support the total cost of any Work (other than Fixed Price Work), changes in the Work, Cash Allowances expenditures and taxes and duties. For Fixed Price Work, the Contractor Records shall be of sufficient detail for the Owner to ascertain the Contractor's compliance with the Fair Wage Policy, if any.

2.6.2 The Contractor shall cause the Subcontractors, Suppliers and Sub-subcontractors, to:

.1 maintain and keep accurate Contractor Records in respect of all items for which the Contractor is required by the Agreement to maintain and keep Contractor Records; and

.2 allow the Owner to inspect and audit such Contractor Records, for the same period of time.

2.6.3 Without limiting the generality of 13.3, the Owner may inspect and audit the Contractor Records at any time during the period in which the Contractor is required to maintain and keep such Contractor Records. The Contractor shall, at its cost, supply certified copies (and notarized if maintained outside of Ontario) of any part of the Contractor Records required whenever requested by the Owner.

3. EXECUTION OF THE WORK

3.1 CONTROL AND COMMENCEMENT OF THE WORK

3.1.1 The Contractor shall, and shall cause the Subcontractors, Suppliers and Sub-subcontractors to, perform the Work in accordance with the Agreement and comply with the Agreement. The Contractor shall have total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Agreement.

3.1.2 The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Work under the Agreement, even if such means, methods, techniques, sequences or procedures are set out in the Owner Prepared Documents.

3.1.3 The Contractor shall not enter upon or occupy any property of a third party for any purpose, unless the Contractor has received prior written permission from the property owner.

3.1.4 Except for such Work as may be required by the Contract Administrator to maintain the Work in a safe and satisfactory condition or as otherwise expressly allowed by the

Agreement, the Contractor shall not carry on Work at the Site on Calendar Days other than Working Days without permission in writing from the Contract Administrator.

3.1.5 The Contractor shall, at all times and as part of the Work, fully assist, co-operate, consult and co-ordinate with the Contract Administrator, the Owner Representative and any other Persons retained or identified by the Owner which are related to or connected with the Project or performing work at or near the Site. The objective of such assistance, co-operation, consultation and co-ordination is to make certain the Work is properly co-ordinated with and integrated with the work, services and operations of such entities.

3.1.6 The Contractor shall not commence the Work or deliver anything to the Site prior to the Commencement Date. If no date is set out for the Commencement Date in row C.2 of the Information Sheet, the Owner shall be entitled to issue a Notice in Writing to the Contractor directing the Contractor to commence the performance of the Work on the date described therein.

3.2 SUPPLEMENTAL INSTRUCTIONS

3.2.1 The Contract Administrator may, during the progress of the Work, issue Supplemental Instructions, which shall be deemed incorporated into and forming part of the Agreement. Supplemental Instructions shall only be issued by the Contract Administrator.

3.2.2 Upon receipt of a Supplemental Instruction, the Contractor shall immediately proceed to perform the Work in accordance with such Supplemental Instruction and otherwise in accordance with the Agreement, unless the Contractor is of the opinion that such Supplemental Instructions require a change in the Contract Price and/or extension of the Contract Time, in which case the Contractor shall proceed in accordance with GC 3.2.3.

3.2.3 If the Contractor, after receiving Supplemental Instructions, is of an opinion that such Supplemental Instructions require a change in the Contract Price and/or extension of the Contract Time, then the Contractor shall promptly notify the Owner and Contract Administrator of such and submit a Claim Notice in accordance with the requirements of 7.7 - CLAIMS PROCEDURE. The Contractor shall not proceed with the Work in respect of such Supplemental Instruction until it has received further instruction from the Contract Administrator. If, pursuant to 7.7 - CLAIMS PROCEDURE it is subsequently determined that the Claim Notice in respect of such Supplemental Instructions is valid, then such determination shall be reflected in a Change Directive issued pursuant to 7.3 – CHANGE DIRECTIVE.

3.3 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.3.1 The Owner reserves the right to award separate contracts in connection with other parts of the Project to other contractors and to perform work with its Personnel. Such work by other contractors or Owner’s Personnel may include utility relocation and surveying, testing, sampling and quality assurance estimates prior to, and possibly during, the Work.

3.3.2 Subject to and without limitation to 4.2 – HEALTH AND SAFETY, when separate contracts are awarded for other parts of the Project, or when work is performed by the Owner's Personnel, the Contractor shall:

.1 co-ordinate, schedule and sequence the activities and work of other contractors and Owner's Personnel on the Project with the Work; and

.2 promptly report to the Contract Administrator in writing, and in no event later than within five (5) Working Days of discovery thereof, any apparent deficiencies in the work of other contractors or of the Owner's Personnel, where such work affects the proper execution of any portion of the Work, prior to proceeding with that portion of the Work. Failure by the Contractor to so report shall invalidate any Claims against the Owner by reason of deficiencies in the work of other contractors or Owner's Personnel except those deficiencies not then reasonably discoverable,

3.3.3 Where the Agreement identifies work to be performed by other contractors or the Owner's Personnel, the Contractor shall co-ordinate the Construction Schedule (and access to the Site) with the work of other contractors and the Owner's Personnel so as to mitigate the risk of delay and disruption under the Agreement and for the other contractors and the Owner's Personnel.

3.3.4 Disputes and other matters in question between the Contractor and other contractors shall be dealt with as provided in 12. DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The Contractor shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the Owner contains a similar agreement to arbitrate.

3.3.5 Notwithstanding that the Owner may award separate contracts in connection with other parts of the Project to other contractors and perform work with its Personnel, the performance of such work or connection of such work onto the Work, by the Owner's Personnel or by other contractors, will not limit or relieve the Contractor of its obligations and responsibilities under the Agreement (including warranty) unless a Deficiency has been created by the Owner's Personnel or Owner's other contractors.

3.3.6 When requested in writing by the Contract Administrator or Owner, the Contractor shall stop Work on the Project so as to avoid interference with work being performed at adjacent or impacted construction projects of the Owner that are unrelated to the Project. The Contractor shall not be entitled to an extension of the Contract Time or to an increase in the Contract Price unless, and only to the extent, the event which caused the cessation of the Work would entitle the Contractor to an extension of the Contract Time or the reimbursement of the Contractor's Losses as provided in GC 7.5.1, 7.5.2 or 7.5.3.

3.4 TEMPORARY WORK

3.4.1 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, removal and repair of Temporary Work.

3.4.2 The Contractor shall engage and pay for registered professional engineering Personnel skilled in the appropriate disciplines to perform those functions referred to in GC 3.4.1 where required by Laws or by the Agreement and in all cases where such Temporary Work is of such a nature that professional engineering skill is required or prudent to produce safe and satisfactory results.

3.4.3 Notwithstanding the provisions of 3.1 - CONTROL OF THE WORK, GC 3.4.1 and 3.4.2 or provisions to the contrary elsewhere in the Agreement, but subject to 3.6 – DOCUMENT REVIEW, where the Agreement includes designs for Temporary Work:

.1 such designs shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design; and

.2 the Contractor shall, however, be responsible for the execution of such design in the same manner as for the execution of the Work.

3.4.4 2.3 - REVIEW AND INSPECTION OF THE WORK and the requirements for Shop Drawings in 3.11 – SHOP DRAWINGS also apply to the Temporary Work.

3.5 CONSTRUCTION SCHEDULE

3.5.1 The Contractor shall:

.1 prepare and submit to the Owner and the Contract Administrator within seven (7) Calendar Days from the Commencement Date, unless otherwise stipulated elsewhere in the Agreement or agreed to by the Contract Administrator, a construction schedule for their review and acceptance that indicates the timing of the major activities of the Work and provides sufficient detail of the critical events and their inter-relationship to demonstrate the Work shall be performed in conformity with the Contract Time. The construction schedule shall:

(1) take into account the phasing and sequencing of construction and the completion dates contained in the Agreement or as otherwise required by the Contract Administrator or the Owner;

(2) include and conform to the Key Work Milestones or any other milestones for the performance of the Work set out in the Agreement;

(3) be of a computerised type and provided in both electronic format and hard copy;

(4) show the Project critical path and the critical path must be identified in a contrasting colour (red) from the other activities;

(5) clearly show, in weekly intervals, the logic and timing of major activities, proposed start dates and estimated duration for activities; and

(6) have a level of detail sufficient to identify the Contractor and each specific Subcontractor and their respective parts of the Work and the specific location thereof.

Once approved by the Owner and the Contract Administrator, the construction schedule submitted by the Contractor under this GC 3.5.1.1, as updated by the Contractor and approved by the Owner and Contract Administrator, shall become the "**Construction Schedule**". The Construction Schedule (and any approved updates) shall be the benchmark against which the progress of the Work is to be measured for the purposes of the Agreement;

.2 monitor the progress of the Work relative to the Construction Schedule;

.3 maintain a Current Schedule and update the Current Schedule every two (2) weeks, unless otherwise stipulated elsewhere in the Agreement or agreed to by the Contract Administrator, and provide the updated Current Schedule to the Owner and Contract Administrator. For clarity, the Current Schedule shall be used for information purposes only;

.4 advise the Contract Administrator of any revisions required to the Construction Schedule as the result of extensions of the Contract Time as provided in 7.CHANGES IN THE WORK and provide the Owner and Contract Administrator for approval, an updated Construction Schedule reflecting such extensions; and

.5 perform the Work in accordance with the Construction Schedule including the Key Work Milestones.

3.5.2 If the Contractor fails to submit the initial or any updated Construction Schedule satisfactory to the Contract Administrator, the Owner shall be entitled to withhold or delay payments under the Agreement until the Contractor complies with the requirements of GC 3.5.1.

3.6 DOCUMENT REVIEW AND EXAMINATION OF SITE

3.6.1 The Contractor shall review the Agreement in accordance with the Standard of Care. The Contractor shall report to the Contract Administrator, no later than three (3) Working Days after discovery by the Contractor, any error, inconsistency or omission the Contractor may discover. The Contractor shall not be liable for Losses resulting from errors, inconsistencies or omissions in the Agreement, which the Contractor did not discover, provided that the Contractor exercised such Standard of Care. The Contractor shall be liable and responsible for Losses (and without any extension of the Contract Time) resulting from errors, inconsistencies or omissions in the Agreement if it recognizes, or should have recognized, exercising such Standard of Care, such errors, inconsistencies or omissions, yet fails to raise such errors,

inconsistencies or omissions to the Contract Administrator's attention prior to performing the affected portion of the Work.

3.6.2 If the Contractor does discover any error, inconsistency or omission in the Agreement or has any doubt as to the meaning or intent of any part thereof, the Contractor shall not proceed with the Work affected until the Contractor has reported to the Contract Administrator and received corrected or missing information, instructions or explanations from the Contract Administrator in writing. The Contractor shall comply with such information, instructions or explanations. The Contractor shall cooperate in good faith with the Owner and the Contract Administrator to resolve any error, omission or inconsistency in the Agreement in a manner that will not result in increased cost to the Owner or any extension of the Contract Time.

3.6.3 The Owner makes no representation, warranty or guarantee about the accuracy, completeness, feasibility or any other aspect of the documents or information provided by the Owner including interpretations of data or opinions expressed in any subsurface report or geotechnical report. Accordingly, the Contractor shall review and otherwise deal with such documents or information in accordance with the requirements of GC 3.6.1 and 3.6.2.

3.6.4 Without limitation to any specific obligations in the Drawings and Specifications in respect of the examination of the Site and surrounding area, the Contractor represents and warrants that in entering into the Agreement with the Owner and acting in accordance with the Standard of Care, it has examined the Site and surrounding area and it has satisfied itself as to the scope and character of the Work, all conditions and information affecting the Work, including the nature of the Work and the Site, access to the Site and weather conditions or that, not having acted in such a manner, the Contractor has assumed and does hereby assume all risk of conditions now existing or arising in the course of the Work which might or could make the Work more expensive or more onerous to fulfil and which a contractor acting in accordance with the Standard of Care would have discovered. The cost and time of all conditions referred to in this GC 3.6.4 form part of the Fixed Price and Unit Prices and the Contract Time and shall not be the basis for an increase in the Fixed Price or Unit Prices or any extension of the Contract Time.

3.7 SUPERVISION

3.7.1 The Contractor shall provide all necessary supervision.

3.7.2 The Contractor shall:

.1 furnish competent and adequate Personnel, who shall be in attendance at the Site at all times, as necessary, for the proper administration, co-ordination, supervision and superintendence of the Work;

.2 organize the procurement of all Products and Construction Equipment so that they will be available in advance of the time they are needed for the Work; and

.3 keep an adequate force of skilled Personnel on the job to complete the Work in accordance with all requirements of the Agreement.

3.7.3 Prior to commencement of the Work, unless otherwise stipulated elsewhere in the Agreement or agreed to by the Contract Administrator, the Contractor shall select a competent and experienced:

.1 Project manager (the "**Contractor Project Manager**") who shall:

(1) be in attendance at the Site or otherwise engaged in the Work at all times, or for such other period of attendance as required by the Agreement including the Specifications;

(2) have full responsibility for the prosecution of the Work, with full authority to act in all matters as may be necessary for the proper co-ordination, supervision, direction and technical administration of the Work;

(3) attend site meetings in order to render reports on the progress of the Work; and

(4) have authority to bind the Contractor in all matters related to the Agreement; and

.2 supervisor of the Site (the "**Contractor Site Supervisor**") who shall be in attendance at the Site at all times while Work is being performed, or for such other period of attendance as required by the Agreement including the Specifications and shall have full responsibility for the day to day field supervision and superintendence of the Work.

3.7.4 The Contractor Project Manager and the Contractor Site Supervisor, if applicable:

.1 shall represent the Contractor at the Site; and

.2 may be the same individual if specified as such in the Specifications.

3.7.5 Information, notices and instructions given to the Contractor Project Manager and/or the Contractor Site Supervisor, if applicable, shall be deemed to have been received by the Contractor, other than notices that are required to be delivered in accordance with 1.6 - RECEIPT OF AND ADDRESSES FOR NOTICES AND DOCUMENTATION.

3.7.6 At the request of the Owner, the Contractor shall supply complete information including written job-specific qualification records for any Personnel of the Contractor, Subcontractors, Suppliers or Sub-subcontractors. Such records will detail the activities that each such Personnel has been trained and qualified to perform.

3.7.7 If the Owner observes that any Personnel of the Contractor, Subcontractors, suppliers or Sub-subcontractors is potentially incompetent, disorderly or a detriment to the Project, then the Owner shall provide Notice in Writing to the Contractor and the Contractor, at the Contractor's cost and without any extension of the Contract Time, shall, in accordance with its obligations under the Agreement, immediately remove such Personnel from the Site if the Contractor determines that such Personnel should be immediately removed from the Site. If such Personnel is

removed, the Contractor, at the Contractor's cost and without any extension of the Contract Time, shall provide replacement Personnel acceptable to the Owner. Such incompetent, disorderly or detrimental Personnel shall not return to the Site without the prior written consent of the Owner or Contract Administrator.

3.7.8 Without limiting the obligations of the Contractor described in 3.3 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and 4.2 – HEALTH AND SAFETY, if the Owner or Contract Administrator observes that any Personnel of the Contractor, Subcontractors, Suppliers or Sub-subcontractors poses an imminent risk to the health and safety of other persons, then the Owner or Contract Administrator can require the Contractor to immediately remove such Personnel from the Site at the Contractor's cost and without any extension of the Contract Time, and in accordance with its obligations under the Agreement. The Contractor, at the Contractor's cost and without any extension of the Contract Time, shall provide replacement Personnel acceptable to the Owner. The Personnel that posed an imminent risk to the health and safety of other persons shall not return to the Site without the prior written consent of the Owner or Contract Administrator.

3.7.9 The Contractor shall provide the Owner and the Contract Administrator with the names, work addresses and mobile telephone numbers of the Contractor Project Manager, the Contractor Site Supervisor and other responsible field Personnel who may be contacted for emergency and other reasons during non-working hours and update as necessary.

3.8 SUBCONTRACTORS AND SUPPLIERS

3.8.1 The Contractor may, subject to this 3.8 – SUBCONTRACTORS AND SUPPLIERS, subcontract portions of the Work, which shall not exceed the portion set out in row E.2 of the Information Sheet, to Subcontractors and Suppliers. The Contractor shall, and shall cause the Subcontractors, Suppliers and Sub-subcontractors to, perform the Work in accordance with the Agreement. The Contractor shall be fully responsible to the Owner for the Subcontractors', Suppliers' and Sub-subcontractors' failure to abide by the obligations of the Agreement.

3.8.2 The Contractor shall preserve and protect the rights of the parties under the Agreement with respect to the portion of the Work to be performed under subcontract, and shall:

.1 enter into subcontracts with Subcontractors and Suppliers to require them to perform their portion of the Work as provided in the Agreement;

.2 provide the Owner or Contract Administrator with a redacted copy of any subcontract with a Subcontractor or Supplier, and all applicable amendments and changes, promptly upon request of the Owner, and in no event later than within five (5) Working Days of such request.

.3 incorporate, or cause to be incorporated, into all subcontracts with Subcontractors and Suppliers the terms and conditions of the Agreement, including:

(1) the contract number set out on the cover page of the Agreement and Project description set out in row A.1 of the Information Sheet;

(2) 9.3 – WARRANTY, GC 13.2.4 and Schedule F - Owner Policies, Procedures, By-Laws and Other Requirements;

(3) a provision requiring the Subcontractor or Supplier to provide adequate notice to the Contractor in order for the Contractor to fulfill its obligations under GC 12.2.16. For clarity, such provision shall include a requirement that the Subcontractor or Supplier include a similar provision in all its subcontracts with Sub-subcontractors and all such Sub-subcontractors to include a similar provision in all their subcontracts with their Sub-subcontractors and so on within every tier of the construction pyramid; and

(4) a provision that permits the Contractor's interest in the subcontract to be immediately assigned, at the same price and in the Owner's sole and absolute discretion, to the Owner or the Owner's designee upon Notice in Writing thereof given by the Owner to both Contractor and Subcontractor or Supplier, as the case may be, for nominal consideration of $5.00, provided, however, that until the Owner has given such Notice in Writing, nothing herein contained shall be deemed to create any contractual or other liability upon the Owner for the performance of obligations under such subcontracts and the Contractor shall be fully responsible and liable for all of its obligations and liabilities (if any) under such subcontracts; and

.4 have control over, charge of, and be fully responsible to the Owner for, the acts and omissions of Subcontractors, Suppliers and their Personnel and for the acts and omissions of Personnel of the Contractor even if such Subcontractor or Supplier was approved or selected by the Owner.

3.8.3 Unless expressly stated otherwise in row A.6 of the Information Sheet, the Contractor may only use the Subcontractors and Suppliers identified in row A.6 of the Information Sheet for the specific portion of the Work which they are identified as performing for the Project. Contractor shall not:

.1 change any of such identified Subcontractors or Supplier or let any subcontracts for the performance of the Work to Subcontractors and Suppliers that have not been identified in row A.6 of the Information Sheet;

.2 use a Subcontractor or Supplier to perform Work which has not been identified in row A.6 of the Information Sheet as being performed by such Subcontractor or Supplier,

without the prior written approval of the Owner. The Owner shall be entitled to a minimum of ten (10) Working Days to review and approve any such request for approval by the Contractor. Without limiting the generality of the factors or criteria which the Owner and Contract Administrator may consider during such review and approval process, the Owner shall be entitled to consider the proposed Subcontractor's or Supplier's compliance with the Owner's Policies, Procedures and By-laws. Any approved replacement of a Subcontractor or Supplier shall be made

with no increase in the Contract Price and extension of the Contract Time and any costs incurred by the Owner for the services of the Contract Administrator in reviewing such proposed replacement shall be borne by the Contractor.

3.8.4 The Owner's consent to subcontracting by the Contractor shall not be construed as relieving the Contractor from any obligation under the Agreement and shall not impose any liability on the Owner.

3.8.5 The Owner, through the Contract Administrator, may provide to a Subcontractor, Supplier and Sub-subcontractor information as to the percentage of the Subcontractor's or Supplier's Work which has been certified for payment.

3.8.6 The Contractor shall pay the Subcontractors and Suppliers on a timely basis in accordance with the terms of their respective subcontracts and applicable Laws.

3.9 LABOUR AND PRODUCTS

3.9.1 The Contractor shall provide and pay for labour, Products, Construction Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work in accordance with the Agreement. Without limiting the generality of the foregoing, the Contractor shall pay its Personnel, and shall cause the Subcontractors and Suppliers to pay their Personnel, performing the Work, in accordance with the labour related provisions set out in the Agreement and at intervals no less than those required by such Personnel's employment or labour agreements.

3.9.2 The Contractor covenants and agrees that the Work, including all Products and components thereof, shall conform to the Agreement in all respects, and, unless otherwise specified in the Agreement, shall be of merchantable quality and fit for their intended purpose as described in the Contract Documents and shall be new and free from Deficiencies. Products which are not specified shall be of a quality consistent with those specified and the use of such Products shall be subject to the acceptance of the Contract Administrator or Owner. This GC 3.9.2 shall be in addition to and not in limitation of any other right or remedy granted by the Agreement or otherwise available to the Owner.

3.9.3 Title to the Work including the Products (and each portion thereof) shall pass to the Owner immediately upon payment therefore (subject to applicable holdback that is not then due) or upon incorporation of the Products into the Work at the Site, whichever first occurs, free and clear of all liens, charges and encumbrances (subject to any rights or remedies provided by the Construction Act, if applicable). Notwithstanding any transfer of title to the Work or any portion thereof to the Owner, the Contractor shall be responsible for and bear the risk of Loss with respect to the Work (including Products delivered to the Site, whether or not incorporated into the Work) until the date of Total Performance of the Work. Title to Owner Supplied Material shall remain with the Owner at all times.

3.9.4 Substitutions

.1 The Contractor shall not substitute any Product without the prior written approval of the Contract Administrator and the Owner.

.2 Where the Agreement requires the Contractor to supply a Product, the Contractor may apply to the Contract Administrator to propose a substitution for such Product ("**Substitution**") that equals or exceeds the quality, suitability, reliability, durability and performance of the Product designated in the Agreement. The application by the Contractor to the Contract Administrator for a Substitution shall be:

(1) in writing and include complete data as to the quality, suitability, reliability, durability, performance and projected cost or cost savings of the Substitution, impact on the Construction Schedule and such other information as the Contract Administrator may require; and

(2) made in such time as to ensure that the review and approval process by the Contract Administrator and the Owner shall not adversely impact the Construction Schedule.

The burden of proving the quality, suitability, reliability, durability and performance of a Substitution shall be upon the Contractor.

.3 The approval or rejection of a Substitution shall be made at the sole and absolute discretion of the Contract Administrator and the Owner. Notwithstanding the foregoing, the Contractor shall not be entitled to any increase in Contract Price or extension of the Contract Time as a result of the review, approval or rejection of a Substitution by the Contract Administrator or the Owner.

.4 Approval of a Substitution will only be for the specific circumstances set out in the application and shall not change or modify any other requirement contained in the Agreement or establish approval for the Substitution to be used in any other portion of the Work that is unrelated to the subject approval.

3.9.5 All surplus Products which have not been used in the performance of the Work shall be removed from the Site when notified in writing to do so by the Contract Administrator. The cost for such surplus Products shall be credited to the Fixed Price or Total Price of Unit Price Work under the Proper Invoice submitted pursuant to GC 5.7.1.1, to the extent the Owner has paid for such surplus Products.

3.9.6 The cost of overtime Work (including overtime rates):

.1 required beyond the normal working day at the Site (as may be described in the Specifications) to complete individual construction operations of a continuous nature in respect of Fixed Price Work or Unit Price Work, such as pouring or finishing of concrete or similar Work; or

.2 in respect of Fixed Price Work or Unit Price Work that the Contractor elects to perform without the Owner or the Contract Administrator requesting such overtime Work; or

.3 except as expressly provided for in the Specifications as a part of the Contract Price,

shall not be chargeable to the Owner and shall be at the cost of the Contractor and without adjustment in the Fixed Price or Unit Prices.

3.9.7 The Contractor shall maintain good order and discipline among the Contractor Parties engaged on the Work and shall not employ on the Work anyone not skilled in the tasks assigned.

3.10 DOCUMENTS AT THE SITE

3.10.1 The Contractor shall control, store and retain copies (one of which must be in hardcopy) of the Agreement, Submittals, reports, and records of meetings at the Site, in good order and readily available to the Owner and the Contract Administrator. Upon the request of the Owner, the Contractor shall provide hard copies and electronic copies of all the foregoing documents to the Owner, at the Owner's cost, except to the extent the delivery of such document already forms part of the Fixed Price Work.

3.10.2 The Contractor shall accurately and continuously note on the Drawings and Specifications kept by the Contractor at the Site, (1) all approved changes and deviations made during the Work which differ from that shown or specified in the Agreement and reviewed Shop Drawings indicating, in a neat, accurate and legible manner the Work as actually installed; (2) the exact location and detail of buried, embedded or concealed as-built conditions and all other as-built conditions of the Work (including the location of all asbestos abatement Work dealing with such matters as floor tiles and pipe insulation); and (3) the exact location and detail of Work installed on a "field run" basis (collectively, the "**As-Built Drawings**"). If any Work is performed otherwise than as shown in the Agreement, the Contractor shall note on such As-Built Drawings the Work as installed, including with respect to the mechanical, electrical and fire protection Work. The As-Built Drawings shall be made available for review by the Owner and the Contract Administrator at all times. The Contractor shall deliver the As-Built Drawings to the Owner on or before Substantial Performance of the Work, in the following format: (A) one complete set of reproducible final versions; and (B) one complete set stored on the latest edition of AutoCAD or such other format required by the Owner.

3.11 SHOP DRAWINGS

3.11.1 The Contractor shall provide Shop Drawings if required by the Agreement or as the Contract Administrator may reasonably request. The Shop Drawings shall meet the requirements of the Agreement (including this 3.11, unless otherwise stipulated elsewhere in the Agreement or agreed to by the Contract Administrator) and the Contractor shall carry out the Work in accordance with Shop Drawings which meet such requirements. The Contractor shall not perform any portion of the Work covered

by or affected by Shop Drawings until the Contract Administrator has completed its review of such Shop Drawings for construction in accordance with the procedure referred to in the Agreement.

3.11.2 The Contractor shall provide Shop Drawings to the Contract Administrator to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors.

3.11.3 Upon request of the Contractor or the Contract Administrator, they shall jointly prepare a schedule of the dates for provision, review and return of Shop Drawings.

3.11.4 The Contractor shall provide Shop Drawings in the form specified, or if not specified, as directed by the Contract Administrator.

3.11.5 Shop Drawings provided by the Contractor to the Contract Administrator shall indicate by stamp, date and signature of the Person responsible for the review that the Contractor has reviewed each one of them.

3.11.6 The Contract Administrator's review is for conformity to the design concept and for general arrangement only and shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Agreement.

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

3.11.8 The Contractor shall review all Shop Drawings before providing them to the Contract Administrator. The Contractor represents by this review that:

.1 the Contractor has determined and verified all applicable field measurements, field construction conditions, Product and Owner Supplied Material requirements, catalogue numbers and similar data, or will do so, and

.2 the Contractor has checked and co-ordinated each Shop Drawing with the requirements of the Work and of the Agreement.

3.11.9 At the time of providing Shop Drawings, the Contractor shall expressly advise the Contract Administrator in writing of any deviations in a Shop Drawing from the requirements of the Agreement. The Contract Administrator shall indicate the acceptance or rejection of such deviation expressly in writing.

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

3.11.11 The Contract Administrator shall review and return Shop Drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the Work.

3.11.12 The Contractor shall provide the Owner with a "specification compliance report" from the manufacture or Supplier of each item of equipment forming part of the Products. The specification compliance report shall provide details which demonstrate that all applicable requirements of the Drawings and Specifications have been satisfied. Any deviations from such requirements must be addressed in the specification compliance report to the satisfaction of the Owner, as confirmed by the Owner. For clarity, any deviation set out in the specification compliance report is not accepted by the Owner, except to the extent such acceptance has been confirmed in writing by the Owner.

3.12 USE OF THE WORK

3.12.1 The Contractor shall confine Construction Equipment, Temporary Work, storage of Products, Owner Supplied Material, waste products and debris, and operations of Contractor Parties to limits indicated by Laws or the Agreement and shall not unreasonably encumber the Site. All Products and Owner Supplied Equipment shall be stored under suitable conditions to prevent damage, deterioration, and contamination.

3.12.2 The Contractor shall not load or permit to be loaded any part of the Work or any part of the Site with a weight or force that shall or could be considered to endanger the safety or integrity of the Work or any part of the Site, individuals and the area adjacent to the Site.

3.13 STANDARD OF CARE, QUALITY ASSURANCE AND QUALITY CONTROL

3.13.1 In performing the Work, the Contractor shall exercise a standard of care, skill and diligence that would normally be provided by an experienced, qualified and prudent contractor supplying similar work for similar projects ("**Standard of Care**"). The Contractor acknowledges and agrees that throughout the term of the Agreement, the Contractor's obligations, duties and responsibilities shall be interpreted in accordance with the Standard of Care. The Contractor shall exercise the Standard of Care in respect of any Products and Personnel which it may recommend to the Owner.

3.13.2 If required by the Specifications, the Contractor shall develop and maintain a quality assurance and quality control plan ("**QA/QC Plan"**), in accordance with the Specifications, to ensure that the Work, including the performance of the Work is in accordance with the Agreement.

3.13.3 As of the Effective Date, the Contractor represents and warrants that there are no pending, threatened or anticipated Claims that would have a material effect on the financial ability of the Contractor to perform the Work. The Contractor shall immediately notify the Owner of any such Claims that arise after the Effective Date and shall take all necessary and prudent steps to remedy or resolve such Claims to ensure that the performance of the Work is unaffected.

3.14 USE AND OCCUPANCY OF THE WORK PRIOR TO SUBSTANTIAL PERFORMANCE OF THE WORK

3.14.1 Without limitation to any other right of the Owner in the Agreement, the Owner shall, at any and all times, have the right to enter, occupy and use the Work or any part

thereof prior to Substantial Performance of the Work if such entry and occupancy does not materially interfere with the Contractor's performance and the completion of the Work within the Contract Time. Should the Owner wish to use or occupy part or all of the Work prior to Substantial Performance of the Work, the Owner shall give thirty (30) Calendar Days' Notice in Writing to the Contractor of the intended purpose and extent of such use or occupancy.

3.14.2 If the Owner exercises the right of occupancy and/or use of the Work in accordance with GC 3.14.1, it agrees to do so in a manner that does not materially interfere with the Contractor's performance and the completion of the Work within the Contract Time and with the understanding that the Owner will be occupying premises within a construction site which will require compliance with all normal construction site requirements including health and safety requirements.

3.14.3 The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance of the Work shall not constitute an acceptance of the Work or parts so occupied. Such use or occupancy of the Work shall not:

.1 relieve or limit the Contractor or its surety from any responsibilities under the Agreement or liability that has arisen, or may arise, from the performance of the Work;

.2 waive the Owner's right to charge the Contractor liquidated damages (including Delay Liquidated Damages) in accordance with the terms of the Agreement; or

.3 affect the Warranty Period or the warranties set out in the Agreement.

3.14.4 Within five (5) Working Days of receiving the Notice in Writing referred to in GC 3.14.1, the Contractor shall notify the Owner in writing of the additional premium cost, if any, to maintain all risk property insurance coverage (including boiler coverage). The cost of such additional premium shall be paid by the Owner (but without any markup by the Contractor) through the issuance of a Change Order, provided that the Owner's need to use or occupy the space did not arise as a result of the Work being behind schedule for a reason other than as described in GC 7.5.1 , 7.5.2 or 7.5.3. If because of such use or occupancy the Contractor is unable to provide such additional coverage, the Owner shall provide, maintain and pay for all risk property insurance coverage (including boiler coverage) insuring the full value of the used or occupied portion of the Work, including coverage for such use or occupancy, and shall provide the Contractor with proof of such insurance. The Contractor shall refund to the Owner the unearned premiums applicable to the Contractor's policies upon termination of coverage.

3.15 ACCESS TO PROPERTIES ADJOINING THE WORK AND INTERRUPTION OF OPERATIONS

3.15.1 The Contractor shall provide, at all times and at no extra cost to the Owner and without extension of the Contract Time, access to fire hydrants, water and gas valves, and all other Utilities and Structures and access to any existing equipment located at the Site which remains in operation by the Owner over the duration of the Project.

The operation of any such Utilities and Structures and equipment shall take precedence over the Work in the case of conflicts.

3.15.2 The Contractor acknowledges that during the term of the Contract, the Place of the Work and the area in the vicinity of the Place of the Work may be occupied by the Owner and other Persons and that, if so occupied, such Persons will continue to carry out their normal operation and use of Place of the Work and shall be allowed to maintain their services and business continuity. The Contractor shall perform the Work in the least intrusive manner possible so as to avoid interfering with any such operations in the vicinity of the Work. The Contractor shall not disrupt the use or enjoyment of the Place of the Work and the vicinity by the Owner and other Persons.

4. PROTECTION OF PERSONS, WORK AND PROPERTY

4.1 PROTECTION OF WORK AND PROPERTY

4.1.1 The Contractor shall protect the Work, Persons and the Owner's property and property adjacent to, in the vicinity of or proximate to the Site from damage which may arise as the result of the Work (including from settlement of ground, flow of water, vibration or shock), and the Contractor shall, and shall cause the other Contractor Parties to, take all precautions to avoid such damage. The Contractor shall be responsible for making good any such damage, at its cost, except damage which occurs as the result of:

.1 subject to 3.6 – DOCUMENT REVIEW, errors, inconsistencies or omissions in the Agreement; and

.2 negligent acts or omissions by the Owner, the Owner Representative, the Contract Administrator, any other contractors (other than the Contractor Parties), and their respective Personnel.

4.1.2 Should damage occur to the Work or Owner's property for which the Contractor is not responsible for pursuant to the Agreement, the Contractor shall make good such damage to the Work and, if the Owner so directs, to the Owner's property. The Contract Price and Contract Time shall be adjusted as provided in 7.1 - OWNER'S RIGHT TO MAKE CHANGES, 7.2 - CHANGE ORDER and 7.3 - CHANGE DIRECTIVE.

4.1.3 Construction Affecting Railway Property or Third Party Operations

.1 The Contractor shall be required to conduct the Work in such a manner as to avoid the possibility of damaging or interfering with any railway property in the vicinity of the Work. Every reasonable precaution shall be taken by the Contractor to ensure the safety and protection of all Contractor Parties and Construction Equipment and railway property (at track crossings or otherwise) and users thereof throughout the performance of the Work.

.2 The Owner shall pay the costs of all flagging and other traffic control measures required and provided by a railway company unless such costs are solely a function of the Contractor's chosen method of completing the Work.

4.1.4 Operational Risk

.1 The position of all pole lines, conduits, pipes, watermains, sewers and other covered, underground and overground utilities and structures in, on, adjacent to under or over the Site (collectively, the "**Utilities and Structures**") are not necessarily provided in the Agreement, and where provided, the accuracy of the position of such Utilities and Structures is not guaranteed and the Owner disclaims all liability with respect to same except to the extent explicitly stated otherwise in row E.3 of the Information Sheet. The Contractor shall be liable for damages to the Utilities and Structures as a result of any act or omission, whether or not the result of negligence, by the Contractor Parties and the Losses relating to such damage shall not be chargeable to the Owner and shall be at the cost of the Contractor.

.2 Without limiting the generality of GC 4.1.4.1, before commencing any Work, the Contractor shall inform itself of the existence and exact condition, size, depth and location of all Utilities and Structures in accordance with the Standard of Care and the Specifications, if applicable, and such process shall occur in conjunction with the Contractor's review of the Agreement pursuant to GC 3.6.1. For clarity, to the extent the Owner is required to provide such information to the Contractor as a part of its obligation under Laws, including the *Ontario Underground Infrastructure Notification System Act, 2012*, any work required to obtain such information shall be performed by the Contractor as a part of the Work without any increase to the Contract Price or extension of the Contract Time.

.3 As a part of, and in co-ordination with, the Work, the Contractor shall provide for the removal, protection, support, temporary and permanent relocation and restoration of the Utilities and Structures to the satisfaction of the owners of the Utilities and Structures, and in performing such Work, the Contractor shall comply with the requirements of the owners of the Utilities and Structures. The Contractor shall arrange with the appropriate owners for the stake out of all Utility and Structure connections that may be affected by the Work. The Contractor shall maintain records of such stake outs and make such records available to the Owner upon request. The Contractor shall observe the location of such stake outs, prior to commencing the Work, and in the event that there is a discrepancy between the location of such stake outs and the locations provided in the Agreement, that may affect the Work, the Contractor shall, prior to performing the affected portion of the Work, immediately notify the Contract Administrator and the affected owners of the Utilities and Structures, in order to resolve the discrepancy.

.4 Where any interruptions in the supply of utility services are required and are authorized by the Contract Administrator, the Contractor shall, in consultation with the Owner, give the affected property owners notice in accordance with the Specifications, and shall arrange such interruptions so as to create a minimum of interference to those affected.

4.1.5 Without in any way limiting the Contractor's obligations under 4.1, should the Contractor or any Subcontractor, Supplier or Sub-subcontractor cause Losses to trees or other plantings, whether owned by the Owner or third parties, the Contractor

shall be liable for the replacement cost of the trees or other plantings damaged, including the cost of any arborist or other consultant, and such Losses may be set-off in accordance with 5.10 – OWNER'S SET-OFF.

4.1.6 The Contractor shall immediately inform the Contract Administrator of all damage that occurs during the term of the Agreement. The Contractor shall then investigate and report back to the Contract Administrator and Owner within fifteen (15) Calendar Days of the occurrence of such damage. Such reports shall include all details as the Owner and Contract Administrator require. The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the Work of other contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the Contractor, without first consulting the Owner and receiving written instructions as to the course of action to be followed from either the Owner or the Contract Administrator. However, where there is imminent danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger. The Contractor shall notify the Owner of such imminent danger as promptly as is practicable under the circumstances. The Contract Administrator may conduct its own investigation and the Contractor shall provide all assistance to the Contract Administrator and Owner as may be necessary for that purpose.

4.1.7 The Contractor shall immediately upon becoming aware of a complaint or Claim made by a resident or property owner, inform the Contract Administrator and the Owner.

4.2 HEALTH AND SAFETY

4.2.1 The Contractor shall, until Total Performance of the Work, be solely responsible for:

.1 construction health and safety at the Site;

.2 compliance with the Laws and practices which relate to construction health and safety, including OHSA; and

.3 initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and the other work performed by the Owner's Personnel and other contractors at the Site (collectively, the "**Other Work**").

4.2.2 Without restricting the generality of any other provision in the Agreement, the Contractor shall, for the purposes of the OHSA, be deemed, construed and designated as the "constructor" for the Work (including the Work of the Subcontractors, Suppliers and Sub-subcontractors and the Other Work of the Owner's Personnel and other contractors at the Site) and shall assume and fulfill all of the responsibilities of constructor as set out in OHSA in respect of the Work and the Other Work and the Site from the Commencement Date until Total Performance of the Work. Unless explicitly stated otherwise in the Agreement, nothing in the Agreement shall be deemed or construed as making the Owner the "employer" (as defined in OHSA) or the "constructor" (as defined in OHSA), either instead of or jointly with the Contractor.

4.2.3 The Contractor shall establish and administer a health and safety plan for the performance of the Work at the Site, which shall comply with the requirements of all Governmental Authorities having jurisdiction and all Laws. The Contractor shall provide the Owner with a copy of the health and safety plan prior to the Commencement Date. The Contractor shall ensure the Contractor Parties, Owner's Personnel and other contractors at the Site comply with the health and safety plan. As part of its reporting obligations on the progress of the Work described in the Specifications, the Contractor shall provide information on the ongoing implementation of its health and safety plan.

4.2.4 Prior to the Commencement Date, the Contractor shall submit to the Owner:

.1 a current WSIB clearance certificate;

.2 a tax statutory declaration in the form attached as Form 3 of Schedule G – Forms;

.3 documentation of the Contractor's in-house corporate level health and safety program;

.4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under OHSA; and

4.2.5 The Contractor shall possess and maintain a valid Certificate of Recognition (COR™) or an Equivalent OHS Certification for the duration of performance of the Agreement. The Contractor shall provide the Contract Administrator with a new Certificate of Recognition (COR™) or Equivalent OHS Certification immediately upon the expiry of the previous Certificate of Recognition or Equivalent OHS Certification or otherwise upon demand by the Contract Administrator.

4.2.6 The Contractor shall report to the Owner all health and safety incidents at the Site including the Contractor's response. Without limiting the foregoing, the Contractor shall report any such incident occurring on or off the Site that relates to its Work or Other Work immediately, and shall, in addition, in no event later than forty-eight (48) hours give written notice of such incident

4.2.7 During the course of the Work, the Contractor shall furnish forthwith to the Contract Administrator a copy of all correspondence, reports, orders or charges respecting health and safety, including under OHSA, the *Technical Standards and Safety Act*, 2000, the *Highway Traffic Act,* the *Environmental Protection Act,* the *Workplace Safety and Insurance Act, 1997*, the *Employment Standards Act, 2000* and the *Criminal Code*, which are received by, or which come to the notice of, the Contractor that apply or are relevant to any of the Work or activities conducted under the terms of the Agreement. The Contractor shall immediately take all corrective measures necessary to address the issues identified or arising out of any such correspondence, report, order or charges.

4.2.8 Without limiting the obligations of the Contractor described in 3.3 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and this 4.2 – HEALTH AND SAFETY, the Owner or Contract Administrator may, by written notice, direct the Contractor to

stop the Work where the Owner or Contract Administrator determines that there is an imminent risk to the safety of individuals or property at the Site. In the event that the Contractor receives such written notice, it shall immediately stop the Work and secure the Site. The Contractor shall not be entitled to an extension of the Contract Time or to an increase in the Contract Price unless, and only to the extent, the event which caused such imminent risk would entitle the Contractor to an extension of the Contract Time or the reimbursement of the Contractor's Losses as provided in GC 7.5.1, 7.5.2 or 7.5.3.

4.2.9 Nothing in the Agreement shall be construed as requiring the Contract Administrator or Owner to monitor or approve the health and safety practices of the Contractor.

4.3 HAZARDOUS MATERIALS

4.3.1 Unless expressly permitted in the Agreement, the Contractor shall, and shall cause the other Contractor Parties to, not bring onto the Site any Hazardous Materials without the prior written authorization of the Contract Administrator. No later than five (5) Working Days following execution of the Agreement and prior to the Contractor mobilizing to the Site, the Contractor shall provide to the Owner, a list of all Hazardous Materials, including safety data sheets, which the Contractor expects to use for the Work, for the Owner's review, and update the Owner with any changes made to the list. The Contractor shall also comply with all other provisions under OHSA related to Hazardous Materials.

4.3.2 The Contractor shall use all reasonable care to avoid spilling or disturbing any Hazardous Materials during the performance of the Work. In the case of a "spill" as defined in the *Environmental Protection Act*, the Contractor shall immediately notify the Owner and the Contract Administrator of the location and details of such spill and report the spill to the relevant Governmental Authority. Reporting a spill to the Owner shall not relieve the Contractor of its legislated responsibilities regarding spills or discharges.

4.3.3 If the Contractor or the Owner encounters Hazardous Materials at the Site or has reasonable grounds to believe that Hazardous Materials are present at the Site, which were not:

.1 brought to the Site by the Contractor Parties;

.2 disclosed by the Owner or in the Agreement; or

.3 discovered by the Contractor through the fulfillment of its responsibilities pursuant to 3.6 - EXAMINATION OF SITE,

the Contractor shall:

.4 take all necessary steps, in accordance with Laws, including stopping the Work, to

(1) manage, remove, dispose of, store or otherwise render harmless such Hazardous Materials;

(2) ensure that no individual's exposure to any Hazardous Materials exceeds any applicable time weighted levels prescribed by Laws (including O Reg 833 under OHSA); and

(3) ensure that no property is damaged or destroyed as a result of exposure to, or the presence of, such Hazardous Materials; and

.5 immediately report the circumstances to the Contract Administrator and the other party in writing.

4.3.4 If the Owner and Contractor do not agree on:

.1 the existence and significance of the Hazardous Materials described in GC 4.3.3;

.2 if such Hazardous Materials were brought onto the Site by a Contractor Party;

.3 if such Hazardous Materials were disclosed by the Owner or in the Agreement; or

.4 if such Hazardous Materials should have been discovered by the Contractor through the fulfillment of its responsibilities pursuant to 3.6 - EXAMINATION OF SITE,

the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and the Contractor.

4.3.5 If the Owner and Contractor agree or if the expert referred to in GC 4.3.4 determines that the Hazardous Materials were not brought onto the Site by a Contractor Party and were not disclosed by the Owner or in the Agreement and would not have been discovered by the Contractor through the fulfillment of its responsibilities pursuant to 3.6 - EXAMINATION OF SITE, the Owner shall immediately at the Owner's own cost:

.1 reimburse the Contractor for the costs of all steps taken pursuant to GC 4.3.3; and

.2 extend the Contract Time for such reasonable time as the Contract Administrator may recommend in consultation with the Contractor and the expert referred to in 4.3.4 and reimburse the Contractor for reasonable Losses incurred as a result of the delay, but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity resulting from such delay.

4.3.6 If the Owner and Contractor agree or if the expert referred to in GC 4.3.4 determines that the Hazardous Materials were brought onto the Site by a Contractor Party and were not disclosed by the Owner or in the Agreement and would not have been discovered by the Contractor through the fulfillment of its responsibilities pursuant to 3.6 - EXAMINATION OF SITE, the Contractor shall immediately at the Contractor's own cost and without extension of the Contract Time:

.1 make good any damage to the Work, the Owner's property or property adjacent to the Site as provided in GC 4.1.1; and

.2 reimburse the Owner for reasonable Losses incurred under GC 4.3.4 but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity.

4.3.7 If either party does not accept the expert's findings under GC 4.3.4, the disagreement shall be settled in accordance with12. DISPUTE RESOLUTION. If such disagreement is not resolved within thirty (30) Calendar Days, the parties shall act immediately in accordance with the expert's determination and take the steps required by GC 4.3.5 or GC 4.3.6 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by 4.3 - HAZARDOUS MATERIALS.

4.4 MOULD

4.4.1 If the Contractor or Owner observes or reasonably suspects the presence of mould at the Site, the remediation of which is not expressly part of the Work:

.1 the observing party shall immediately report the circumstances to the other party in writing;

.2 the Contractor shall immediately take all reasonable steps, including stopping the Work if necessary, to ensure that no individual suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and

.3 if the Owner and Contractor do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and Contractor.

4.4.2 If the Owner and Contractor agree, or if the expert referred to in GC 4.4.1.3 determines that the presence of mould was caused by the Contractor's operations under the Agreement, the Contractor shall promptly, and in no event later than within ten (10) Working Days after such agreement or determination, as applicable, at the Contractor's own cost:

.1 take all reasonable and necessary steps to safely remediate or dispose of the mould;

.2 make good any damage to the Work, the Owner's property or property adjacent to the Site as provided in GC 4.1.1; and

.3 reimburse the Owner for reasonable Losses incurred under GC 4.4.1.3.

4.4.3 If the Owner and Contractor agree, or if the expert referred to in GC 4.4.1.3 determines that the presence of mould was not caused by the Contractor's operations under the Agreement, the Owner shall promptly, and in no event later than within ten (10) Working Days after such agreement or determination, as applicable, at the Owner's own cost:

.1 take all reasonable and necessary steps to safely remediate or dispose of the mould;

.2 reimburse the Contractor for the cost of taking the steps under GC 4.4.1.2 and making good any damage to the Work as provided in GC 4.1.2; and

.3 extend the Contract Time for such reasonable time as the Contract Administrator may recommend in consultation with the Contractor and the expert referred to in GC 4.4.1.3 and reimburse the Contractor for reasonable Losses incurred as a result of the delay but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity.

4.4.4 If either party does not accept the expert's finding under GC 4.4.1.3, the disagreement may be settled in accordance with 12. DISPUTE RESOLUTION. If such disagreement is not resolved within thirty (30) Calendar Days, the parties shall act immediately in accordance with the expert's determination and take the steps required by GC 4.4.2 or 4.4.3, it being understood that by so doing neither party will jeopardize any Claim the party may have to be reimbursed as provided by 4.4 - MOULD.

4.5 ARTIFACTS AND FOSSILS

4.5.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place or Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.

4.5.2 The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in GC 4.5.1, and shall immediately notify the Contract Administrator upon discovery of such items and shall suspend the Work within any area identified by the Contract Administrator. Initial notification may be verbal provided that such notice is confirmed in writing by the Contractor within two (2) Calendar Days of discovery.

4.5.3 The Contract Administrator will investigate the impact on the Work of the discoveries identified in GC 4.5.1. If conditions are found that would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Contract Administrator, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in 7.2 - CHANGE ORDER or 7.3 - CHANGE DIRECTIVE.

5. CONTRACT PRICE AND PAYMENT

5.1 CONTRACT PRICE

5.1.1 The Contract Price, which excludes Value Added Taxes, is described in paragraph 2.1 of Section 2 of the Agreement – CONTRACT PRICE.

5.2 OWNER'S OBLIGATION TO PAY

5.2.1 Subject to the provisions of the Agreement, and in accordance with the Construction Act, the Owner shall:

.1 in respect of Fixed Price Work, make progress payments and, if any, milestone payments to the Contractor for amounts undisputed by the Owner on account of the Fixed Price when due, together with such Value Added Taxes as may be applicable to such payments;

.2 in respect of Unit Price Work, make progress payments to the Contractor for amounts undisputed by the Owner on account of the Total Price of Unit Price Work when due, together with such Value Added Taxes as may be applicable to such payments;

.3 upon Substantial Performance of the Work, pay to the Contractor the unpaid balance of the ten percent (10%) portion of the Lien Holdback when due together with such Value Added Taxes as may be applicable to such payment; and

.4 upon Total Performance of the Work, pay to the Contractor the unpaid amount of the Contract Price and the finishing portion of the Lien Holdback when due together with such Value Added Taxes as may be applicable to such payments.

5.2.2 Payment of the Contract Price shall be full compensation for all labour, services, Contractor Parties, Construction Equipment and Products required in the performance of the Unit Price Work, including, hand tools, supplies and other incidentals.

5.2.3 The Unit Prices shall not be adjusted during the term of the Agreement other than as provided for in Schedule B – Pricing Form.

5.2.4 Payment for any Unit Price Work not specifically detailed as part of any one item of Unit Price Work and without specified details of payment shall be deemed to be included in the items of Unit Price Work with which it is associated.

5.2.5 Advance payments for Products not yet incorporated into the Work (whether or not delivered to the Site) shall not be made by the Owner without the prior written consent of the Owner, in its sole and absolute discretion. Any such advance payment shall be made on terms as agreed to by the Owner and Contractor (such terms may include transfer of title, the Contractor's responsibility for risk of Loss and off-site storage requirements).

5.2.6 In the event of Losses occurring where payment becomes due under the all risk property insurance policies, payments shall be made to the Contractor in accordance with the provisions of 8.1 – INSURANCE.

5.3 PROPER INVOICES

5.3.1 After the Commencement Date, Proper Invoices shall be given to the Owner monthly for each Invoice Period as the Work progresses, unless otherwise specified in row

B.9 of the Information Sheet. Proper Invoices shall be given to the Owner by giving it to the Owner Representative in accordance with row B.10 of the Information Sheet.

5.3.2 If the Contractor is performing Unit Price Work, the Contract Administrator or Owner Representative shall make an Estimate of Units once an Invoice Period, in writing. The first Estimate of Units shall be in respect of the Unit Price Work performed since the Contractor commenced the Unit Price Work, and every subsequent Estimate of Units, except the final one, shall be in respect of the Unit Price Work performed since the preceding Estimate of Units was made. The Contract Administrator or Owner Representative, as applicable, shall provide a copy of each such Estimate of Units to the Contractor on or before the 5th Calendar Day after the end of the Invoice Period (or the next Working Day following such date if such date is not a Working Day).

5.3.3 For all Work, the Contractor shall submit a draft invoice to the Contract Administrator:

.1 at the invoice meeting held on or before the 7th Calendar Day after the end of the Invoice Period (or the next Working Day following such date if such date is not a Working Day) to which the Proper Invoice relates; or

.2 on or before the 7th Calendar Day after the end of the Invoice Period (or the next Working Day following such date if such date is not a Working Day) to which the Proper Invoice relates, in such form of written or electronic communication as agreed to by the parties.

If the Contractor submits the draft invoice in accordance with GC 5.3.3.1, then the Contract Administrator, the Owner and the Contractor shall review such draft invoice at such meeting or, if the Contractor submits the draft invoice in accordance with GC 5.3.3.2, then the Contractor Administrator and the Owner shall review such draft invoice and, prior to the 14th Calendar Day after the end of such Invoice Period, the Owner and the Contract Administrator may provide the Contractor with suggested revisions to the draft invoice based upon the progress of the Work, the Contract Administrator's or Owner Representative's, as applicable, Estimate of Units and other relevant considerations. The draft invoice shall be submitted in the same format (and with the same content) as the Proper Invoice.

5.3.4 On the 14th Calendar Day after the end of the Invoice Period to which the Proper Invoice relates, the Contractor shall give a Proper Invoice to the Owner. In preparing the Proper Invoice, the Contractor should take into consideration revisions proposed by the Contract Administrator and the Owner from the draft invoice process including any reconciliations with the Contract Administrator's or Owner Representative's, as applicable, Estimate of Units. Incorporating such revisions will reduce the likelihood of the Owner issuing a notice of non-payment pursuant to GC 5.4.1.3 but is without prejudice to any rights or remedies of the Owner under the Agreement or otherwise. For clarity:

.1 a Proper Invoice shall not be rendered incompliant with the requirements of the Agreement solely by reason of a failure to incorporate any such proposed revisions including any reconciliation with the Contract Administrator's or Owner Representative's, as applicable, Estimate of Units; and

.2 the Contractor may only give to the Owner a Proper Invoice on the 14th Calendar Day after the end of the Invoice Period to which the Proper Invoice relates, and the Contractor shall not give to the Owner a Proper Invoice on any other Calendar Day. Any Proper Invoice received by the Owner on any Calendar Day:

(1) earlier than the 14th Calendar Day after the end of such Invoice Period shall be deemed to have been received by the Owner on the 14th Calendar Day after the end of such Invoice Period; or

(2) later than the 14th Calendar Day after the end of such Invoice Period shall be deemed to have been received by the Owner on the Calendar Day of such delivery,

and if the date on which the Proper Invoice is received under GC 5.3.4.2, or is deemed to have been received under GC 5.3.4.2(1) or (2), is not a Working Day, then it shall be deemed to be received on the next Working Day.

5.3.5 The amount applied for in each Proper Invoice shall be:

.1 for Fixed Price Work:

(1) relating to milestones set out in the Agreement, the portion of the Fixed Price attributable to the milestones which the Owner has agreed have been completed on or before the last Calendar Day of the Invoice Period to which the Proper Invoice relates except for milestones dealt with in prior Proper Invoices;

(2) not relating to milestones set out in the Agreement, the value, proportionate to the Fixed Price not attributable to the milestones, of such Fixed Price Work performed to the last Calendar Day of the Invoice Period to which the Proper Invoice relates less the value of such Fixed Price Work previously invoiced in prior Proper Invoices;

.2 for Unit Price Work, the aggregate of the total units for each item of the Unit Price Work performed to the last Calendar Day of the Invoice Period to which the Proper Invoice relates multiplied by the applicable Unit Price of each such item, less the value of all Unit Price Work previously invoiced in prior Proper Invoices; and

.3 for T&M Changes in the Work, an amount equal to:

(1) the total T&M Price of all T&M Changes in the Work performed to the last Calendar Day of the month to which the Proper Invoice relates; less

(2) the total T&M Price of all T&M Changes in the Work in respect of all prior Proper Invoices,

calculated in accordance with Section 3 of Schedule E – Valuing Changes in the Work.

For clarity, the amount applied for in each Proper Invoice shall not include any amounts included in any Claim Notice unless and until the Owner or the Contract Administrator, as the case may be, has issued a determination to the Contractor regarding the validity of such Claim Notice pursuant to GC 7.7.6.

5.3.6 Schedule of Values

.1 The Contractor shall submit to the Contract Administrator, within fourteen (14) Calendar Days of the Effective Date and prior to the first Proper Invoice, a schedule of values with a detailed breakdown of the Fixed Price Work not relating to milestones, aggregating the total amount of the Fixed Price not attributable to the milestones, so as to facilitate evaluation of Proper Invoices.

.2 The schedule of values shall:

(1) be made out in such form and supported by such evidence as the Contract Administrator may reasonably direct;

(2) include a fair and reasonable value for the preparation and completion of the As-Built Drawings; and

(3) include the fixed price for the bonds and insurance to be maintained by the Contractor in compliance with the requirements of the Agreement and provide for the payment of such fixed price for the bonds and insurance in amounts proportionate to the payment of the Fixed Price not attributable to the milestones unless otherwise agreed to by the Contract Administrator.

.3 When accepted by the Contract Administrator, the schedule of values shall be used as the basis for evaluating Fixed Price Work not relating to the milestones in Proper Invoices, unless both parties agree the schedule of values is in error.

.4 The Owner, acting reasonably, reserves the right to modify costs allocated to the various breakdown items in the schedule of values during the performance of the Work to prevent front loading.

5.3.7 The Proper Invoice shall be in a form similar to Form 1 of Schedule G – Sample Proper Invoice and shall, to the extent applicable:

.1 include the following information, to the extent such information is not included in any schedule of values:

(1) the Contractor's name, telephone number and mailing address, and contact information of the Contractor Project Manager;

(2) remittance payment information;

(3) Proper Invoice number;

(4) the date of the Proper Invoice and the Invoice Period during which the Work was performed;

(5) the Contract number;

(6) purchase order number

(7) contact information of the Owner's Representative and Contract Administrator;

(8) a description of the Project;

(9) percentage of Work completed to date;

(10) a description of the Work performed during the Invoice Period and a specific itemization of the Work with quantities where appropriate including:

(A) the Contract Administrator's or Owner Representative's, as applicable, Estimate of Units; and

(B) the Contractor's Estimate of Units;

(11) the total Contract Price and the amount of the Contract Price previously paid;

(12) the value of Work and changes in the Work performed to date itemized by Change Order; and

(13) the amount payable for the Work and changes in the Work performed during the Invoice Period;

.2 include the schedule of values;

.3 include a detailed description of expenditures under the Cash Allowance and Provisional Allowance;

.4 include Daily Contractor Work Records;

.5 include evidence of compliance with worker's compensation legislation including a WSIB clearance certificate;

.6 include a statutory declaration using the latest form CCDC 9A - 2018 Statutory Declaration of Progress Payment Distribution by Contractor, confirming that all accounts of the Contractor have been paid in full up to and including the latest progress payment received;

.7 for advance payment, if applicable, for Products not yet incorporated into the Work:

(1) list such Products (and the advance payment calculations in respect thereof) as a separate line item; and

(2) be supported by invoices and such other evidence as the Contract Administrator may reasonably request to establish the value and delivery of such Products;

.8 list the Lien Holdback, Contractual Holdback and any other holdbacks provided for under this Contract as a separate line item;

.9 include the Contractor's registration number for Value Added Taxes and list the total amount of Value Added Taxes separate from the total Contract Price;

.10 include a copy of the latest Current Schedule delivered in compliance with the applicable requirements of 3.5 – CONSTRUCTION SCHEDULE; and

.11 include such other information and documents: (1) identified elsewhere in the Agreement; or (2) as required under the Construction Act.

5.3.8 A Proper Invoice may be revised by the Contractor after it has submitted the Proper Invoice to the Owner, if:

.1 the Owner agrees in advance to the revision;

.2 the date of the Proper Invoice is not changed; and

.3 the Proper Invoice continues to be in compliance with the requirements of GC 5.3.7.

5.4 PROGRESS PAYMENT

5.4.1 After receipt by the Contract Administrator of a Proper Invoice submitted by the Contractor in accordance with 5.3 – PROPER INVOICES:

.1 the Contract Administrator shall promptly inform the Owner of the date of receipt of the Proper Invoice;

.2 the Contract Administrator shall, no later than the number of Calendar Days or Working Days, as applicable, after the receipt of the Proper Invoice identified in row C.8 of the Information Sheet, issue to the Owner and copy to the Contractor, a certificate for payment in the amount applied for, or in such other undisputed amount as the Contract Administrator determines to be properly due; and

.3 if the Contract Administrator, or the Owner independent of the Contract Administrator, disputes all or any portion of the amount applied for in such Proper Invoice, the Owner shall promptly, but no later than fourteen (14) Calendar Days after the Contract Administrator's receipt of the Proper Invoice from the Contractor, provide the Contractor a notice of non-payment in the form and manner prescribed by the Construction Act specifying the amount that is not being paid and detailing all of the reasons for such non-payment.

5.4.2 The Owner shall, no later than twenty-eight (28) Calendar Days after the receipt of the Proper Invoice, make payment to the Contractor of the amount set out in the

Proper Invoice less the amount disputed by the Contract Administrator or the Owner independent of the Contract Administrator, as applicable, that is set out in the notice of non-payment issued pursuant to GC 5.4.1.3. For clarity, progress payments for Unit Price Work shall be based on Estimates and as such shall be construed and held to be approximate. Subject to section 1.1 of Schedule E – Valuing Changes in the Work, the final quantities of total units for each item of the Unit Price Work performed for the Proper Invoice submitted pursuant to GC 5.7.1.1 shall be based on actual field measurements of the Unit Price Work completed. The Owner shall retain the Contractual Holdback, Lien Holdback and any other holdbacks provided for under this Contract as a separate line item from such payment and may retain any other amount pursuant to 5.10 - OWNER'S SET-OFF. Unless otherwise specified in the Agreement, no letter of credit or demand-worded holdback shall be accepted or used to retain any part of the Lien Holdback.

5.4.3 For clarity, if the Contractor fails to submit a Proper Invoice to the Contract Administrator which is in compliance with the requirements of GC 5.3.7, the Owner shall not be required to make payment to the Contractor within the twenty-eight (28) Calendar Day period set out in GC 5.4.2. Such twenty-eight (28) Calendar Day period shall not commence until such time as the Contract Administrator has received from the Contractor a Proper Invoice in compliance with the requirements of GC 5.3.7.

5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

5.5.1 When the Contractor considers that Substantial Performance of the Work has been attained the Contractor shall, within one (1) Working Day, deliver to the Contract Administrator and to the Owner a comprehensive list of items to be completed or corrected, together with a written application for a review by the Contract Administrator to establish Substantial Performance of the Work. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Agreement. Such written application shall include the proof required by the Agreement including the Specifications to demonstrate that the Work has been substantially performed in conformance with the requirements of the Construction Act.

5.5.2 The Contract Administrator shall review the Work to verify the validity of the written application for Substantial Performance of the Work and shall promptly, and in any event, no later than twenty (20) Calendar Days after receipt of the Contractor's list and application:

.1 advise the Contractor in writing that the Work is not substantially performed and give reasons why, or

.2 set out the date of Substantial Performance of the Work in the certificate of Substantial Performance of the Work and issue a copy of such certificate to each of the Owner and the Contractor within seven (7) Calendar Days after signing such certificate. The certificate of Substantial Performance of the Work shall be in the form prescribed by the Construction Act.

5.5.3 Immediately following the issuance of the certificate of Substantial Performance of the Work, the Contractor shall prepare and submit to the Owner and the Contract Administrator a schedule for completing the Work and correcting all Deficiencies,

which establishes the date for the Total Performance of the Work. Upon the Owner and the Contract Administrator's approval of such schedule, the Construction Schedule shall be deemed to be amended to include such schedule. The date for Total Performance of the Work identified in such schedule shall not be later than the Scheduled Date for Total Performance of the Work.

5.5.4 Upon receipt of a copy of the certificate of Substantial Performance of the Work, the Contractor shall forthwith, as required by section 32(1) of the Construction Act, publish a copy of the certificate in the manner set out in the regulations. If the Contractor fails to publish a copy of the certificate of Substantial Performance of the Work within seven (7) Calendar Days after receiving a copy of such certificate, the Owner may publish a copy of such certificate at the Contractor's cost.

5.6 PAYMENT OF LIEN HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

5.6.1 After the date on which all liens that may be claimed against the Lien Holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act and provided the certificate of Substantial Performance of the Work has been published in accordance with 5.5, the Contractor shall submit a Proper Invoice for the Lien Holdback, which shall, in addition to complying with the requirements of GC 5.3.7, include the following items in order to be considered a "Proper Invoice" for the purposes of GC 5.6.2:

.1 the list of Claims required by GC 9.2.1;

.2 the value of outstanding or incomplete Work; and

.3 a representation and warranty from the Contractor that, as of the date of the Proper Invoice, the only Adjudications in respect of disputes as described in GC 12.2.16 are Adjudications which the Contractor has provided Notice in Writing of to the Owner in accordance with GC 12.2.16.

5.6.2 After the receipt of a Proper Invoice from the Contractor in compliance with the requirements of GC 5.6.1, the Contract Administrator shall issue a certificate for payment of the Lien Holdback.

5.6.3 Subject to GC 5.6.4 and the Construction Act, the Owner shall, no later than fifteen (15) Working Days after the receipt of the Proper Invoice, make payment to the Contractor of the amount of the Lien Holdback set out in the Proper Invoice. Subject to the Construction Act, the Owner may retain out of the Lien Holdback any sums required by law to satisfy any liens against the Work and any other amount pursuant to 5.10 - OWNER'S SET-OFF.

5.6.4 The Owner may refuse to pay some or all of the Lien Holdback the Owner is required to pay to the Contractor pursuant to GC 5.6.3 if:

.1 no later than forty (40) Calendar Days after publication of the certificate of Substantial Performance of the Work in accordance with GC 5.5.4, the Owner publishes, in the manner set out in the Construction Act, a notice in the form

prescribed by the Construction Act, specifying the amount of the Lien Holdback that the Owner refuses to pay; and

.2 the Owner notifies the Contractor, in accordance with the Construction Act, of the publication of such notice.

5.6.5 For clarity, if the Contractor fails to submit a Proper Invoice to the Contract Administrator which is in compliance with the requirements of GC 5.6.1, the Owner shall not be required to make payment to the Contractor within the fifteen (15) Working Day period set out in GC 5.6.3. Such fifteen (15) Working Day period shall not commence until such time as the Contract Administrator has received from the Contractor a Proper Invoice in compliance with the requirements of GC 5.6.1.

5.7 PAYMENTS UPON TOTAL PERFORMANCE OF THE WORK

5.7.1 Payment Upon Total Performance of the Work

.1 When the Contractor considers that the Work is Totally Performed, the Contractor shall submit a Proper Invoice for payment of the unpaid amount of the Contract Price other than the finishing portion of the Lien Holdback.

.2 The Contractor's Proper Invoice submitted in accordance with GC 5.7.1.1 shall, in addition to complying with the applicable requirements of GC 5.3.7, include the list of Claims required by GC 9.2.2 in order to be considered a "Proper Invoice" for the purposes of GC 5.7.1.5.

.3 The Contract Administrator shall, no later than ten (10) Calendar Days after the receipt of a Proper Invoice from the Contractor submitted in accordance with GC 5.7.1.1, review the Work to verify the validity of such Proper Invoice. If the Contract Administrator, or the Owner independent of the Contract Administrator, disputes the validity of such Proper Invoice, the Owner shall promptly, but no later than fourteen (14) Calendar Days after the Contract Administrator's receipt of such Proper Invoice from the Contractor, provide the Contractor a notice of non-payment in the form and manner prescribed by the Construction Act specifying the amount that is not being paid and detailing all of the reasons why such Proper Invoice is invalid. No later than twenty-eight (28) Calendar Days after the receipt by the Contract Administrator of such Proper Invoice, the Owner shall make payment to the Contractor of the amount set out in such Proper Invoice less the amount disputed by the Contract Administrator or the Owner independent of the Contract Administrator, as applicable, that is set out in a notice of non-payment. If such Proper Invoice is invalid, then the Contractor shall then submit another Proper Invoice when it considers that the Work is Totally Performed and the process described in this GC 5.7.1 shall repeat.

.4 When the Contract Administrator finds the Proper Invoice submitted in accordance with GC 5.7.1.1 is valid and in compliance with the requirements of GC 5.7.1.2, the Contract Administrator shall promptly issue a certificate for payment which shall set out the date of Total Performance of the Work.

.5 The Owner shall, no later than twenty-eight (28) Calendar Days after the receipt by the Contract Administrator of a Proper Invoice submitted in accordance with GC 5.7.1.1 pay the Contractor as provided in 5.2 - OWNER'S OBLIGATION TO PAY less any amount disputed by the Contract Administrator or the Owner independent of the Contract Administrator, as applicable, that is set out in a notice of non-payment issued pursuant to GC 5.4.1.3 (including amounts in respect of Deficiencies identified after the receipt of the Proper Invoice).

.6 For clarity, if the Contractor fails to submit a Proper Invoice to the Contract Administrator which is in compliance with the requirements of GC 5.7.1.1, the Owner shall not be required to make payment to the Contractor within the twenty-eight (28) Calendar Day period set out in GC 5.6.3. Such twenty-eight (28) Calendar Day period shall not commence until such time as the Contract Administrator has received from the Contractor a Proper Invoice in compliance with the requirements of GC 5.7.1.1.

5.7.2 Payment of the Finishing Portion of the Lien Holdback

.1 After the date on which all liens that may be claimed against the finishing portion of the Lien Holdback have expired or been satisfied, discharged or otherwise provided for under the Construction Act and provided the Contract Administrator has certified that the Work is Totally Performed in accordance with GC 5.7.1, the Contractor shall submit a Proper Invoice for the finishing portion of the Lien Holdback.

.2 When the Contract Administrator finds the Proper Invoice submitted in accordance with GC 5.7.2.1 is valid and in compliance with the requirements of GC 5.7.2.1, the Contract Administrator shall promptly issue a certificate of payment for the finishing portion of the Lien Holdback.

.3 Subject to GC 5.7.2.4 and the Construction Act, the Owner shall, no later than fifteen (15) Working Days after the receipt of the Proper Invoice, make payment to the Contractor of the amount of the finishing portion of the Lien Holdback set out in the Proper Invoice. Subject to the Construction Act, the Owner may retain out of the finishing portion of the Lien Holdback any sums required by law to satisfy any liens against the Work and any other amount pursuant to 5.10 - OWNER'S SET-OFF.

.4 The Owner may refuse to pay some or all of the finishing portion of the Lien Holdback the Owner is required to pay to the Contractor pursuant to GC 5.7.2.3 if:

(1) no later than forty (40) Calendar Days after the date of Total Performance of the Work, the Owner publishes, in the manner set out in the Construction Act, a notice in the form prescribed by the Construction Act, specifying the amount of the finishing portion of the Lien Holdback that the Owner refuses to pay; and

(2) the Owner notifies the Contractor, in accordance with the Construction Act, of the publication of such notice.

.5 For clarity, if the Contractor fails to submit a Proper Invoice to the Contract Administrator which is in compliance with the requirements of GC 5.7.2.1, the Owner shall not be required to make payment to the Contractor within the fifteen (15) Working Day period set out in GC 5.6.3. Such fifteen (15) Working Day period shall not commence until such time as the Contract Administrator has received from the Contractor a Proper Invoice in compliance with the requirements of GC 5.7.2.1.

5.8 FINAL ACCEPTANCE CERTIFICATE

5.8.1 The Contract Administrator shall issue the final acceptance certificate ("**Final Acceptance Certificate**") after the later of the:

.1 date on which the Contract Administrator determines that the Work has passed all inspection and testing requirements and is satisfied that the Contractor has corrected all Deficiencies and has discharged all of the Contractor's obligations under the Agreement; and

.2 expiry of the Warranty Period.

The Contract Administrator shall have no obligation to issue the Final Acceptance Certificate until all known Deficiencies have been corrected and the Contractor has discharged all obligations under the Agreement.

5.9 CONTRACTOR DISCHARGE OF LIABILITIES

5.9.1 In addition to the obligations assumed by the Contractor pursuant to 3.8 – SUBCONTRACTORS AND SUPPLIERS, the Contractor agrees to discharge all liabilities and obligations for the Work including in respect of labour, services, Contractor Parties, Construction Equipment and Products, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld.

5.10 OWNER'S SET-OFF

5.10.1 In addition to and without limiting any other rights the Owner may have under the Agreement and at law or otherwise, the Owner may set-off and deduct from any amount owing to the Contractor under the Agreement (including any payments by the Owner pursuant to GC 5.4.2, GC 5.6.3, GC 5.7.1.5, GC 5.7.2.3 and determinations pursuant to an Adjudication) an amount sufficient to cover:

.1 any outstanding or disputed liabilities or obligations of the Contractor to the Owner (including unpaid liquidated damages), or to the Indemnities pursuant to 9.1 – INDEMNIFICATION;

.2 any Losses or amounts for which the Owner is expressly entitled in the Agreement to set-off or retain including GC 2.5.5, GC 5.4.2, GC 5.6.3, GC 5.7.2.3, GC 11.1.5.1, GC 11.1.5.2, GC 4.1.5, GC 10.2.5, GC 8.1.11.3, GC 9.1.3 GC 9.1.6, GC 13.2.1.2 and GC 13.2.2;

.3 any of the following:

(1) any assessment due to the Workplace Safety and Insurance Board relating to the Work; and

(2) any amount necessary to satisfy Contractor's obligations under 5.9 – CONTRACTOR DISCHARGE OF LIABILITIES;

.4 any other amounts owed by the Contractor to the Owner under the Agreement; and

.5 if the Contractor becomes insolvent, all outstanding Claims and Losses of the Owner whether or not related to the Agreement.

If there is an insufficient amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the aforementioned Claims and Losses.

6. ALLOWANCES

6.1 ALLOWANCES

6.1.1 The Fixed Price or Total Price of Unit Price Work includes the Allowances, if any. The Allowances include all taxes and duties (except only Value Added Taxes).

6.1.2 The Contractor's overhead and profit for the Cash Allowance is included in the Fixed Price or Total Price of Unit Price Work, and not in the Cash Allowance itself. Each Provisional Allowance item includes the Contractor's overhead and profit in connection with such Provisional Allowance. The Contractor shall not be paid any additional overhead and profit in connection with the Allowances other than as provided for in this 6.1 - ALLOWANCES.

6.1.3 Expenditures under Allowances shall be pre-authorized by the Owner in writing through the Contract Administrator.

6.1.4 Where the actual cost of the Work under any individual Cash Allowance exceeds the amount of such Cash Allowance, any unexpended amounts from other Cash Allowances may be reallocated, at the Owner's direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the Fixed Price for overhead and profit. Only where the actual cost of the Work under all Cash Allowances exceeds the total amount of all Cash Allowances shall the Contractor be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on such excess, as set out in row B.5 of the Information Sheet, and the Fixed Price shall be adjusted accordingly by Change Order.

6.1.5 The total amount of any unexpended Allowances shall be deducted from the Fixed Price or Total Price of Unit Price Work by Change Order, after providing for any reallocation contemplated in GC 6.1.4. For Provisional Allowances, such deduction includes the Contractor's overhead and profit included in such total amount. For clarity, no adjustment shall be made for the Contractor's overhead and profit included

in the Fixed Price or Total Price of Unit Price Work on such total amount deducted in respect of Cash Allowances.

6.1.6 The value of the Work performed under an Allowance is eligible to be included in Proper Invoices.

6.1.7 The Contractor and the Contract Administrator shall jointly prepare a schedule that shows when the Contract Administrator and Owner must authorize ordering of items called for under Allowances to avoid delaying the progress of the Work.

6.1.8 The Contractor shall extend to the Owner all refunds and trade, quantity and cash discounts, rebates and refunds which may be received in purchasing under Allowances.

6.1.9 The Owner reserves the right to call, or to have the Contractor call, competitive bids or other types of procurements for portions of the Work to be paid for from Allowances. If the Owner determines to proceed with competitive bids, the Contractor shall comply with the directions of the Owner.

6.1.10 The Contractor shall include copies of Contractor Records substantiating purchases under Allowances.

7. CHANGES IN THE WORK

7.1 OWNER'S RIGHT TO MAKE CHANGES

7.1.1 The Owner, through the Contract Administrator, without invalidating the Agreement, may make:

.1 changes in the Work consisting of additions, deletions or other revisions to the Work by Change Order or Change Directive; and

.2 changes to the Contract Time for the Work, or any part thereof, by Change Order or Change Directive.

7.1.2 The Contractor shall not perform a change in the Work without a Change Order or a Change Directive. To the extent the Contractor performs any such change in the Work, the Contractor does so at its own risk and without any liability or obligation on the part of the Owner. There shall be no change in the Contract Price (including delay prolongation costs, remobilization costs or other compensation), extension of the Contract Time or other amendment to the Agreement on account of any change in the Work unless specified in, and initiated through, a Change Order or a Change Directive.

7.1.3 There shall be no extension of the Contract Time or increase in the Contract Price or payment of any kind whatsoever (including for loss of productivity) based on the aggregate quantity, scope or value of changes in the Work whether resulting from Change Order or Change Directive. The Contractor agrees that in connection with any Change Order or Change Directive it shall co-operate with the Owner and the Contract Administrator and shall carry out such Change Order or Change Directive in

such a manner as to avoid incurring or to minimize any additional Losses to be incurred as a result of such Change Order or Change Directive or delay in the performance of the Work.

7.1.4 The value of a change shall be determined as follows, at the sole discretion of the Owner, as indicated in the Contemplated Change Order or Change Directive, as applicable:

.1 if the change relates to items for which the Unit Prices set out in the Agreement are applicable, in accordance with Section 1 of Schedule E – Valuing Changes in the Work; or

.2 in the absence of applicable Unit Prices set out in the Agreement:

(1) on either a negotiated fixed price or unit price basis, in accordance with the provisions in Section 2 of Schedule E – Valuing Changes in the Work; or

(2) if the Parties are unable to agree on a fixed price or unit price pursuant to GC 7.1.4.2(1), on a time and material basis, in accordance with the provisions in Section 3 of Schedule E – Valuing Changes in the Work.

7.1.5 Without limiting the entitlement of the Contractor pursuant to GC 11.1.9.2 when there is a termination for convenience pursuant to GC 11.1.9.1, if any change in the Work is made by which the amount of Work to be done is decreased, or any portion of the Work is dispensed with, the Owner shall not be liable to the Contractor for any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity.

7.1.6 Subject to any entitlement of the Contractor expressly provided for under the Agreement, no course of conduct or dealing between the parties, no express or implied acceptance of additions, deletions or other revisions to the Work, and no Claims that the Owner has been unjustly enriched by any addition, deletion or other revision to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a Claim Notice or any other Claim for additional payment under the Agreement or a Claim Notice for any extension of the Contract Time or any other Claim.

7.2 CHANGE ORDER

7.2.1 When a change in the Work is proposed or required by the Owner, the Contract Administrator will provide the Contractor with a written description of the proposed change in the Work (a "**Contemplated Change Order**"). The Contractor shall promptly but in no event later than ten (10) Working Days (or such other period set out in row C.9 of the Information Sheet) after receipt of a Contemplated Change Order submit, in a form acceptable to the Contract Administrator, a method of adjustment or an amount of adjustment for the Contract Price, if any, and the adjustment in the Contract Time, if any, for the proposed change in the Work.

7.2.2 Subject to GC 7.1.4, when the Owner and Contractor agree to the adjustments in the Contract Price and Contract Time or to the method to be used to determine the

adjustments, such agreement shall be reflected in a Change Order. The value of the Work performed as the result of a Change Order shall be included in the Proper Invoice.

7.2.3 A Change Order shall be a final determination or adjustment in the Contract Time, Contract Price and any other amendment to the Agreement as a result of the change in the Work and shall constitute a full and final settlement and satisfaction of all consequences to the Contractor of such change in the Work and shall be deemed to compensate Contractor fully for all effects of such change in the Work. For clarity, if a Change Order does not address an adjustment in the Contract Time, Contract Price or any other amendment to the Agreement, as the case may be, there shall be no adjustment in the Contract Time, Contract Price or any other amendment to the Agreement, as the case may be as a result of the change in the Work provided for in such Change Order.

7.3 CHANGE DIRECTIVE

7.3.1 If the Owner requires the Contractor to proceed with a change in the Work prior to the Owner and the Contractor agreeing upon the corresponding adjustment in Contract Price and/or Contract Time the Owner, through the Contract Administrator, shall issue a Change Directive.

7.3.2 Without limiting GC 7.3.1, a Change Directive may be used to direct a change in the Work that is only a change in the Construction Schedule or Contract Time.

7.3.3 Upon receipt of a Change Directive, the Contractor shall proceed immediately with the change in the Work.

7.3.4 The adjustment in the Contract Price, if any, for a change carried out by way of a Change Directive shall be determined in accordance with GC 7.1.4.

7.3.5 Without limitation to GC 7.3.3, upon receipt of a Change Directive, the Contractor shall promptly provide the Owner with an estimate of the cost of the performance of the change in the Work contemplated in the Change Directive and the impact on the Construction Schedule, if applicable, but in no event later than ten (10) Working Days (or such other period set out in row C.10 of the Information Sheet) after receipt of the Change Directive. If the Contractor, acting reasonably, requires more time to provide an estimate, it may notify the Owner of the date when the estimate will be provided.

7.3.6 Without limitation to GC 7.3.3, when the Owner and the Contractor reach agreement in respect of a Change Directive on the adjustment to the Contract Price and to the Contract Time, if any, such agreement shall be reflected in a Change Order. The Contractor shall not be entitled to include the value of the change in the Work performed as the result of such Change Directive in its Proper Invoices until, and unless, such Change Order has been executed.

7.4 CONCEALED OR UNKNOWN CONDITIONS

7.4.1 If the Owner or the Contractor discover conditions at the Site which are:

.1 subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in, or inferable from, the Agreement; or

.2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement,

then the observing party shall give Notice in Writing to the other party of such conditions before they are disturbed and in no event later than five (5) Working Days after first observance of the conditions.

7.4.2 The Contract Administrator will promptly, and in no event later than within twenty (20) Working Days after discovery thereof by the Owner or the Contractor, investigate such conditions and make a finding having regard to and subject to the liabilities and responsibilities assumed by the Contractor pursuant to 3.6 - EXAMINATION OF SITE and GC 4.1.4. If the finding is that the conditions differ materially and, having regard to and subject to the liabilities and responsibilities assumed by the Contractor pursuant to 3.6 - EXAMINATION OF SITE and GC 4.1.4, this would cause an increase or decrease in the Contract Time or Contract Price, the Contract Administrator, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in 7.2 - CHANGE ORDER or 7.3 - CHANGE DIRECTIVE. For clarity, the Contractor's entitlement to such change in the Work shall be determined by the Contract Administrator taking into account the respective liabilities assumed by the Owner and Contractor pursuant to 3.6 - EXAMINATION OF SITE and GC 4.1.4.

7.4.3 If the Contract Administrator finds that the conditions at the Site are not materially different or that no change in the Contract Price or extension of the Contract Time is justified, the Contract Administrator will report the reasons for this finding to the Owner and the Contractor in writing.

7.4.4 If such concealed or unknown conditions relate to Hazardous Materials, artifacts and fossils, or mould, the parties will be governed by the provisions of 4.3 - HAZARDOUS MATERIALS, 4.5 - ARTIFACTS AND FOSSILS and 4.4 – MOULD, as applicable.

7.5 DELAYS

7.5.1 If the Contractor is delayed in the completion of a critical path Work activity by:

.1 subject to GC 7.5.3, an act or omission of the Owner, the Owner Representative, the Contract Administrator or anyone employed or engaged by them directly or indirectly, which is contrary to the provisions of the Agreement; or

.2 by a stop work order issued by a court or other public authority,

then, except to the extent such event results from the negligent act or omission of the Contractor Parties or the default or breach of the Contractor's obligations under the Agreement or any other act or fault of the Contractor Parties, the Contract Time shall

be extended for such reasonable time as agreed to by the Parties, taking into account such time period as recommended by the Contract Administrator and the Contract Price shall be adjusted to account for reasonable Losses incurred by the Contractor as the result of such delay including the Losses referred to in GC 7.5.8, as applicable, but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity resulting from such delay.

For greater clarity, an order issued under the Emergency Management and Civil Protection Act shall not be considered to be a stop work order under GC 7.5.1.

7.5.2 If the Contractor is delayed in the completion of a critical path Work activity by any cause beyond the Contractor's control, including:

.1 war, blockades, and civil commotions;

.2 labour disputes, strikes and lock-outs (other than lock-outs described in GC 7.5.3);

.3 fire, unusual delay by common carriers or unavoidable casualties; or

.4 abnormally adverse weather conditions at the Site which are different from those normally and customarily experienced at the Site (as documented by weather data from Environment Canada) over the past ten (10) years taking into consideration severity, duration and time of year conditions,

.5 epidemics, pandemics, disease outbreaks and any order issued under the *Emergency Management and Civil Protection Act*;

except to the extent such event results from the negligent act or omission of the Contractor Parties or the default or breach of the Contractor's obligations under the Agreement, then the Contract Time shall be extended for such reasonable time as agreed to by the Parties, taking into account such time period as recommended by the Contract Administrator. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for Losses incurred by such delays except to the extent the Contractor would be entitled to reasonable Losses in accordance with GC 7.5.1 or if such delay is the cause of the stop work order in connection with the Contractor's termination of the Agreement pursuant to GC 11.2.1.

7.5.3 If the Contractor is delayed in the completion of a critical path Work activity by a lock-out of the Owner or the City of Toronto, except to the extent such event results from the negligent act or omission of the Contractor Parties or the default or breach of the Contractor's obligations under the Agreement:

.1 the Contract Time shall be extended for the duration of such lock-out, provided that if the duration of such lock-out exceeds five (5) Working Days, the Contract Time shall be extended by the duration of such lock-out plus an additional (5) Working Days; and

.2 the Contract Price shall only be adjusted to account for direct reasonable costs the Contractor incurs for leased Construction Equipment as a result of such lock-out, but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity resulting from such delay.

7.5.4 No extension of the Contract Time shall be made for delay unless Notice in Writing of the cause of delay is given to the Contract Administrator and Owner in accordance with 7.7.1.

7.5.5 If no:

.1 schedule is made under GC 2.2.12 for the Contract Administrator to provide Supplemental Instruction; or

.2 time period is provided elsewhere in the Agreement where the Contract Administrator is to provide instructions to the Contractor,

then no request for an extension of the Contract Time shall be made by the Contractor because of failure of the Contract Administrator to provide such Supplemental Instructions or other instructions, as applicable, until fifteen (15) Working Days after demand for such Supplemental Instructions or other instructions, as applicable, has been made or such longer period of time reasonably required under the circumstances.

7.5.6 If the Work is behind schedule for a reason other than as described in GC 7.5.1, 7.5.2 or 7.5.3, the Contractor, at its expense and subject to GC 7.5.7, shall:

.1 prepare and present to the Contract Administrator and Owner, for review and approval, a recovery plan ("**Recovery Plan**") as soon as practical, but not later than three (3) Working Days after the earlier of the Contractor becoming aware of the Work being behind schedule or the Owner notifying the Contractor that the Work is behind schedule. Such Recovery Plan shall include information and details required by the Contract Administrator and Owner, acting reasonably, and shall demonstrate how the Contractor shall achieve the recovery of the schedule and bring the Work back on schedule. Any costs incurred by the Owner for the services of the Contract Administrator in reviewing multiple submissions of the Recovery Plan shall be borne by the Contractor; and

.2 commence the implementation of the Recovery Plan approved by the Contract Administrator and Owner as soon as practical, but not later than within two (2) Working Days of the Contract Administrator and Owner providing approval of the Recovery Plan; and

.3 otherwise take all measures necessary to bring the Work back on schedule (including expediting, increasing the labour force, supervisors and equipment, and working overtime).

For clarity, this GC 7.5.6 shall not limit the other provisions of 7.5.

7.5.7 For greater certainty and without limiting any other provision in the Agreement, there shall be no extension of the Contract Time or increase in the Fixed Price or Unit Prices to the extent a delay was caused by the negligent act or omission of the Contractor Parties or by the Contractor's default or breach of the Agreement. Without limiting any other provision in the Agreement, the Owner shall be reimbursed by the Contractor for all Losses incurred by the Owner as the result of such delay, including all services required by the Owner from the Contract Administrator and Owner Representative as a result of such delay by the Contractor and, in particular, the costs of the Contract Administrator's and Owner Representative's services during the period between the Scheduled Date for Substantial Performance of the Work as the same may be extended through the provisions of the GC and the actual date of Substantial Performance of the Work achieved by the Contractor. For clarity, such costs shall be in addition to any Delay Liquidated Damages payable by the Contractor.

7.5.8 The Contractor shall be responsible for the care, maintenance and protection of the Work in the event of any suspension of construction as a result of the delay described in GC 7.5.1, 7.5.2 or 7.5.3. In the event of such suspension, the Contractor shall be reimbursed by the Owner for the reasonable Losses incurred by the Contractor for such care, maintenance and protection, but excluding the costs of the Contractor's head office Personnel and any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity.

7.5.9 Without limiting the generality of any other provision in the Agreement, the Contractor shall use best efforts to mitigate the impact of any delay events dealt with by GC 7.5.1, 7.5.2 or 7.5.3 and any other matters dealt with in a Claim Notice upon the performance of the Work, the Contract Time and the Contract Price. If the Contractor does not exercise such best efforts, the Contractor's entitlements under any applicable Claim Notice will be reduced or invalidated to reflect impacts that would have been avoided by such mitigation.

7.5.10 Any extension of the Contract Time or adjustment in the Contract Price provided for in this 7.5 – DELAYS shall be authorized in accordance with 7.2 - CHANGE ORDER.

7.6 DELAY LIQUIDATED DAMAGES

7.6.1 The Contractor acknowledges and agrees that the Owner will suffer financial Loss if the Work is not completed within the time specified in the Agreement. The Contractor also recognizes the delays, costs and difficulties involved in proving the actual Loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Contractor agrees that if the date of Substantial Performance of the Work is delayed past the Scheduled Date for Substantial Performance of the Work, subject to any adjustment in Contract Time as provided for in the Agreement, the Contractor shall pay Owner liquidated damages in the amount designated in row B.6 of the Information Sheet ("**Delay Liquidated Damages**") for each and every Calendar Day or Working Day, as applicable, of delay until the Contractor has attained Substantial Performance of the Work. The Contractor further expressly acknowledges and agrees that Delay Liquidated Damages payable by the Contractor are:

.1 not intended to be a penalty and are a reasonable and genuine pre-estimate of the actual damage that will be incurred by the Owner if the Contractor fails to achieve Substantial Performance of the Work in accordance with the requirements of the Agreement (including paragraph 1.3 of Section 1 of the Agreement);

.2 in addition to, and without prejudice to, any other right or remedy available to the Owner under the Agreement or otherwise and does not limit or reduce any obligation or liability of the Contractor under the Agreement or otherwise; and

.3 not a cap on the damages payable by, or liability of, the Contractor, if the Contractor fails to achieve Substantial Performance of the Work in accordance with the requirements of the Agreement (including paragraph 1.3 of Section 1 of the Agreement).

7.6.2 If there is a delay in attaining Substantial Performance of the Work, in spite of the payment of Delay Liquidated Damages in accordance with GC 7.6.1, the Contractor shall continue to perform and expedite the Work in accordance with the Agreement.

7.6.3 The Contractor shall pay Delay Liquidated Damages pursuant to 7.6.1 on a monthly basis as they accrue.

7.7 CLAIMS PROCEDURE

7.7.1 The Contractor shall provide a Notice in Writing to the Owner and the Contract Administrator of any claim for a change in the Contract Price, extension of the Contract Time or other changes to the Work or amendments to the Agreement ("**Claim Notice**") within ten (10) Working Days after the Contractor knows, or should know applying the Standard of Care, of the event or circumstance giving rise to such claim. Any Claims by the Contractor in respect of such claim or Claim Notice shall be irrevocably barred, and waived and released by the Contractor unless the Contractor has strictly complied with the applicable requirements of 7.CHANGES IN THE WORK and the Contractor has provided such Claim Notice within the prescribed time period.

7.7.2 Without limiting the generality of any other provision in the Agreement, the Contractor shall immediately upon commencing Work that may result in a Claim Notice, keep such Contractor Records that relate to such Work (including any T&M Change in the Work) and the Claim Notice arising therefrom (including Daily Contractor Work Records) as may be necessary to support and substantiate such Claim Notice. The Contractor shall attempt, on a daily basis, to reconcile its Daily Contractor Work Records with the records of the Contract Administrator or Owner Representative, as applicable and have the Daily Contractor Work Records signed by the Contract Administrator or Owner Representative, as applicable. For clarity, the reconciling of the Contractor's Daily Work Records with the records of the Contract Administrator or Owner Representative, as applicable, shall not be construed to be acceptance of a Claim Notice. If it is not possible to reconcile the Daily Contractor Work Records, then the Contractor shall submit the un-reconciled Daily Contractor Work Records with its Claim Notice, whereby the resolution of the dispute about the Daily Contractor Work Records shall not be resolved until there is a resolution of the applicable Claim Notice.

7.7.3 Subject to GC 7.7.4, the Claim Notice shall:

.1 identify the item or items in respect of which the Claim Notice arises;

.2 include the date the Contractor first became aware of the event or circumstance giving rise to the Claim Notice;

.3 state the grounds, contractual or otherwise, upon which the Claim Notice is made;

.4 provide sufficient and detailed information and documentation to allow the Contract Administrator and the Owner to properly consider the Claim Notice of the Contractor including:

(1) a description of the portions of the Work affected thereby;

(2) the cause of the change in the Contract Time, a description of such change, an assessment of the impact such change will have on the Construction Schedule (including an explanation as to how the critical path will be affected) and a reasonable estimate of the number of Calendar Days by which the Work will be delayed and date and time when the delay was experienced;

(3) a detailed account of the amount claimed and a breakdown of the change in the Contract Price;

(4) details of mitigation strategies applied; and

(5) all other pertinent details and backup information and documents; and

.5 include the Contractor Records (including Daily Contractor Work Records) maintained by the Contractor supporting such Claim Notice.

The Contractor shall submit further updates on the Claim Notice to the Owner and the Contract Administrator as they become available, but in no event shall the Contractor submit any further updates within the fourteen (14) Calendar Days prior to the deadline for the Contract Administrator to issue its determination pursuant to GC 7.7.6.

7.7.4 Where the event giving rise to the Claim Notice has a continuing effect, the Claim Notice submitted under GC 7.7.2 shall be considered to be an interim Claim Notice and the Contractor shall, submit further updates on the Claim Notice at such intervals as the Owner or Contract Administrator may reasonably require. Such updates shall give the accumulated amount of the Claim Notice and any further grounds upon which it is based, as a part of the information and documents which the Contractor is required to provide in accordance with GC 7.7.2. The Contractor shall submit a final Claim Notice after the end of the effects resulting from the event as a part of the information and documents which the Contractor is required to provide in accordance with GC 7.7.2.

7.7.5 The Contract Administrator may, from time to time, request the Contractor to submit any further and other particulars as the Contract Administrator considers necessary to assess the Claim Notice. The Contractor shall submit the requested information within thirty (30) Calendar Days of receipt of such request or such shorter time as required by the Contract Administrator.

7.7.6 Within ninety (90) Calendar Days of initial receipt of the Claim Notice pursuant to GC 7.7.1, or such longer period of time required by Owner, the Owner, or if authorized by the Owner, the Contract Administrator, shall prepare and issue a determination to the Contractor regarding the validity of the Claim Notice. Such determination may be reflected in a Change Order or Change Directive to the extent required pursuant to GC 7.1.2. The Contractor shall be conclusively deemed to have accepted such determination of the Owner, or the Contract Administrator, as the case may be, and to have expressly waived and released the Owner from all Claims in respect of the Claim Notice including the particular matter dealt with in that determination unless, within fifteen (15) Working Days after receipt of that determination, the Contractor provides a revised Claim Notice or disputes that determination in accordance with 12.DISPUTE RESOLUTION.

7.8 SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS

7.8.1 For the purposes of this 7.8 - SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS, “Third Party Claimant” means any Person asserting a Claim that is not a party to the Agreement other than a Subcontractor, Supplier or Sub-subcontractor asserting a Claim in respect of the Work or the Project:

.1 for which such Subcontractor, Supplier or Sub-subcontractor is entitled to assert rights (including lien rights) under the Construction Act against the Owner; or

.2 which relate to a Claim the Contractor is asserting against the Indemnitees.

7.8.2 Without limiting the obligations of the Contractor under 7.7 – CLAIMS PROCEDURE and GC 7.8.3 or elsewhere in the Agreement, the Contractor shall, or shall cause the Contractor's insurer to, in the manner and extent requested by the Owner:

.1 respond to all Third Party Claimants in a timely manner;

.2 ensure that Third Party Claimants are provided with accurate information about the status of their Claim, and

.3 where appropriate, notify Third Party Claimants of the relevant activity on their Claims and provide them with information.

7.8.3 If the Contractor receives notice of a Claim of a Third Party Claimant relating to or arising out of the Agreement, the Contractor shall immediately forward the notice of Claim to the City of Toronto Clerk’s office at claims@toronto.ca.

7.8.4 Once the Contractor receives notice of a Claim of a Third Party Claimant relating to or arising out of the Agreement (including any notice from the City of Toronto's adjuster), the Contractor shall, or shall cause the Contractor's insurer to, in the manner and extent requested by the Owner:

.1 within five (5) Working Days of receiving notice of such Claim, send a letter to the Third Party Claimant acknowledging receipt of such Claim and provide the Third Party Claimant with the contact information of the Contractor Project Manager, or another Person representing the Contractor, to whom the Third Party Claimant can refer questions regarding such Claim;

.2 conduct an investigation of such Claim and make a decision regarding such Claim that is based on a proper consideration of the facts; and

.3 within twenty-five (25) Working Days of receiving notice of such Claim, provide the Third Party Claimant with a letter advising of the results of the investigation and clearly explaining the Contractor's decision regarding such Claim or should the Contractor require the involvement of their insurance company to resolve such Claim, this shall be forwarded to the insurance company and the Third Party Claimant shall be notified within the allotted period of time above.

7.8.5 The Owner may, in writing, provide an extension of time for responding to the Claim of a Third Party Claimant pursuant to this 7.8- SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS if the Contractor or the Contractor's insurer, in writing, provides the Owner with a request for an extension as well as the reasons for the extension. In considering whether to provide such an extension, the Owner shall consider the Contractor's, or the Contractor's insurer's, reasons for the request and all of the surrounding circumstances including good customer service standards. Once the Contractor forwards such Claim to its insurer, the resolution of such Claim shall follow the insurance industry standards for claim investigation.

7.8.6 If an extension of time is provided under GC 7.8.5, the Contractor, or the Contractor's insurer, shall write to the Third Party Claimant advising that the investigation is on-going, advise of the date by which the Contractor or its insurer will report the results of the investigation to the Third Party Claimant, and explain the reasons why additional time is required to make a decision on the Claim.

7.8.7 A copy of all letters sent to a Third Party Claimant by or on behalf of the Contractor, including letters sent by the Contractor's insurer, pursuant to this 7.8- SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS, shall be copied to the Owner, and the City of Toronto's adjuster.

7.8.8 Where appropriate, the Contractor shall ensure its insurer takes all of the appropriate steps to meet the obligations under GC 7.8.1 to 7.8.7.

7.8.9 The Contractor shall provide to the Owner monthly updates on the status of all Claims received from Third Party Claimants until resolution of such Claims.

7.8.10 If the Contractor fails to meet any of its obligations under this 7.8 - SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS, the Owner may provide the Contractor with Notice in Writing that the relevant obligations have not been fulfilled. If the Contractor does not fulfil such obligations within five (5) Working Days from receipt of such Notice in Writing, the Owner, without prejudice to any other right or remedy, may hold back an amount of $10,000.00 from monies payable to the Contractor under the Agreement. The Owner may exercise its right of holdback under this section for each Claims of a Third Party Claimant for which the Contractor fails to meet its obligations under 7.8 - SERVICE STANDARDS FOR CONTRACTOR IN RESPONDING TO THIRD PARTY CLAIMANTS. Without limiting any of the Owner's other rights of holdback or set-off, the Owner will release the monies held back pursuant to this GC 7.8.10 once it has received evidence that the Contractor has sent the Third Party Claimant a letter(s) in accordance with GC 7.8.4.1 and 7.8.4.3.

8. INSURANCE, CONTRACT SECURITY, BONDS AND CONTRACTUAL HOLDBACK

8.1 INSURANCE

8.1.1 Without restricting the generality of 9.1 – INDEMNIFICATION or any other provision of the Agreement, the Contractor shall provide, maintain and pay:

.1 for the insurance coverages listed in this 8.1 - INSURANCE under GCs 8.1.2, 8.1.4, 8.1.5, 8.1.6, 8.1.7, 8.1.8 and 8.1.9 as such coverages may be modified by Row D.1 of the Information Sheet;

.2 if required by row D.1 of the Information Sheet, coverage under GC 8.1.3; and

.3 such additional insurance coverages as required by Row D.1 of the Information Sheet.

8.1.2 Commercial General Liability Insurance:

(1) in the amount of five million dollars ($5,000,000) per occurrence;

(2) that includes the Indemnitees and such other Persons identified by the Owner from time to time as additional insureds with respect to liability arising out of the operation of the Contractor with regard to the Agreement; and

(3) that provides for a cross liability and/or severability of interest, contractual liability, Owner's and Contractor's protective liability, broad form property damage, contingent/and or employer's liability, products and completed operations, non-owned automobile liability and, if applicable to the insured operations as detailed in the Agreement, coverage for blasting, explosion, shoring, underpinning, underground works, pile driving and collapse; and

(4) which includes completed operations coverage for a period of six (6) years from the date of Substantial Performance of the Work, unless otherwise indicated in the Agreement. If the Contractor fails to comply with the requirements of this GC 8.1.2(4) or to maintain such coverage any

contractual period for claiming indemnity described in the Agreement will not be binding on the Owner.

8.1.3 Contractor's Pollution Liability Insurance

.1 If specified in row D.1 of the Information Sheet, pollution liability insurance. The policy shall have a limit of not less than Two Million Dollars ($2,000,000) per claim limit. The policy shall cover third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the Contractor's, Subcontractor's, Sub-subcontractor's or Supplier's operations and completed operations (i.e. Work performed). If written as a single project policy, the policy shall include an extended reporting period of 24 months. If written as an annual policy, the policy should be kept in force for 24 months from the date of the later of the: issuance of the Final Acceptance Certificate or termination of the Agreement, as the case may be. The Owner shall be included as an additional insured on this policy.

8.1.4 All Risk Property Insurance

.1 All risk property insurance shall be written on a replacement cost basis based on the Contract Price, on the building or structure while in the course of construction, and on all Products, Construction Equipment, supplies and/or systems, including boiler and machinery, and pressure vessels if applicable, that form part of the Work or are used in the performance of the Work. The policy may be written separately in the form of a Builder's Risk or Installation Floater; and Boiler and Machinery policy and/or Contractor's Equipment policy, as appropriate to the Project. The Owner shall be included as an additional insured and a joint loss payee on these policies, except for the Contractor's Equipment policy. This GC 8.1.4 is subject to GC 3.14.4.

.2 The all risk property insurance shall provide that, in the event of a loss or damage:

(1) unless directed otherwise by the Owner in its sole and absolute discretion, the Contractor shall act on behalf of both the Owner and the Contractor for the purpose of adjusting the amount of such loss or damage payment with the insurers and payment shall be made to the Owner and the Contractor as their respective interests may appear;

(2) when the extent of the loss or damage is determined the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Agreement except that the Contract Time may be extended relative to the extent of the loss or damage in accordance with 7.5 – DELAYS; and

(3) the Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Agreement, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and in accordance with the requirements of 5. CONTRACT PRICE AND PAYMENT. In addition, the

Contractor shall be entitled to receive from the payments made by the insurers the amount of the Contractor's interest in the restoration of the Work.

8.1.5 Automobile Liability Insurance

.1 Automobile liability insurance in respect of all licensed owned/leased vehicles that will be utilized in the performance of the Work, unless otherwise required by the Agreement. Such automobile liability insurance shall have limits of not less than five million dollars ($5,000,000).

8.1.6 Professional Liability Insurance

.1 If providing specialized consulting services including architectural, design, mechanical engineering, or other engineering professional services as a part of the Work, the Contractor shall provide and/or cause any Subcontractor or Sub-subcontractor, where such Subcontractor or Sub-subcontractor is under a professional obligation to maintain the same, Professional Liability Insurance or Errors and Omissions Insurance in the amount of not less than five million dollars ($5,000,000) and shall continue for twenty-four (24) months following the date of the earlier of the issuance of the Final Acceptance Certificate or termination of the Agreement, as the case may be.

8.1.7 Aviation Liability Insurance

.1 If used directly or indirectly in performance of the Work by the Contractor, Subcontractor, Sub-subcontractor or Supplier, aviation liability insurance with respect to owned or non-owned aircraft, remotely piloted aircraft, unmanned aerial vehicles or drones including the use of additional premises, and shall include, if applicable, coverage for bodily injury, death, aircraft passenger hazard, and damage to property including loss of use thereof. Such insurance shall have limits of not less than five million dollars ($5,000,000).

8.1.8 Watercraft Liability Insurance

.1 If used directly or indirectly in performance of the Work by the Contractor, Subcontractor, Sub-subcontractor or Supplier, watercraft liability insurance with respect to owned or non-owned watercraft including the use of additional premises, and shall include coverage for bodily injury, death, and damage to property including loss of use thereof. Such insurance shall have limits of not less than five million dollars ($5,000,000).

8.1.9 Marine Insurance

.1 If carrying out any ocean, coastal and inland waterway shipments, the Contractor shall ensure a marine insurance policy is in place to fully insure the full replacement value of the shipment, insurance, and freight plus 10% and should

cover the cargo on an "All Risks" basis from the point of origin of shipment until delivery in Toronto, Ontario, including the risk of unloading at the delivery point.

.2 The Contractor shall maintain or cause to be maintained, if applicable, hull and machinery insurance covering the full replacement cost of all barges, scows and other watercraft owned, rented or leased by the Contractor or any Subcontractor or Sub-subcontractor.

8.1.10 The Contractor shall be responsible for all deductible and self-insured retention amounts under the policies required by this 8.1 - INSURANCE.

8.1.11 Insurance Requirements and Duration

.1 Unless specified otherwise in this 8.1 - INSURANCE, the duration of each insurance policy shall be from on or before Commencement Date until the date of the earlier of the issuance of the Final Acceptance Certificate or termination of the Agreement, as the case may be.

.2 Prior to the execution of the Agreement, and upon placement and at amendment or extension of all or any part of the insurance, the Contractor shall within five (5) Working Days provide the Owner with confirmation of coverage on the Owner's certificate of insurance form as attached as Form 2 of Schedule G – Forms or on a form acceptable to the Owner, without notice or demand by the Owner. Prior to the expiration date of all or any part of the insurance the Contractor shall submit to the Owner such confirmation of coverage or a replacement policy without notice or demand by the Owner. The insurance documents required by this GC 8.1.11.2 shall be signed by the insurer or an authorized representative of the insurer.

.3 If the Owner receives notice of cancellation for nonpayment of the insurance premium, the Owner may, but is not obliged to, pay the premium of any policy of insurance required to be maintained herein and make a formal demand for reimbursement of such costs from the Contractor. If the Contractor fails to pay the cost of the insurance placed by the Owner within fifteen (15) Calendar Days of the date on which the Owner made a formal demand for reimbursement of such costs, the Owner may set-off the costs thereof in accordance with 5.10 – OWNER'S SET-OFF.

.4 The Contractor shall, on request, within five (5) Working Days provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature of the insurer or the underwriter or the broker.

.5 All insurance policies taken out by the Contractor shall be placed with insurers satisfactory to the Owner in its sole and absolute discretion. Without limiting the generality of the foregoing, all insurers must be licensed to underwrite insurance in the Province of Ontario, except to the extent the Owner waives such requirement in writing.

.6 The insurance policies required pursuant to this GC shall:

(1) be primary and shall not call into contribution any insurance available to the Owner; and

(2) contain a waiver of subrogation rights which the insurers may have against the Owner or any other additional insured, except for the Automobile Liability and Professional Liability policies.

.7 The amount of the deductible for the purpose of the Agreement shall not be more than $25,000.00. Following the award of the Agreement, the Owner reserves the right to negotiate a higher or lower deductible, as appropriate.

.8 In addition to the insurance required by 8.1 – INSURANCE, the Contractor shall, at its cost, maintain such other forms of insurance as the Owner, acting reasonably, may require from time to time, in amounts and for risks against which a prudent contractor would insure.

.9 Each policy (except for the policy of automobile liability insurance required under GC 8.1.5) shall contain an endorsement requiring the insurer(s) to notify the Owner in writing, by registered mail, at least thirty (30) Calendar Days (fifteen (15) Calendar Days if cancellation is due to non-payment of premium), prior to any cancellation of the Contractor's insurance.

.10 "Claims made" insurance policies shall not be permitted, except for the Professional Liability and Contractor's Pollution Liability policy.

.11 The insurance coverages required by 8.1 – INSURANCE shall allow for partial or total use and occupancy by the Owner prior to Substantial Performance of the Work in accordance with 3.14.

8.1.12 The Contractor shall cause the Subcontractors and Suppliers to provide and maintain, at the expense of the Subcontractors and Suppliers, the insurance set out in GC 8.1.3 and 8.1.5.

8.2 CONTRACT SECURITY

8.2.1 The Contractor shall, prior to the Commencement Date or within the specified time, provide to the Owner any contract security specified in row D.2 of the Information Sheet.

8.3 SURETY BONDS

8.3.1 Unless expressly indicated otherwise in row D.5 of the Information Sheet, the Contractor shall provide surety bonds, which shall be:

.1 a performance bond with a coverage limit of fifty percent (50%) of the aggregate amount of the Fixed Price and the estimated Total Price of Unit Price Work (calculated using the Estimate of Units for Completion), plus Value Added Taxes;

and a labour and material payment bond with a coverage limit of fifty percent (50%) of such aggregate amount;

.2 in compliance with the requirements of the Construction Act and in the form prescribed by the Construction Act; and

.3 delivered to the Owner prior to the execution of the Agreement by both the Owner and the Contractor.

8.3.2 The premiums for the bonds required by the Agreement are included in the Fixed Price and Unit Prices.

8.3.3 If the Contract Price increases during the Performance of the Work, the Owner shall have the right, in its sole discretion and at any time, to require riders be provided to the existing bonds, to increase the value of the bonds to fifty percent (50%) of the total of the Contract Price plus Value Added Taxes.

8.4 CONTRACTUAL HOLDBACK

8.4.1 The Owner shall retain a contractual holdback equal to the amount(s) identified in row D.3 of the Information Sheet (the aggregate of such amounts retained by the Owner being the "**Contractual Holdback**"). For clarity, the Owner shall not retain Contractual Holdback in respect of the payment of Lien Holdback pursuant to 5.6 - PAYMENT OF LIEN HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK or the payments pursuant to 5.7 – PAYMENTS UPON TOTAL PERFORMANCE OF THE WORK.

8.4.2 The Owner, without prejudice to any other right or remedy, shall be entitled to apply the Contractual Holdback towards Losses the Owner may suffer, sustain or incur in connection with the:

.1 exercise of its rights in respect of the Contractor's failure to correct a default pursuant to GC 11.1.5;

.2 failure of Contractor to complete the Work and correct deficient Work after the issuance of the certificate of Substantial Performance of the Work in accordance with the completion schedule established pursuant to GC 5.5.3; and

.3 exercise of its right to correct Deficiencies or make good damaged work or property pursuant to GC 2.5.4 and 9.3.5.

8.4.3 Upon the Total Performance of the Work, the portion of the Contractual Holdback which remains after the Owner has exercised its rights pursuant to 8.4.2, if any, shall be reduced by the percentage amount identified in row D.4 of the Information Sheet. The reduced amount of the Contractual Holdback (without any interest owed by the Owner) shall be eligible to be included in the Proper Invoice submitted pursuant to GC 5.7.1.1.

8.4.4 After the issuance of the Final Acceptance Certificate, the Contractor may submit a Proper Invoice to the Owner in accordance with the applicable requirements of 5.3 –

PROPER INVOICES requesting release of the portion of the Contractual Holdback which remains after the Owner has exercised its rights pursuant to GC 8.4.2, if any. The Owner shall make payment to the Contractor of such remaining portion of the Contractual Holdback (without any interest owed by the Owner) in accordance with the applicable requirements of 5.4 – PROGRESS PAYMENT.

9. INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

9.1 INDEMNIFICATION

9.1.1 The Contractor shall indemnify, defend and hold harmless the Owner, the mayor of the City of Toronto and each of the City of Toronto's agencies, boards, commissions, Personnel, elected officials, servants, volunteers and advisers (including the Contract Administrator and the Owner Representative), and their respective successors and assigns (collectively as the "**Indemnitees**") from and against all Claims brought against, or Losses suffered, sustained, or incurred by, the Indemnitees which may be directly or indirectly attributable to, or arising or alleged to arise out of:

.1 the negligent acts or omissions of the Contractor Parties;

.2 any deliberate act of wrongdoing or wilful misconduct or fraud of a Contractor Party including intentional misrepresentation; or

.3 the performance of or the failure to perform any of the Contractor's obligations under the Agreement

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

.4 all Losses that any of the Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property (including all or any part of the Site or any other tangible property related thereto); and

.5 all Claims arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.

9.1.2 Without limiting the generality of any other provision in the Agreement, the Contractor shall indemnify, defend and hold harmless the Indemnitees from and against all Claims brought against, or Losses suffered, sustained, or incurred by the Indemnitees which may be directly or indirectly attributable to, or arising or alleged to arise out of:

.1 a lien or subsequent lawsuit brought in connection with any lien by a Subcontractor, Sub-subcontractor or Supplier;

.2 the infringement or an alleged infringement of any patented invention or copyright by the Contractor Parties in connection with the Work including the Products;

.3 the Contractor's failure to comply with the requirements of 4.3 – HAZARDOUS MATERIALS;

.4 the Contractor's failure to comply with the requirements of OHSA and the duties, responsibilities and obligations of the constructor under OHSA;

.5 the Contractor's failure to comply with the requirements of GC 12.2.16 or 3.8.2.3(3);

.6 a Subcontractor, Supplier or Sub-subcontractor's failure to comply with the requirements of GC 3.8.2.3(3);

.7 the presence of mould caused by the Contractor's operations under the Agreement as determined in accordance with GC 4.4.2; or

.8 the Contractor's failure to comply with the requirements of GC 10.1.6.

9.1.3 The Contractor shall pay to the Indemnitees, or any of them, on demand the amount of all Losses and Claims for which the Contractor is obligated to indemnify the Indemnitees and any moneys paid or payable by the Indemnitees in settlement or in discharge or on account thereof. If the Contractor fails to make such payments within ten (10) Working Days after such demand, the Owner may set-off such payments in accordance with 5.10 – OWNER'S SET-OFF.

9.1.4 The Owner shall indemnify, defend and hold harmless the Contractor from and against all Claims brought against the Contractor by third parties, or Losses suffered, sustained, or incurred by the Contractor in respect of such third party Claims, that are attributable to, or arise out of, the Contractor's direct involvement in the Agreement, provided such third party Claims are directly caused by the negligent act or omission of the Owner in the performance of the Owner's obligations under the Agreement, and then only to the extent the Losses was caused by the Owner.

9.1.5 The Owner shall indemnify, defend and hold harmless the Contractor from and against all Claims brought against the Contractor, or Losses suffered, sustained, or incurred by the Contractor arising out of the Contractor's performance of its obligations under the Agreement which are attributable to, or arise out of

.1 a lack of or defect in title or an alleged lack of or defect in title to the Site; or

.2 an infringement of a patent of invention directly resulting from the use of a model, plan or design that was supplied to the Contractor by the Owner as part of the Agreement,

but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity. The Contractor expressly waives the right to indemnity for Claims other than those stated above.

9.1.6 The Contractor hereby authorizes and empowers the Owner or its solicitor to defend, settle or compromise any of the Claims described in GC 9.1.1 and 9.1.2 as the Owner or its solicitor may deem expedient. The Contractor shall ratify and confirm all the acts of the Owner and its solicitor undertaken pursuant to this GC 9.1.6 and shall pay to such solicitor on demand his or her reasonable costs of any such defense, settlement

and/or compromise. If the Contractor fails to make such payments to the solicitor, the Owner may set-off such payments in accordance with 5.10 – OWNER'S SET-OFF.

9.1.7 The Contractor shall not settle or compromise any of the Claims described in GC 9.1.1 or 9.1.2, for which it is liable to indemnify, defend and hold harmless the Owner without first obtaining the consent of the Owner with such consent not to be unreasonably withheld or delayed.

9.1.8 The Contractor acknowledges that the Owner holds the benefit of any covenant, release or indemnity in the Agreement, including the covenants of the Contractor in GC 9.1.1, 9.1.2 and 9.1.3, that is expressly intended to extend to include the Indemnitees (other than the Owner) as third party beneficiaries as trustee and agent for such Indemnitees. The Owner shall be entitled to enforce the rights of such Indemnitees as third party beneficiaries under such covenant and indemnities.

9.1.9 9.1 - INDEMNIFICATION in no way limits any other liability or obligation of the parties in respect of the Agreement.

9.2 WAIVER OF CLAIMS

9.2.1 With its Proper Invoice for the Lien Holdback submitted in accordance with 5.6 - PAYMENT OF LIEN HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the Contractor shall include a list setting out the status of all outstanding Claim Notices which have been submitted in strict compliance with 7.7 – CLAIMS PROCEDURE. For clarity, notwithstanding any other provision of the Agreement to the contrary:

.1 any Claim Notices submitted prior to such Proper Invoice, but which are not set out in such list shall be deemed to be irrevocably barred, and waived and released by Contractor; and

.2 any Claims not included in such list shall be deemed to be irrevocably and unconditionally barred, and waived and released by Contractor, except for payment of the Lien Holdback which is the subject matter of such Proper Invoice, payment of the Contractual Holdback and any Claims in respect of Work to be performed sixty (60) Days prior to the date of Substantial Performance and on and after the date of Substantial Performance of the Work.

9.2.2 With its Proper Invoice submitted pursuant to GC 5.7.1.1 the Contractor shall include a list setting out the status of all outstanding Claim Notices which have been submitted in strict compliance with 7.7 – CLAIMS PROCEDURE. For clarity, notwithstanding any other provision of the Agreement to the contrary:

.1 any Claim Notices submitted prior to such Proper Invoice, but which are not set out in such list shall be deemed to be irrevocably barred, and waived and released by Contractor; and

.2 any Claims not included in such list shall be deemed to be irrevocably and unconditionally barred, and waived and released by Contractor, except for

payment of any remaining Lien Holdback and the payment which is the subject matter of such Proper Invoice.

9.3 WARRANTY

9.3.1 The Contractor warrants that all Work shall be free of Deficiencies including in materials and workmanship and conform to the requirements of the Agreement during the Warranty Period. Except as expressly provided elsewhere in the Agreement, the Contractor does not warrant that the Owner Supplied Materials are free of Deficiencies. For clarity, this does not limit any warranty obligations of the Contractor for Work in respect of, or in connection with, the Owner Supplied Materials.

9.3.2 The Owner or Contract Administrator shall promptly give the Contractor Notice in Writing of observed Deficiencies which occur during the Warranty Period.

9.3.3 The Contractor shall, at the Contractor's cost, commence correction of Deficiencies in the Work which appear prior to and during the Warranty Period promptly, and in no event later than within ten (10) Working Days after receipt of Notice in Writing from the Owner or Contract Administrator of observed Deficiencies, and promptly complete the correction of such Deficiencies. The obligation of the Contractor to perform the corrective Work in accordance with this 9.3 – WARRANTY shall include the provision of all necessary labour and materials and the removal and replacement of covering materials. The carrying out of the correction of Deficiencies shall be executed at times convenient with the Owner which may entail overtime Work on the part of, and at the cost of, the Contractor. For greater certainty, if the Contractor is notified of Deficiencies prior to the end of the Warranty Period, then the Contractor shall make good the Deficiencies, notwithstanding that the warranty Work may commence or extend beyond the end of the Warranty Period.

9.3.4 The Contractor shall, at its cost, make good or pay for damage or destruction to other parts of the Work, the Owner's or other contractors' property or any other property caused by the Deficiencies during the Warranty Period or the correction of such Deficiencies.

9.3.5 If after receipt of the Owner's or Contract Administrator's Notice in Writing, the Contractor fails to, within the required period, commence and complete the correction of Deficiencies or make good damage or destruction to other parts of the Work, the Owner's or other contractors' property or any other property as required by this 9.3 – WARRANTY, the Owner may correct the Deficiencies or make good such damage and destruction and hold the Contractor responsible for all costs thereof.

9.3.6 Any extension of the warranty beyond the Warranty Period shall be as specified in the Agreement ("**Extended Warranty Periods**"). Without limiting the Contractor's warranty under 9.3 – WARRANTY, the Extended Warranty Periods shall be issued by the warrantor to the benefit of the Owner. The Contractor's responsibility with respect to the Extended Warranty Periods shall be limited to obtaining any of the Extended Warranty Periods from the warrantor and assisting the Owner in the administration of the Extended Warranty Periods to the extent reasonably required by the Owner. The obligations under the Extended Warranty Periods are solely the responsibilities of the warrantor. For clarity, this GC 9.3.6 does not limit any responsibility or liability of the

Contractor in respect of Deficiencies which appear prior to and during the Warranty Period.

9.3.7 Any Product or equipment requiring excessive servicing during the Warranty Period (or free maintenance period, if applicable) shall be considered Deficient and the warranty (or free maintenance period) shall be deemed to take effect from the time that the Deficiency has been corrected so as to cause excessive servicing to terminate.

9.3.8 Within thirty (30) Calendar Days after Substantial Performance of the Work, and without limiting the Contractor's warranty under this 9.3 – WARRANTY, the Contractor shall assign to the Owner, to the extent assignable, the benefit of all warranties and guarantees relating to the Work. The assignment shall:

.1 expressly reserve the right of the Contractor to make any claims under such warranties and guarantees;

.2 in no way prejudice any rights of or benefits accruing to the Contractor pursuant to such warranties and guarantees; and

.3 be in a form acceptable to the Owner.

9.3.9 The provisions of 9.3 – WARRANTY shall not deprive the Owner of any action, right or remedy otherwise available to the Owner for the Contractor's failure to fulfill its obligations or responsibilities under the Agreement and shall not be construed as a waiver of Claims in favour of the Contractor or as a limitation on the time in which the Owner may pursue such other action, right or remedy. The warranties set out in the Agreement are not supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law, trade usage or otherwise.

10. GOVERNING REGULATIONS

10.1 LAWS, NOTICES, PERMITS, AND FEES

10.1.1 The Owner shall obtain and pay for development approvals, building permit, easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in GC 10.1.2 or for which the Agreement specify as the responsibility of the Contractor.

10.1.2 The Contractor shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the Work (including dewatering permits/agreements) and customarily obtained by contractors in the jurisdiction of the Site after the issuance of the building permit. The Contract Price includes the cost of these permits, licences, inspections, certificates and agreements, and their procurement.

10.1.3 The Contractor shall, and shall cause all Subcontractors, Suppliers and Sub-subcontractors to give the notices required by, and comply with, the Laws which are or come into force during the performance of the Work and which relate to the Work, to the preservation of health and safety.

10.1.4 Without limiting GC 10.1.3, the Contractor shall notify the Chief Building Official or the registered code agency where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The Contractor shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario Building Code.

10.1.5 Subject to 3.6 – DOCUMENT REVIEW AND EXAMINATION OF SITE, the Contractor shall not be responsible for verifying that the Agreement is in compliance with the Laws relating to the Work. If the Agreement is at variance therewith, or if, subsequent to the Effective Date, changes are made to the applicable Laws which require modification to the Agreement, the Contractor shall advise the Contract Administrator in writing requesting direction immediately upon such variance or change becoming known. The Contract Administrator will make the changes required to the Agreement as provided in 7.1 - OWNER'S RIGHT TO MAKE CHANGES, 7.2 - CHANGE ORDER and 7.3 - CHANGE DIRECTIVE.

10.1.6 If the Contractor:

.1 fails to notify the Owner and the Contract Administrator in writing of changes made to the applicable Laws (other than Owner's Policies, Procedures and By-laws) in accordance with GC 10.1.5;

.2 fails to obtain direction as required in GC 10.1.5; or

.3 performs Work that it knows or should have known, applying the Standard of Care, contravenes any Laws,

the Contractor shall be responsible for and shall correct the violations of such Laws, and shall be responsible for the Losses and delay attributable to the failure to comply with the provisions of such Laws, and, notwithstanding any limitations described in GC 9.1.1.

10.1.7 Notwithstanding GC 7.5.2, if subsequent to the Effective Date, changes are made to Laws (other than Owner's Policies, Procedures and By-laws) which increase or decrease the cost of the performance of the Work or Contract Time then:

.1 any claim by the Contractor must be submitted in accordance with the requirements of 7.7 - CLAIMS PROCEDURE; and

.2 the Owner may submit a change in accordance with the requirements of 7.1 – OWNER'S RIGHT TO MAKE CHANGES.

10.1.8 Without limiting the generality of any other provision in the Agreement, the Contractor shall cause all certificates to be furnished that are required or given by the appropriate Governmental Authorities or quasi-governmental authorities as evidence that the Work as installed conforms with the Laws, including certificates of compliance for the Owner's occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the Work, in the event that such Governmental Authorities or quasi-governmental authorities furnish such certificates.

10.2 TAXES AND DUTIES

10.2.1 Subject to GC 10.2.3, the Fixed Prices and Unit Prices shall include all taxes and customs duties except for Value Added Taxes payable by the Owner to the Contractor. For clarity, there shall be no adjustment in the Fixed Price or Unit Prices as a result of inflation or currency fluctuation.

10.2.2 The Contractor shall provide a detailed breakdown of additional taxes and duties if requested by the Owner in a form satisfactory to the Owner.

10.2.3 Any increase or decrease in costs to the Contractor due to changes in Canadian federal and provincial taxes and custom duties after the Effective Date shall increase or decrease the Fixed Prices and Unit Prices accordingly. For greater certainty, the Contractor shall not be entitled to any markup for overhead or profit on any increase in such taxes and duties.

10.2.4 The Contractor represents and warrants that it is:

.1 not a non-resident Canadian; or

.2 has notified the Owner in writing, prior to execution of the Agreement that it is a non-resident Canadian,

for the purposes of the *Income Tax Act* (Canada). Notwithstanding anything to the contrary, all amounts payable by the Owner shall be subject to the *Income Tax Act* (Canada) (including applicable deductions from payments by the Owner on account of withholding against tax). Without limiting the generality of the foregoing, if any Laws requires that any taxes or other amounts be deducted or withheld from any payments to be made by the Owner under the Agreement, the Owner shall deduct such taxes or other amounts and remit such taxes or other amounts directly to the applicable Governmental Authority, including the Canada Revenue Agency, on or before the applicable due date and the Owner shall not be required to compensate or otherwise indemnify the Contractor with respect to such taxes or other amount.

10.2.5 Any taxes or customs duties applicable to the Agreement, including any sales taxes, excise taxes or Value Added Taxes, whether or not paid, which are found to be inapplicable or for which refund, exemption or recovery may be obtained, are the sole and exclusive property of the Owner. The Contractor agrees to, and to cause all Subcontractors, Suppliers and Sub-subcontractors to, cooperate with the Owner in the application for any refund, exemption or recovery of any taxes or customs duties, which cooperation shall include, making or concurring in the making of an application for any such refund, exemption or recovery, and providing to the Owner copies, or where required, originals of Contractor Records or other documents necessary to support such applications for refunds, exemptions or recoveries. All such refunds, exemptions or recoveries shall either be paid to the Owner, or shall be a credit to the Owner against the Contract Price in accordance with 5.10 – OWNER'S SET-OFF, in the Owner's discretion. 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 GC. The Contractor agrees to

enable, assist with and submit to any reasonable audit requested by the Owner with respect the potential refunds, exemptions or recoveries under this GC.

10.2.6 Customs duties penalties, or any other penalty, fine or assessment levied against the Contractor, shall not be treated as a tax or customs duty for the purpose of this 10.2 – TAXES AND DUTIES.

10.3 PATENT FEES

10.3.1 The Contractor shall pay the royalties and patent licence fees required for the performance of the Agreement.

10.4 WORKERS' COMPENSATION

10.4.1 Prior to commencing the Work, and again with the Proper Invoice for the Lien Holdback following Substantial Performance of the Work and the Contractor's Proper Invoice submitted pursuant to GC 5.7.1.1, the Contractor shall provide evidence of compliance with workers' compensation Laws, including payments due thereunder by the Contractor.

10.4.2 At any time during the term of the Agreement, when requested by the Owner, the Contractor shall provide evidence of compliance with workers' compensation Laws by the Contractor and Subcontractors.

11. DEFAULT, TERMINATION AND SUSPENSION

11.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, TERMINATE THE AGREEMENT OR SUSPEND THE WORK

11.1.1 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency, or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, immediately terminate the Contractor's right to continue with the Work or immediately terminate the Agreement, by giving the Contractor or receiver or trustee in bankruptcy Notice in Writing to that effect specifying the date upon which such termination becomes effective.

11.1.2 If the Contractor:

.1 fails to comply with the requirements of 1.7 – CONFLICTS OF INTEREST or if the parties are unable to resolve a Conflict of Interest of the Contractor to the satisfaction of the Owner;

.2 fails to provide a Recovery Plan in accordance with GC 7.5.6.1 or comply with the requirements in respect of a Recovery Plan under GC 7.5.6.2 and 7.5.6.3; or

.3 is found or determined to have committed any offence that qualifies as an "indictable offence" under the *Criminal Code* (Canada) or any offence of a similar nature with substantially similar penalties under any quasi-criminal provisions of

another Law or any fraudulent act in any way related to the Work or the Agreement,

the Owner may, without prejudice to any other right or remedy the Owner may have, immediately terminate the Contractor's right to continue with the Work or immediately terminate the Agreement, by giving the Contractor Notice in Writing to that effect specifying the date upon which such termination becomes effective.

11.1.3 Subject to GC 11.1.1 and GC 11.1.2, if the Contractor:

.1 fails to commence the Work by the Commencement Date;

.2 neglects to prosecute the Work properly or fails or neglects to maintain the latest Construction Schedule; or

.3 otherwise fails to comply with the requirements of the Agreement,

the Owner may, without prejudice to any other right or remedy the Owner may have, give the Contractor Notice in Writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default in the five (5) Working Days immediately following the receipt of such Notice in Writing. Failure by the Owner to provide such Notice in Writing in a timely manner after the default has occurred shall not constitute condonation of the default.

11.1.4 If the Owner determines that the default referred to in GC 11.1.3 cannot be corrected in the five (5) Working Days specified or in such other time period as may be subsequently agreed in writing by the parties, the Contractor shall be in compliance with the Owner's instructions if the Contractor:

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

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

.3 corrects the default in accordance with the Agreement terms and with such schedule.

11.1.5 If the Contractor fails to correct the default referred to in GC 11.1.3 in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the Owner may have, the Owner may:

.1 correct such default and set-off the cost thereof in accordance with 5.10 – OWNER'S SET-OFF provided the Contract Administrator has certified such cost to the Owner and the Contractor;

.2 charge the Contractor for any Losses suffered, sustained or incurred by the Owner as a result of such default and/or set-off such Losses in accordance with 5.10 – OWNER'S SET-OFF; or

.3 immediately terminate the Contractor's right to continue with the Work in whole or in part or immediately terminate the Agreement by giving the Contractor Notice in Writing to that effect specifying the date upon which such termination becomes effective.

11.1.6 If the Owner terminates the Contractor's right to continue with the Work or terminates the Agreement as provided in GC 11.1.1, 11.1.2 and 11.1.5, without prejudice to any other right or remedy which the Owner may have, the Owner may, at its sole option:

.1 take possession of the Work, Products and Owner Supplied Material at the Site;

.2 subject to the rights of third parties, utilize the Construction Equipment at the Site;

.3 finish the Work by whatever method the Owner may consider expedient, but without undue delay or cost;

.4 require Contractor to provide such reasonable assistance as required to properly and safely transition the Work to the Owner or its other contractors;

.5 withhold further payment to the Contractor until a final certificate for payment is issued;

.6 charge the Contractor the amount by which the full cost of finishing:

(1) any Fixed Price Work as certified by the Contract Administrator exceeds the unpaid balance of the Fixed Price; and

(2) any Unit Price Work as certified by the Contract Administrator exceeds the portion of the Total Price of Unit Price Work that would have been paid to the Contractor on the completion of such Unit Price Work (calculated based on the number of units required to complete the Unit Price Work after the effective date of termination).

plus compensation to the Contract Administrator for the Contract Administrator's additional services and a reasonable allowance as determined by the Contract Administrator to cover the cost of corrections to Work performed by the Contractor that may be required under 9.3 - WARRANTY;

.7 on expiry of the Warranty Period, charge the Contractor the amount by which the cost of corrections to the Contractor's Work under 9.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference; and

.8 charge the Contractor for any Losses suffered, sustained or incurred by the Owner as a result of such termination and/or set-off such Losses in accordance with 5.10 – OWNER'S SET-OFF.

For clarity, any one or more of the Owner's rights in GC 11.1.6 shall also apply to the portions of the Work that the Owner has terminated the Contractor's right to continue pursuant to GC 11.1.5.3, *mutatis mutandis*.

11.1.7 Upon receipt of Notice in Writing from the Owner terminating the Agreement, the Contractor shall:

.1 subject to GC 11.1.6.4, cease Work on the effective date of the termination;

.2 place no additional orders (and if requested by the Owner, the Contractor shall cancel existing orders and subcontracts specified by the Owner upon terms satisfactory to the Owner); and

.3 preserve and protect the Products (at the Site or in transit), Owner Supplied Material and Work completed and in progress pending the Owner's instructions, and the Contractor shall dispose of same in accordance with the Owner's instructions.

11.1.8 The Contractor's obligation under the Agreement as to quality, correction and warranty of the Work performed by the Contractor up to the time of termination shall continue after such termination of the Agreement.

11.1.9 Termination for Convenience

.1 Notwithstanding any other term or condition in the Agreement, the Owner may (at any time) terminate the Contractor's right to continue with the Work or terminate the Agreement without cause and in its sole and absolute discretion by giving a Notice in Writing to the Contractor, specifying the date upon which such termination becomes effective, provided that such termination date may not be less than seven (7) Calendar Days from the date on which the Contractor is deemed to have received such Notice in Writing.

.2 In the event of termination pursuant to GC 11.1.9.1, the Owner shall be entitled to take possession of the Site, the Work, the Products and the Owner Supplied Material, and the Contractor shall be entitled to be paid for the following, without duplication, but subject to the other requirements in the Agreement to be satisfied by the Contractor prior to payment:

(1) the value proportionate to the Contract Price, of the Work performed up to the effective date of termination;

(2) reasonable demobilization costs paid by the Contractor which have been pre-approved by the Owner in writing;

(3) reasonable costs incurred in connection with the preservation or protection of the Work; and

(4) Subcontractor and Supplier cancellation costs reasonably paid by the Contractor as a result of such termination which have been pre-approved by

the Owner in writing and could not have been reasonably mitigated by the Contractor.

For greater certainty, the amounts payable pursuant to GC 11.1.9.2(1) are less any previous amounts paid or properly withheld on account of the Contract Price and except for the amounts referred to in this GC 11.1.9.2, the Contractor shall not be entitled to any additional Losses resulting from the termination in accordance with GC 11.1.9.1 including any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity.

11.1.10 Notwithstanding any other provision in the Agreement, the Contractor shall accept, and not dispute, the termination of the Agreement or the Contractor's right to continue with the Work in whole or in part by the Owner under GC 11.1.1, 11.1.2 or 11.1.5.3, provided that the Contractor is entitled to dispute the existence of the underlying default or event giving the Owner the right to terminate the Agreement, or the Contractor's right to continue with the Work in whole or in part, in accordance with 12. DISPUTE RESOLUTION. However, if the Agreement is terminated under GC 11.1.1, 11.1.2 or 11.1.5.3 and it is later determined that there was no default or other event giving the Owner the right to terminate the Agreement or the Contractor's right to continue with the Work in whole or in part, as applicable, such termination shall be deemed to have been a termination for convenience and the rights and obligations of GC 11.1.9 shall apply to such termination.

11.1.11 Suspension

.1 The Owner, from time to time, may suspend any portion or the whole of the Work for any reason for such time as the Owner may notify the Contractor in a Notice in Writing. In addition to suspending any portion or the whole of the Work, the Owner shall be entitled to instruct the Contractor in the Notice in Writing to take such other action as may be reasonably required in respect of the suspension.

.2 The Contractor shall, upon receipt of such Notice in Writing, suspend the Work referred to in such Notice in Writing (except for Work which, in the reasonable opinion of the Contractor is necessary for the safety and security of people or property) and such suspended Work shall not be resumed until the Owner so directs in writing.

.3 Subject to GC 2.2.19, upon resumption of the suspended Work and provided the suspension of the Work was not as a result of the negligent act or omission of the Contractor Parties or the default or breach of the Contractor's obligations under the Agreement or any other act or fault of the Contractor Parties, the Contract Time shall be extended for such reasonable time as agreed to by the Parties, taking into account such time period as recommended by the Contract Administrator and the Contract Price shall be adjusted to account for reasonable Losses incurred by the Contractor as the result of such suspension but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity resulting from such suspension.

11.1.12 The Contractor acknowledges that remedies at law may be inadequate to provide the Owner with full compensation if the Contractor breaches its obligations under this

11.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, TERMINATE THE CONTRACT OR SUSPEND THE WORK and that any such breach of such obligations by the Contractor may cause the Owner irreparable harm. As a result, the Owner will be entitled, without prejudice to any other right or remedy it may have at law or in equity, to seek injunctive relief, specific performance, or any other equitable remedy if the Contractor breaches such obligations or takes steps that reasonably will result in a breach of such obligations.

11.2 CONTRACTOR'S RIGHT TO TERMINATE THE AGREEMENT

11.2.1 If the Work is suspended or otherwise delayed for a period of sixty (60) Working Days (or such alternate period under row C.11 of the Information Sheet) or more, by a stop work order issued by a court or other public authority (other than the City of Toronto) and providing that such order was not issued as the result of an act or fault of a Contractor Party, the Contractor may terminate the Agreement by giving the Owner Notice in Writing to that effect specifying the date upon which such termination becomes effective.

For greater clarity, an order issued under the Emergency Management and Civil Protection Act shall not be considered to be a stop work order for the purposes of this section 11.2.1.

11.2.2 The Contractor may give Notice in Writing to the Owner, with a copy to the Contract Administrator, that the Owner is in default of the Owner's contractual obligations if:

.1 the Contract Administrator fails to issue a certificate for payment as provided in 5.4 - PROGRESS PAYMENT; or

.2 the Owner fails to pay the Contractor an amount: (1) which is due and payable under the Agreement, subject to the Owner's right to set-off pursuant to 5.10 – OWNER'S SET-OFF; or (2) awarded by arbitration or court; or

.3 the Owner fails to comply with a material requirement of the Agreement,

and instruct the Owner to correct the default in the fifteen (15) Working Days immediately following the receipt of such Notice in Writing.

11.2.3 If the default cannot be corrected within the fifteen (15) Working Days specified in GC 11.2.2, the Owner shall be in compliance with the Contractor's instructions if the Owner:

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

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

.3 completes the correction in accordance with such schedule.

11.2.4 If the Owner fails to correct the default in the time specified or subsequently agreed upon, the Contractor may, without prejudice to any other right or remedy the

Contractor may have, terminate the Agreement by giving the Owner Notice in Writing to that effect specifying the date upon which such termination becomes effective.

11.2.5 If the Contractor terminates the Agreement under the conditions described in this 11.2 - CONTRACTOR'S RIGHT TO TERMINATE THE AGREEMENT, the Contractor shall be entitled to be paid for all Work performed to the date of termination. The Contractor shall also be entitled to recover the reasonable Losses associated with termination, including the costs of demobilization, but excluding any consequential, indirect or special damages and loss of profit, loss of opportunity or loss of productivity resulting from such termination.

11.3 OTHER TERMINATION OBLIGATIONS

11.3.1 If the Agreement is terminated, by the Owner or Contractor, as the case may be:

.1 the party terminating the Agreement shall publish, in the manner set out in the Construction Act, a notice of the termination in the form prescribed by the Construction Act and, for the purposes of this section, the date on which the Agreement is terminated is the termination date specified in the Notice in Writing delivered by such party to the other party pursuant to the Agreement; and

.2 the Contractor shall:

(1) comply with the requirements in GC 13.5.7 in respect of Confidential Information;

(2) stop, and cause all Subcontractors, Suppliers and Sub-subcontractors to stop, all Work in progress and refrain from undertaking any further commitments;

(3) except for subcontracts to be assigned to the Owner pursuant to GC 3.8.2.3(4), terminate any subcontracts related to the Work;

(4) minimize all costs resulting from the termination of the Agreement; and

(5) at the Owner's option, deliver, or cause to be delivered, to the Owner all Work-in-process obtained or performed by the Contractor and the Subcontractors, Suppliers and Sub-subcontractors up to the effective date of termination (including all Work-in-process situate at locations other than the Site and Contractor Prepared Documents).

12. DISPUTE RESOLUTION

12.1 DISPUTE RESOLUTION

12.1.1 Unless the Agreement has been terminated or completed, the Contractor shall in every case, notwithstanding any Claim Notice or the occurrence of a Dispute, continue to proceed with the Work with due diligence and expedition. Such continuance shall not jeopardize the Contractor's entitlement in respect of such Claim

Notice or Dispute, provided the Contractor has complied with all other requirements of the Agreement.

12.1.2 The parties acknowledge and agree that, for the purposes of Part II.1 of the Construction Act, there shall be no dispute with respect to an Adjudicable Matter that is also the subject matter of a Claim Notice, unless and until a Claim Notice in accordance with GC 7.7 – CLAIMS PROCEDURE has been received by the Owner and the Contract Administrator, and the Owner or the Contract Administrator, as the case may be, has issued a determination to the Contractor regarding the validity of the Claim Notice pursuant to GC 7.7.6.

12.1.3 The parties acknowledge that no arbitration, action, suit or other proceeding shall be brought, nor any mediation undertaken, with respect to the subject matter of a Claim Notice unless and until a Claim Notice in accordance with GC 7.7 has been received by the Owner and the Contract Administrator, and the Owner or the Contract Administrator, as the case may be, has issued a determination to the Contractor regarding the validity of the Claim Notice pursuant to GC 7.7.6.

12.2 ADJUDICATION

12.2.1 The parties acknowledge and agree that, for the purposes of paragraph 7 of s. 13.5(1) of the Construction Act:

.1 neither the Agreement nor any Schedule sets out “any other matter” that the parties agree may be referred to an Adjudication; and

.2 the parties may agree after the commencement of the Agreement to “any other matter” that may be referred to an Adjudication provided such agreement is in writing and explicitly identifies and refers to the other matter to refer to an Adjudication.

12.2.2 All Adjudications shall proceed in accordance with the provisions of the Construction Act and the additional procedures set out in this 12.2 - ADJUDICATION, subject to the exercise of the powers provided to the Adjudicator under section 13.12 of the Construction Act.

12.2.3 Subject to GC 7.7 – CLAIMS PROCEDURE and GC 12.1.2, at any time prior to the completion of the Agreement, either party may refer an Adjudicable Dispute to Adjudication, by giving a Notice of Adjudication to the other party.

12.2.4 If the party issuing the Notice of Adjudication is the:

.1 Contractor, the Notice of Adjudication shall be given to:

City of Toronto
Adjudication Unit
C/O City Solicitor's Office
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario M5V 3C6

.2 Owner, the Notice of Adjudication shall be given to the person at the address set out in row A.3 of the Information Sheet.

The Notice of Adjudication shall be given to the other party by registered mail, courier or hand delivery.

12.2.5 Delivery of the Notice of Adjudication by registered mail is deemed given on the fifth day after the Notice of Adjudication is mailed.

12.2.6 Delivery of the Notice of Adjudication by courier is deemed given on the second day following the day the courier was given the document, unless the second day is a holiday, in which case the Notice of Adjudication is deemed given on the next day that is not a holiday.

12.2.7 The seat of the Adjudication shall be in Toronto, Ontario.

12.2.8 In addition to the requirements of section 13.8 of the Construction Act, if an Adjudication between the Owner and the Contractor is with respect to an Adjudicable Matter that is the same or includes the subject matter of disputes that can be referred to adjudication between:

.1 the Contractor and Subcontractors and/or Suppliers that are to be adjudicated in separate Adjudications, if a Subcontractor and/or Supplier does not agree to a consolidated Adjudication, the Owner shall be entitled, in its sole and absolute discretion, to direct the Contractor to, and the Contractor shall, require the consolidation of the Adjudication through the exercise of the Contractor's right pursuant to section 13.8(2) of the Construction Act; or

.2 the Owner and other contractors engaged by the Owner to perform work on the improvement that are to be adjudicated in separate Adjudications, the Contractor hereby acknowledges and agrees to the consolidation of the separate Adjudications if the Owner requires the consolidation of the separate Adjudications and such other contractors have also agreed to the consolidation of the separate Adjudications.

12.2.9 The Adjudicator nominated by the party issuing the Notice of Adjudication shall:

.1 have relevant qualifications and experience with respect to the Project or projects of a similar nature and magnitude, to the Project;

.2 be independent of and at arm's length to Contractor, Owner and any other person having an interest in the Project or any of the documents comprising the Agreement; and

.3 have no conflict of interest relating to the parties or the Dispute.

12.2.10 In addition to the requirements of section 13.11 of the Construction Act, the copy of the contract and any other documents delivered to the party that received the Notice of Adjudication pursuant to section 13.11 of the Construction Act shall:

.1 be delivered to such party by the other party in the manner as required by the Adjudicator;

.2 if the contract and such documents have an aggregate file size in excess of twenty (20) MB, be delivered to such party by the other party on a USB flash drive or using a secure electronic document exchange service in a searchable format; and

.3 include an index of documents with identifying information (for example, date, document description, author/recipient).

12.2.11 The Contractor and Owner hereby acknowledge and agree that:

.1 they shall, immediately after the appointment of the Adjudicator, either through the agreement of the parties or by the Authorized Nominating Authority ("**ANA**"), deliver a written agreement requesting that the Adjudicator provide the party that received the Notice of Adjudication no less than fourteen (14) Calendar Days from the date of receipt of the documents pursuant to section 13.11 of the Construction Act to respond;

.2 if the documents delivered pursuant to section 13.11 of the Construction Act:

(1) exceed 100 documents or 1000 pages in the aggregate, excluding the Agreement and all Schedules; or

(2) seek monetary relief in excess of one million dollars ($1,000,000) exclusive of Value Added Taxes,

they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator provide the party that received the Notice of Adjudication no less than sixty (60) Calendar Days from the date of receipt of such documents to respond and extend the deadline for the Adjudicator to make its determination to no less than thirty (30) Calendar Days after the deadline for the delivery of the response by such party; and

.3 if the documents delivered pursuant to section 13.11 of the Construction Act are delivered at any time between the Friday prior to December 25th in a given year and the first Monday of January of the following year, they shall, immediately after the receipt of such documents, deliver to the Adjudicator a written agreement requesting that the Adjudicator exclude the period between the date of delivery of such documents and that first Monday of January from the counting of Calendar Days for the purposes of the Adjudication and, as necessary to give effect to such exclusion, extend the deadline for the party that received the Notice of Adjudication to respond and the deadline for the Adjudicator to make its determination.

12.2.12 The Adjudicator shall be entitled to grant any remedy or relief which is consistent with the intentions of the parties expressed under the Agreement but shall not be entitled to exercise the power of prerogative writs.

12.2.13 In addition to the requirements of section 13.19(1) of the Construction Act, a requirement to pay an amount in accordance with section 13.19 of the Construction Act is subject to GC 13.2.1.2.

12.2.14 Other than in accordance with the Construction Act, any determination and reasons of an Adjudicator on the Project shall not be relied upon by either party on any other projects. The determination and reasons of any adjudicators on any other projects shall not be relied upon by the parties in any Adjudication on the Project.

12.2.15 If an Adjudicable Dispute is referred to Adjudication and such Adjudicable Dispute is already the subject of a mediation pursuant to GC 12.4 - MEDIATION, an arbitration pursuant to GC 12.5 - ARBITRATION or a court proceeding, which has not been finally determined, the party responding to the Notice of Adjudication shall be entitled, in its sole and absolute discretion, to choose to:

.1 terminate, suspend or proceed with such mediation or arbitration, as applicable, and if the responding party elects to terminate such mediation or arbitration, as applicable, the party referring the Adjudicable Dispute to Adjudication shall be responsible for all costs of the mediator or arbitrator, as applicable, up to the date of receipt of the Notice of Adjudication; or

.2 stay or proceed with such court proceeding, and if the responding party elects to stay such court proceeding, the party referring the Adjudicable Dispute to Adjudication shall execute all further documents and do all other lawful things necessary to give full effect to such stay, and after the Adjudicator makes its determination, either party may move to lift such stay, which the other party shall consent to.

12.2.16 The Contractor shall, in respect of any dispute between:

.1 the Contractor and a Subcontractor or Supplier;

.2 a Sub-subcontractor and a Subcontractor or Supplier; or

.3 a Sub-subcontractor and another Sub-subcontractor,

no later than two (2) Working Days after the receipt by the Adjudicator of the documents under section 13.11 of the Construction Act in respect of such dispute, deliver a Notice in Writing to the Contract Administrator and Owner setting out the date which such Adjudicator received such documents.

12.3 NEGOTIATIONS

12.3.1 Either party may initiate negotiations of any Dispute by giving written notice to the other party ("**Notice of Negotiations**") with reasonable particulars of the Dispute. After the receipt of a Notice of Negotiations the parties shall make all reasonable efforts to resolve the Dispute by amicable negotiations and the parties agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate such negotiations.

12.3.2 Any applicable negotiations shall be completed as soon as possible and shall be limited to a period of no more than ninety (90) Calendar Days following the delivery of a Notice of Negotiations, or such other period of time as the Parties agree in writing.

12.4 MEDIATION

12.4.1 Subject to GC 12.1.3, the parties, by mutual written agreement, may submit any Dispute to mediation. Such mediation shall proceed in accordance with this 12.4 – Mediation and such other terms and conditions agreed to by the parties.

12.4.2 The mediator shall be mutually agreed upon by the Owner and Contractor.

12.4.3 Subject to GC 12.2.15.1, each party is responsible for its own costs related to the mediation. The costs of the mediator shall be equally shared by the Owner and Contractor.

12.5 ARBITRATION

12.5.1 Subject to GC 12.1.3, the parties, by mutual written agreement, may submit any Dispute to be finally determined by arbitration before a sole arbitrator, who shall also be agreed to as a part of such mutual agreement. The provisions of the *Arbitration Act, 1991* (ON) shall apply to such arbitration, including the provisions for appeal therein except as otherwise provided in this 12.5 - ARBITRATION and such arbitration shall be subject to such other terms and conditions agreed to by the parties.

12.5.2 If the parties agree to arbitration to resolve a Dispute, the Owner shall notify the Contract Administrator in writing within fifteen (15) Calendar Days of the written agreement to arbitrate.

12.5.3 Subject to GC 12.2.15.1, unless otherwise agreed to in the written agreement to arbitrate, each party is responsible for its own costs related to the arbitration and the arbitrator shall not have the discretion to award costs related to the arbitration. The costs of the arbitrator and any other Persons appointed to assist the arbitrator (including independent experts) shall be equally shared by the Owner and Contractor.

12.5.4 The arbitrator’s reasoned decision shall be made in writing within ninety (90) Calendar Days of the conclusion of the hearing. An extension of time to make a decision may be granted with consent of both parties.

12.5.5 The resolution of Disputes pursuant to this 12.5 - ARBITRATION shall be final and binding upon the parties, and there shall be no appeal therefrom, including any appeal to a court of law on a question of law, a question of fact, or a question of mixed fact and law.

12.6 RIGHTS OF BOTH PARTIES

12.6.1 Unless the parties agree otherwise, no action taken under GC 12.1 to GC 12.5 by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties.

13. OTHER PROVISIONS

13.1 OWNERSHIP OF EXISTING MATERIALS AND EQUIPMENT

13.1.1 Unless otherwise specified, all materials, equipment and other property existing at the Site at the time of execution of the Agreement shall remain the property of the Owner or any other Person identified by the Owner.

13.2 CONSTRUCTION LIENS

13.2.1 Upon the receipt of a written notice of lien, claim for lien or a certificate of action under the Construction Act, arising from the performance of the Work by any Subcontractor, Supplier or Sub-subcontractor:

.1 the Contractor at its sole cost, shall take whatever steps are necessary to discharge, release or vacate such claim for lien or certificate of action, or withdraw the written notice of a lien within ten (10) Calendar Days of it coming to the notice of the Contractor. If the claim for lien or certificate of action is merely vacated, the Contractor shall, if requested, undertake the Owner's defence of any subsequent lawsuit commenced in respect of the claim for lien or certificate of action at the Contractor's sole cost; and

.2 the Owner may retain an amount sufficient to satisfy such claim for lien, certificate of action or written notice of a lien, including an amount sufficient to cover potential costs, in accordance with GC 5.10 – OWNER'S SET-OFF.

13.2.2 If the Contractor fails or refuses to vacate or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien, within the time period required by 13.2.1, the Owner shall at its option, be entitled (but not obliged) to take whatever steps are necessary to vacate and/or discharge the claim for lien or certificate of action, or cause the withdrawal of the written notice of a lien and all Losses incurred by the Owner in so doing (including all legal fees and disbursements) may be set-off by the Owner in accordance with 5.10 – OWNER'S SET-OFF.

13.2.3 After the Contractor or the Owner, as the case may be, has vacated and/or discharged the claim for lien or certificate of action, or caused the withdrawal of the written notice of a lien, then any amount retained by the Owner pursuant to GC 13.2.1.2 in respect of such claim for lien, certificate of action or written notice of lien shall be eligible to be included in the next Proper Invoice submitted by the Contractor.

13.2.4 The Contractor acknowledges that all claims for lien shall be given to the Clerk of the City of Toronto through its web portal at www.toronto.ca/liens.

13.2.5 This 13.2 – CONSTRUCTION LIENS does not apply to any claim for lien or certificate of action to the extent arising from a payment default of the Owner under the Agreement.

13.3 OWNERSHIP OF CONTRACTOR DOCUMENTS

13.3.1 Subject to GC, 1.1.11, all correspondence, data, plans, drawings, specifications, reports, estimates, summaries, photographs, models, mockups, Contractor Records and all other information and documentation in any form (an whether in draft or final format) prepared by or for the Contractor in connection with, or arising out of the Work or the Agreement (collectively, the "**Contractor Prepared Documents**") shall be the exclusive property of the Owner, provided the Contractor shall retain the copyright in the Contractor Prepared Documents prepared by the Contractor. The Contractor grants the Owner an irrevocable, perpetual, royalty free and cost free license to use, amend and copy the Contractor Prepared Documents in any manner it chooses including the construction, design, testing, refurbishment, use, modification, expansion, occupancy, operation, maintenance, renovation, management, sale, extension, alteration and repair of the Work, the Site, the Project or any part thereof or any other project or any work including providing the Contractor Prepared Documents to consultants, design-builders, construction managers, contractors, suppliers and others for such purposes. Such license shall survive the termination of the Agreement.

13.3.2 In the event of any termination of the Agreement or as requested by the Owner, from time to time, the Contractor agrees to promptly, and in no event later than within ten (10) Working Days after such termination, deliver the Contractor Prepared Documents to the Owner.

13.4 OWNER SUPPLIED MATERIAL

13.4.1 The Contractor shall, in advance of receipt of shipments of Owner Supplied Material, provide adequate and proper storage facilities acceptable to the Contract Administrator and on the receipt of the Owner Supplied Material shall immediately place it in storage except where it is to be incorporated forthwith into the Work.

13.4.2 The Contractor shall be responsible for acceptance of Owner Supplied Material, at the specified delivery point. All Owner Supplied Material in each shipment shall be accounted for by the Contractor. Immediately upon receipt of each shipment, the Contractor shall provide the Contract Administrator with copies of bills of lading, or such other documentation the Contract Administrator may require to substantiate and reconcile the quantities of Owner Supplied Material received. Where Owner Supplied Material arrives at the delivery point in a damaged condition or where there are discrepancies between the quantities received and the quantities shown on the bills of lading, the Contractor shall immediately report such damage or discrepancies to the Contract Administrator who shall arrange for an immediate inspection of the shipment. Where damage or deficiencies are not so reported, it shall be assumed that the shipment arrived in good condition and order, and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner and without any extension of the Contract Time.

13.4.3 Once accepted by the Contractor, notwithstanding that title to the Owner Supplied Equipment shall be held by the Owner, the risk of Loss to the Owner Supplied Material shall be borne by the Contractor. If after accepting delivery, such Owner Supplied Material is damaged or lost while under the control of the Contractor, it shall be replaced or repaired by the Contractor at no cost to the Owner, and to the satisfaction of the Contract Administrator. If such Owner Supplied Material is rejected by the Contract Administrator for reasons that are not the fault of the Contractor, it shall remain in the care and at the risk of the Contractor until its disposition has been determined by the Contract Administrator.

13.4.4 Owner Supplied Material shall not, except with the written permission of the Contract Administrator, be used by the Contractor for purposes other than the performance of the Work under the Agreement. Contractor shall store, operate, maintain, repair and otherwise deal with the Owner Supplied Material in the same manner as would a prudent owner of such material and equipment, and in accordance with the Agreement and the applicable operating and maintenance manuals, and using suitably qualified and experienced Personnel, until returned to the Owner.

13.4.5 Empty reels, crates, containers and other types of packaging from Owner Supplied Material shall become the property of the Contractor when they are no longer required for their original purpose and shall be disposed of by the Contractor at the Contractor's cost unless otherwise specified in the Agreement or directed by the Owner.

13.4.6 Where Owner Supplied Material supplied by the Owner is ordered and stockpiled prior to the award of the Agreement, the Contractor shall, at no extra cost to the Owner, immediately upon commencement of operations, check the Owner Supplied Material, report any damage or deficiencies to the Contract Administrator and take charge of the Owner Supplied Material at the stockpile site. Where damage or deficiencies are not so recorded by the Contractor, it shall be assumed that the stockpile was in good condition and order when the Contractor took charge of it, and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner and without any extension of the Contract Time.

13.5 CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

13.5.1 The parties acknowledge and agree that MFIPPA applies to the Owner and the Owner Documents and that the Owner is required to fully comply with MFIPPA. The Contractor shall retain and preserve Owner Documents in a secure and accessible manner to enable the Owner to fulfill its obligations under MFIPPA and the Owner’s Policies, Procedures and By-laws.

13.5.2 Notwithstanding anything else in the Agreement to the contrary, the Contractor acknowledges and agrees that the Owner has a right to disclose or publish the Agreement (including any or all terms hereof), any or all Owner Documents and any information derived from the Owner Documents as the Owner, in its sole discretion, may consider appropriate.

13.5.3 Each party acknowledges the importance of maintaining the confidentiality and privacy of Confidential Information. Except as authorized hereunder, each receiving

party shall, with respect to Confidential Information it receives from or on behalf of any disclosing party at all times:

.1 hold such Confidential Information in strict confidence, under and in accordance with all applicable requirements of the Agreement including the Specifications, if any;

.2 implement and use, appropriate technical, organizational and physical security measures to protect and secure such Confidential Information, whether in storage or in use, with no less than the same degree of care as the receiving party uses to protect its own Confidential Information against loss, theft and unauthorized access, use, copying, modification, disclosure, publication or dissemination or disposal, but in no case with less than a reasonable degree of care. Further, the Contractor shall comply, if requested by the Owner, with a document control and security protocol approved by the Owner, which protocol shall prescribe limitations on the use, disclosure and storage of such Confidential Information;

.3 comply with all applicable requirements of Laws, including MFIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada), and any other Laws now in force or that may in the future come into force governing the collection, use, disclosure and protection of Personal Information applicable to the Contractor;

.4 not disclose to a third party and not permit any third party any manner of access to, whether directly or indirectly, such Confidential Information without the prior written approval of the disclosing party in each instance, except as provided for in this 13.5 – CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION; and

.5 not to use such Confidential Information for any purpose whatsoever other than in connection with the rights conferred under the Agreement as permitted by the Agreement.

13.5.4 The parties agree that:

.1 the receiving party may disclose Confidential Information of the disclosing party received by it pursuant to the Agreement:

(1) to its Personnel if and when such Personnel have a need to know such Confidential Information so that such receiving party may exercise its rights and/or meet its obligations under the Agreement or comply with Laws, provided that such Personnel are advised of the confidential nature of the Confidential Information and, by virtue of the terms of their employment, engagement or retainer or as a result of an agreement in writing, are bound by confidentiality obligations substantially no less restrictive than those imposed on the receiving party pursuant to the Agreement;

(2) to the extent such disclosure is required pursuant to Laws or any Governmental Authority, provided that, where circumstances permit, prior to

such disclosure the receiving party shall to the extent it is legally permitted to do so give the disclosing party a notice of the potential disclosure and allow the disclosing party the opportunity to contest the requirement for disclosure or seek a protective order or ruling in connection with such potential disclosure;

(3) as necessary in connection with any dispute resolution commenced pursuant to the Agreement; and

(4) as may be permitted or required under the *City of Toronto Act, 2006*;

.2 the Contractor may disclose Confidential Information of the Owner to its professional advisors, Subcontractors, Suppliers or Sub-subcontractors, to the extent necessary, to enable that party to perform, to cause to be performed the Work, or to enforce, its rights or obligations under the Agreement, provided that such parties are advised of the confidential nature of the Confidential Information and bound in writing to confidentiality obligations in favour of both the Owner and Contractor substantially no less restrictive than those imposed on Contractor by the Agreement;

.3 the Owner may disclose Confidential Information of the Contractor to its professional advisors, consultants, other contractors, Personnel and any other party providing or potentially providing services to the Owner to enable the Owner to perform any of its obligations or exercise any of its rights under the Agreement, provided that such parties are advised of the confidential nature of the Confidential Information and bound in writing to confidentiality obligations substantially no less restrictive than those imposed on the Owner by the Agreement; and

.4 any disclosure of Confidential Information allowed pursuant to this 13.5 - CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION shall be limited to that which is necessary to satisfy the need for such disclosure.

13.5.5 The Contractor acknowledges that the Owner may use the Confidential Information of Contractor for purposes not specific to the Project, but for other general governmental purposes.

13.5.6 Each receiving party shall immediately provide Notice in Writing to a disclosing party in the event that it becomes aware of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Confidential Information by a receiving party or any party to which a receiving party has disclosed any Confidential Information.

13.5.7 The Contractor shall allow the Owner on reasonable Notice in Writing to inspect any Confidential Information in the custody or possession of a Contractor Party and to audit compliance with this GC including the measures used to protect Confidential Information, and otherwise properly respond to all reasonable inquiries of the Owner with respect to handling of Confidential Information within five (5) Working Days.

13.5.8 The Contractor shall provide, and shall cause each of its professional advisors, Subcontractors, Suppliers or Sub-subcontractors to provide, in a timely manner, all necessary and reasonable information and co-operation to the Owner and to any Governmental Authorities with jurisdiction or oversight over Laws governing the collection, use, disclosure and protection of Personal Information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.

13.5.9 Subject to any applicable requirement of Laws, the Contractor shall on the earliest of the date of Total Performance of the Work, termination or expiry of the Agreement or upon the written request of the Owner, immediately cease all use of and return to the Owner or, at the direction of the Owner, dispose of, destroy, or render permanently anonymous, all Confidential Information, in each case using appropriate technical, organizational and physical security measures to protect Confidential Information against loss, theft and unauthorized access, disclosure, copying, use or modification.

13.5.10 This 13.5 – CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION shall not apply in respect of information (except for Personal Information), if such information:

.1 was lawfully acquired by the receiving party prior to the Effective Date without any restrictions as to use or disclosure or any obligation of confidentiality;

.2 is lawfully, and without any restrictions as to use or disclosure or any obligation of confidentiality, provided to a receiving party by a third party, except where the third party is known or should reasonably have been suspected of being subject to an obligation to the disclosing party to maintain such information in confidence;

.3 is independently created, developed or acquired by or for the receiving party without reference to the Confidential Information provided by the disclosing party or through third parties to whom the Confidential Information had not been disclosed; or

.4 is released from the confidentiality provisions of the Agreement by the written authorization of the disclosing party.

13.5.11 The obligations in this 13.5 – CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION shall survive the termination of the Agreement. To the extent of any conflict or inconsistency between this GC and any other provision of the Agreement, this GC shall prevail.

SCHEDULE E

VALUING CHANGES IN THE WORK

1. CHANGES IN THE WORK BASED ON UNIT PRICES SET OUT IN THE AGREEMENT

1.1 Notwithstanding that the number of units of an item of Unit Price Work to be performed shall exceed or be less than the Estimate of Units for Completion, subject to section 1.2 of this Schedule E, the Contractor shall proceed to perform the applicable Unit Price Work and payment shall be made for the final quantities of total units for such item in accordance with GC 5.3.5.2.

1.2 When the number of units of a Major Item of Unit Price Work exceeds the Estimate of Units for Completion for such item by more than 30%, the Contractor shall not proceed with the portion of such Major Item of Unit Price Work in excess of 130%, but the Owner shall have the right, in its sole discretion, to require that the portion of the applicable Unit Price Work for such Major Item which exceeds 130% of the Estimate of Units be performed and paid for as a T&M Change in the Work, in accordance with Section 3 of this Schedule E and if the Owner so elects, the Contract Administrator shall issue a Change Directive pursuant to GC 7.3 – CHANGE DIRECTIVE, or the parties shall sign a Change Order pursuant to GC 7.2 – CHANGE ORDER, reflecting the change for this portion of the Unit Price Work. For clarity:

1.2.1 where the number of units of a Major Item exceeds 100% of the applicable Estimate of Units for Completion for such Major Item, the units of such Major Item which are less than 130% of the Estimate of Units for Completion of such Major Item shall be paid for at the Unit Prices in accordance with GC 5.3.5.2;

1.2.2 where the number of units of an item of Unit Price Work (other than Major Items) exceeds 100% of the Estimate of Units for Completion for such item, all units of such item (including any units in excess of 130% of the applicable Estimate of Units for Completion) shall be paid for at the Unit Prices in accordance with GC 5.3.5.2; and

1.2.3 the Unit Prices under "Schedule A Schedule of Prices for Changes in the Work", if attached to Schedule B - Pricing Form, shall apply to an item of Unit Price Work if there is no corresponding Unit Price set out elsewhere in Schedule B – Pricing Form for such item.

2. CHANGES IN THE WORK ON A NEGOTIATED FIXED PRICE OR NEGOTIATED UNIT PRICE BASIS

2.1 The negotiated fixed price for a change in the Work or negotiated unit price(s) for the components of a change in the Work, as the case may be, whether performed by the Contractor or a Subcontractor, Supplier or Sub-subcontractor, shall be inclusive of all costs, charges, expenses, fees and taxes whatsoever required or related to the performance of such change in the Work and markup as provided for in section 2.2.3 of this Schedule E, with the exception of Value Added Taxes.

2.2 The negotiated fixed price for a change in the Work or negotiated unit price(s) for the components of a change in the Work, as the case may be, shall be the sum of the following:

2.2.1 the negotiated fixed price or negotiated unit price(s), as applicable, for the portions of the change in the Work to be carried out by the Contractor's Personnel, without markup by the Contractor;

2.2.2 the negotiated fixed price or negotiated unit price(s), as applicable for the portions of the change in the Work to be carried out by the Subcontractors, Suppliers or Sub-subcontractors, without markup by the Contractor, Subcontractor, Supplier or Sub-subcontractor; and

2.2.3 markup calculated as follows:

.1 multiplying the negotiated amount set out in section 2.2.1 of this Schedule E by the percentage amount described in row B.1 of the Information Sheet; and

.2 multiplying the negotiated amount set out in section 2.2.2 of this Schedule E by the percentage amount described in row B.2 of the Information Sheet.

Such markup percentages shall not be adjusted during the term of the Agreement. Notwithstanding any other provision in the Agreement, the cumulative total percentage markup charged by the Contractor, Subcontractors, Suppliers and Sub-subcontractors pursuant to section 2.2.3.2 of this Schedule E shall not exceed the percentage amount set out in row B.2 of the Information Sheet, regardless of the extent to which the change in the Work is performed by a Subcontractor, Supplier or Sub-subcontractor. For greater certainty, such markup percentage shall not apply to Value Added Taxes. Any change in Work performed by a Subcontractor, Supplier and Sub-subcontractor that is an "associate" (as defined by the Securities Act) of the Contractor shall be treated as if such change in the Work was performed by the Contractor for the purposes of calculating the markup and, in such an instance, the markup in section 2.2.3.1 of this Schedule E is applicable, not the markup in section 2.2.3.2 of this Schedule E.

2.3 The Contractor shall provide written quotes identifying each amount to be charged by the Contractor and each Subcontractor, Supplier and Sub-subcontractor, including for each of the foregoing, a detailed breakdown of amounts for transportation, labour, Product, Construction Equipment, services. The Value Added Taxes, as applicable, shall be identified separately in a manner satisfactory to the Owner. The Contractor shall also provide any other detail reasonably required by the Owner to evaluate the proposed fixed price of the change in the Work.

2.4 Where such change in the Work requires the rental of Construction Equipment, any rental charges for the actual operation time required for the performance of the change in the Work must be agreed upon by the parties before the Contractor commences the change in the Work.

2.5 The markups provided for in section 2.2.3 of this Schedule E shall constitute the only compensation the Contractor shall be entitled to for any and all overhead, profit, incidental and administrative costs whatsoever related to the change, including, costs relating to superintendence and supervision, shop drawing production, estimating, site office and home office expenses, tools of Personnel, temporary facilities and controls, and coordination of any and all Work-related activities.

2.6 If such change in the Work results in a net decrease in the Fixed Price, the Fixed Price shall be decreased by an amount proportionate to the reduction in the Fixed Price Work, provided that such reduction shall not include any amounts for portions of the Fixed Price relating to the fixed overhead costs incurred by the Contractor as reasonably substantiated by the Contractor.

3. CHANGES IN THE WORK ON A TIME AND MATERIAL BASIS – LINEAR APPROACH

3.1 For the purposes of this Section 3 of this Schedule E, the following definitions apply:

3.1.1 **"127 Rate**" means the rate for Construction Equipment (other than Rented Construction Equipment, Operated Rented Construction Equipment, hand tools and tools of the trade) as listed in the version of the OPSS.PROV 127, Schedule of Rental Rates for Construction Equipment Including Model and Specification Reference that is current at the time the T&M Change in the Work is carried out or, for such Construction Equipment that is not so listed, the rate for such Construction Equipment that has been calculated by the Owner, using the same principles as used in determining the 127 Rates. The 127 Rate shall not include the cost of the operator unless otherwise stated in OPSS.PROV 127.

3.1.2 **"Cost of Labour"** means, in respect of all Personnel in the direct employ of the Contractor for labour and supervision actively and necessarily engaged on the T&M Change in the Work, the aggregate product of (.1) the number of hours as recorded in the Daily Contractor Work Records for each such Personnel and (.2) the applicable hourly rate for such Personnel based on the wages, salary and Payroll Burden paid or incurred directly by the Contractor. The Contractor acknowledges that the Cost of Labour (including such hourly rate) shall be subject to audit and verification by the Owner in accordance with GC 2.6 – CONTRACTOR RECORDS and adjustment as appropriate. The Cost of Labour shall not include any costs incurred, and the Contractor shall not be paid, for:

.1 general supervision, administration and management time unless the T&M Change in the Work results in an extension of the Contract Time; or

.2 any wages, salary or Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Equipment.

3.1.3 **"Cost of Products"** means the aggregate cost of all Products purchased, or supplied from stock and valued at current market prices, by the Contractor for the purpose of carrying out the T&M Change in the Work, as shown by itemized invoices.

3.1.4 **"Operated Rented Construction Equipment"** means Rented Construction Equipment for which an operator is provided by the supplier of the equipment and for which the rent or lease includes the cost of the operator.

3.1.5 **"Payroll Burden"** means the payments in respect of workplace insurance, vacation pay, employment insurance, sickness and accident insurance, pension fund, and such other welfare and benefit payments forming part of the normal labour costs for Personnel.

3.1.6 **"Rented Construction Equipment"** means Construction Equipment (other than hand tools and tools of the trade) that is rented or leased for the special purpose of a T&M Change in the Work from a Person that is not an associate as defined by the *Securities Act* of the lessee, the use of which is approved by the Contract Administrator in advance of such rental or lease.

3.1.7 **"Road Work"** means the preparation, construction, finishing and construction maintenance of roads, streets, Highways and parking lots and includes all Work incidental thereto other than Work on structures.

3.1.8 **"Sewer and Watermain Work"** means the preparation, construction, finishing and construction maintenance of sewer systems and watermain systems, and includes all Work incidental thereto other than Work on structures.

3.1.9 **"Standby Time"** means any period of time that is not considered Working Time and which together with the Working Time does not exceed ten (10) hours in any one Working Day and during which time a piece of Construction Equipment (other than hand tools and tools of the trade) cannot practically be used on other Work but must remain at the Site in order to continue with its assigned task and during which time the unit is in fully operable condition.

3.1.10 **"Structure Work"** means the construction, reconstruction, repair, alteration, remodelling, renovation or demolition of any bridge, building, tunnel or retaining wall and includes the preparation for and the laying of the foundation of any bridge, building, tunnel or retaining wall and the installation of equipment and appurtenances incidental thereto.

3.1.11 **"T&M Costs"** has the meaning set out in section 3.2 of this Schedule E;

3.1.12 **"T&M Price"** means, in respect of a T&M Change in the Work, the total T&M Costs.

3.1.13 **"Working Time"** means each period of time during which a piece of Construction Equipment (other than hand tools and tools of the trade) is actively and necessarily engaged in assigned tasks for a specific operation and the first two (2) hours of each immediately following period during which such Construction Equipment is not so engaged but during which such operation is otherwise proceeding and during which time such Construction Equipment cannot practically be transferred to other Work but must remain at the Site in order to continue with its assigned tasks for such operation and during which time such Construction Equipment is in a fully operable condition.

3.2 The total cost of performing the T&M Change in the Work shall be the total actual reasonable costs to the extent directly paid by the Contractor in performing such Work in accordance with the Agreement ("**T&M Costs**") and is limited to the aggregate of the following subject to all applicable credits being deducted:

3.2.1 Cost of Labour calculated in accordance with section 3.4 of this Schedule E;

3.2.2 Cost of Products calculated in accordance with section 3.5 of this Schedule E;

3.2.3 costs for Working Time of all:

.1 Construction Equipment, other than: Rented Construction Equipment, Operated Rented Construction Equipment; hand tools; and tools of the trade, calculated in accordance with section 3.6.1 of this Schedule E;

.2 Rented Construction Equipment (other than Operated Rented Construction Equipment) calculated in accordance with section 3.6.2 of this Schedule E; and

.3 Operated Rented Construction Equipment calculated in accordance with section 3.6.3 of this Schedule E.

3.2.4 costs for Standby Time, transportation and other related costs calculated in accordance with section 3.7 of this Schedule E; and

3.2.5 costs for Subcontractors calculated in accordance with section 3.9 of this Schedule E.

The markup percentages in this Section 3 of this Schedule E shall not be adjusted during the term of the Agreement. For greater certainty, such markup percentages shall not apply to Value Added Taxes.

3.3 Payment as provided for in this Section 3 of this Schedule E shall be full compensation for all labour, Construction Equipment and Products and other work and services to perform the T&M Change in the Work except where there is agreement to the contrary prior to the commencement of the T&M Change in the Work. The payment adjustments on a Time and Material basis shall apply to each individual change in the Work authorized by the Contract Administrator.

3.4 Payment for Labour

3.4.1 The Owner shall pay the Contractor for labour employed on the T&M Change in the Work at 135% of the Cost of Labour up to $3500, then at 120% of any portion of the Cost of Labour in excess of $3500.

3.4.2 Cost of Labour shall include the time of operators of Construction Equipment (other than Operated Rented Construction Equipment) or associated labourers who cannot be otherwise employed during Standby Time or during the period of idleness caused by the circumstances giving rise to the T&M Change in the Work.

3.5 Payment for Products

3.5.1 Where payments are to be made for T&M Changes in the Work, the Owner shall pay the Contractor for Products used at 120% of the Cost of Products up to $3,500, then at 115% of any portion of the Cost of Products in excess of $3,500.

3.6 Working Time

3.6.1 The Owner shall pay the Contractor for the Working Time of all Construction Equipment used on the T&M Change in the Work, other than Rented Construction Equipment, Operated Rented Construction Equipment, hand tools and tools of the trade, at the 127 Rates with a cost adjustment as follows:

.1 Cost for each Change Order or Change Directive $12,000 or less - no adjustment;

.2 Cost for each Change Order or Change Directive greater than $12,000 but not exceeding $24,000 - payment of $12,000 plus 90% of the portion in excess of $12,000; and

.3 Cost for each Change Order or Change Directive greater than $24,000 – payment of $22,800 plus 80% of the portion in excess of $24,000.

3.6.2 The Owner shall pay the Contractor for the Working Time of Rented Construction Equipment (other than Operated Rented Construction Equipment) used on the T&M Change in the Work at 110% of the invoice rental or lease rate approved by the Contract Administrator. Such rental or lease rate shall not exceed 110% of the 127 Rate (applicable to such Rented Construction Equipment, if it was not rented) unless the Contract Administrator approves the invoice price prior to the use of such Rented Construction Equipment.

3.6.3 The Owner shall pay the Contractor for the Working Time of Operated Rented Construction Equipment used on the T&M Change in the Work at 110% of such Operated Rented Construction Equipment invoice rental or lease rate approved by the Contract Administrator prior to the use of Operated Rented Construction Equipment on the T&M Change in the Work. If the Contract Administrator has not provided such approval the Owner shall pay the Contractor based on 110% of the 127 Rate (applicable to such Operated Rented Construction Equipment, if it was not rented).

3.6.4 The rates for Construction Equipment including the 127 Rates shall include all costs for: (A) installation, transportation and delivery, dismantling, removal, repairs, operation, maintenance, fuel, servicing, lubricants, certificates and licenses, except to the extent described in section 3.7 of this Schedule E; (B) all items necessary for the safe and proper use of the Construction Equipment; and (C) all items associated with operating and maintaining the Construction Equipment, including any required safety checks.

3.6.5 The rates and payments for Construction Equipment (other than Operated Rented Construction Equipment) including the 127 Rates described in this

section 3.6 of this Schedule E shall not include the Cost of Labour for operators unless expressly stated otherwise.

3.7 Standby Time

3.7.1 The Owner shall pay the Contractor for Standby Time of Construction Equipment at 35% of the 127 Rate or 35% of the invoice rental or lease rate, as applicable. The Owner shall pay reasonable costs for Rented Construction Equipment where it is necessarily retained at the Site for extended periods agreed to by the Owner, which are beyond the period provided for in the rental agreement or lease agreement. This shall include Rented Construction Equipment intended for use on other Work, but which has been idled due to the circumstances giving rise to the T&M Change in the Work.

3.7.2 The Owner or the Contract Administrator may require Rented Construction Equipment idled by the circumstances giving rise to the T&M Change in the Work to be returned to the lessor until the T&M Change in the Work requiring the Rented Construction Equipment can be resumed. The Owner shall pay such costs as result directly from such return.

3.7.3 When Construction Equipment is transported, solely for the purpose of the T&M Change in the Work, to or from the Site, payment shall be made by the Owner only in respect of the transporting units. When Construction Equipment is moved under its own power it shall be deemed to be performing the T&M Change in the Work. The method of moving the Construction Equipment and the rates for such transportation shall be subject to the prior written approval of the Owner.

3.7.4 The rates and payments for Construction Equipment (other than Operated Rented Construction Equipment) including the 127 Rates described in this section 3.7 of this Schedule E shall not include the Cost of Labour for operators unless expressly stated otherwise.

3.8 Notwithstanding any other provision of this Section 3 of this Schedule E, no payment shall be made to the Contractor for, or in respect of, hand tools or tools of the trade.

3.9 Payment for Work By Subcontractors

3.9.1 For T&M Changes in the Work, where the Work is performed by a Subcontractor the Owner shall pay the Contractor the amount pursuant to the written agreement with the Subcontractor plus a markup of 10 % of the first $10,000 of such amount plus 5 % of such amount in excess of $10,000, provided:

.1 any amounts incurred in excess of $10,000 are subject to the Owner's prior written approval; and

.2 any time and material costs of such Subcontractor included in such amounts shall be (i) calculated based on the lesser of the actual hourly rates for Personnel in the direct employ of the Subcontractor or the applicable hourly rates charged by the Contractor as a part of the Cost of Labour which is applicable to such Personnel; and (ii) limited to the costs

described in this Section 3 of this Schedule E to which the Contractor is entitled changing "Contractor" to "Subcontractor" as necessary".

3.9.2 No further markup shall be applied regardless of the extent to which the T&M Change in the Work is performed by a Subcontractor, Supplier or Sub-subcontractor. If a change in the Work is subcontracted to an "associate" (as defined by the Securities Act) no markup whatsoever shall be applied.

3.10 All trade, quantity and cash discounts and rebates and refunds accrue to the Owner, including all returns from sale of surplus materials and equipment applicable to the T&M Change in the Work, and the Contractor shall make provisions for them to be secured without delay.

3.11 Submission of Summaries

3.11.1 The Contractor shall prepare and maintain complete and accurate Daily Contractor Work Records for T&M Changes in the Work.

3.11.2 Prior to the start of the T&M Change in the Work, the Contractor shall provide the applicable Construction Equipment rates not already submitted to, and approved by, the Contract Administrator during the course of the Work.

3.11.3 Separate summaries of the Daily Contractor Work Records for the T&M Change in the Work shall be completed by the Contractor and each such summary shall include the Change Directive or Change Order number and covering dates of the T&M Change in the Work and shall itemize separately labour, Products and Construction Equipment. Invoices for Products, Rented Construction Equipment and other charges incurred by the Contractor on the T&M Change in the Work shall be included with each summary.

3.11.4 The summaries required under section 3.11.3 of this Schedule E shall be submitted by the Contractor within thirty (30) Calendar Days after the completion of the applicable T&M Change in the Work.

3.12 Except where there is agreement in writing to the contrary, the payments described herein shall be accepted by the Contractor as compensation in full for overhead, profit and all costs and expenses arising out of the T&M Change in the Work including all cost of general supervision, administration and management time spent on the Work and no other payment or allowance shall be made in respect of such T&M Change in the Work.

3.13 Pending determination of the final amount of a T&M Change in the Work, the undisputed value of the T&M Change in the Work performed:

3.13.1 as the result of a Change Order, is eligible to be included in Proper Invoices; and

3.13.2 as the result of a Change Directive, is not eligible to be included in Proper Invoices except to the extent that it is dealt with in a Change Order.

3.14 If the Owner and the Contractor do not agree on the proposed adjustment in the Contract Time attributable to the T&M Change in the Work, or the method of determining it, the adjustment shall be referred to the Contract Administrator for determination.

SCHEDULE F

OWNER'S POLICIES, PROCEDURES, BY-LAWS AND OTHER REQUIREMENTS

[Note to Finalization: Insert the specific Schedule F for your agency. Update page numbers and delete these instructions]

SCHEDULE G

FORMS

Schedule G is comprised of the following forms:

Form 1: Sample Proper Invoice

Form 2: Certificate of Insurance

Form 3: Tax Statutory Declaration

Form 4: Notice of Adjudication

FORM 1: SAMPLE PROPER INVOICE

Contractor Company Logo INVOICE

BILL TO:		**REMIT TO:**	
Owner:	*City of Toronto*	Vendor Name	*Vendor*
Street Address:	*55 John Street, 20th Floor*	Vendor Number	*123456789*
City:	*Toronto, Ontario*	Street Address	*123 Toronto Street, Unit 12*
Postal Code:	*M5V 3C6*	City	*Toronto, Ontario*
		Postal Code	*XXX XXX*
Division:	*Engineering & Construction Services*		
Owner Representative	*John Doe*	Contractor Project Manager	*John Doe*
Tel. #:	*416-39X-XXXX*	Tel. #	*416-39X-XXXX*
Email:	*John.Doe@toronto.ca*	Email	*John.Doe@Vendor.ca*
		INVOICE DATE:	*September 19, 2019*
Contract #:	*Contract Number*	**INVOICE #**	*12548*
Blanket Contract #: (if any)	*XXXXXXX*		
PO #/ CRO#/ DPO#:	*XXXXXXX*		
Project Description:	*Project Description*		
Invoice Period:	*(Start) to (End)*		
Progress Payment Certificate#:	*PR-XX*	*HST Registration No.* _____	
		Currency _____	

Item	Contract Price	Progress To Date		Previous Billing	Current Billing
		%	$		
A	B	C = (D / B)	D	E	F = (D - E)
Base Contract	$0.00	0.00%	$0.00	$0.00	$0.00
Allowances	$0.00	0.00%	$0.00	$0.00	$0.00
Approved Change Orders (non-Allowance)	$0.00	0.00%	$0.00	$0.00	$0.00
Gross Amount	**$0.00**	**0.00%**	**$0.00**	**$0.00**	**$0.00**
Less: Statutory Lien Holdback			$(0.00)	$(0.00)	$(0.00)
Less: Contractual Holdbacks			$(0.00)	$(0.00)	$(0.00)
Net Amount			$0.00	$0.00	$0.00
HST 13%			$0.00	$0.00	$0.00
Less: Other Taxes			$(0.00)	$(0.00)	$(0.00)
Total Amount Due					**$0.00**

Name: _____ Signature: _____

Title: Date:

☑ Additional information to be included/attached

FORM 2: CERTIFICATE OF INSURANCE

To be completed only by the insurer or by its representative.

Name of Insured:	City of Toronto Contact Name, Address, and Telephone Number:
Address and Telephone Number of Insured:	

Operations of Named Insured for which certificate is issued:

(NOTE: Provide specific project information including the Toronto Zoo contract number)

1. Commercial General Liability: Deductible $_____

Insuring Company	**Policy Number**	**Policy Limit(s) $** (per occurrence)	**Effective Date** (yyyy-mm-dd)	**Expiry Date** (yyyy-mm-dd)
Primary Insurer:				
Umbrella/Excess Insurer: □ **Applicable to Auto Coverage**				
Contractor's Pollution Liability, Sudden and Accidental and Gradual, if applicable				

Commercial General Liability policy provisions:

a) The CITY OF TORONTO, ITS BOARDS, AGENCIES, COMMISSIONS OR SUBSIDIARY OPERATIONS, AS APPLICABLE, the TORONTO AND REGION CONSERVATION AUTHORITY, and the CONSULTANT are included as Additional Insureds but only with respect to liability arising out of the operations of the Insured for which a contract or proposal is issued by the Toronto Zoo.

b) The policy includes a Cross-Liability and Severability of Interest, Blanket Form Contractual Liability, Owner's and Contractor's Protective Liability, Broad Form Property Damage, Contingent and/or Employer's Liability, Non-Owned Automobile Liability, Products/Completed Operations and any other provision relevant to the contract work. If applicable to the insured operations, coverage for Blasting, Pile Driving and Collapse.

c) The Commercial General Liability Policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to the City.

2. Automobile Liability, if applicable: **Deductible $** _____

Insuring Company	**Policy Number**	**Policy Limit(s) ($)**	**Effective Date (yyyy-mm-dd)**	**Expiry Date (yyyy-mm-dd)**

3. Contractor's Equipment Property Insurance: Deductible $ _____

Contractor's tools & equipment , materials & supplies in an amount to reflect the replacement cost.
Policy includes a Waiver of Subrogation Clause in favour of the City.

Certificate of Insurance

Capital Construction Projects

Insuring Company	Policy Number	All-Risk Property Limit(s) ($)	Effective Date (yyyy-mm-dd)	Expiry Date (yyyy-mm-dd)

4. Builder's Risk or Installation Floater - Products, supplies and equipment and/or systems, including boiler and machinery, if applicable, that forms part of the Work. Deductible $ _____

Identify Policy Type:

Builder's Risk □

Installation Floater □

The Owner shall be included as an additional insured and a joint loss payee.

Insuring Company	Policy Number	Limit of Coverage ($)	Effective Date (yyyy-mm-dd)	Expiry Date (yyyy-mm-dd)

5. Other (Specify) _____. Deductible $ _____

Insuring Company	Policy Number	Policy Limit(s) ($)	Effective Date (yyyy-mm-dd)	Expiry Date (yyyy-mm-dd)

6. Other (Specify) _____. Deductible $ _____

Insuring Company	Policy Number	Policy Limit(s) ($)	Effective Date (yyyy-mm-dd)	Expiry Date (yyyy-mm-dd)

All of the above policies (with the exception of the Automobile Insurance, Section 2 above) must include a clause that states that if the policy is cancelled during the period of coverage, as stated herein, thirty (30) days, (fifteen (15) days if cancellation is due to non-payment of premium), prior written notice by registered mail will be given by the Insurer(s) to the Toronto Zoo.

CERTIFICATION

I certify that the insurance is in effect as stated in this Certificate and that I have authorization to issue this Certificate for and on behalf of the Insurer(s). This Certificate is valid until the expiration date(s) stated in the “Expiry Date” provision, unless notice is given in writing in accordance with the provision of this Certificate.

Date	Broker’s or Insurer’s Name and Address	Signature and Stamp of Certifying Official

FORM 3: TAX STATUTORY DECLARATION

CANADA, PROVINCE OF ONTARIO, JUDICIAL DISTRICT OF YORK	) IN THE MATTER OF the annexed Agreement) made between)))) – and –)) **[OWNER]**)) this _____ day of _____, 20___.) with respect to)

I, _____, of the CITY / TOWN / VILLAGE of _____

in the Province of _____, do solemnly declare as follows:

1. I am _____ of _____
   (If an incorporated Company, state" President", (Company Name)
   "Secretary", or as the case may be)
   referred to above (hereinafter called "the Contractor"), and as such have knowledge of the matters hereinafter declared to.

2. The Contractor has paid all taxes and/or penalties imposed on it by the Corporation Tax Act, R.S.O. 1990, c. C.40, as may be amended.

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

DECLARED before me at the _____ of _____ in the City of Toronto this _____ day of _____ 20___	} } } } } } _____ } Signing Officer of Company } }

A Commissioner, etc.

FORM 4: NOTICE OF ADJUDICATION

IN THE MATTER OF AN ADJUDICATION PURSUANT TO PART II.1 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, c. C.30, as amended

Notice of Adjudication

Date

Agreement Information

Contract Number
Project

Information of Party Initiating the Adjudication

Corporate Name		
Corporate Address		
City/Town	Province	Corporate Phone No.
Postal Code	Email (if applicable)	Corporate Fax No.

Information of Party Receiving the Notice of Adjudication

Corporate Name		
Corporate Address		
City/Town	Province	Corporate Phone No.
Postal Code	Email (if applicable)	Corporate Fax No.

Contractor Information

Contractor Project Manager, if applicable
Contractor Site Supervisor, if applicable

Owner Information

Owner Representative
Contract Administrator

Adjudication Claim Information

Claimed Amount, exclusive H.S.T.

Please indicate which Adjudicable Matter the Adjudication is in respect of:

☐ Valuation of services or materials provided under the Agreement
☐ Payment under the Agreement
☐ Dispute regarding a Notice of Non-Payment
☐ Amounts Set-off by Owner
☐ Non-payment of Lien Holdback

If applicable, please identify relevant:

☐ Change Directive Number: _____
☐ Change Order Number: _____
☐ Proper Invoice Number: _____
☐ Claim Notice reference number and date: _____

Please provide the nature and a brief description of the dispute, including details respecting how and when the dispute arose and the nature of the redress sought (attach a separate sheet if necessary):

Requested Adjudicator

First and Last Name		
Address		
City/Town	Province	Phone No.
Postal Code	Website (if applicable)	Email

Consolidation

☐ The dispute which is the subject matter of this Notice of Adjudication is proposed to be consolidated with the disputes which are the subject matter of the notices of adjudication attached as "**Attachment 1**"

Delivery
See GC 12.2.4 for method of delivery of the Notice of Adjudication and address for delivery.
Attachments
Please attach a copy of any notices of adjudication for adjudications proposed to be consolidated to this Notice of Adjudication as **"Attachment 1".** Please attach a copy of SCHEDULE A – INFORMATION SHEET to this Notice of Adjudication as "**Attachment 2**".

SCHEDULE H

DRAWINGS AND SPECIFICATIONS

[Note to Finalization before Execution: Attach or list the Drawings and Specifications (which includes, for clarity, the Standard Drawings, the Standard Specifications and Special Specifications and material and finishing schedules).]