SUPPLEMENTARY CONDITIONS

The Standard Construction Document CCDC-2 2008 for Stipulated Price Contract, English version, consisting of the Agreement Between Owner and Contractor, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these Contract Documents, with the following amendments, additions and modifications. These Supplementary Conditions have been developed by Ontario Infrastructure and Lands Corporation (“OILC”), with the endorsement of the Ontario General Contractors Association.

All references in this contract to the Owner shall refer to the entity identified in the Agreement Between Owner and Contractor, but all rights, benefits, or entitlements reserved to the Owner under the terms of this contract shall equally accrue to and be jointly or severally enforceable by OILC, Her Majesty the Queen in Right of Ontario, and the Owner.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 – CONTRACT DOCUMENTS

3.1 Include in the list of Contract Documents in paragraph 3.1:

- Supplementary Conditions
- Ontario Fair Wage Program Labour Conditions including the applicable Schedule of Fair Wage Rates
- Performance Bond
- Labour and Material Payment Bond
- Vendor Performance Program and/or Vendor Performance Scorecard and Guidelines
- Project Specific Supplementary Conditions

ARTICLE A-5 – PAYMENT

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

5.3 Interest

.1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest on
such unpaid amounts shall also become due and payable from the date that is 30 calendar days after the date when the payment became due until payment at the rate established from time to time by the Minister of Finance (Ontario).

ARTICLE A-9 – CONFLICT OF INTEREST

Add new Article A-9 – Conflict of Interest:

9.1 The Contractor, all of the Subcontractors, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the Owner) with the provision of the Work pursuant to the Contract. The Contractor acknowledges and agrees that a conflict of interest includes the use of Confidential Information where the Owner has not specifically authorized such use.

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

9.3 The Contractor covenants and agrees that it will not hire or retain the services of any employee or previous employee of Ontario Realty Corporation, Ontario Infrastructure Projects Corporation, OILC or the Ontario Public Service where to do so constitutes a breach by such employee or previous employee of the previous employer’s conflict of interest policy, as it may be amended from time to time.

9.4 A breach of this Article by the Contractor, any of the Subcontractors, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the Owner to terminate the Contract, in addition to any other rights and remedies that the Owner has in the Contract, in law, or in equity.

ARTICLE A-10 – CONFIDENTIALITY

Add new Article A-10 – Confidentiality:

10.1 The Contractor agrees to ensure that it shall, both during or following the term of the Contract, maintain the confidentiality and security of all Confidential Information and Personal Information, and that it shall not directly or indirectly disclose, destroy, exploit, or use any Confidential Information or Personal Information, except where required by law, without first obtaining the written consent of the Owner. The Contractor may disclose any portion of the Contract Documents or any other information provided to the Contractor by the Owner to
any Subcontractor or Supplier if the Contractor discloses only such information as is necessary to fulfill the purposes of the Contract and the Contractor has included a commensurate confidentiality provision in its contract with the Subcontractor or Supplier. The Contractor acknowledges that it will comply with all requirements of the Personal Information Protection and Electronic Documents Act. The Contractor acknowledges that the Owner is bound by the provisions of the Freedom of Information and Protection of Privacy Act ("FIPPA"). The Contractor further acknowledges that the Owner may be required to disclose any or all of the Confidential Information and Personal Information in the event that it is compelled to do so by law, through a request under FIPPA, or by the rules of any applicable regulatory authority.

**DEFINITIONS**

Add the following definitions:

a. **Affected Party and Affected Parties**

Affected Party and Affected Parties have the meaning set out in GC 13.6.4

b. **As-Built Drawings**

As-Built Drawings means drawings prepared by the Contractor by marking on a copy of the Drawings the changes from the Drawings which occur during construction including, but are not limited to the exact location of major building components that were shown generally on the Drawings.

2a. **Confidential Information**

Confidential Information means all the information or material of the Owner that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-lists) which is communicated to or comes into the possession or control of the Contractor at any time, but Confidential Information shall not include information that:

1) is or becomes generally available to the public without fault or breach on the part of the Contractor, including without limitation breach of any duty of confidentiality owed by the Contractor to the Owner or to any third party, but only after that information becomes generally available to the public;

2) the Contractor can demonstrate to have been rightfully obtained by the Contractor from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence;
3) the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor at the time of disclosure, free of any obligation of confidence; or

4) is independently developed by the Contractor without use of any Confidential Information.

9a. Contractor Security Officer or “CSO”

Contractor Security Officer or “CSO” means the individual designated by the Contractor as the Contractor’s representative who will liaise with the Owner for the purposes of coordinating the Security Clearance Checks for the Contractor and all Affected Parties and who will have overall responsibility for carrying out Contractor’s security screening obligations outlined in this contract, and to whom any additional information deemed relevant to the required Security Clearance Checks, may be communicated during the contractor security screening process.

10a. Fair Wage Program Labour Conditions

Fair Wage Program Labour Conditions refers to the Ontario Fair Wage Program Labour Conditions and applicable Schedule of Fair Wage Rates included in the Contract Documents.

12b. Personal Information

Personal Information has the same definition as in subsection 2(1) of FIPPA and includes an individual’s name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the Contractor.

16a. Security Clearance Check

Security Clearance Check includes all of the following:

(a) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offense provisions of federal statutes, including but not limited to the Criminal Code, R.S.C. 1985, C. C-46, as amended, for which a pardon under the Criminal Records Act, R.S.C. 1985, C. C-47, as amended, has not been granted;

(b) a police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual in relation to:

- convictions under the offense provisions of federal statutes, including but not limited to the Criminal Code, R.S.C. 1985, C. C-46, as
amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;

- findings of guilt in relation to federal statutes for which a court has granted a discharge;

- charges laid under the offense provisions of any federal statutes that are unresolved; and

- records of judicial orders in effect made in relation to the offense provisions of federal statutes;

(c) a police records check in other jurisdictions as deemed necessary by the information provided to the Security Services and Contingency Planning Branch of the Ontario government (SSCPB) during a Security Clearance Check; and

(d) if deemed necessary by SSCPB considering the circumstances of the Project, a driving records check.

18a. **SSCPB**

SSCPB means the Security Services and Contingency Planning Branch of the Ministry of Government Services, or any successor thereof.

24a. **Vendor Performance Guidelines**

*Vendor Performance Guidelines* mean guidelines developed by the *Owner* in connection with the *Vendor Performance Program*.

24b. **Vendor Performance Program**

*Vendor Performance Program* means the *Owner’s* policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The *Vendor Performance Program* establishes a standard methodology for the incorporation of a vendor’s past performance as a criterion in assessing that vendor’s bids or proposals for future work with the *Owner*.

24c. **Vendor Performance Scorecard**

*Vendor Performance Scorecard* means a scorecard developed by the *Owner* in connection with the *Vendor Performance Program*. 
GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

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

GC 1.1 CONTRACT DOCUMENTS

.1 Add new sentence to the end of paragraph 1.1.6:

The Specifications are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the Contract Documents will be construed to place responsibility on the Consultant to settle disputes among the Subcontractors and Suppliers or as between them and the Contractor with respect to such divisions.

.2 Add new subparagraph 1.1.7.5:

1.1.7.5 noted materials and annotations shall take precedence over graphic indications.

.3 Delete paragraph 1.1.8 in its entirety and substitute new paragraph 1.1.8:

1.1.8 The Owner shall provide the Contractor, without charge, 6 copies of the Contract Documents.

GC 1.3 RIGHTS AND REMEDIES

.1 Delete the word "No" from the beginning of paragraph 1.3.2 and substitute the words:

"Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1, no …".

GC 1.4 ASSIGNMENT

.1 Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1:

1.4.1 The Owner may assign the Contract or a portion thereof without the consent of the Contractor, where such assignment is to an entity undertaking the Project for the use of the Crown in Right of Ontario or Canada. The Contractor may not assign the Contract or a portion thereof without the consent of the Owner, and the granting of such
consent shall be in the Owner's discretion, not to be unreasonably withheld.

**GC 2.4 DEFECTIVE WORK**

.1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

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

2.4.1.2 When applicable, the Contractor shall give priority to the correction of any defective work or deficiencies which the Owner determines adversely affect its day-to-day operations.

**GC 3.1 CONTROL OF THE WORK**

.1 Add new paragraph 3.1.3:

3.1.3 Prior to commencing the Work, the Contractor shall verify, at the Place of the Work, all relevant measurements and levels necessary for the proper completion of the Work and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or exact locations are not apparent in the Contract Documents, the Contractor shall immediately notify the Consultant in writing and obtain Supplemental Instructions from the Consultant before proceeding with any part of the affected work.

**GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

.1 Delete subparagraph 3.2.2.1 in its entirety

.2 Delete subparagraph 3.2.2.2 in its entirety

.3 Add new subparagraph 3.2.3.4:

3.2.3.4 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.4 of General Condition 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the Owner's own forces and for other contractors performing work identified in the
Contract Documents, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the Place of the Work, including all of the responsibilities of the constructor as that term is defined in the Occupational Health and Safety Act.

**GC 3.4 DOCUMENT REVIEW**

.1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency, or omission the Contractor may discover. Such review by the Contractor shall be undertaken with the standard of care described in paragraph 3.14.1 of the Contract. Except for its obligation to make such review and report the result, the Contractor does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Contractor could not reasonably have discovered through the exercise of the required standard of care. If the Contractor does discover any error, inconsistency, or omission in the Contract Documents, the Contractor shall not proceed with the work affected until the Contractor has received corrected or missing information from the Consultant.

.2 Add new paragraph 3.4.2:

3.4.2 If, at any time, the Contractor finds errors, inconsistencies, or omissions in the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor shall immediately notify the Consultant, and request a Supplemental Instruction, Change Order, or Change Directive, as the case may require. Neither the Owner nor the Consultant will be responsible for the consequences of any action of the Contractor based on oral instructions.

**GC 3.5 CONSTRUCTION SCHEDULE**

.1 Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

3.5.1 The Contractor shall,
within 15 days following the award of the Contract, prepare and submit to the Owner and the Consultant for their review and acceptance, a construction schedule that indicates the timing of the activities of the Work and provides sufficient detail of the critical events and their inter-relationship to demonstrate the Work will be performed in conformity with the Contract Time and in accordance with the Contract Documents. Unless otherwise agreed to in writing, in advance by the Owner and the Contractor, when required by the Specifications to employ construction scheduling software, the Contractor shall employ the software Microsoft Project in generating the construction schedule, which permits the progress of the Work to be monitored in relation to the critical path established in the schedule. The Contractor shall provide the construction schedule and any successor or revised schedules to the Owner in electronic format and paper copy. When required by the Specifications to employ construction scheduling software, the Contractor shall provide the construction schedule to the Owner in editable format, together with a record version in PDF format. Once accepted by the Owner and the Consultant, the construction schedule submitted by the Contractor shall become the baseline construction schedule;

provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the Owner pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE;

monitor the progress of the Work on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the Owner pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the Consultant and the Owner in writing of any variation from the baseline or slippage in the schedule; and

if, after applying the expertise and resources required under subparagraph 3.5.1.2, the Contractor forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.3 cannot be recovered by the Contractor, it shall, in the same notice, indicate to the
Consultant and the Owner if the Contractor intends to apply for an extension of Contract Time as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

.2 Add new paragraph 3.5.2:

3.5.2 If, at any time, it should appear to the Owner or the Consultant that the actual progress of the Work is behind schedule or is likely to become behind schedule, or if the Contractor has given notice of such to the Owner or the Consultant pursuant to subparagraph 3.5.1.3, the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the schedule or minimize the resulting delay and shall produce and present to the Owner and the Consultant a recovery plan demonstrating how the Contractor will achieve the recovery of the schedule. If the Contractor intends to apply for a change in the Contract Price in relation to a schedule recovery plan, then the Contractor shall proceed in accordance with General Condition 6.5 – DELAYS.

GC 3.6 SUPERVISION

.1 Delete paragraph 3.6.1 in its entirety and substitute new paragraph 3.6.1:

3.6.1 The Contractor shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the Place of the Work while work is being performed. The appointed representatives shall not be changed except for valid reasons, and upon the Contractor obtaining the Owner’s written consent, which consent will not be unreasonably withheld.

.2 Add new paragraph 3.6.3:

3.6.3 The Owner may, at any time during the course of the Work, request the replacement of the appointed representative(s), where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the Owner’s operations. Immediately upon receipt of the request, the Contractor shall make arrangements to appoint an acceptable replacement.
GC 3.8 LABOUR AND PRODUCTS

.1 Delete paragraph 3.8.2 and replace with new paragraph 3.8.2:

3.8.2 Unless otherwise specified in the Contract Documents, Products provided shall be new and as specified. The Contractor shall not provide substitutions for specified Products without the express written consent of the Consultant and the Owner.

.2 Add new paragraph 3.8.4:

3.8.4 The Contractor shall comply with all requirements set out in the Fair Wage Program Labour Conditions. The hours of work, the rates of wages paid, and the working conditions shall be in accordance with the Labour Conditions and applicable Schedule of Fair Wage Rates, included therein, as amended from time to time.

GC 3.11 USE OF THE WORK

.1 Add new paragraph 3.11.3:

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

Add new General Conditions 3.14 and 3.15:

GC 3.14 PERFORMANCE BY CONTRACTOR

3.14.1 In performing its services and obligations under the Contract, the Contractor shall exercise the standard of care, skill, and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The Contractor acknowledges and agrees that throughout the Contract, the performance of the Contractor’s obligations, duties, and responsibilities shall be judged against this standard. The Contractor shall exercise the same standard of care, skill, and diligence in respect of any Products, personnel, or procedures which it may recommend to the Owner.

3.14.2 The Contractor further represents, covenants and warrants to the Owner that:
.1 the personnel it assigns to the Project are appropriately experienced;

.2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the Owner’s approval, in the event of death, incapacity, removal or resignation; and

.3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the Contractor to perform its work under the Contract.

GC 3.15 RIGHT OF ENTRY

3.15.1 The Owner shall have the right to enter or occupy the Work in whole or in part for the purpose of placing fittings and equipment or for other uses before Substantial Performance of the Work, if, in the reasonable opinion of the Consultant and Contractor, such entry or occupation does not prevent or substantially interfere with the Contractor’s completion of the Contract within the Contract Time. Such entry or occupation shall not be considered as acceptance of the Work or in any way relieve the Contractor from responsibility to complete the Contract.

GC 4.1 CASH ALLOWANCES

.1 Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where the actual cost of the Work under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the Consultant’s direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the Contract 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 the excess only, as set out in the Contract Documents.

.2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:
4.1.5   The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order without any adjustment for the Contractor's overhead and profit on such amount.

.3 Add new paragraph 4.1.8:

4.1.8   The Owner reserves the right to call, or to have the Contractor call, for competitive bids for portions of the Work, to be paid for from cash allowances.

GC 5.1   FINANCING INFORMATION REQUIRED OF THE OWNER

.1 Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.

.2 Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:

5.1.1   The Owner and Contractor shall provide each other with timely Notice in Writing of any material change in their financial ability to fulfil their respective obligations under the Contract.

.3 Delete paragraph 5.1.2 in its entirety.

GC 5.2   APPLICATIONS FOR PROGRESS PAYMENT

.1 Add to the end of paragraph 5.2.7 the following new sentence:

Any Products delivered to the Place of the Work but not yet incorporated into the Work shall remain at the risk of the Contractor notwithstanding that title has passed to the Owner pursuant to General Condition 13.1 - OWNERSHIP OF MATERIALS.

.2 Add new paragraphs 5.2.8, 5.2.9, and 5.2.10:

5.2.8   As a condition of receiving each progress payment after the first, the Contractor shall submit a Statutory Declaration on an original form CCDC Document 9A-2001, attesting to the truth of the statements made therein.
5.2.9 The Contractor shall submit a Workplace Safety & Insurance Board Clearance Certificate with each application for progress payment.

5.2.10 The Contractor shall prepare current As-Built Drawings during the course of the Work, which current As-Built Drawings shall be maintained by the Contractor and made available to the Consultant for review with each application for progress payment. The Consultant may retain a reasonable amount and up to a maximum of the amounts outlined in paragraph 5.4.7, from any progress payment for the value of the As-Built Drawings not presented for review until the As-Built Drawings are presented for review.

GC 5.3 PROGRESS PAYMENT

.1 Delete subparagraph 5.3.1.3 in its entirety and substitute new subparagraph 5.3.1.3:

.3 the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement – PAYMENT no later than 45 calendar days after the date of a certificate of payment issued by the Consultant

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

.1 Delete paragraph 5.4.3 in its entirety and substitute new paragraph 5.4.3:

5.4.3 Immediately prior to the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Consultant, shall establish reasonable dates for finishing the Work and correcting deficiencies.

.2 Add new paragraphs 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8 and 5.4.9:

5.4.4 Within 7 calendar days of receiving a copy of the certificate of Substantial Performance of the Work signed by the Consultant, the Contractor shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the Construction Lien Act) and shall provide to the Consultant and the Owner the date of publication and the name of the construction trade newspaper in which the publication occurred. If the Contractor fails to comply with this provision, the Owner may publish a copy of the certificate and charge the Contractor with the costs so incurred.
5.4.5 Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Consultant all:

.1 guarantees;
.2 warranties;
.3 certificates;
.4 testing and balancing reports;
.5 distribution system diagrams;
.6 spare parts;
.7 maintenance manuals;
.8 samples;
.9 existing reports and correspondence from authorities having jurisdiction in the Place of the Work;

and other materials or documentation required to be submitted under the Contract, together with written proof acceptable to the Owner and the Consultant that the Work has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the Place of the Work.

5.4.6 Where the Contractor is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the Project in a material way, the failure to deliver shall not be grounds for the Consultant to refuse to certify Substantial Performance of the Work. If the Contractor fails to deliver any of the materials required in subparagraphs 5.4.5.7 or 5.4.5.8, the Consultant shall retain from the payment of holdback under General Condition 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the amount set out in paragraph 5.4.7., until the materials required pursuant to subparagraphs 5.4.5.7 or 5.4.5.8 are delivered.

5.4.7 The amount to be retained by the Consultant as contemplated in subparagraphs 5.2.10 and 5.4.6 is as follows:

.1 where the Contract Price is less than $100,000 the amount to be retained is $5,000;
.2 where the *Contract Price* is greater than $100,000 but less than $500,000, the amount to be retained is 5% of the *Contract Price*; and

.3 where the *Contract Price* is greater than $500,000 but less than $5,000,000, the amount to be retained is the greater of $25,000 or 3% of the *Contract Price*.

5.4.8 Should the *As-Built Drawings* not be delivered in accordance with subparagraph 5.2.10 or any documents or materials not be delivered in accordance with paragraph 5.4.5 by the earlier of 50 days following publication of the certificate of Substantial Performance of the Work and the submission of the Contractor’s application for final payment under paragraph 5.7.1 of General Condition 5.7 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.10 or 5.4.7 shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Price* shall be reduced accordingly.

5.4.9 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:

.1 identify the parties involved;

.2 identify the amount in dispute;

.3 provide a brief statement summarizing the position of each party;

.4 include copies of any correspondence or documents in support of either party’s position;

.5 include copies of any documents of any court or arbitration process related to the matter;
.6 identify the dispute or claim between the Contractor and the Owner to which the matter relates; and

.7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the Work. Accordingly, the Contractor shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The Contractor shall not be entitled to recover from the Owner any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the Contractor is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the Contractor and the Owner.

**GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

.1 Add new subparagraph 5.5.1.3:

5.5.1.3 submit a statement that no written notices of lien have been received by it.

.2 Delete from line 1 of paragraph 5.5.2, the words, “the statement” and substitute the words:

“the documents”.

.3 Delete paragraph 5.5.3 in its entirety.

**GC 5.7 FINAL PAYMENT**

.1 Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1:

5.7.1 When the Contractor considers that the Work is completed, the Contractor shall submit an application for final payment. The Contractor's application for final payment
shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5. The Work shall be deemed not to be performed until all of the aforementioned documents have been delivered.

.2 Delete from the first line of paragraph 5.7.2 the words, “calendar days” and substitute the words:

“Working Days”.

.3 Delete from the second line of paragraph 5.7.4 the words, “calendar days” and substitute the words:

“Working Days”.

.4 Add new paragraph 5.7.5:

5.7.5 Prior to the release of the finishing holdback provided for under the Construction Lien Act, the Contractor shall submit:

.1 Contractor’s written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;

.2 a Statutory Declaration CCDC 9A-2001;

.3 a final Workplace Safety & Insurance Board Clearance Certificate.

GC 6.2 CHANGE ORDER

.1 Add new paragraph 6.2.3:

The Contractor may apply mark-ups for overhead and profit to approved changes to the Contract Price as follows:

.1 where the approved change in the Contract Price is less than $200,000, compensation for overhead shall be determined by multiplying the approved change in Contract Price by 0.10; and

.2 where the approved change in the Contract Price is less than $200,000, compensation for profit shall be determined by multiplying the approved change in Contract Price by 0.10; or
where the approved change in the *Contract Price* is equal to or greater than $200,000, compensation for overhead shall be determined by multiplying the approved change in *Contract Price* by 0.10; and

where the approved change in the *Contract Price* is equal to or greater than $200,000, compensation for profit shall be determined by multiplying the approved change in *Contract Price* by 0.05.

**GC 6.3 CHANGE DIRECTIVE**

.1 **Delete** subparagraph 6.3.7.1(1) and replace it with:

“(1) carrying out the work, including necessary supervisory services;”

.2 **Delete** subparagraph 6.3.7.1(2) and replace it with

“(2) intentionally left blank.”

.3 **Amend** subparagraph 6.3.7.1(3) so that, as amended, it reads:

“(3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *As-Built Drawings*: or…”

.4 **Amend** subparagraph 6.3.7.1(4) so that, as amended, it reads:

“(4) including clerical staff engaged in processing changes in the *Work.*”

**GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

.1 **Add** new paragraph 6.4.5:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.1, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a
claim arise, the Contractor will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the Contract Documents.

GC 6.5 DELAYS

.1 Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.2 Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.3 Add new paragraph 6.5.6.

6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor or anyone directly or indirectly employed or engaged by the Contractor, or by any cause within the Contractor’s control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Contractor. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as the result of such delay, including, but not limited to, the cost of all additional services required by the Owner from the Consultant or any subconsultants, project managers, or others employed or engaged by the Owner.

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

.1 Revise the heading, “OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT” to read, “OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO...
CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT”

.2 Delete paragraph 7.1.6 and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11 and 7.1.12:

7.1.6 In addition to its right to terminate the Contract set out herein, the Owner may terminate this Contract at any time for any other reason and without cause upon giving the Contractor Notice in Writing to that effect. In such event, the Contractor shall be entitled to be paid for all Work performed including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the termination of the Contract, but in no event shall the Contractor be entitled to be compensated for any loss of profit on unperformed portions of the Work, or indirect, special, or consequential damages incurred.

7.1.7 The Owner may suspend Work under this Contract at any time for any reason and without cause upon giving the Contractor Notice in Writing to that effect. In such event, the Contractor shall be entitled to be paid for all Work performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the suspension of the Work, but in no event shall the Contractor be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than 180 calendar days, the Contract shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.

7.1.8 In the case of either a termination of the Contract or a suspension of the Work under General Condition 7.1 - OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the Contractor shall use its best commercial efforts to mitigate the financial consequences to the Owner arising out of the termination or suspension, as the case may be.
7.1.9 Upon the resumption of the Work following a suspension under General Condition 7.1 - OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 7.2 - CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the Contractor will endeavour to minimize the delay and financial consequences arising out of the suspension.

7.1.10 The Contractor's obligation under the Contract as to quality, correction, and warranty of the Work performed by the Contractor up to the time of termination or suspension shall continue after such termination of the Contract or suspension of the Work.

7.1.11 If any security check performed in accordance with GC13.6 discloses a security problem that is not resolved by Contractor to the satisfaction of the Owner within ten (10) Working Days following receipt of written notice of such problem from the Owner, the Owner may terminate this Contract by giving Contractor notice in writing to that effect.

7.1.12 Without limiting the foregoing in this section, a finding on a security check that is incompatible with ensuring any of the achievement of the following objectives is a security problem:

(i) Contractor’s ability to provide the services in accordance with the Agreement;
(ii) the safety of the client’s directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor’s directors, officers, employees, agents, consultants or subcontractors, the Owner’s clients and their directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor’s directors, officers, employees, agents, consultants or subcontractors and the public;
(iii) the reputation of or public confidence in the client;
(iv) the security of the client’s financial assets and revenue;
(v) the security of any real property owned, controlled or managed by the client;
(vi) the security of any other property owned, controlled, managed or licensed by the client;
(vii) the security, confidentiality or integrity of the client’s confidential information and the integrity of any other materials held by the client.

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

.1 Delete paragraph 7.2.2 in its entirety.

.2 Delete subparagraph 7.2.3.1 in its entirety.

.3 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

7.2.3.3 the Owner fails to pay the Contractor when due the amount certified by the Consultant or awarded by arbitration or a court, except where the Owner has a bona fide claim for set off, or

.4 Delete from subparagraph 7.2.3.4, the words:

"", except for General Condition 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,"

.5 Delete from the end of paragraph 7.2.4 the words "or terminate the Contract" and substitute the words:

"until the default is corrected, provided, however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the Contractor’s Notice in Writing to the Owner was given pursuant to subparagraph 7.2.3.3, then, 180 days after the delivery of the Notice in Writing, the Contractor may terminate the Contract, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply."

**GC 8.1 AUTHORITY OF THE CONSULTANT**

.1 Delete last sentence of 8.1.3 and substitute the following sentence:

If it is subsequently determined that such instructions were at variance with the Contract Documents, the Owner shall pay the Contractor costs incurred by the Contractor in carrying out such instructions which the
Contractor was required to do beyond the requirements of the Contract Documents, including costs resulting from interruption of the Work.

**GC 8.2  NEGOTIATION, MEDIATION AND ARBITRATION**

.1 Delete paragraphs 8.2.6, 8.2.7, and 8.2.8 in their entirety and substitute new subparagraph 8.2.6:

8.2.6 When a dispute has not been resolved through negotiation or mediation, within 10 Working Days after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may give a Notice in Writing to the other party and to the Consultant inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the Arbitration Act, 1991. If the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding Notice in Writing within 10 Working Days of receipt of the invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

**GC 9.1  PROTECTION OF WORK AND PROPERTY**

.1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 errors in the Contract Documents which the Contractor could not have discovered applying the standard of care described in paragraph 3.14.1;

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

9.1.2 Before commencing any Work, the Contractor shall determine the locations of all underground utilities and structures indicated in or inferable from the Contract Documents, or that are inferable from an inspection of the Place of the Work exercising the degree of care and skill described in paragraph 3.14.1.

.3 Add new paragraph 9.1.5:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, the Contractor shall neither undertake to repair or replace any damage whatsoever to the work of other
contractors, or to adjoining property, nor acknowledge that 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 Consultant. Where, however, there is danger to life, the environment, or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger.

4 Add new paragraph 9.1.6:

9.1.6 The Contractor shall be responsible for securing the Place of Work at all times and shall take all reasonable precautions necessary to protect the Place of Work, its contents, materials (including Owner-supplied materials) and the public from loss or damage during and after working hours. Where the Consultant or the Owner deems the provision of security guard services to be necessary, the Contractor shall provide those services at the Owner's expense.

**GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

1 Add new subparagraph 9.2.5.5

9.2.5.5 take all reasonable steps to mitigate the impact on Contract Time and Contract Price

2 Delete subparagraph 9.2.7.4 in its entirety.

3 Add to subparagraph 9.2.8.3 immediately before the comma, the following new words:

"and as a result of the delay"

**GC 9.4 CONSTRUCTION SAFETY**

1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1

9.4.1 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
.2 Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

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

.1 a current Workplace Safety & Insurance Board Clearance Certificate;

.2 copies of the Contractor’s insurance policies having application to the Project or certificates of insurance, at the option of the Owner;

.3 documentation setting out the Contractor’s in-house safety programs;

.4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the Occupational Health and Safety Act.

9.4.3 The Contractor shall indemnify and save harmless the Owner, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the Contractor under the Occupational Health and Safety Act, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the Owner is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.4 The Owner undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the Contractor with respect to occupational health and safety and related matters. Prior to admission to the Place of the Work, the Contractor may, as a condition of admission, require any other contractor or the Owner’s own forces to sign a written acknowledgement in the following form:
Acknowledgement

The undersigned acknowledges that the Work it will perform on behalf of the Owner requires it to enter a Place of the Work which is under the total control of a Contractor that has a Contract with the Owner, pursuant to which the Contractor has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the “constructor” under the Occupational Health and Safety Act, as well as responsibility to co-ordinate and schedule the activities of our Work with the Work of the Contractor under its Contract. The undersigned agrees to comply with the Contractor’s directions and instructions with respect to health, safety, co-ordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned’s Contract with the Owner, as the case may be. The undersigned also agrees to have the Contractor named as an additional insured on any comprehensive liability insurance policy, where such insurance is required.

Name: 
Title: 
Date:

GC 9.5 MOULD

.1 Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:

"and as a result of the delay"

.2 Delete subparagraph 9.5.3.4 in its entirety.

GC 10.1 TAXES AND DUTIES

.1 Add new paragraph 10.1.3:

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

.2 Add new paragraph 10.1.4:

10.1.4 In the event that new or additional taxes in respect of the Work are required by federal, provincial, territorial, regional or municipal legislation after the Contract is executed, the amount payable under this Contract shall be adjusted to include such taxes.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

.1 Add to the end of paragraph 10.2.4 the following words:

"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. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern."

.2 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:

“Subject to paragraph 3.4.1, the”.

GC 10.3 PATENT FEES

.1 Delete paragraph 10.3.2 in its entirety.

GC 10.4 WORKERS’ COMPENSATION

.1 Add to subparagraph 10.4.1 immediately after the first comma, the following new words:

"again with each application for progress payment, and"

.2 Add to the beginning of subparagraph 10.4.2 the following new words:
"The Contractor shall ensure that each Subcontractor complies with the workers' compensation legislation at the Place of the Work.

.3 Add new paragraph 10.4.3:

10.4.3 Where a Subcontractor is not required to participate in the insurance plan provided for under the workers' compensation legislation, the Contractor shall require the Subcontractor to provide a sworn declaration of its exemption as a condition of the Subcontractor's admission to the Place of Work. When requested by the Owner, the Contractor shall require the Subcontractor to provide a letter of exemption under the workers' compensation legislation.

GC 11.1 INSURANCE

.1 Add new subparagraph 11.1.1.6(4):

11.1.1.6.(4) If any loss occurs involving damage to property in an amount greater than $25,000, bodily injury to any person, or damage to any existing structure, the Contractor shall, in addition to the other requirements set out herein, immediately provide a detailed written report to the Owner and to OILC, 1 Dundas Street West, Suite 2000, Toronto, Ontario M5G 2L5, Attn: Executive Vice President, Real Estate Management.

.2 Add new subparagraph 11.1.1.8:

11.1.1.8 Pollution Liability Insurance in the joint names of the Contractor and the Owner with limits of not less than $5 million per occurrence, an aggregate limit of not less than $5 million within any policy year, and a deductible not exceeding $5,000, such insurance to be maintained from the date of commencement of the Work until one year from the date of Substantial Performance of the Work.

.3 Delete paragraph 11.1.2 in its entirety and substitute new paragraph 11.1.2:

11.1.2 In all instances in paragraph 11.1.1 where the Contractor is required to obtain insurance coverages naming or jointly naming the Owner, such policies shall also name OILC and Her Majesty the Queen in right of Ontario. Each of the
policies of insurance shall also contain a provision requiring not less than 30 days' written notice to each named insured prior to cancellation or any change that would reduce coverage. At least 10 calendar days prior to commencement of the Work and upon any renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the Owner with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Work.

.4 Add new subparagraph 11.1.9:

11.1.9 The parenthetical reference in CCDC 41 - INSURANCE REQUIREMENTS, paragraph 4 which reads: "(excluding flood and earthquake)" is deleted and replaced with the following: "(including flood, earthquake, testing, and commissioning)".

GC 11.2 CONTRACT SECURITY

.1 Delete paragraph 11.2.1 in its entirety and substitute new paragraph 11.2.1:

11.2.1 The Contractor shall, prior to commencement of the Work, provide to the Owner:

.1 a performance bond, in the form set out in the Contract Documents, in an amount equal to 50% of the Contract Price, covering the performance of the Contract, including the Contractor's requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and

.2 a labour and material payment bond, in the form set out in the Contract Documents, in an amount equal to 50% of the Contract Price covering payment for labour, Product, or both.

.2 Delete paragraph 11.2.2 in its entirety and substitute new paragraph 11.2.2:

11.2.2 The bonds referred to in paragraph 11.2.1 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the Place of the Work and
shall be maintained in good standing until the fulfillment of the Contract.

.3 Add new paragraph 11.2.3:

11.2.3 If approved changes pursuant to the Contract result in approved increase or cumulative increases to the Contract Price the Contractor shall promptly acquire additional bonding at the Owner’s expense. Where additional bonding premiums are paid by the Owner, the Contractor shall promptly submit written confirmation that the premiums were paid to the surety and promptly provide the Owner with the original revised performance bond(s).

GC 12.1 INDEMNIFICATION

.1 Delete General Condition 12.1 – INDEMNIFICATION in its entirety and substitute:

12.1 The Contractor shall indemnify and hold harmless OILC, Her Majesty the Queen in right of Ontario, the Owner, the Consultant, and their respective agents, appointees, directors, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the Contractor's performance of the Contract. Nothing in this paragraph 12.1, shall limit any claim that OILC, Her Majesty the Queen in right of Ontario, or the Owner may have under the insurance coverage to be provided under General Condition 11.1 - INSURANCE.

GC 12.2 WAIVER OF CLAIMS

.1 Delete the reference to "395 calendar days" in the last line of paragraph 12.2.2 and substitute "120 calendar days".

.2 Delete the last sentence of subparagraph 12.2.3.4 and substitute:

"Substantial defects or deficiencies” mean those defects or deficiencies in the Work where the reasonable cost of repair of such defects or deficiencies exceeds:

.1 if the Contract Price is $2 million or less, the sum of $50,000, before Value Added Taxes;
.2 if the Contract Price exceeds $2 million, the sum of $100,000, before Value Added Taxes;

but, in any event, a defect or deficiency in the Work which affects the Work to such an extent or in such a manner that a significant part or the whole of the Work is unfit for the purpose intended by the Contract Documents shall be deemed to be a “substantial defects or deficiencies” regardless of the cost of repair.

.2 Amend paragraph 12.2.5 by adding ",12.2.3.4" immediately after the reference to paragraph 12.2.3.3.

GC 12.3 WARRANTY

.1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words:

"Subject to paragraph 3.4.1, the…".

Add new PART 13 as follows:

PART 13 OTHER PROVISIONS

GC 13.1 OWNERSHIP OF MATERIALS

13.1.1 All Work and Products delivered to the Place of the Work by the Contractor shall be the property of the Owner. The Contractor shall remove all surplus or rejected materials when notified in writing to do so by the Consultant.

GC 13.2 CONSTRUCTION LIENS

13.2.1 In the event that a claim for lien is registered against the Project by a Subcontractor or Supplier, and provided the Owner has paid all amounts properly owing under the Contract, then the Contractor shall, at its own expense:

.1 within 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and

.2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.
13.2.2 In the event that the Contractor fails to conform with the requirements of paragraph 13.2.1, the Owner may fulfil those requirements without Notice in Writing to the Contractor and set off and deduct from any amount owing to the Contractor, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and associated expenses.

GC 13.3 CONTRACTOR DISCHARGE OF LIABILITIES

13.3.1 In addition to the obligations assumed by the Contractor pursuant to General Condition 3.7 – SUBCONTRACTORS AND SUPPLIERS, the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, Subcontractors and Products, used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

GC 13.4 RECORDS/DAILY REPORTS/DAILY LOGS

13.4.1 The Contractor shall maintain and keep accurate Project records (which means all tangible records, documents, computer printouts, electronic information, books, plans, Drawings, Specifications, accounts or other information relating to the Work) in its office in Ontario in accordance with requirements of law, but in any event for not less than 6 years from Substantial Performance of the Work or until all claims have been settled. During this time, the Contractor shall allow the Owner and OILC access to the Project records during normal business hours upon the giving of reasonable notice. The Contractor shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the Subcontractors and Suppliers to incorporate them into every level of contract thereunder for any part of the Work.

GC 13.5 CONTRACTOR EVALUATION

13.5.1 In accordance with the Owner's Vendor Performance Program, the Owner will evaluate the performance of the Contractor with respect to the Work using the criteria outlined in the Vendor Performance Scorecard and the Vendor Performance Guidelines included with the Contract Documents.
GC 13.6 SECURITY SCREENING

13.6.1 Contractor acknowledges that the Ontario government has implemented a policy that requires Contractor and all individuals who will be performing work on behalf of the Contractor doing business with the Ontario government to undergo Security Clearance Checks. The Security Clearance Checks are administered by the SSCPB, of the Ministry of Government Services.

13.6.2 Contractor shall comply with the above-noted policy. Should there be any discrepancy between the above-noted policy and the security screening steps outlined herein, the former shall govern. Contractor shall ensure that Contractor’s staff and all Subcontractors are in full compliance with the above-noted policy.

13.6.3 Contractor shall ensure that the screening provisions outlined herein are included in each subcontract Contractor enters into with its Subcontractors for any part of the Work. In addition, Contractor shall require its Subcontractors to include the screening provisions outlined herein into every level of contract thereunder with each of their respective subcontractors for any part of the Work.

13.6.4 Contractor acknowledges that SSCPB will perform Security Clearance Checks on Contractor, including its directors, officers, owners, partners, if applicable, and shareholders (if a privately held corporation and as requested by SSCPB), Contractor’s staff and Contractor’s Subcontractors (including each Subcontractor’s directors, officers, owners, partners, shareholders and employees who will perform any part of the Work) (collectively referred to in this section as “Affected Parties” and individually as an “Affected Party”). Accordingly, Contractor shall require each Affected Party to undergo a Security Clearance Check.

13.6.5 Contractor further acknowledges that unless stated otherwise by the Owner in writing, Security Clearance Checks must be completed for each Affected party and each Affected party must receive clearance in accordance with the timelines set out in 13.6.5(i) and 13.6.5(ii) in order for Contractor its staff and Subcontractors to perform any part of the Work required for the Project. Accordingly:

(i) Contractor, its directors, officers, owners, partners, if applicable, shareholders (if a privately held corporation and as requested by SSCPB) and Contractor’s staff then
assigned to the Project must receive clearance prior to award of the Contract; and

(ii) Subcontractors (including each of the Subcontractor’s directors, officers, owners, partners, shareholders and staff who will be required to perform any part of the Work), must receive clearance prior to performing any part of the Work.

13.6.6 The Owner will provide CSO with all forms and information necessary to coordinate and facilitate the required Security Clearance Checks.

13.6.7 Contractor’s CSO shall obtain:

(i) written consent to perform a Security Clearance Check, in the form provided by the Owner, from each Affected Party; and

(ii) any other information that the Owner, in its sole and absolute discretion acting on the direction of SSCP, may deem necessary in order to conduct a Security Clearance Check on the Affected Parties;

and shall submit this information to the Owner in the prescribed form and in a sealed envelope. The Owner will provide the sealed envelopes to SSCP so as to permit SSCP to perform the necessary Security Clearance Checks.

13.6.8 As a consequence of any Security Clearance Check, the Owner, acting promptly on the determination by SSCP, may notify Contractor’s CSO that an Affected Party did not receive clearance. Upon request by the Owner, Contractor will remove and replace any such Affected Party in accordance with GC13.6.11 and GC13.6.12 so that such Affected Party is no longer performing the Work or any part thereof. Contractor further acknowledges and agrees that the Owner shall be acting reasonably and consistent with applicable laws if the Owner requests the replacement of an Affected Party who did not receive clearance following a Security Clearance Check.

13.6.9 During the term or any extension term of this agreement, Contractor shall ensure that, within five (5) Working Days of becoming aware of any change, Contractor shall inform the Owner in writing of any:
(i) change to any information related to Security Clearance Checks for any existing Affected Party to enable SSCPB to update the individual’s Security Clearance Check; and

(ii) addition to the Affected Parties for the purpose of enabling SSCPB to perform Security Clearance Checks on any such new Affected Party. Contractor shall provide any such information in accordance with GC 13.6.4, 13.6.5 and GC 13.6.7.

13.6.10 All administrative costs incurred by Contractor in complying with the requirements of this GC 13.6 shall be borne solely by Contractor.

13.6.11 If any Affected Party refuses to consent to a security check performed in accordance with this GC13.6 or if any security check performed in accordance with this GC13.6 relating to any Affected Party assigned to fulfil Contractor’s obligations under this agreement discloses any security issue relating to the Affected Party, the Owner may determine that any such Affected Party is a security threat and provide written notice to Contractor of the Owner’s determination. Upon receipt of such written notice, Contractor shall promptly replace any such Affected Party.

13.6.12 Unless otherwise agreed to by the Owner in writing, any individual proposed by Contractor to replace an Affected Party further to GC13.6.11 must possess the equivalent or greater qualifications and experience than that of the Affected Party being replaced and such individual must be provided at no incremental cost to the Owner.

END OF DOCUMENT