



## **NOTICE TO CONTRACTORS**

It is highly recommended that a thorough review of the Tender Document be completed. Metrolinx has revised several sections of the Definitions, Instructions to Bidders, Tender Document Forms, General Conditions of the Contract and Scope of Work.

Failure to read and comply with the current Tender Document requirements may result in your Submission being declared non-compliant and disqualified.





## Tender For

Tender Description: Pedestrian Bridge  
Replacement at  
Clarkson GO Station

Tender Number: PT-2018-STNS-576

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**ADDENDA (IF APPLICABLE)**

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Any Addenda/Addendum issued hereto shall form part of this Tender Document and any resultant Contract(s) for the Work.

Addenda, if applicable, are as follows:

Addendum No.	Date Issued
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## BIDDER'S SUBMISSION CHECKLIST

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### 1.0 Submission Checklist

The following checklist provides the Bidder with a consolidated listing of the requirements for the Submission. Bidders should review the checklist prior to submitting the Submission to ensure compliance.

<b>Requirement</b>
The Bidder has read through all the Tender Documents including any Addenda that have been issued and these have all been considered in your Submission.
The Bidder has reviewed the mandatory requirements and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.
The Bidder has reviewed the Tender Timetable and understands all the dates and timelines associated with this Tender Process
Contact information for the individual responsible for the Submission has been included in "Tender Document Form: Form of Tender".
The Bidder shall comply with the Submission requirements.
The Bidder understands the requirements for Electronic Bid Submission and shall comply with the Submission requirements.
The Bidder's Submission has been prepared in accordance with the Instructions to Bidders (i.e. mandatory formats, templates and requirements) as outlined in the Tender Documents.
The Bidder's Price Submission has been completed in full and included with the Submission.
The Bidder has attended the Mandatory Site / Information Meeting, if applicable.
The Bidder has not included any qualifying statements in its Submission.
If a Joint Venture, a copy of the Joint Venture agreement electing the Participant-in-Charge is attached.
The Bidder has completed and included all Tender Document Forms with its Submission

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## INTRODUCTION

### **1.0 General**

- 1.1 Metrolinx is issuing this call for Tenders to retain the services of a Contractor to provide the goods and/or services described herein. Metrolinx intends to notify a Bidder of acceptance of its Submission and enter into a Contract through an open, fair and competitive process.
- 1.2 You are invited to submit your Submission for PT-2018-STNS-576, as more particularly described in this Tender Document as required by Metrolinx for Pedestrian Bridge Replacement at Clarkson GO Station.



## DEFINITIONS

### 1.0 In this Tender Document,

- 1.1 **“Addenda”/“Addendum”** is the formal written release of additions, deletions, revisions, clarifications to this Tender Document, via the Metrolinx MERX Portal, that form a part of the Tender Document and subsequently the Contract as specified in Section 4.0 of Instructions to Bidders.
- 1.2 **“Bid Deposit”** shall have the meaning ascribed to it in Section 12.0, Bid Deposit, of Instructions to Bidders.
- 1.3 **“Bidder”** means the entity that submits a Submission in response to this Tender Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.4 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx Head Office is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.5 **“CCDC”** means Canadian Construction Documents Committee.
- 1.6 **“Closing”** means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.2, Tender Timetable, of Instructions to Bidders.
- 1.7 **“Conflict of Interest”** means:
- (a) in relation to this Tender Process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Bidders, (ii) communicating with any person with a view to influencing preferred treatment in this Tender Process (including but not limited to the lobbying of decision makers involved in this Tender Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this Tender Process; or
  - (b) in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Bidder’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
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## DEFINITIONS

- 1.8 “**Consultant**” is Planmac Engineering Inc. and shall have the same meaning ascribed in Supplementary Definitions of the Contract.
- 1.9 "**Contract**" shall have the same meaning ascribed in Definitions of the Contract.
- 1.10 "**Contract Documents**" shall have the same meaning ascribed in Definitions of the Contract.
- 1.11 "**Contract Price**" means the Contract Price set out in "Tender Document Form: Contract Prices" both Word file and Excel spreadsheet.
- 1.12 "**Contractor**" shall have the same meaning ascribed in Definitions of the Contract.
- 1.13 "**Drawings**" shall have the meaning ascribed in Definitions of the Contract.
- 1.14 "**EBS**" means Electronic Bid Submission.
- 1.15 "**E-Bid Authorized Signer**" is the designated individual the Bidder's has the authority to bind the Bidder's organization to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.
- 1.16 "**E-Bid Confirmation Number**" is the receipt received by a Bidder from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.17 "**FIPPA**" means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of “Personal Information” by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to the Contract.
- 1.18 "**Joint Venture**" means a business arrangement of two or more parties proposed for this Tender Process further described in Section 21.0 of Instructions to Bidders.
- 1.19 "**Key Personnel**" mean the individuals identified by name in “Tender Document Form: Contractor Personnel”.
- 1.20 "**Metrolinx**" is a provincial crown agency continued under Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns and shall have the same meaning ascribed to "Metrolinx" in Schedule A - Definitions of General Conditions of the Contract.
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## DEFINITIONS

- 1.21 “**Metrolinx MERX Portal**” is the electronic bid solicitation and Bidder Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Bidder interaction as it directly relates to the download by a Bidder of Metrolinx Tender Documents including Addenda from and upload by a Bidder of a Submission to Metrolinx in response to this Tender Process.
- 1.22 “**Option**” means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.23 “**Owner**” shall have the same meaning ascribed in the Definition of the Contract and is also known as Metrolinx.
- 1.24 “**PDF**” means Portable Document Format.
- 1.25 “**Participant in Charge**” shall have the same meaning ascribed in Section 21.3 of Instructions to Bidders.
- 1.26 “**Parties**” means both Metrolinx and the Bidder and a “**Party**” means either one.
- 1.27 “**Place of the Work**” is the designated site or location of the Work.
- 1.28 “**Procurement Office**” means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.29 “**Procurement Representative**” means the following individual in the Procurement Services Department:

Kim Seto, Procurement Officer	
Telephone number	(416) 202-5540
Email	Kim.Seto@metrolinx.com

- 1.30 “**Submission**” means all documentation which the Bidder shall be bound to and other materials and information submitted electronically by the Bidder's E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Tender Document or in respect of this Tender Process.
- 1.31 “**Subcontractor**” shall have the meaning ascribed in Definitions of the Contract.
- 1.32 “**Substantial Performance of the Work**” shall have the same meaning ascribed in Definitions of the Contract.
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- 1.33 "**Supplier**" shall have the same meaning ascribed in Definitions of the Contract.
- 1.34 "**Specifications**" shall have the same meaning ascribed in Definitions of the Contract.
- 1.35 "**Tender Document**" means this Tender document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 1.36 "**Tender Document Form(s)**" means any sections of this Tender Document which require completion and must be included with the Submission.
- 1.37 "**Tender Process**" means the procurement process for this Tender as set out in the Tender Document herein.
- 1.38 "**Total Performance of the Work**" shall have the same meaning ascribed in Supplementary Definitions of the Contract.
- 1.39 "**Vendor Performance Management (VPM)**" shall have the meaning ascribed in Section 31.0 of Instructions to Bidders.
- 1.40 "**Vendor Performance Rating (VPR)**" is the average of a vendor's performance evaluation scores in a particular category (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPR's of all vendors in a particular category who have performed services for Metrolinx during the prior fiscal year.
- 1.41 "**Work**" means the replacement of the pedestrian bridge at Clarkson GO Station including: mobilization and demobilization; clearing and grubbing; removal and disposal of existing bridge superstructure and accessories; installation, maintenance, and removal of erosion and sediment control devices; installation, maintenance and removal of shoring for underground and above ground utilities; structural excavation and removal and disposal of existing concrete sub-structures; removal, reinstatement and restoration of features including chain-link fence, static signage, asphalt pavement, concrete sidewalk, concrete curb and gutter, pavement markings, retaining walls, railings and all other elements that may need to be removed to facilitate construction; new concrete substructure backfill and compact; installation of new prefabricated galvanized covered bridge superstructure with all accessories including fasteners, bearings, railings and expansion joint cover plates; installation of new electrical system and lighting fixtures under bridge canopy, site restoration and cleanup and all other site
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## DEFINITIONS

activities required by the Contractor to facilitate construction. This includes all services, goods, equipment, matters and things required to be done under the Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the General Requirements, Specifications and Drawings.

- 1.42 “**Working Day**” shall have the meaning ascribed in Section 3.0, Hours of Work, of Section 01000 - General Requirements: General Instructions

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## 1.0 General

1.1 The Bidder's Submission will be evaluated in accordance with the "Submission Evaluation and Selection Process" section of this Tender Document.

### 1.2 Tender Timetable

<b>Milestone</b>	<b>Date</b>
Issuance of Tender Document	October 2, 2018.
Mandatory Site Meeting	Not Applicable
Deadline To Propose Alternate Products and Materials	October 11, 2018.
Deadline to Submit Questions	October 11, 2018.
Last Day for Issuance of Addenda	October 18, 2018.
Closing	October 24, 2018 @ 3:00 p.m. Toronto, Ontario time
Deadline to Submit Bid Deposit and Agreement to Bond or Alternative (if Applicable)	October 29, 2018 @ 3:00 p.m. Toronto, Ontario time
Estimated Commencement Date of Work	February 4, 2019.

Metrolinx may, without liability, cost or penalty and in its sole discretion amend the Tender Timetable.

## 2.0 Tender Enquiries and Requests for Clarifications, Changes or Revisions

2.1 All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.

2.2 Information communicated by anyone else shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.

2.3 Any questions concerning this Tender Document, the contents herein, including General Conditions of the Contract, or the Work contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Tender Document, including the General Conditions of the Contract, shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Bidders to submit their questions or requests early in the question and answer (referred to as "Q and A") process. When seeking changes or amendments to any of the terms and

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conditions of this Tender Process, including the terms contained in General Conditions of the Contract, the Bidder should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Bidder should propose the language that would address its concern(s).

- 2.4 All questions/requests for clarification, change or amendment related to this Tender Document are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer form attached separately as:

“Q and A Form”

In the table provided in the Q and A Form, indicate the document section related to each question being submitted as well as page, document title, drawing no., section number and details of the specific question/request. For each set of questions submitted by the Bidder, a new copy of the above referenced Q and A Form should be submitted.

- 2.5 When necessary, revisions to, or clarifications of the Tender Documents will be incorporated into a written Addendum issued by the Procurement Representative identified herein. Information regarding this Tender Document or the Work, whether provided by the Procurement Representative identified herein, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless incorporated into a written Addendum.

### **3.0 Mandatory Site/Information Meeting**

- 3.1 Not Applicable

### **4.0 Addenda / Changes to the Tender Documents**

- 4.1 In the event that Metrolinx determines in its sole discretion that clarifications and/or revisions to this Tender Document are required, Metrolinx shall issue an Addendum. Information concerning Addenda can be found through the Metrolinx MERX Portal for this Tender Process. Bidders are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- 4.2 It is the Bidder's responsibility to ensure that they have obtained copies of all Addenda, and to ensure that the Addenda have been considered in their
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Submission. Addenda/Addendum shall become part of this Tender Document and the contents thereof shall be allowed for in the prices bid for the Work.

- 4.3 The Bidder, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in its Submission.
- 4.4 The Bidder shall submit the Submission using the most current Tender Document Forms as issued via Addenda. Failure to use the most current pages of the Tender Document Forms may result in the Submission being found non-compliant and disqualified.

### **5.0 Tender Submission**

- 5.1 Submissions shall only be accepted electronically via the Metrolinx MERX Portal. Submissions submitted in any other manner shall be found non-compliant and disqualified.
  - 5.2 It is the Bidders sole responsibility when submitting a Submission to Metrolinx to exercise extreme care when completing and submitting all required documents and/or information. Failure of the Bidder to include all required documents and/or information may result in the Bidder's Submission being found non-compliant and disqualified.
  - 5.3 Bidders shall examine carefully the whole of the Tender Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
  - 5.4 The Bidder shall not claim at any time after the Closing and/or after notification of acceptance of its Submission that there was any misunderstanding or uncertainty in regard to the Tender Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
  - 5.5 Submissions should be completed fully in a clear and comprehensible manner.
  - 5.6 The Submission shall be submitted on the most current Tender Document Forms issued by Metrolinx and except for designated sections where the Bidder is to enter information, the Tender Document and Tender Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
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- 5.7 Any Submission which contains such conditional and/or qualifying statements may be found non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Bidder, upon request by Metrolinx.
- 5.8 If during the preparation of their Submission, the Bidder desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Bidder, documents that have been uploaded to the Metrolinx MERX Portal may be added, removed and/or re-submitted as often as required at any time, prior to Closing.
- 5.9 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- 5.10 For assistance with registration and login credentials, subscription information, fees, and general use of the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <https://www.youtube.com/watch?v=To0fqSccw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379). For additional Metrolinx MERX Portal guidelines, refer to the document entitled "Metrolinx MERX Portal - General Information" under "Attachments" in this Tender Document.
- 5.11 Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Bidder.
- 5.12 The Bidder may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into [www.metrolinx.merx.com](http://www.metrolinx.merx.com).

### **6.0 Submission Deadline**

- 6.1 Submissions must be electronically uploaded via the Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be found non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Bidder shall submit the Submission within sufficient time to ensure its arrival before the Closing.
- (a) If the Bidder attempts to submit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
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- (b) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- 6.2 Upon successful completion of the electronic submission process, the Bidder shall be provided with an E-bid Confirmation Number indicating that the Submission was uploaded successfully.
- 6.3 Metrolinx reserves the right to postpone the Closing at which time all potential Bidders shall be advised of the new Closing by way of Addenda.
- 6.4 After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Results of the opening of Submissions will be made public within approximately 24 hours on the Metrolinx MERX Portal (search the Tender Number and select "Bid Results").
- 6.5 Upon execution of the final Contract, all Bidders that have submitted a Submission shall be notified in writing of the results of the award to the successful Bidder. Results of the award to the successful Bidder shall also be posted on the Metrolinx MERX Portal. (search the Tender Number and select "Awards").

### **7.0 Clarification of Submissions**

- 7.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission or provide the required supporting documentation specified in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements", and such Bidders shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Bidders to discuss aspects of their Submission. Metrolinx may require Bidders to submit additional information clarifying any matters contained in their Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Bidder's acknowledgement of that interpretation. Any unsolicited information shall not be considered.
  - 7.2 Such information accepted by Metrolinx and written interpretations which have been acknowledged by the relevant Bidder shall be considered to form part of the Submission of those Bidders.
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7.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification or to substantiate compliance with a mandatory requirement, shall be considered as additions to a Bidder's Submission.

7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

### **8.0 Bidder Qualifications**

8.1 Only the Submissions of qualified Bidders will be considered for acceptance by Metrolinx. In order to be considered qualified, the Bidder shall demonstrate to the satisfaction of Metrolinx in the sole discretion of Metrolinx, that the Bidder has:

- (a) satisfactorily completed contracts for work similar in scope, magnitude and complexity as "the Work of this Contract"; and
- (b) achieved at least one (1) of the following safety requirements:
  - (i) COR™ Certified status with the Infrastructure Health and Safety Association (IHSA); or
  - (ii) OHSAS 18001 certification; or
  - (iii) Out-of-Province COR™ Reciprocity (for bidding purposes only) through IHSA.

(c) the physical and financial resources to complete the work

8.2 With respect to the experience requirements set out in Subsection 8.1 above, each Bidder is solely responsible to provide:

- (a) in "Tender Document Form: Bidder's Qualifications", a detailed description of reference projects starting with the most recent, whether completed, that the Bidder has performed and that the Bidder is representing to Metrolinx meets the requirements of Subsection 8.1 herein;
- (b) in "Tender Document Form: Bidder's Qualifications", a client contact person for each reference project, that are prepared to speak to Metrolinx with respect to the Bidder's performance on each project described;

8.3 Metrolinx may, in its sole discretion, waive the requirement to contact references provided by any Bidder and rely on the detailed descriptions provided by the Bidder in "Tender Document Form: Bidder's Qualifications".

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- 8.4 When completing "Tender Document Form - Bidder's Qualifications", the Bidder should list relevant work that has been completed or that is ongoing under a Metrolinx contract. In its determination of whether a Bidder meets the requirements of Section 8.1 herein, Metrolinx may, in its sole discretion:
- (a) take into account the experience of Metrolinx itself in dealing with the Bidder or its Subcontractor(s) in circumstances where the Bidder or its Subcontractor(s) has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such a project as a reference); and
  - (b) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project as a reference).
- 8.5 Before any Submission is accepted, any Bidder may be required to demonstrate to the satisfaction of Metrolinx, that it is capable of performing the Work. Metrolinx reserves the right to inspect the equipment to be used, and/or the facilities where the proposed Work is to be carried out, of any and all Bidders and Subcontractors, and make any and all further investigations it deems, in its sole opinion, necessary, prior to the acceptance of any Submission, to determine if a Bidder is qualified to perform the Work.
- 8.6 In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.

### **9.0 Insurance**

- 9.1 The Bidder shall, in accordance with the Supplementary General Conditions of the Contract, provide a valid certificate of insurance in the types and amounts specified, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. This requirement is a pre-condition of execution of the Contract. Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

### **10.0 Workplace Safety and Insurance Clearance Certificate**

- 10.1 The Bidder shall, in accordance with the Supplementary General Conditions of the Contract, provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the
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Work of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

### **11.0 Parent Company Indemnity**

- 11.1 Solely upon Metrolinx request, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx, as a pre-condition to execution of the Contract, the Bidder may be required to submit a 'Guarantee' from its parent company, if there is one, included as "Parental Guarantee" and provided under Attachments, or in a form satisfactory to Metrolinx and indicating that the Parent company agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Work for the warranty period(s) stipulated therein. This requirement shall be exercised by Metrolinx based on Metrolinx's assessment, in its sole discretion, of the Bidder's financial capacity, corporate structure (i.e. if it is a subsidiary), scale and value of the Work and other risk factors.
- 11.2 Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

### **12.0 Bid Deposit**

- 12.1 The Bidder shall comply with "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements" as it relates to the Bid Deposit requirement. Failure to comply with the aforementioned requirement shall result in the Submission being found non-compliant and disqualified.
- 12.2 The Bidder shall submit the required original Bid Deposit to Metrolinx Procurement Office no later than the deadline indicated in Section 1.2, Tender Timetable of Instructions to Bidders.
- (a) If hand delivering the Bid Deposit to the Procurement Office, the Bidder must present government issued photo identification to the security desk representative(s) upon arrival. Inform the security representative that an envelope is being delivered to the Metrolinx mail room on the 4th floor. The Bidder will not be provided with a receipt upon drop off of any
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documentation, envelopes or packages. The envelope should be clearly labelled as follows:

- (i) "URGENT: Agreement to Bond/Bid Deposit  
Attention: [Insert Name of Procurement Representative]  
Procurement Services  
Tender No. [Insert Tender No.]  
Hand Delivered on: [Insert Date and Time the package was delivered]
- (ii) The Bidder should send an email to the Procurement Representative indicating that the Bid Deposit has been delivered to the Procurement Office.

- 12.3 The Bid Deposit shall be in the form of a original bid bond from a recognized Canadian Surety or an original certified cheque or bank draft or letter of credit drawn upon a recognized Canadian Financial institution, payable to "Metrolinx" in the amount of \$25,000.00 (the "Bid Deposit"). The bid bond shall be duly executed by the Surety and signed by the Bidder. Certified Cheques, Bank Drafts or Letters of Credit shall be duly executed by the financial institution. All signatures and seals (if required) shall be originals.
- (a) Failure of the Bidder to provide the original Bid Deposit by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders shall result in the Bidder's Submission being found non-compliant and disqualified, and may also result in the Bidder's bidding rights being suspended by Metrolinx for a period of twelve (12) months. It is the responsibility of the Bidder to properly arrange for the delivery of the original Bid Deposit to the Procurement Office to ensure that Metrolinx receives such original Bid Deposit within the timeframe specified in this Section 12.0, Bid Deposit.
- 12.4 The Bid Deposit should include the Contract name and number.
- 12.5 Certified cheques and bank drafts shall not be deposited and interest shall therefore not be paid.
- 12.6 The original Bid Deposit will be retained until all Submissions received have been reviewed and evaluated by Metrolinx. The Bid Deposits, with the exception of those belonging to the three (3) lowest priced responsive Submissions received, may be returned to Bidders upon request, ten (10) Business Days after the Closing. Otherwise the Bid Deposits, with the exception of a bid bond, shall be returned after a Contract for the Work has been executed.
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- 12.7 The Bidder acknowledges and agrees that its Bid Deposit will be forfeited to Metrolinx as liquidated damages upon the occurrence of any of the following events:
- (a) Withdrawal of the Submission by the Bidder after the Closing where such withdrawal has not been requested by Metrolinx; or
  - (b) Failure by the Bidder to execute the Contract; or
  - (c) Failure by the Bidder to provide any of the documents required by the Tender Documents as a condition of entering into the Contract, including, but not necessarily limited to, the Contract Security, Insurance Certificates or Workplace Safety and Insurance Clearance Certificate within the timeframes specified in this Tender Document.

### **13.0 Contract Security**

- 13.1 The Bidder shall comply with "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements" as it relates to the Agreement to Bond or specified alternative requirement. Failure to comply with the aforementioned requirement shall result in the Submission being found non-compliant and disqualified. A sample Agreement to Bond is provided under Attachments.
- 13.2 The Bidder shall submit the required original Agreement to Bond or specified alternative to the Metrolinx Procurement Office no later than by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders.
- (a) If hand delivering the Agreement to Bond or alternative to the Procurement Office, the Bidder must present government issued photo identification to the security desk representative(s) upon arrival. Inform the security representative that an envelope is being delivered to the Metrolinx mail room on the 4th floor. The Bidder will not be provided with a receipt upon drop off of any documentation, envelopes or packages to the Procurement Office. The envelope should be clearly labelled as follows:
    - (i) "URGENT: Agreement to Bond/Bid Deposit  
Procurement Services  
Attention: [Insert Name of Procurement Representative]  
Tender No. [Insert Tender No.]  
Hand Delivered on: [Insert Date and Time the package was delivered]"
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- (ii) The Bidder should send an email to the Procurement Representative indicating that the Agreement to Bond or alternative has been delivered to the Procurement Office.

### 13.3 The original Agreement to Bond:

- (a) shall be issued by a recognized Canadian Surety,
- (b) shall be for a Performance Bond and a Labour and Materials Payment Bond each equal to fifty percent (50%) of the Contract Price;
- (c) shall be in favour of Metrolinx;
- (d) shall be duly executed and sealed by the Surety;
- (e) shall be duly executed by the Bidder;
- (f) should be duly sealed by the Bidder if required by the form.

### 13.4 Specified Alternatives

- (a) In lieu of an Agreement to Bond the Bidder may submit an original of one of the following specified alternative forms:
  - (i) Letter of Credit
    - (A) An original written surety statement from a recognized Canadian financial institution, in the amount of twenty-five percent (25%) of the Contract Price as specified in Tender Document Form: Contract Prices, stating that a Letter of Credit shall be available upon acceptance of the Bidder's Submission. The surety statement shall be duly executed by the financial institution.
    - (B) The Letter of Credit to be provided by the Bidder to Metrolinx upon acceptance of the Bidder's Submission, shall expressly state that it may be drawn upon by Metrolinx on the delivery of a certificate from the President and CEO of Metrolinx confirming that the Bidder has defaulted in the performance of its obligations under the Contract. No other documentary evidence is required to be provided by Metrolinx.
    - (C) The Letter of Credit shall indicate that "Metrolinx" is the named beneficiary and should include the Contract name and number.



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(ii) Certified Cheque/Bank Draft

- (A) If a certified cheque or bank draft is used in lieu of an Agreement to Bond, it must be submitted as an original, in the amount of twenty-five percent (25%) of the Contract Price as specified in Tender Document Form: Contract Prices.
- (B) Certified Cheques and Bank Drafts shall be made payable to "Metrolinx" and shall be duly signed and sealed (if a seal is required) by the financial institution.
- (C) Certified cheques and bank drafts shall not be deposited and interest shall therefore not be paid.
- (D) The certified cheque or bank draft should reference the Bidder's full legal company name, the Contract number and title.

13.5 All original specified alternative forms of Contract Security submitted shall have original signatures and original seals where required.

13.6 Failure of the Bidder to provide the Agreement to Bond or specified alternative by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders shall result in the Bidder's Submission being found non-compliant and disqualified and may also result in the Bidder's bidding rights being suspended by Metrolinx for a period of twelve (12) months. It is the responsibility of the Bidder to properly arrange for the delivery of the Agreement to Bond or specified alternative to the Procurement Office and to ensure that Metrolinx receives the original Agreement to Bond or specified alternative within the timeframe provided.

13.7 As a pre-condition to execution of the Contract, the Bidder shall deliver the Performance Bond and Labour and Materials Payment Bond, or specified alternative, to Metrolinx within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. The Performance Bond and the Labour and Materials Payment Bond should include the Contract number and title. Failure of the Bidder to fulfill this requirement shall result in acceptance of the Submission by Metrolinx being cancelled and forfeiture of the Bidder's Bid Deposit.

### **14.0 Alternate Products and Materials**

14.1 Bidders wishing to propose alternate products or materials, other than those specified in the Tender Documents, for use in the Work shall, no later than the

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## INSTRUCTIONS TO BIDDERS

date specified in Section 1.2, Tender Timetable of Instructions to Bidders, submit a request in writing to the Procurement Representative seeking approval for the proposed alternate. The request must include supporting documentation to establish the proposed alternate's equivalence to the product or material specified.

14.2 Metrolinx may, prior to Closing, respond to such requests as follows:

- (a) Should Metrolinx, in its sole discretion, approve the proposed alternate, it will issue an Addendum identifying the alternate and stating it is approved for use as part of the Work; or
- (b) Should Metrolinx, in its sole discretion, not approve the proposed alternate, it shall only inform the Bidder who proposed the alternate of its decision.

14.3 Metrolinx is under no obligation to accept or reject any proposed alternate. Metrolinx shall accept or reject any proposed alternate at its sole discretion. Metrolinx is under no obligation to disclose the reason, or reasons, to any Bidder for the acceptance or rejection of any proposed alternate.

### **15.0 Mandatory Requirements**

15.1 The Bidders must meet all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements listed below shall result in the Bidder's Submission to be found non-compliant and will not be considered further.

15.2 The mandatory requirements for this Tender Document are as follows:

- (a) The Submission shall be submitted by the Bidder's E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
  - (b) Pricing information must be completed and submitted with the Submission using "Tender Document Form: Contract Prices".
  - (c) The Bidder shall attend a mandatory site/information meeting per the instructions outlined in Instructions to Bidders.
  - (d) The Bidder shall declare any conflicts of interest in Section 1.1 of "Tender Document Form: Conflict of Interest". If Section 1.1(b) is left blank or Tender Document Form: Conflict of Interest is not returned with the Submission, the provisions of Section 1.1(a) of "Tender Document Form: Conflict of Interest" shall apply.
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- (e) The Bidder shall meet all of the mandatory requirements stated in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements".

### **16.0 Rights of Metrolinx**

16.1 Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this call for Tenders and any acceptance of a Submission for any reason and at any time prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Bidder except the obligation to return the Bid Deposit;
  - (b) to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection will be based on which Bidder has provided a Submission which Metrolinx determines, in its sole discretion, to provide the greatest value based on quality, service and price based on the evaluation criteria contained in this Tender Document;
  - (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
  - (d) to waive any requirement of this Tender Document or request amendment of a Submission by the Bidder where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
  - (e) to waive the requirement to check references;
  - (f) to not respond to a Bidder's questions;
  - (g) to use its own experiences, and the experiences of any other third party, with the Bidder in previous contracts in order to evaluate the Bidder's Submission. Specifically to,
    - (i) take into account the experience of Metrolinx itself in dealing with the Bidder in circumstances where the Bidder has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such project in "Tender Document Form: Bidder's Qualifications"; and
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- (ii) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project in "Tender Document Form: Bidder's Qualifications").
  - (h) to issue or not to issue a notification of acceptance of a Bidder's Submission based on submitted references and/or references independently obtained by Metrolinx;
  - (i) to issue or not to issue a notification of acceptance of a Bidder's Submission based on the Bidder's, or its Subcontractor(s), experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder or its Subcontractor(s):
    - (i) was/were previously given a "Notification of Submission Acceptance" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
    - (ii) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
    - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year;
    - (iv) is an affiliate of or successor to any corporation described in Sections 16.1(i)(i) through 16.1(i)(iii) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 16.1(i)(i) through 16.1(i)(iii) above.
  - (j) to reject any Bidder's Submission during this Tender Process and any bidder submission from any procurement process, due to unsatisfactory performance history with Metrolinx;
  - (k) to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) to five (5) years or currently active;
  - (l) to suspend a Bidder's bidding rights for a period of twelve (12) months after Closing, for failure of the Bidder to provide the Agreement to Bond or
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specified alternative by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders;

- (m) to distribute via Addenda, copies of any Bidder's questions received and responses provided by Metrolinx, to all Bidders who received this Tender Document;
  - (n) to request that a Bidder voluntarily withdraw its Submission without penalty, where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Work would not be satisfactorily completed;
  - (o) to request that a Bidder voluntarily withdraw from its Submission, without penalty, any conditional and/or qualifying statements, as determined by Metrolinx in its sole discretion;
  - (p) to disqualify any Submission where the Bidder does not voluntarily withdraw parts of, or all of, its Submission, as requested by Metrolinx under sections 16.1(n) or 16.1(o);
  - (q) to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
  - (r) to within one hundred and twenty (120) days following Closing, exercise any rights under Section 7.1 of Instructions to Bidders;
  - (s) to correct arithmetical and/or carry forward errors in any or all Submissions where such errors affect extended totals, the Contract Price H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by Metrolinx and acknowledged in each instance by the initials of the Bidder's and Metrolinx's authorized signatories. Such corrections will become part of the Bidder's Submission. Failure of the Bidder to acknowledge such corrections shall result in its Submission being found non-compliant and disqualified;
  - (t) to, upon failure of the Bidder whose Submission was accepted to fulfill the conditions of Section 17.2 of Instructions to Bidders, cancel acceptance of the Bidder's Submission by Metrolinx and consistent with industry practice, notify another Bidder who was determined to be qualified in accordance with the "Submission Evaluation and Selection Process" section of this
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Tender Document and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 17.2 of Instructions to Bidders, and for Metrolinx to issue a notification of acceptance of the Submission to that Bidder.

### **17.0 Contract To Be Executed**

- 17.1 Metrolinx shall notify the Bidder in writing of acceptance of its Submission. . . Metrolinx will prepare Agreement Between Owner and Contractor and bind it into the Contract. Three (3) copies of the Contract will be forwarded to the Bidder for review and execution.
- 17.2 The Contract shall be executed by the Bidder and delivered to Metrolinx within five (5) Business Days of notification to the Bidder that Metrolinx has accepted its Submission. Failure by the Bidder to execute and deliver the Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate and the Performance and Labour and Materials Payment Bonds, or specified alternative (if applicable), and if requested, the Parental Guarantee and any other documents as may be required within the specified time, could result in the cancellation of the acceptance of the Bidder's Submission and forfeiture of the Bidder's Bid Deposit.
- 17.3 Upon failure of the Bidder whose Submission was accepted, to fulfil the conditions of Section 17.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Bidder's Submission consistent with Section 16.1(t) of Instructions to Bidders.
- 17.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Bidder who's Submission has been accepted have executed the written agreements contemplated in the Tender Document.
- 17.5 The Bidder shall not start the Work before the Contract has been executed by the Bidder and Metrolinx and all documents required by the Tender Document, as a condition of acceptance, have been delivered to Metrolinx.

### **18.0 Subcontractors and Suppliers**

- 18.1 Bidders shall be responsible for the distribution of all the instruments of the Tender Document and Addenda/Addendum thereto to all Subcontractors or Suppliers.
  - 18.2 Metrolinx or its representatives will have no obligation whatsoever to supply any Subcontractor or Supplier with all or part of the Tender Document and Addenda
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and shall not be liable for any damages suffered by any Bidder, Subcontractor or Supplier who does not receive or review the Tender Document or Addenda/Addendum. No claims for payment or for a change order will be entertained because of the failure of any Subcontractor or Supplier to receive or review the Tender Document or Addenda/Addendum which have been supplied to the Bidders prior to Closing.

### **19.0 Submission Evaluation**

19.1 Subject to the "Rights of Metrolinx" set out herein and without creating any obligations whatsoever to any Bidder, Metrolinx advises that it shall evaluate Submissions using the criteria stated under the "Submission Evaluation and Selection Process" section of this Tender Document.

### **20.0 Conflict of Interest**

20.1 Conflict of Interest shall be as defined in "Definitions" of this Tender Document. The Conflict of Interest declaration included in "Tender Document Form: Conflict of Interest" shall be completed and provided with the Submission.

20.2 Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer, or employee or advisor of Metrolinx who has any connection or relationship with, or any pecuniary interest in the Bidder or any Subcontractor thereof;
- (b) the Bidder or any Subcontractor thereof is in possession of confidential information relating to the Work; and
- (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Work has assisted the Bidder in the preparation of its Submission.

20.3 If, at the determination of Metrolinx in its sole discretion, a Bidder is found to be in a Conflict of Interest that cannot be resolved or the Bidder fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Bidder from the Tender Process or terminate any agreement entered into with the Bidder pursuant to this Tender Process.

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### **21.0 Joint Ventures**

- 21.1 If a Joint Venture is proposed, the Bidder shall state in its Submission the Joint Venture agreement that forms the basis on which the Joint Venture plans to carry out its obligations.
- 21.2 The Joint Venture shall not change its Joint Venture arrangement.
- 21.3 One of the Joint Venture participants shall be nominated as being in charge during this Tender Process and, in the event of a successful Submission during finalization of the Contract (the "Participant in Charge"). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture.
- 21.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant or a copy of the Joint Venture agreement electing the Participant-in-Charge.
- 21.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this Tender Process and during the Contract for carrying out the obligations pursuant to the Contract.

### **22.0 Prohibited Contacts and Lobbying Prohibition**

- 22.1 A Bidder, Bidder's team members and all of the Bidder's respective Subcontractors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this Tender Process.
  - 22.2 Without limiting the generality of Section 22.1 above, neither the Bidder nor the Bidder's team members nor any of their respective Subcontractors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this Tender Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.
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## **INSTRUCTIONS TO BIDDERS**

### **23.0 Media Releases, Public Disclosures and Public Announcements**

- 23.1 A Bidder shall not, and shall ensure that its team members, advisors, Subcontractors, employees or representatives do not issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this Tender Process, its Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 23.2 A Bidder shall not, and shall ensure that its team members, advisors, Subcontractors, employees and representatives do not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Bidder or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the Tender Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Bidder, Bidder's team members and all of the Bidder's respective advisors, Subcontractors, employees and representatives are permitted to state publicly that it/they are participating in this Tender Process.
- 23.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Bidder to discuss this Tender Document with prospective Subcontractors regarding their participation in this Tender Process.

### **24.0 Restriction on Communications Between Bidders - No Collusion**

- 24.1 A Bidder shall not discuss or communicate, directly or indirectly, with any other Bidder, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Bidders. Bidders shall prepare and submit Submissions independently and without any knowledge, comparison of information or arrangements, direct or indirect, with any other Bidder. This obligation extends to all team members of a Bidder and all of the Bidder's respective advisors, Subcontractors, employees and representatives.

### **25.0 Disclosure of Information**

- 25.1 The Bidder hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.
- 25.2 The Bidder hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.
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- 25.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Bidder acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Bidders and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: [www.ontario.ca/page/ontarios-open-data-directive](http://www.ontario.ca/page/ontarios-open-data-directive).
- 25.4 Disclosure of personal or confidential business information may be avoided if it would be significantly harmful to business interests or would be an unreasonable invasion of personal privacy. Accordingly, Bidders are encouraged to:
- (a) identify those portions of their Submissions which they are supplying in confidence and for which disclosure to others would be significantly harmful to their business, or would be an unreasonable invasion of their personal privacy, as defined in Section 17 of FIPPA; and
  - (b) be prepared to justify that determination if challenged to do so by someone who applies for access to the information.

### **26.0 Freedom of Information and Protection of Privacy Act ("FIPPA")**

- 26.1 Bidders are advised that Metrolinx may be required to disclose all, a part, or parts of a Bidder's Submission pursuant to FIPPA.

### **27.0 Submission to Be Retained by Metrolinx**

- 27.1 Metrolinx shall not return a Submission or any accompanying documentation submitted, with the exception of a Bid Deposit and/or Agreement to Bond or specified alternatives, submitted by a Bidder.

### **28.0 Confidential Information of Metrolinx**

- 28.1 All information provided by or obtained from Metrolinx in any form in connection with this Tender Process;
- (a) is the sole property of Metrolinx and shall be treated as confidential;
  - (b) shall not be used for any purpose other than replying to the Tender Document and the performance of any subsequent agreement; and
  - (c) shall not be disclosed without prior written authorization from Metrolinx.
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### **29.0 Bidders Shall Bear Their Own Costs**

29.1 The Bidder shall bear all costs associated with or incurred in connection with its participation in this Tender Process, including, but not limited to, preparation of its Submission.

### **30.0 Changes to Key Personnel**

30.1 Not Applicable.

### **31.0 Vendor Performance Management Program**

31.1 Vendor Performance Management (“VPM”) Program means the Metrolinx system for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor’s past performance in a particular category as a criterion in assessing that vendor’s submission for future work with Metrolinx.

31.2 Pursuant to Metrolinx’s VPM Program, Metrolinx will be considering the Bidder’s past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Tender Document.

31.3 The VPR is being applied as a component of evaluation for this Tender Process in accordance with the “Submission Evaluation and Selection Process” section of this Tender Document.

31.4 A Bidder may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Bidder has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 1.29 of the Definitions.

31.5 Metrolinx shall not be held liable for any administrative delays in updating VPR scores, which could result in a Vendor being bypassed for award on this Tender Process.

31.6 Information regarding Metrolinx Vendor Performance Management System and how a Vendor Performance Rating is calculated can be found in the Metrolinx “Vendor Relationship Management Procedures and Guidelines v1,1 dated November 7, 2016”, or most current version, accessed through the following link: [http://www.metrolinx.com/tenders/en/VendorRelationshipManagement\\_Guidelines.pdf](http://www.metrolinx.com/tenders/en/VendorRelationshipManagement_Guidelines.pdf).

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## INSTRUCTIONS TO BIDDERS

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- 31.7 The "Contract Performance Appraisal" applicable to any Contract resulting from this Tender Process, can be found under "Attachments".

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### **1.0 Evaluation**

- 1.1 Submissions shall undergo several phases of evaluation based on documentation provided and Vendor Performance Rating information contained in the Metrolinx MERX Portal.
- 1.2 Mandatory criteria will be rated pass or fail. All other criteria shall be evaluated in accordance with Section 1.0 herein. Evaluation shall occur in three (3) phases, as follows:
  - (a) Phase One: Administrative Evaluation (Compliant/Non-Compliant)
    - (i) Submissions shall undergo an administrative evaluation to determine compliance with the administrative mandatory requirements. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the administrative mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet the administrative mandatory requirements shall be considered non-compliant and shall be disqualified.
    - (ii) Administrative mandatory requirements include, but shall not be limited to:
      - (A) Proper completion of Tender Document Forms;
      - (B) Compliance to Tender Document requirements;
      - (C) Attendance at mandatory Site visit, if any.
  - (b) Phase Two: Vendor Performance Rating (VPR) (Part A) and Pricing (Part B) Evaluation
    - (i) Part A - Vendor Performance Rating (VPR) Evaluation
      - (A) The VPR of each Bidder's Submission proceeding to this Phase Two: VPR Evaluation shall be evaluated as follows:
        - I) For this Tender Process as it relates to evaluation of a Bidder's VPR, "Performance Category" shall be defined as the Construction Services category.
          - 1) In the event of a discrepancy, the Performance Category stated in the Contract Performance Appraisal (CPA) shall take precedence over the

## SUBMISSION EVALUATION AND SELECTION PROCESS

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Performance Category stated in Section 1.2(b)(i)(A)(I) above, and shall be used as the basis for evaluating VPR.

- II) For this Tender Process, the Vendor Performance Rating (“VPR”) is the average of a vendor’s performance evaluation scores (as assessed by or on behalf of Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.
  - III) If a Bidder has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all vendors who have performed services for Metrolinx for a thirty-six (36) month period preceding the Closing, in this Performance Category.
  - IV) The legal name of the Bidder stated on the Form of Tender will be used for determining the Bidder’s VPR score in the Performance Category. It is the responsibility of the Bidder to ensure that its proper legal name has been stated on the Form of Tender and matches the legal name used by the Bidder in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Bidder, after the Closing, to change the legal name provided.
  - V) In the case of a Joint Venture where multiple parties will sign the Contract, the VPR under the Performance Category, of each Joint Venture participant, will be added and the average will be applied as the VPR score.
  - VI) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 1.2(b)(i)(A)III) above shall apply for that member.
  - VII) The Bidder’s VPR, at the time of evaluating this Phase Two, shall be the VPR used for evaluation purposes. The Bidder’s VPR used in the evaluation of this Phase Two
-

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can be obtained from the Procurement Representative at the conclusion of this Tender Process.

VIII) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Two evaluation, each Bidder's VPR shall be evaluated as follows:

1) The following equation shall be applied to determine each Bidder's VPR Score, as follows:

a) "Bidder's VPR (Expressed as a %) / 10 = Bidder's VPR Score"

(ii) Part B - Pricing Evaluation

(A) Tender Document Form: - Contract Prices shall be evaluated for compliant Submissions.

(B) An administrative evaluation shall be conducted of Tender Document Form: - Contract Prices to determine compliance with the mandatory requirements as stated therein and in the Instructions to Bidders. The Contract Price of each Submission proceeding to Pricing Evaluation shall be evaluated and scored as follows:

I) The Submission with the lowest Contract Price shall receive the maximum score of ten (10) points for Pricing Evaluation.

II) The following equation shall be applied to other compliant Submissions to determine a score out of ten (10):

$$\frac{\text{Lowest Contract Price}}{\text{Bidder's Contract Price}} \times 10 = \text{score out of ten}$$

(iii) Evaluation

(A) The following weightings shall be applied to determine each Bidder's Phase Two Total Overall Score, as follows:

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Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
PHASE ONE: ADMINISTRATIVE EVALUATION (Compliant/Non-Compliant)			
PHASE TWO: VENDOR PERFORMANCE RATING (VPR) EVALUATION			
Bidder's VPR Score	10	5	
VPR Evaluation Subtotal:			
PHASE TWO: PRICING EVALUATION			
Tender Document Form: Contract Prices	10	95	
Pricing Evaluation Subtotal:			
TOTAL OVERALL SCORE		100%	1,000

(iv) Total Overall Score

- (A) Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight to determine the weighted score (i.e. VPR Evaluation Subtotal, Pricing Evaluation Subtotal). The weighted scores are then added to determine the Total Overall Score for the Submission.
  - (B) The VPR Evaluation Subtotal shall be added to the Pricing Evaluation Subtotal to determine the Total Overall Score for the Submission.
    - D) Total Overall Score = VPR Evaluation Subtotal + Pricing Evaluation Subtotal
  - (C) The compliant Submissions evaluated during this Phase Two process, will be ranked from highest to lowest Total Overall Score. The top three Highest Ranked Submissions (first, second and third highest Total Overall Score = "Highest Ranked") shall proceed to Phase Three: Technical Evaluation.
- (c) Phase Three: Technical Evaluation (Pass/ Fail)  
(hereinafter referred to as "Technical Evaluation")
- (i) A technical evaluation shall be conducted of the Highest Ranked compliant Submissions. Bidder's qualifications in accordance with
-



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Section 8.0, Bidder's Qualifications of Instructions to Bidders as well as Tender Document Form: Bidder's Qualifications and Mandatory Corporate, Personnel and Technical Requirements shall form the basis of this evaluation.

- (ii) Only the Submissions of qualified Bidders will be considered for acceptance by Metrolinx.
- (iii) In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.
- (iv) If the Highest Ranked compliant Submissions do not meet the requirements of the Technical Evaluation, Metrolinx will carry out a technical evaluation of the Submission next in ranking, and so on until a compliant Submission is found.
- (v) Notwithstanding Sections 1.2(c)(i) through 1.2(c)(iv) above, Metrolinx may exercise its rights under Sections 16.1(g) through 16.1(k), under Rights of Metrolinx in Instructions to Bidders, and in doing so, any information obtained will be factored into this Technical Evaluation as a final pass/fail criteria.

### **2.0 Selection of Submissions**

- 2.1 Metrolinx's selection of the successful Submission will be based on which Bidder has provided a Submission which Metrolinx determines in its sole discretion, to be most beneficial to Metrolinx.
- 2.2 Notification of acceptance shall be issued to the compliant Bidder with the highest Total Overall Score that meets the criteria of Section 1.2(c) above.

END OF SECTION

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# SUPPLEMENTARY AGREEMENT BETWEEN OWNER AND CONTRACTOR

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The Standard Construction Document for the Stipulated Price Contract, English version, CCDC 2-2008 Stipulated Price Contract, consisting of the “Agreement between Owner and Contractor, Definitions, and General Conditions of the Unit Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of the Contract Documents with the following amendments, additions and modifications set out herein. CCDC 2-2008 is available for purchase at [www.ccdc.org](http://www.ccdc.org). The “Agreement Between Owner and Contractor” of CCDC 2 2008 Stipulated Price Contract, is hereby amended as follows:

## **1.0 ARTICLE A-1 THE WORK**

1.1 Paragraph 1.3 is amended as follows:

- (a) Add the words “, and attain Total Performance of the Work by the 31st day of May in the year 2019” after the words “in the year 2019” in the third line of paragraph 1.3.

1.2 Paragraphs 1.4

- (a) Add Paragraphs 1.4:

“1.4 The Contractor has informed itself of the conditions relating to the Work to be performed and has inspected and is thoroughly familiar with the location of the Work and the plans, specifications, drawings and all terms, conditions and covenants of the Contract.

## **2.0 ARTICLE A-3 CONTRACT DOCUMENTS**

2.1 Paragraph 3.1 to 3.8

- (a) Delete paragraph 3.1 in its entirety and replace with the following new paragraph 3.1 to 3.8:

3.1 the words, “The following are the Contract Documents referred to in Article A-1 of the Agreement – THE WORK, and in the case of any conflicts, ambiguities, or inconsistencies between the Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- .1 Contract Amendments;
  - .2 Change Order;
  - .3 Change Directive;
-

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- .4 the body of this Supplementary Agreement between Owner and Contractor;
  - .5 Supplementary the General Conditions of the Contract;
  - .6 Definitions;
  - .7 General Conditions of the Contract;
  - .8 Agreement between Owner and Contractor;
  - .9 Drawings; and
  - .10 Specifications.
- 3.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 3.3 Drawings of a larger scale shall govern over those of a smaller scale of the same date. Later dated documents shall govern over earlier documents of the same type.
- 3.4 Regardless of the order of precedence set out in paragraph hereinany provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- 3.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the Contract Documents.
- 3.6 Headings or subheadings in the Contract Documents are inserted for reference convenience only and shall not affect the Work, or the interpretation of the Contract Documents.
- 3.7 The following provisions shall survive the expiry or termination of this Contract: Article A-3, Article A-4, GC 1.5 – ADVERTISING AND PUBLIC NOTICES, GC 1.6 – CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION, GC 1.7 RECORDS AND AUDIT, GC 5.10 – CLAIMS FOR LIEN, Part 8 – DISPUTE RESOLUTION, GC 11.1 INSURANCE, GC 11.2 CONTRACT SECURITY, Part 12
-

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– INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY, GC 14 – CONTRACTOR WORK PERFORMANCE RATING, GC 15 – CONFLICT OF INTEREST; and any other provision which state explicitly therein that it shall survive expiry or termination.”

### **3.0 ARTICLE A-4 CONTRACT PRICE**

#### **3.1 Paragraphs 4.7 through 4.13**

(a) Add new Paragraphs 4.7 through 4.10 as follows:

- “4.7 The Contract Price is firm. The Contractor acknowledges and agrees that, the Contractor has satisfied itself as to the correctness and sufficiency of the Contract Price, and has based the Contract Price on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters and any further data relevant to the Work, and that the Contract Price covers all of the Contractor’s obligations under the Contract, and all things necessary for the proper performance of the Work, including the remedying of any defects.
- 4.8 The Contract Price includes all Cash Allowances, contingency allowances (if applicable) and all applicable taxes, except Harmonized Sales Tax (H.S.T.).
- 4.9 The Contract Price represents full payment for all the Work necessary for the proper completion of the Contract, including any warranty work or correction of deficiencies or defects that is required in accordance with this Contract.
- 4.10 The Contract Price includes all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities customs, duties, royalties, handling, transportation, travel, mileage, overhead, profit and all other charges.
- 4.11 The Owner may, from time to time, withhold or set off against any amounts otherwise due to the Contractor, any amounts (including, without limitation, any amounts payable as liquidated damages), which are due to or owed to the owner from or by the Contractor pursuant to the terms of this Contract.”
-

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4.11 Allowances

4.11.1 Cash Allowances

- .1 Cash Allowances are subject to the Supplementary General Conditions and General Conditions of the Contract.
- .2 Descriptions of each Cash Allowance are listed below and amounts are specified under this A-4 – Contract Price in the attached Excel spreadsheet entitled “Contract Prices”.

4.11.2 Description of Cash Allowances

- .1 Not Applicable

4.11.3 Contingency Allowances

- .1 Contingency Allowances are subject to the General Conditions of the Contract.

4.12 Options

4.12.1 Not Applicable

**4.0 ARTICLE A-5 PAYMENT**

4.1 Delete subparagraphs 5.1.2. and 5.1.3 in their entirety and replace with the following:

- .1 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.”

**5.0 ARTICLE A-5 PAYMENT**

5.1 Not Applicable

**6.0 ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

6.1 Paragraph 6.1 is amended as follows:

- (a) Delete the words “or other form of electronic communication” from the second line.
-

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- (b) Delete the words “or other form of electronic communication” from the seventh line of.
- (c) Delete the words “email address” from the signature lines for the Owner, Contractor and Consultant.

**7.0 ARTICLE A-9 SEVERABILITY**

7.1 Add new Article A-9 as follows:

“ARTICLE A-9 SEVERABILITY

- 9.1 If any provision of this Contract is found to be invalid or unenforceable in any circumstances, the remainder of this Contract, and the application of such provision in any other circumstances, shall not be affected.”

**8.0 ARTICLE A-10 TIME OF ESSENCE**

8.1 Add new Article A-10 as follows:

“ARTICLE A-10 TIME OF ESSENCE

- 10.1 Time shall be of the essence of the Contract and under all Contract Documents.”

**9.0 ARTICLE A-11 GENERAL PROVISIONS**

10.1 Add new Article A-11 as follows:

“ARTICLE A-11 GENERAL PROVISIONS

- 11.1 Failure or delay by either the Contractor or the Owner to exercise any right or power under this Contract will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.
  - 11.2 The parties hereto shall do all further acts and things and execute all further documents reasonably required in the circumstances to affect the intent of this Contract. References to the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, a
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legal entity, the word “or” is not exclusive; the words “herein”, “hereof”, “hereunder” and other words of similar import refer to the Contract Documents as a whole and not to any particular Article, Section, subsection or other subdivision thereof.

- 11.3 In the exercise of their respective rights and in the performance of their respective obligations under the Contract Documents, unless the provision explicitly permits the contrary, each party shall act reasonably, diligently and in good faith."

END OF SECTION

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## FORM OF AGREEMENT

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### 1.0 Form of Agreement

The “Agreement Between Owner and Contractor” in CCDC 2 2008 Stipulated Unit Price Contract is referred to herein as the Form of Agreement and shall constitute the form of agreement of this Contract in its entirety. CCDC 2 2008 is available for purchase at [www.ccdc.org](http://www.ccdc.org).

The Owner is: Metrolinx

The Consultant is: Planmac Engineering Inc.  
80 North Queen Street, Suite 302  
Toronto, Ontario  
M8Z 2C9

The Work is: Pedestrian Bridge Replacement at Clarkson GO Station

Contract No. PT-2018-STNS-576

Article A-1: Date of Commencement of Work: February 4, 2019.

Date of Substantial Performance of the Work: May 15, 2019.

Date of Total Performance of the Work: May 31, 2019.

Article A-2: This list of Contract Documents are the documents as listed in the List of Contents, including Tender Document Forms as completed and submitted by the Contractor, and as accepted by Metrolinx.

END OF SECTION

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## SUPPLEMENTARY DEFINITIONS OF THE CONTRACT

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The “Definitions” of CCDC2 2008 Stipulated Price Contract, are hereby amended as follows:

### **1.0 Definitions**

#### **1.1 Act**

- (a) Add new definition, “Act”, as follows:
- (b) *Act* means the Construction Act (Ontario) as amended.”

#### **1.2 Applicable Law**

- (a) Add new definition, “Applicable Law”, as follows:
- (b) *Applicable Law* means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable approvals, standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.”

#### **1.3 Confidential Information**

- (a) Add new definition, “Confidential Information”, as follows:
  - (b) *Confidential Information* means all information of a confidential nature (as determined with reference to its treatment by the Owner) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by the Owner or the Consultant (or its representatives) to the Contractor (including to employees, contractors, or other representatives thereof). For greater certainty, *Confidential Information* also includes all construction documents, Personal Information and all of the Owner’s materials provided by the Owner, which includes: (a) specifications, drawings, images, software, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of the Owner), (b) technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, the Owner or the Consultant and
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provided to the Contractor; (c) all procurement documents issued by the Owner; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the aforementioned Owner's materials by the Owner or any third party not performing work under this Contract."

### 1.4 **Consultant**

- (a) Delete the definition of "Consultant" in its entirety and replace it with the following:
- (b) The *Consultant* shall be the person or entity designated as the *Consultant* by the Owner, from time to time."

### 1.5 **Contract Documents**

- (a) Add the words "in writing" after the word "upon" in the second line of the definition of Contract Documents.

### 1.6 **Contract Time**

- (a) Delete the word "Substantial" and substitute the word "Total" in the second line.

### 1.7 **Contractor Personnel**

- (a) Add new definition, "Contractor Personnel" as follows:
  - (i) "Contractor Personnel" means (a) with respect to the Contractor, all of the Contractor's personnel, employees, agents, third party providers an Independent Inspection Company and independent contractors engaged in the performance of the Work; and (b) with respect to each Subcontractor all of that Subcontractor's personnel, employees, agents, third party providers, an Independent Inspection Company and independent contractors engaged in the performance of the Work."

### 1.8 **Intentionally Left Blank**

### 1.9 **FIPPA**

- (a) Add new definition, "FIPPA", as follows:
-

## SUPPLEMENTARY DEFINITIONS OF THE CONTRACT

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- (i) FIPPA means the Freedom of Information and Protection of Privacy Act (Ontario) as amended.”

### 1.10 FIPPA Records

- (a) Add new definition, “FIPPA Records” as follows:
  - (b) *FIPPA Records* means all information, data, records and materials, however recorded, in the custody or control of the Owner, including Confidential Information and Personal Information (as defined in FIPPA). For the purposes of this definition, documents held by the *Contractor* in connection with this *Contract* are considered to be in the control of the Owner.”

### 1.11 GC

- (a) Add new definition, “GC”, as follows:
  - (i) *GC* means the General Conditions of the Contract, as amended by the Supplementary General Conditions”.

### 1.12 Governmental Authority

- (a) Add new definition, “Governmental Authority”, as follows:
  - (b) *Governmental Authority* means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, “*Governmental Authority*” does not include Metrolinx.

### 1.13 Independent Inspection Company

- (a) Add new definition, “Independent Inspection Company”, as follows:
  - (b) “*Independent Inspection Company* means any independent or 3rd party inspection and testing agencies/companies.”

### 1.14 OHSA

- (a) Add new definition, “OHSA”, as follows:
-

## SUPPLEMENTARY DEFINITIONS OF THE CONTRACT

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- (b) *OHSA* means the Occupational Health and Safety Act (Ontario), as amended.”

### 1.15 **Personal Information**

- (a) Add new definition, “Personal Information” as follows:
- (b) *Personal Information* has the meaning as set out for the term in FIPPA.

### 1.16 **Provisional Item(s)**

- (a) Add new definition, “Provisional Item(s) as follows:
- (b) *Provisional Item(s)* are one or more components of the Work that are to be exercised at the sole discretion of Metrolinx.

### 1.17 **Railway**

- (a) Add new definition, “Railway”, as follows:
- (b) *Railway* or *Railways* means one or more of the Canadian National Railway Company, Canadian Pacific Railway Company, or The Toronto Terminals Railway Company Limited owning or operating the *Railway Right-of-Way* on which all or part of the *Work* may be performed.”

### 1.18 **Railway’s Engineer**

- (a) Add new definition, “Railway’s Engineer”, as follows:
- (b) *Railway’s Engineer* means the person designated as such by the applicable *Railway* or the *Owner*.”

### 1.19 **Railway Flag Person**

- (a) Add new definition, “Railway Flag Person”, as follows:  
  
*Railway Flag Person* means the person designated as such by the applicable *Railway* or the *Owner* to provide flagging services.”

### 1.20 **Railway Right-of-Way**

- (a) Add new definition, “Railway Right-of-Way”, as follows:  
  
*Railway Right-of-Way* means the land, property, trackage, equipment and
-

## SUPPLEMENTARY DEFINITIONS OF THE CONTRACT

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facilities of the *Railway*, including main tracks, side tracks, branch lines, yards and terminals owned or controlled by the *Railway* or the *Owner*.”

### 1.21 Submittals

- (a) Add new definition, “Submittals”, as follows:
- (b) *Submittals* are any or all documents or items required by the *Contract Documents* to be provided by the *Contractor* to the *Owner* or the *Consultant*, including but not limited to:
  - (i) Shop Drawings, samples, models, specifications, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*;
  - (ii) Construction Schedule;
  - (iii) As-built drawings and manuals to provide instructions for the operation; and
  - (iv) safety plans, schedules or policies; and
  - (v) documents related to the warranty or maintenance of the *Work*.”

### 1.22 Standard of Care

- (a) Add new definition, “Standard of Care”, as follows:
- (b) *Standard of Care* shall have the meaning set out in GC 3.15.”

### 1.23 Total Performance of the Work

- (a) Add new definition, “Total Performance of the Work”, as follows:
- (b) *Total Performance of the Work* means when the entire *Work*, except for those items arising from GC 12.3 – WARRANTY, has been performed in accordance with the requirements of the *Contract Documents* and is so certified by the *Consultant*.”

### 1.24 Toxic and Hazardous Substances

- (a) Add new definition, “Toxic and Hazardous Substances”, as follows:
-

## SUPPLEMENTARY DEFINITIONS OF THE CONTRACT

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- (b) *Toxic and Hazardous Substances* means, collectively, any contaminant, waste, subject waste, pollutant, toxic substance, dangerous goods, asbestos, petroleum, its derivatives, by-products or other hydrocarbons, as defined in or pursuant to any applicable laws, regulations, by-laws, guidelines or orders rendered by any governmental authority having jurisdiction or any other substance or material which, when released to, or present in, the natural environment, is likely to cause in some immediate or foreseeable future time, material harm or degradation of the natural environment or material risk to human health.”

### 1.25 Unit Price

- (a) Add new definition “Unit Price”, as follows:
- (b) A Unit Price means an all-inclusive cost for goods and/or services, including customs duties, royalties, handling, transportation, overhead, profit and all other charges as it relates to SGC 4.3, Provisional Items.

### 1.26 Warranty Period

- (a) Add new definition, “Warranty Period” as follows:
  - (i) “*Warranty Period* means two (2) years from the Total Performance Date, except where longer periods of warranty are specified in the Contract, in each case as may be extended in accordance with the provisions of the Contract.”

### 1.27 Warranty Period Letter of Credit

- (a) Add new definition, “Warranty Period Letter of Credit” as follows:
  - (i) “Warranty Period Letter of Credit has the meaning ascribed to it in GC 12.3.”

### 1.28 WSIB

- (a) Add new definition, “WSIB”, as follows:
  - (i) “*WSIB* means the Workplace Safety and Insurance Board.”

### 1.29 Working Days

- (a) Delete the definition of “Working Days” in its entirety and replace with the following:
-

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*Working Days* means any day other than: (a) a Saturday or Sunday and (b) any other day on which the *Owner's* Head Office at 97 Front Street West, Toronto, Ontario, is not open for business. Each *Working Day* will end at 4:00 p.m. on that day.”

END OF SECTION

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### **1.0 Definitions**

The “Definitions” of CCDC 2 2008 Stipulated Price Contract shall constitute the “Definitions of the Contract” in their entirety as amended by the Supplementary Definitions herein. CCDC 2 2008 can be purchased at [www.ccdc.org](http://www.ccdc.org).

END OF SECTION

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Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract of the CCDC2 2008 – Stipulated Price Contracts (hereinafter referred to as “General Conditions of the Contract” is deleted in its entirety by these Supplementary General Conditions, it shall be noted as “Intentionally left blank”. The numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained. The General Conditions of the Contract are hereby amended as follows:

## **PART 1 GENERAL PROVISIONS**

### **1.0 GC 1.1 - Contract Documents**

#### 1.1 GC 1.1.3

Delete GC 1.1.3 in its entirety.

#### 1.2 GC 1.1.5

Delete GC 1.1.5 in its entirety

#### 1.3 GC 1.1.7

(a) Delete GC 1.1.7 in its entirety and replace with the following:

“1.1.7 If there is a conflict with the Contract Documents, it shall be resolved be in accordance with the order of priority set out in Article A-3 Contract Documents of the Agreement between the Owner and the Contractor.”

(b) Add GC 1.1.7.5, as follows:

“1.1.7.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the Contract Documents.”

#### 1.4 GC 1.1.8

(a) Delete GC 1.1.8 in its entirety and replace with the following:

“1.1.8 The Owner shall provide the Contractor, without charge, up to ten copies of the Contract Documents. If requested by the Contractor, the Owner shall provide additional copies, at the cost of the Contractor.”

#### 1.5 GC 1.1.11

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(a) Add GC 1.1.11 as follows:

“1.1.11 Subject to paragraph 1.1.9, all surveys, reports, drawings, calculations, designs, plan, specifications and other data, information, materials, collected, compiled, drawn or produced, including computer printouts, pursuant to the Contract are the property of the Owner. The Contractor shall transfer the copyright, including an express waiver and release of all moral rights, of all Drawings, plans, Specifications, models, photos, and other written or graphic materials produced under the Contract to the Owner which will be free to use them as it sees fit. Any waiver or release obtained under this clause may include a reasonable exclusion of liability regarding the use of materials for other projects. In the event of any dispute or disagreement pertaining to the Work between the Owner and the Contractor, the Owner will have the unqualified right and license to use the design as it may have evolved from time to time and any Drawings, Specifications, documents, materials of any nature and kind which may now or hereafter exist and which the Contractor may have any right, title, interest or copyright for the purpose of completing the design and construction of the Work for which they were prepared.”

1.6 GC 1.1.12

(a) Add GC 1.1.12 as follows:

“1.1.12 Wherever in the Contract Documents items are noted as “N.I.C.” (“Not In Contract”) the Owner will provide such items either during or after the Contract Time. The Contractor shall accommodate the entry of such items into the Work when N.I.C. items are delivered to the Place of the Work.”

### **2.0 GC 1.2 - Law Of The Contract**

2.1 Delete GC 1.2.1 in its entirety and replace with the following:

“1.2.1 The parties agree that the law of Ontario, Canada shall govern the interpretation of the *Contract* and irrevocably attorn to the exclusive jurisdiction of the courts of Ontario, Canada and all lawful courts to which decisions can be appealed therefrom.”

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**3.0 GC 1.3 – Rights and Remedies**

3.1 Add GC 1.3.3 as follows:

“1.3.3 Notwithstanding paragraph 1.3.1, the Owner shall not be liable, whether in contract, tort or any other theory of law, for any claim arising from any prior negotiation, representation, or agreement, whether written or oral, which is superseded by the Contract under Article A-2 of the Agreement – Agreements and Amendments.”

**4.0 GC 1.4 ASSIGNMENT**

4.1 GC 1.4.1

(a) Delete GC 1.4.1 in its entirety and replace with the following:

“1.4.1 The *Contractor* shall not assign the Contract, either whole or in part, without the prior written consent of the *Owner*. The *Owner* may assign the Contract, either in whole or in part, with written notice to the *Contractor*.”

**5.0 GC 1.5 ADVERTISING AND PUBLIC NOTICES**

5.1 Add GC 1.5 – ADVERTISING AND PUBLIC NOTICES as follows:

“GC 1.5 – ADVERTISING AND PUBLIC NOTICES

1.5.1 The *Contractor* will obtain the *Owner’s* prior written approval for any public statement, advertising, written public sales promotions, press release or other general publicity matter, in which the name or trademarks of the *Owner* or any Railway are mentioned or used or in which words are used from which any connection with the *Owner* or any Railway or their trademarks may be inferred. The *Contractor* will not allow or permit any public ceremony in connection with the Work without the prior written permission of the *Owner*, which may be unreasonably withheld. The *Contractor* will not erect or permit the erection of any sign or advertising without the prior written approval of the *Owner*. The *Contractor* shall not publish, issue or make any public statements or news release, electronic or otherwise concerning the *Contract* or the *Work*, without the express written consent of the *Owner*, which may be unreasonably withheld”

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### 6.0 GC 1.6 CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

6.1 Add GC 1.6 - CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION as follows:

“GC 1.6 – CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

1.6.1 The *Contractor* shall not disclose or provide any Confidential Information to third parties who do not require that information or data to complete any portion of the *Work* and who are not authorized by the *Owner* to receive, or have access to, such Confidential Information.

1.6.2 The Contractor acknowledges that the Owner is a provincial crown agency subject to the *Freedom of Information and Protection of Privacy Act* (Ontario), and agrees that all *FIPPA Records* are subject to, and the collection, use, storage and treatment thereof, is governed by FIPPA. The Contractor agrees to keep all *FIPPA Records* secure and available, in accordance with the requirements of *FIPPA*. In the event of a conflict between the requirements of this Contract and the requirements of *FIPPA*, the requirements of *FIPPA* shall take precedence.

1.6.3 In the event that a request is made under *FIPPA* for the disclosure of any *FIPPA Records*, the Owner shall provide prompt written notice thereof to the Contractor and the Contractor shall provide any and all relevant FIPPA Records to the Owner on demand for the purposes of responding to an access request under *FIPPA*. In these circumstances, the *Contractor* shall provide all *FIPPA Records* requested to the *Owner's* Freedom of Information Coordinator (or equivalent) within seven (7) *Working Days* of receipt of the request from the Owner. Notwithstanding anything to the contrary in this Contract and subject to the Contractor's rights of appeal pursuant to Section 28(9) of *FIPPA*, the Owner shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of *FIPPA* (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

1.6.4 For greater certainty, the *Contractor* shall advise its representatives and all *Subcontractors* of the requirements of this GC 1.6, and associated requirements set out elsewhere in this *Contract*, and take appropriate action to ensure compliance by such representatives with the terms of this GC 1.6. In addition to any other liabilities of the Contractor pursuant to this *Contract* or otherwise at law or in equity, the *Contractor* shall be

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liable for all claims arising from any non-compliance with this GC 1.6 by the Contractor, Subcontractors and their respective personnel.”

### 7.0 GC 1.7 RECORDS AND AUDIT

7.1 Add GC 1.7 - RECORDS AND AUDIT as follows:

#### “GC 1.7 - RECORDS AND AUDIT

1.7.1 The *Contractor* shall maintain complete and accurate books, payrolls, accounts, records and invoices in relation to the Contract and shall grant the Owner, full audit rights in respect of all said books, records, accounts and invoices relating to the performance of the Work. Such records shall include, but are not limited to:

- .1 a daily log or report containing details on weather conditions, the condition of the Place of the Work, work force of the Contractor, Subcontractor, Suppliers, third parties and any other forces on site at the Place of the Work, and also record general activities and performance for the day. Such log or report shall also include any extraordinary or emergency events which may occur;
- .2 records with details on manpower and material resourcing of the Work, including records which document the activities of the Contractor in connection with the construction schedule, and comparing that resourcing to the resourcing anticipated against the most recent version of the construction schedule; and
- .3 other information, reports, documents, records and the like pertaining to the physical condition of the Place of the Work, health and safety, fire safety, emergency preparedness, environmental matters, human resources or employee matters.

1.7.2 The Owner may inspect and audit such books, payrolls, accounts records and invoices of the *Contractor* from time to time, at any time as deemed necessary by the *Owner* prior to the date of Final Certificate for Payment and thereafter for a period of two (2) years to verify the *Contractor's* estimates, valuation of changes in the *Work*, the performance of the *Contractor*, and claims, and the *Contractor* shall supply certified copies of books, payrolls, accounts, invoices and other records to the Owner or access to same as required by the *Owner*. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the Owner, through its employees, agents,

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representatives, or other designees, during normal business hours at the Contractor's office or place of business. The Contractor shall ensure an equivalent provision to this SC 1.7.2 are part of each Subcontractor's and Supplier's contract (and shall require the Subcontractors and Suppliers to incorporate same into every level of contract thereunder) for any part of the Work and the Contract, to provide the Owner with access to project records as contemplated herein.

- 1.7.3 If the *Contractor* fails to keep, or fails to cause to be kept, adequate records to document the estimate, valuation of a change in the *Work*, the *Contractor's* performance, or claim or fails to provide certified copies or access to such records when requested, the *Contractor* shall forfeit all right to payment for the change in the *Work* or claim which it may otherwise have had. Any amount already paid by the *Owner* in respect of such change in *Work* or claim shall become immediately repayable to the *Owner* on demand for same."

### 8.0 GC 1.8 FURTHER ASSURANCES

- 8.1 Add GC 1.8 - FURTHER ASSURANCES as follows:

#### "GC 1.8 - FURTHER ASSURANCES

- 1.8.1 Each party agrees that it shall at any time and from time to time, at its own expense, execute and deliver such further documents and do such further acts and things as the other party may reasonably request for the purpose of giving effect to the *Contract* or carrying out the intention of facilitating the performance of the *Contract*.
- 1.8.2 Without limiting the generality of GC 1.8.1 and notwithstanding any other provisions of the *Contract*, the *Contractor* acknowledges that it may, from time to time during the *Contract* Time, be requested to provide its agreement to indemnify, or to directly indemnify third parties for any liability, damages or claims which may arise in connection with the performance of the *Work* and as a result of the acts or omissions of the *Contractor* or those persons or entities for who it is responsible at law, and the *Contractor* shall reasonably cooperate with the *Owner* and shall execute and deliver such documents and agreements as may be required and requested by the *Owner*."
-

**PART 2 ADMINISTRATION OF THE CONTRACT**

**1.0 GC 2.1 AUTHORITY OF THE CONSULTANT**

1.1 Delete GC 2.1 in its entirety and replace with the following:

"GC 2.1 AUTHORITY OF THE CONSULTANT

- 2.1.1 The *Consultant* shall be appointed by the *Owner* and shall be the *Owner's* representative during construction and until the issuance by the *Consultant* of a certificate attesting to the Total Performance of the Work, or at a date specified by the *Owner*. All instructions to the *Contractor* including instructions from the *Owner* will be issued by the *Consultant*. The *Consultant* will have the authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*.
- 2.1.2 The *Consultant* shall inspect the *Work* for its conformity with the plans and Specifications, and record the necessary data to establish payment quantities under the schedule of Contract quantities and unit prices or to make an assessment of the value of the *Work* completed in the case of a lump sum price contract.
- 2.1.3 The *Consultant* will investigate all claims of a change in the *Work* made by the *Contractor* and issue appropriate instructions
- 2.1.4 In the case of non-compliance with the provisions of the *Contract* by the *Contractor*, the *Consultant*, after consultation with the *Owner*, will have the authority to suspend the *Work* for such reasonable time as may be necessary to remedy such non-compliance. The *Contractor* shall not be entitled to any compensation for suspension of the *Work* in these circumstances.
- 2.1.5 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* may be modified or extended by the *Owner* in writing.
- 2.1.6 If the *Consultant's* employment is terminated, the *Owner* shall appoint a replacement *Consultant* whose status under the *Contract Documents* shall be that of the former *Consultant*."

**2.0 GC 2.2 ROLE OF THE CONSULTANT**

2.1 GC 2.2.3

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- (a) Delete the second sentence of GC 2.2.3.

### 2.2 GC 2.2.6

- (a) Add the word “schedules” after the word “techniques,” in the second line.

### 2.3 GC 2.2.7

- (a) Delete GC 2.2.7 in its entirety and replace with the following:

“2.2.7 The *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Document*.”

### 2.4 GC 2.2.14

- (a) Delete the word “submittals,” and replace with the words “Submittals which are provided” after the word “Contractor’s” in the first line of GC 2.2.14.

### 2.5 GC 2.2.16

- (a) Delete GC 2.2.16 in its entirety and replace with the following:

“2.2.16 The *Consultant* will conduct reviews of the *Work* to determine the dates of *Substantial Performance of the Work* and *Total Performance of the Work*.”

## **3.0 GC 2.3 REVIEW AND INSPECTION OF THE WORK**

### 3.1 GC 2.3.8

- (a) Add 2.3.8 as follows:

“2.3.8 The *Contractor* shall immediately inform the *Owner* and the *Consultant* of any notices, warnings or asserted violations issued by any regulatory or government agencies having jurisdiction relating to the *Work*.”

### 3.2 GC 2.3.9

- (a) Add GC 2.3.9 as follows:

“2.3.9 The *Owner* or the *Consultant* shall have the right to:

- .1 review and inspect the progress of the *Work*; and
-



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.2 review, approve or accept any Submittals.

The *Owner's* or the *Consultant's* review, inspection, approval and/or acceptance is for the sole benefit of *Owner* and shall not constitute a transfer of liability from the Contractor to the *Owner* or the *Consultant*, nor shall it constitute a waiver by the *Owner* or the *Consultant* of the Contractor's liability. The Contractor remains liable and responsible for its actions, errors or omissions, and its obligations to carry out the Work in accordance with the *Contract Documents*, *Applicable Law* and the *Required Standard of Care* regardless of any such review, inspection, approval or acceptance by the *Owner*."

3.3 GC 2.3.10

(a) Add GC 2.3.10 as follows:

"2.3.10 Where standards of performance are specified in the *Contract Documents* and the *Work* does not comply with the performance specified, such deficiency shall be corrected as directed by the *Consultant*. Any testing of work identified as defective in accordance with GC 2.4, including retesting required by the *Owner* to verify performance, shall be done at the *Contractor's* expense."

### 4.0 GC 2.4 DEFECTIVE WORK

4.1 GC 2.4.1

(a) Delete GC 2.4.1 in its entirety and replace with the following:

"2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated into the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor* at no additional cost to the *Owner*. If the said defective work was in any way identified as a result of, or during the course of, an inspection by the *Owner*, the *Contractor* shall reimburse the *Owner* in full for any costs or expenses incurred by the *Owner* in respect of, or as a result of, the inspection.

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- .1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective *Work* and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
- .2 The *Contractor* shall prioritize the correction of any defective *Work* which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner*.”

### 4.2 GC 2.4.3

- (a) Delete the words “the difference in value between the work as performed and that called for by” and replace with “the value of such work as is necessary to correct any non-compliance with” in the second and third lines of GC 2.4.3.

## PART 3 EXECUTION OF THE WORK

### 1.0 GC 3.1 CONTROL OF THE WORK

#### 1.1 GC 3.1.2

- (a) Add the word “schedules” after the word “techniques” in the first line of GC 3.1.2.

#### 1.2 GC 3.1.3

- (a) Add GC 3.1.3 as follows:

“3.1.3 Notwithstanding paragraphs 3.1.1 and 3.1.2, the Contractor agrees that it shall fully comply with all policies and procedures of the Owner which are relevant to any activity of the Contractor to be performed under the Contract. The Contractor further agrees that it will use reasonable efforts to inquire from the Owner if such policies or procedures exist which are relevant to any activity of the Contractor to be performed under the Contract. The Owner agrees that it will use reasonable efforts to communicate to the Contractor all policies or procedures it may have which are relevant to any such activity.”

#### 1.3 GC 3.1.4

- (a) Add GC 3.1.4 as follows:
-

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

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

2.1 GC 3.2.2

- (a) Delete GC 3.2.2 in its entirety.

**3.0 GC 3.4 DOCUMENT REVIEW**

3.1 GC 3.4.1

- (a) Delete GC 3.4.1 in its entirety and replace with the following:

“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 comply with the standard of care described in GC 3.15 STANDARD OF CARE. 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. 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.”

3.2 GC 3.4.2

- (a) Add GC 3.4.2 as follows:
-

“3.4.2 If the Contractor finds discrepancies in or omissions from the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor shall immediately notify the Consultant, who will provide written instructions or explanations. Neither the Owner nor the Consultant will be responsible for oral instructions.”

#### 4.0 GC 3.5 CONSTRUCTION SCHEDULE

##### 4.1 GC 3.5.1

(a) Delete GC 3.5.1 in its entirety and replace with the following:

“3.5.1 The Contractor shall submit to the Owner and Consultant within five (5) Working Days of the date that the Agreement between *Owner* and the *Contractor* has been fully executed by the *Owner*, and thereafter from time to time in accordance with GC 3.5.2, a construction schedule in computerized form in accordance with the following requirements, for acceptance by the *Owner* and Consultant, each in its sole discretion:

- .1 takes into account the sequence of construction and completion dates;
- .2 demonstrates and indicates the logic and timing of major activities of the Work with sufficient detail of critical events and their inter-relationship to demonstrate the Work will be performed in conformity with the Contract Time;
- .3 indicates proposed start dates and estimated duration for activities; and
- .4 with sufficient detail to identify the Contractor and each specific Subcontractor and their respective parts of the Work and specific location thereof.

If the Owner or the Consultant identifies deficiencies, problems, discrepancies or omissions in the construction schedule, the Contractor shall promptly revise the schedule to incorporate such comments and re-submit to the Owner and the Consultant as many times as required, all at the cost of the Contractor, until the construction schedule is acceptable to the Owner and the Consultant. The Contractor is responsible for providing a complete

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and sufficient constructions schedule in accordance with the requirements set out herein and there shall be no claims for delays or costs as a result of the failure to provide an acceptable schedule.”

4.2 GC 3.5.2

(a) Add GC 3.5.2 as follows:

“3.5.2 The Contractor shall monitor the progress of the Work relative to the construction schedule and provide an updated schedule that is acceptable to the Owner in its sole discretion, subject to the requirements set out in GC 3.5.1, on a monthly basis or as requested by the Owner. The Contractor shall submit such updated and accepted schedule with every application for progress payment in accordance with GC 5.2.8.”

4.3 GC 3.5.3

(a) Add GC 3.5.3 as follows:

“3.5.3 The Contractor shall immediately advise the Consultant of any revisions required to the schedule as the result of extensions of the Contract Time as provided in Part 6 of the General Conditions – CHANGES IN THE WORK.”

4.4 GC 3.5.4

(a) Add GC 3.5.4 as follows:

“3.5.2 If the Contract Price is greater than \$500,000.00, the schedule shall be prepared using the critical path method and the Contractor shall submit with the schedule a Gantt Chart (a list of tasks and related information, including duration, with a bar type chart showing tasks and durations over time) and a PERT Chart (a network diagram showing all tasks and task dependencies).”

4.5 GC 3.5.5

(a) Add GC 3.5.5 as follows:

“3.5.5 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

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likely to become behind schedule, or if the Contractor has given notice of such to the Owner or the Consultant pursuant to GC 3.5.2, 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 recovery of the schedule.”

### **5.0 GC 3.6 SUPERVISION**

#### **5.1 GC 3.6.1**

- (a) Add the words “with the prior consent of the Owner” at the end of GC 3.6.1.

#### **5.2 GC 3.6.3**

- (a) Add GC 3.6.3 as follows:

“3.6.3 The Contractor shall provide the Owner and the Consultant with the name, address, and telephone number of the representative referred to in GC 3.6.1 and other responsible persons who may be contacted for emergency and other reasons during non-working hours throughout the course of the Work.”

#### **5.3 GC 3.6.4**

- (a) Add GC 3.6.4 as follows:

“3.6.4 The Owner may, at any time, object to any representative or employee of the Contractor, Subcontractors or Suppliers and require the Contractor to remove, dismiss or replace, or cause to be removed, dismissed or replaced, the said representative or employee.”

### **6.0 GC 3.7 SUBCONTRACTS AND SUPPLIERS**

#### **6.1 GC 3.7.1.4**

- (a) Add GC 3.7.1.4 as follows:

“.4 ensure that the Contractor, all Subcontractors and Suppliers, and anyone employed or engaged by them directly or indirectly, have the qualifications, technical skills, levels of experience and

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knowledge required, and all applicable permits, licences and approvals necessary, to discharge the work to be performed by them in accordance with the terms of the Contract.”

6.2 GC 3.7.3

- (a) Delete GC 3.7.3 in its entirety and replace with the following:

“3.7.3 The Contractor may subcontract any part of the Work, subject to these General Conditions and the terms set out in the Contract Documents.”

6.3 GC 3.7.4

- (a) Delete GC 3.7.4 in its entirety and replace with the following:

“3.7.4 The Contractor shall notify the Consultant, in writing, of its intention to subcontract. Such notification shall identify the part or parts of the Work and the Subcontractor with whom it is proposing to subcontract. The Owner may object to the use of any Subcontractor, in which case the Contractor shall nominate an alternative Subcontractor for review by the Owner.”

6.4 GC 3.7.5

- (a) Delete GC 3.7.5 in its entirety and replace with the following:

“3.7.5 The Contractor shall not, without the written consent of the Owner, and whose consent may be unreasonably withheld, change a Subcontractor who has been engaged in accordance with this General Condition.”

6.5 GC 3.7.7

- (a) Add GC 3.7.7 as follows:

“3.7.7 The Contractor shall preserve and protect the rights of the Owner with respect to that part of the Work to be performed under subcontract and shall enter into agreements with the intended Subcontractors to require them to perform their Work in accordance with the Contract Documents and shall be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly and

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indirectly employed by them as for acts and omissions of persons employed directly by the Contractor.”

6.6 GC 3.7.8

(a) Add GC 3.7.8 as follows:

“3.7.8 The Owner's consent to subcontracting by the Contractor shall not be construed as relieving the Contractor from any obligation under the Contract and shall not impose any liability on the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner. The Contractor shall be solely responsible for scheduling, coordinating and reviewing the work of its Subcontractors and Suppliers. ”

6.7 GC 3.7.9

(a) Add GC 3.7.9 as follows:

“3.7.9 Subcontracting shall be conducted in a manner consistent with the principles of open, fair and transparent procurement, and the Contractor shall keep records demonstrating compliance with this requirement in accordance with GC 1.7 RECORDS AND AUDIT.”

6.8 GC 3.7.10

(a) Add GC 3.7.10 as follows:

“3.7.10 The Contractor shall not be entitled to compensation by the Owner or any extension to the Contract Time arising out of, or in any way relating to, any breach of contract or failure to perform work by any Subcontractor or Supplier for any reason, including but not limited to, the insolvency or bankruptcy of the Subcontractor or Supplier, even though the Subcontractor or Supplier may have been designated or pre-qualified by the Owner or the Consultant.”

**7.0 GC 3.8 LABOUR AND PRODUCTS**

7.1 GC 3.8.2

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- (a) Add the following sentence to the end of GC 3.8.2:

“The Contractor shall not change the source of supply of any Product without the written authorization of the Consultant.”

7.2 GC 3.8.3

- (a) Add the words “and qualified” after the word “skilled” in the first line of GC 3.8.3.

7.3 GC 3.8.4

- (a) Add GC 3.8.4 as follows:

“3.8.4 The Owner may at any time, for reasonable cause, require the Contractor to promptly remove from the Place of the Work any employee of the Contractor as well as any Subcontractor or employee of any Subcontractor.”

7.4 GC 3.8.5

- (a) Add GC 3.8.5 as follows:

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

7.5 GC 3.8.6

- (a) Add GC 3.8.6 as follows:

“3.8.6 The Contractor shall ensure that all Products are of good quality, fit for their intended purpose and maintained in a safe, serviceable condition in accordance with this Contract and good industry practice.”

7.6 GC 3.8.7

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(a) Add GC 3.8.7 as follows:

“3.8.7 Where more than one Product is specified for a use, the Contractor may select any of the Products so specified unless the Specifications, Drawings or Contract Documents indicate otherwise. The Contractor shall assume all responsibility for liabilities and additional costs that may arise as a result of the Contractor’s choice to use one of the named Products.”

7.7 GC 3.8.8

(a) Add GC 3.8.8 as follows:

“3.8.8 The Contractor may apply to the Consultant to substitute a Product for an equivalent Product. Such application shall be in writing and made at the earliest opportunity with sufficient time for the Consultant to assess the application. The application shall include the following:

- .1 reasons for the proposed substitution (eg. significant delay in delivery, strikes, unavailability, improved quality or field service, amount of contract cost reduction etc.); and
- .2 sufficient description and technical information, specifications, references and samples and any other information requested by the Consultant; in order for the Consultant to thoroughly assess the proposed substitution and compare the proposed substitute with that specified.”

7.8 GC 3.8.9

(a) Add GC 3.8.9 as follows:

“3.8.9 The Consultant’s assessment of proposed substitutions shall include, but not limited to, criteria such as quality, durability, performance, ease of operation, safety, technical support, service and parts, availability and estimated cost of warranty and adherence to Specifications. All applications and submissions related to the proposed substitution shall only be made by the Contractor and not by any Subcontractors or Suppliers.”

7.9 GC 3.8.10

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- (a) Add GC 3.8.10 as follows:

“3.8.10 The approval or rejection of a proposed substitution shall be at the discretion of the Consultant, whose decision shall be final. Regardless of the Consultant’s decision on a proposed substitution, the Owner reserves the right to assess and apply to the Contractor, all costs related to the Consultant’s and the Owner’s review of the proposed substitution.”

7.10 GC 3.8.11

- (a) Add GC 3.8.11 as follows:

“3.8.11 The Contractor’s prices shall be based on the Products specified. The Contract shall not be based on a presumed acceptance by the Consultant or the Owner of a substitute Product.”

7.11 GC 3.8.12

- (a) Add GC 3.8.12 as follows:

“3.8.12 Acceptance by the Consultant of an equivalent Product shall apply to this Contract only and shall not set any precedent for other Contracts.”

7.12 GC 3.8.13

- (a) Add GC 3.8.13 as follows:

“3.8.13 The Contractor shall assume all responsibility for liabilities and additional costs that may subsequently arise as a result of his proposed substitution being accepted by the Consultant.”

7.13 GC 3.8.14

- (a) Add GC 3.8.14 as follows:

“3.8.14 Any changes necessitated by the use of the substituted Products shall be at the sole expense of the Contractor. The Contractor shall be responsible for assuring the proper fit and matching of all substituted Products to the surrounding materials.”

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**8.0 GC 3.10 SHOP DRAWINGS AND OTHER SUBMITTALS**

8.1 GC 3.10

- (a) Add the words “AND OTHER SUBMITTALS” to the end of the heading for GC 3.10 – SHOP DRAWINGS.
- (b) Add the words “and Other Submittals” after the words “Shop Drawings” in GC’s 3.10.1, 3.10.2, 3.10.3, 3.10.4, 3.10.5, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11 and 3.10.12.
- (c) Add the following to the end of GC 3.10.1:

“All *Shop Drawings* and *Other Submittals*, shall be submitted electronically on a FTP site supplied by the *Contractor*, and should be kept up-to-date during the *Contract*.”

8.2 GC 3.10.8.2

- (a) Add the words “and *Submittal*” after the words “*Shop Drawing*” in the first line of GC 3.10.8.2

**9.0 GC 3.11 USE OF THE WORK**

9.1 GC 3.11.1

- (a) Add the words “the Owner’s reasonable instructions,” after the word “permits,” in the second line of GC 3.11.1.

9.2 GC 3.11.2

- (a) Add the words, “individuals and the areas adjacent to the work.” to the end of GC 3.11.2.

9.3 GC 3.11.3

- (a) Add GC 3.11.3 as follows:

“3.11.3 Subject to paragraph 9.4.6 of GC 9.4 - CONSTRUCTION SAFETY, The Owner shall have the right to enter and occupy the Place of the Work in whole or in part for the purpose of placing materials, fittings, and equipment, or for any other use at any time before completion of the Contract if, in the reasonable opinion of the Consultant, such entry and occupation does not

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prevent or interfere with the Contractor in achieving Substantial Performance of the Work within the Contract Time stipulated in the Contract.”

9.4 GC 3.11.4

- (a) Add GC 3.11.4 as follows:

“3.11.4 No entry or occupation by the Owner as referenced in paragraph 3.11.3 shall constitute or be considered as acceptance of the Work in whole or in part, or in any way relieve the Contractor of its responsibility to complete the Contract.”

**10.0 GC 3.13 CLEANUP**

10.1 GC 3.13.2

- (a) Add the words “all to the satisfaction of the Consultant and the Owner, acting reasonably.” to the end of GC 3.13.2.

10.2 GC 3.13.4

- (a) Add GC 3.13.4 as follows:

“3.13.4 The Owner shall have the right to back charge the cost of cleaning and removal if such cleaning and removal is not completed within twenty-four (24) hours of written notice to clean or remove. The Owner shall also have the right to back charge the cost of damage to the Place of the Work caused by the Contractor’s, Subcontractor’s or Supplier’s transportation in and out of the Place of the Work if not repaired within five (5) Working Days of written notice to repair or before final payment, whichever is earlier.”

**11.0 GC 3.14 INTERFERENCE**

11.1 GC 3.14

- (a) Add GC 3.14 INTERFERENCE as follows:

“GC 3.14 INTERFERENCE

3.14.1 If the Work, in whole or in part, involves the renovation of, or addition to, existing and occupied premises:

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- .1 the Contractor shall maintain normal business operations and traffic flow, with a minimum of inconvenience to the tenants and occupants of the Place of the Work;
- .2 subject to the provisions of the Contract Documents, the Contractor shall ensure that no essential services such as electric power, water supply or other public utilities are interrupted;
- .3 in every case where an interruption to existing services or utilities is to occur during execution of the Work, the Contractor shall give the Owner five (5) Working Days prior written notice. The Contractor shall reschedule any such interruption if requested to do so in writing by the Owner; and
- .4 any work by the Contractor that generates excessive noise shall be subject to the restrictions set out elsewhere in the Contract Documents.”

**12.0 GC 3.15 – PERFORMANCE BY CONTRACTOR AND STANDARD OF CARE**

- 12.1 Add GC 3.15 PERFORMANCE BY CONTRACTOR AND STANDARD OF CARE as follows:

“GC 3.15 PERFORMANCE BY CONTRACTOR AND STANDARD OF CARE

3.15.1 In performing its services and obligations under the Contract, the Contractor shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects (“Standard of Care”). The Contractor acknowledges and agrees that throughout the Contract, the Contractor’s obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Contractor shall exercise the same standard of due care and diligence in respect of any Products, personnel, or procedures which it may recommend to the Owner. The Contractor shall ensure that all Subcontractors and Suppliers perform the work in accordance with the Standard of Care.

3.15.2 The Contractor further represents, covenants, and warrants to the Owner that:

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- .1 the personnel it assigns are appropriately experienced and qualified;
- .2 it has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject 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."

### **13.0 GC 3.16 – RISK OF LOSS AND TITLE**

13.1 Add GC 3.16 RISK OF LOSS AND TITLE as follows:

#### **“3.16 RISK OF LOSS AND TITLE**

- 3.16.1 Title to portions of the Work completed or in the process of being completed and title to all Product and material produced and received by the Contractor shall pass to the Owner on the earlier of payment by the Owner or the delivery of any such portion of the Work and materials to the Owner; provided that the Owner is then in compliance with its payment obligations under the Contract and that the total value of such portion of the Work, Products and materials is not greater than the amount of money paid by the Owner at that time, to the Contractor under this Contract.
  - 3.16.2 Risk of loss or damage to any part of the Work or Products shall remain with the Contractor until issuance of the Consultant's certificate of Total Performance of the Work.
  - 3.16.3 The Contractor shall take reasonable and proper care of all property, title to which is vested in the Owner, while the same is in, on or about the plant and premises of the Contractor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.”
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### **PART 4 ALLOWANCES AND PROVISIONAL ITEMS**

#### **1.0 PART 4 ALLOWANCES AND PROVISION ITEMS**

- 1.1 Add the words “AND PROVISIONAL ITEMS” to the end of the heading for PART 4 ALLOWANCES.

#### **2.0 GC 4.1 CASH ALLOWANCE**

2.1 GC 4.1.3

- (a) Delete GC 4.1.3 in its entirety and replace with following:

“4.1.3 Cash Allowances shall be used and expended solely for purposes specified and at the sole discretion of Owner, and work under a Cash Allowance is not guaranteed. The Contract Price includes the Contractor’s overhead and profit, including but not limited to administering the Cash Allowance or soliciting bids for such Cash Allowances, in connection with such Cash Allowances. Where costs under a Cash Allowance exceed the amount of the allowance allocated to such Cash Allowance item, unexpended amounts from other Cash Allowances may be reallocated at the Owner’s direction in its sole discretion to cover the shortfall without additional overhead or profit charges being attributed to the Contractor. A markup for overhead and profit may only be charged to overruns on the total of all Cash Allowances in accordance with the percentages set out for such markup in GC 6.1.3. Cash Allowance items shall be administered and authorized as follows:

- .1 The Owner, via the Consultant, shall notify the Contractor a request to proceed with a Cash Allowance item.
  - .2 Upon receipt of such request from the Consultant, the Contractor shall, in respect of the identified Cash Allowance item provide to the Owner a response setting out: the schedule for the Work and expected milestones and completion date; the personnel and subcontractors which the Contractor proposes to perform the Work and the costs of such Work, with up to three (3) quotations for any or all of the Work if requested by the Owner; and any other information requested by the Owner. If one of the quotations is from the Consultant, then all quotations shall
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be caused by the Consultant to be submitted to the Owner directly from all vendors.”

- .3 Upon receipt and review of such response, the Owner, via the Consultant, shall approve such Cash Allowance item in writing. No amounts shall be payable in respect of any Cash Allowance items unless and until the Owner has approved such expenditure in writing.”

2.2 GC 4.1.4

- (a) Delete “the Contract Documents” from GC 4.1.4 and replace with “GC 6.1.3”.

**3.0 GC 4.3 – PROVISIONAL ITEMS**

- 3.1 Add new GC 4.3 – PROVISIONAL ITEMS as follows:

“GC 4.3 – Provisional Items

- 4.3.1 The Contract Price includes the Provisional Items, if any, stated in the Contract Documents.
  - 4.3.2 The Provisional Items shall be authorized individually in writing by the Owner through the Consultant. The Contractor shall not proceed with any Provisional Item without such prior written authorization.
  - 4.3.3 The prices stated for any and all items identified as “Provisional Items” in Article A-4 Contract Price of Supplementary Agreement Between Owner and Contractor shall be for the completed Work “in place” and shall be inclusive of all costs related thereto including, but not necessarily limited to, all overhead, profit and applicable taxes, except Harmonized Sales Tax, unless otherwise specified by the Owner. In the event the Owner decides, in its sole discretion, not to proceed with any or all of the identified Provisional Items, the Contract Price shall be adjusted by the Extended Price for the applicable Item No.’s stated in Article A-4 Contract Price of Supplementary Agreement Between Owner and Contractor for such Provisional Item(s).
  - 4.3.4 In the event changes are made to the stated estimated quantities for a Provisional Item, the Extended Price for that Provisional Item as stated in Article A-4 Contract Price of the Supplementary Agreement Between Owner and Contractor shall be adjusted based on the actual quantity of
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work performed and the Unit Price for that Provisional Item.”4.3.5  
Provisional Items are options to be exercised at the sole discretion of the Owner. In the event the Owner decides, in its sole discretion, to:

- .1 not proceed with any or all of the identified Provisional Items; or
- .2 proceed with any or all of the identified Provisional Items but increases or reduces the quantity of such Provisional Items;

the Contract Price shall be adjusted proportionally based on the Extended Price stated for such Provisional Items in Article A-4. The Extended Price shall form the basis of all adjustments without any additional compensation or markup. For greater certainty, the markups provided in GC 6.1.3 and GC 6.7.4 are not applicable to Provisional Items.”

**PART 5 PAYMENT**

**1.0 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

1.1 GC 5.1.1

- (a) Delete GC 5.1.1 in its entirety.

1.2 GC 5.1.2

- (a) Delete GC 5.1.2 in its entirety.

**2.0 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

2.1 GC 5.2.4

- (a) Delete the words “calendar days” and replace with “Working Days” in the first line of GC 5.2.4.

2.2 GC 5.2.7

- (a) Add the following sentence to the end of GC 5.2.7:

“Any Products delivered to the Place of the Work but not yet incorporated into the Work shall remain at the risk of the Contractor notwithstanding that title has passed to the Owner pursuant to GC 3.16 RISK OF LOSS AND TITLE.”

2.3 GC 5.2.8

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- (a) Add GC 5.2.8 as follows:

“5.2.8 The Contractor shall submit, with each application for progress payment after the first, a WSIB clearance certificate, an updated schedule acceptable to the Owner in accordance with GC 3.5 CONSTRUCTION SCHEDULE, and a Statutory Declaration, on an original form of CCDC Document 9A-2001 Statutory Declaration of Progress Payment Distribution by Contractor, stating that payments in connection with the Work, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application and, if requested by the Owner, a Statutory Declaration from any Subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B-2001 Statutory Declaration of Progress Payment Distribution by Subcontractor. The Statutory Declarations shall be dated the same date as the Contractor’s application for payment.”

2.4 GC 5.2.9

- (a) Add GC 5.2.9 as follows:

“5.2.9 The Contractor shall prepare and maintain current as-built drawings which shall consist of the Drawings and Specifications revised by the Contractor during the Work, showing changes to the Drawings and Specifications, including but not limited to architectural, structural, mechanical, electrical, cabling, Shop Drawings, single-line diagrams and any other graphical representations, and shall be maintained by the Contractor and made available to the Consultant for review with each application for progress payment.”

2.5 GC 5.2.10

- (a) Add GC 5.2.10 as follows:

“5.2.10 Payment for bonds and insurance will be paid one hundred percent (100%) on the first progress payment, provided that respective invoices are submitted as proof of payment.”

**3.0 GC 5.3 PROGRESS PAYMENT**

3.1 GC 5.3.1.2

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- (a) Add the following sentence to the end of GC 5.3.1.2:

“For clarity, the 10 calendar day period referenced herein shall not commence until such time as the Consultant has determined that he has received from the Contractor all required documents supporting the invoice and evidencing the Work being invoiced, including but not limited to the documents listed in GC 5.2.8 and GC 5.2.9, all to the Consultant's satisfaction.”

**3.2 GC 5.3.1.3**

- (a) Delete GC 5.3.1.3 in its entirety and replace with following:

“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 twenty (20) calendar days after the date of issuance by the Consultant of a certificate for payment.”

**3.3 GC 5.3.3**

- (a) Add GC 5.3.3 as follows:

“5.3.3 Certificates for payment may provide for retention of amounts as determined by the Consultant to ensure correction or replacement of deficient work done or unacceptable product provided.”

**4.0 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

**4.1 GC 5.4.3**

- (a) Delete GC 5.4.3 in its entirety and replace with the following:

“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 a schedule for completion of the Work and correcting deficiencies in the Work, and the construction schedule shall be deemed to be amended to include this completion schedule.”

**4.2 GC 5.4.4**

- (a) Add GC 5.4.4 as follows:
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“5.4.4 Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Consultant all:

- .1 guarantees;
- .2 warranties, completed as per GC 12.3;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance/operation manuals;
- .8 training manuals;
- .9 samples;
- .10 reports and correspondence from authorities having jurisdiction in the Place of the Work;
- .11 Shop Drawings, and marked up Drawings;
- .12 completed as-built drawings in the latest edition of a Computer Assisted Design Drawing software program;
- .13 inspection certificates;
- .14 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.”

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

#### **5.1 GC 5.5.1.2**

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- (a) Add the words “and, if requested by the Owner, as Statutory Declaration from any Subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B – 2001 Statutory Declaration of Progress Payment Distribution by Subcontractor.” to the end of GC 5.5.1.2.

5.2 GC 5.5.2

- (a) Delete the words “the statement” and replace with the words “the documents” in the first line of GC 5.5.2.

5.3 GC 5.5.3

- (a) Delete GC 5.5.3 in its entirety.

5.4 GC 5.5.4

- (a) Delete GC 5.5.4 in its entirety and replace with the following:

“5.5.4 The Contract shall be subject to the Construction Act (Ontario) (the “Act”). In accordance with the Act, the Owner may retain any amounts which are: required by law to satisfy any liens against the Work, in respect of claims of third parties made to the Owner in respect of the Contract or the Work, and in respect of any claims the Owner may have against the Contractor.”

5.5 GC 5.5.5

- (a) Delete GC 5.5.5 in its entirety.

**6.0 GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

6.1 GC 5.6.1

- (a) Delete 5.6.1 in its entirety and replace with following:

“5.6.1 Where the work of a Subcontractor or Supplier has been performed prior to Substantial Performance of the Work and is certified as completed in accordance with the Act and evidence of such is submitted by the Contractor, along with a clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract, to the satisfaction of the Consultant, the Owner shall pay the Contractor the holdback amount retained for such subcontract work, or the Products supplied by such Supplier, on the first calendar day following the

expiration of the holdback period for such work stipulated in the Act. The Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Work and any amounts in respect of claims of third parties made to the Owner in respect of the Contract or the Work.”

**7.0 GC 5.7 FINAL PAYMENT**

**7.1 GC 5.7.1**

- (a) Delete GC 5.7.1 in its entirety and replace with the following:

“5.7.1 When the Contractor considers that the Work has been totally performed, the Contractor shall submit an application for final payment, together with a written application for review by the Consultant to establish Total Performance of the Work, and any other documents or materials not yet delivered pursuant to GC 5.4.4 and as listed in GC 5.7.5. The Work shall not be deemed to have been performed until all of the aforementioned documents and materials have been delivered, and the Owner may withhold payment in respect of the delivery of any documents or materials in an amount determined by the Consultant in accordance with the provisions of GC 5.8 WITHHOLDING OF PAYMENT and GC 12.1 INDEMNIFICATION. The Consultant shall advise the Contractor upon receipt of an application for final payment if additional documents or materials are required pursuant to this GC 5.7.1 and the Contractor shall respond promptly with such documents or materials.”

**7.2 GC 5.7.2**

- (a) Delete GC 5.7.2 in its entirety and replace with following:

“5.7.2 The Consultant will, no later than 10 calendar days after the receipt of an application from the Contractor for final payment, review the Work to verify the validity of the application and:

- .1 advise the Contractor in writing that the Work is not totally performed and give reasons why, or
  - .2 state the date of Total Performance of the Work in a certificate and issue a copy of that certificate to each of the Owner and the Contractor.”
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The above time period for response shall not commence until all documents and materials required pursuant to GC 5.7.1 have been received by the Consultant.”

7.3 GC 5.7.3

- (a) Delete the words “finds the Contractor’s application for final payment valid” and substitute the words “issues the certificate of Total Performance of the Work” in the first line of GC 5.7.3.

7.4 GC 5.7.4

- (a) Delete the number “5” and replace with “15” in the second line of GC 5.7.4.

7.5 GC 5.7.5

- (a) Add GC 5.7.5 as follows:

“5.7.5 The Contractor shall submit to the Consultant, with the application for final payment, the following documentation:

.1 all closeout documentation required by the Contract Documents, including but not limited to, warranties, manuals, guarantees, as-built drawings and all other relevant literature from Suppliers and manufacturers including, but not limited to:

- .1 equipment, maintenance and operations manuals;
  - .2 equipment specifications, data sheets and brochures, parts lists and assembly drawings, performance curves and other related data;
  - .3 line drawings, value charts and control sequences with description of the sequence of operations;
  - .4 warranty documents;
  - .5 service and maintenance reports as applicable;
  - .6 specifications;
  - .7 shop drawings;
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- .8 testing results;
- .9 commissioning and quality assurance documentation, and
- .10 HVAC balance reports.
- .2 a Statutory Declaration, on an original form of CCDC Document 9A – 2001, stating that payments in connection with the Work, as noted in the statutory declaration, have been made to the end of the period immediately preceding that covered by the application for final payment and, if requested by the Owner, as Statutory Declaration from any Subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B – 2001 Statutory Declaration of Progress Payment Distribution by Subcontractor.”

**8.0 GC 5.8 WITHHOLDING OF PAYMENT**

8.1 GC 5.8

- (a) Add “Subject to GC 12.1 INDEMNIFICATION,” at the beginning of GC 5.8.1.

**9.0 GC 5.10 CLAIMS FOR LIEN**

9.1 GC 5.10

- (a) Add GC 5.10 Claims for Lien as follows:

“GC 5.10 CLAIMS FOR LIEN

- 5.10.1 The Contractor shall cause any and all construction liens and certificates of action relating to the Work registered or preserved by any Subcontractor, Supplier, Contractor’s employees, or any other party to whom the Contractor is or may be responsible at law, to be discharged or vacated, or cause to be discharged or vacated, immediately but in any case no later than five (5) Working Days of the date of registration or reservation, all at the Contractor’s sole expense. The Contractor shall not be entitled to receive any payment from the Owner until all such claims for lien and certificates of action have been vacated or discharged.
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- 5.10.2 The Contractor shall cause any and all written notices of lien relating to the Work given to any person, including, but not limited to, the Owner by any Subcontractor, sub-subcontractor, Supplier, Contractor's employees, or any party to whom the Contractor is or may be responsible at law, to be withdrawn or vacated, and the Contractor shall do so immediately but in any case no later than five (5) Working Days of the written notice of lien having been given, all at the Contractor's sole expense.
- 5.10.3 If the Contractor fails to discharge or vacate any such lien or certificate of action, or to have any such written notice of lien withdrawn or vacated, within five (5) days, then the Owner shall have the right but not the obligation, do so and set off and deduct from any amount owing to the Contractor, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. 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 expenses of so doing."

**10.0 GC 5.11 PAYMENT OF ACCRUED HOLDBACK ON A PHASED BASIS**

10.1 GC 5.11

- (a) Add GC 5.11 Payment of Accrued Holdback on a Phased Basis as follows:
- (b) "GC 5.11 PAYMENT OF ACCRUED HOLDBACK ON A PHASED BASIS:

5.11.1 After completion of any of the Substantial Performance of the Work, the *Contractor* shall:

- .1 submit an application for payment of the unpaid holdback that has accrued during the phase that has been completed,
  - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products, construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* during the phase referred to in subparagraph 5.11.1.1 and for which the *Owner* might in any way be held responsible have been paid in full, except
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for amounts properly retained as a holdback or as an identified amount in dispute and, if requested by the *Owner*, a Statutory Declaration from any *Subcontractor*, as may be identified by the *Owner*, on an original form of CCDC Document 9B – 2001 Statutory Declaration of Progress Payment Distribution by Subcontractor, and

- .3 provide confirmation to the *Owner* and the *Consultant* in writing that:
  - .1 there are no preserved or perfected liens in respect of the *Contract* or in respect of any *Subcontractors*, *Suppliers* or other subtrades or sub-subtrades of the *Contractor*, or
  - .2 all liens in respect of the *Contract*, and all liens in respect of any of *Subcontractors*, *Suppliers* or other subtrades or sub-subtrades of the *Contractor*, have been satisfied, discharged or otherwise provided for under the *Act* and the *Contractor* shall provide proof of same to the *Owner* and the *Consultant*.

5.11.2 After the receipt of an application for payment from the *Contractor* and the documents as provided in paragraph 5.11.1, the *Consultant* will issue a certificate for payment of the accrued holdback amount.

5.11.3 The *Contract* shall be subject to the Construction Act (the “*Act*”). In accordance with the *Act*, the *Owner* may retain any amounts which are: required by law to satisfy any liens against the *Work*, in respect of claims of third parties made to the *Owner* in respect of the *Contract* or the *Work*, and in respect of any claims the *Owner* may have against the *Contractor*.”

**11.0 GC 5.11 PAYMENT OF ACCRUED HOLDBACK ON AN ANNUAL BASIS**

11.1 Not Applicable

**12.0 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES**

12.1 GC 6.1.3

- (a) Add GC 6.1.3 as follows:
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“6.1.3 For the purpose of valuing Cash Allowances pursuant to GC 4.1.4, Contingency Allowances or Optional Items pursuant to GC 4.2.2, changes which result in an increase in the Contract Price, and any other items under the Contract Documents which provide for payment to the Contractor of overhead and profit, allowances for overhead and profit shall be included as follows:

- .1 Contractor’s combined mark-up for overhead and profit shall be fifteen percent (15%) on work and services completed by its own forces, and five percent (5%) on work and services completed by its Subcontractors.
- .2 Subcontractors’ combined mark-up for overhead and profit shall be fifteen percent (15%) on work and services completed by their own forces, and five percent (5%) on work and services completed by their subcontractors.”

12.2 GC 6.1.4

(a) Add GC 6.1.4 as follows:

“6.1.4 The mark-ups provided for in GC 6.1.3 shall constitute the only compensation the Contractor shall be entitled to for any and all overhead and profit related to the change, Cash Allowance or Contingency Allowance.”

12.3 GC 6.1.5

(a) Add GC 6.1.5 as follows:

“6.1.5 The Contractor’s and Subcontractor’s overhead as set out in GC 6.1.3 shall be deemed to include direct and indirect costs arising from: preparation of change order, change directive, supplemental instruction; obtaining quotations and preparation and submission of any documentation or materials; computer services; cleaning and cleaning services; any increase in the cost of obtaining or maintaining all bonds and insurance policies; any increase in performance, labour and materials payment bonds values and durations; any increase in insurance and workplace safety insurance values and durations; any increase in warranty or guaranty values or durations; estimating, costing, accounting, payroll administration; office administration, processing correspondence, timekeeping, material consumed in the

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construction contract administration and management process; reproduction, office, shop drawing review and preparation; permits and statutory fees; plant and equipment including operators and equipment rentals; vehicles; place of work office and head office overheads; place of work site contractor and subcontractor superintendence, supervisors and assistants; material re-handling; safety equipment, safety wear and first aid; security; technical staff; telephone, mobile phone, and facsimile services and charges; temporary heat, light and power; temporary protection; temporary place of work offices, trailers and storage compounds; timekeeping and the like.”

**13.0 GC 6.2 – CHANGE ORDER**

13.1 GC 6.2.1 is amended as follows:

- (a) Delete the words “promptly present,” and substitute the words “, within five (5) Working Days of receiving the written description, present” in the second line of paragraph 6.2.1.

13.2 GC 6.2.2:

- (a) Renumber existing paragraph “6.2.2” to paragraph number “6.2.3”.
- (b) Add new paragraph 6.2.2 as follows:

“6.2.2 The method of adjustment of the Contract Price presented by the Contractor may be:

- .1 by estimate and acceptance in a lump sum or Unit Price quotation,
- .2 by Unit Prices set out in the Contract or subsequently agreed upon, or
- .3 by the actual cost of the change in the Work, plus an agreed fixed or percentage fee.”

13.3 GC 6.2.4

- (a) Add GC 6.2.4 as follows:

“6.2.4 When the Contractor submits an invoice from a Subcontractor or Supplier as part of its detailed breakdown of the cost of a change,

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as may be required by GC 6.2 CHANGE ORDER or GC 6.3 CHANGE DIRECTIVE, the Contractor is deemed to represent and warrant to the Owner that the amount shown on the invoice is the amount that the Contractor is liable to pay for the services and materials described in the invoice, net of all discounts, unless the Contractor indicates otherwise when submitting its detailed breakdown. When the Contractor submits an estimate or quotation from a Subcontractor or Supplier as part of its detailed breakdown of the estimated cost of a change, the Contractor is deemed to represent and warrant to the Owner that, subject to any qualifications on the face of the estimate or quotation and any qualifications made by the Contractor within the detailed breakdown, that the amount set out in the estimate or quotation is the amount the Contractor has agreed to pay should the Contractor be authorized to proceed with the change, net of all discounts. Notwithstanding the foregoing, the Contractor shall be entitled to take a commercially reasonable early payment discount (if offered) when the Contractor pays its Subcontractor or Supplier prior to receiving payment from the Owner.”

### 13.4 GC 6.2.5

(a) Add GC 6.2.5 as follows:

“6.2.5 In the event any of the change in the Work, contains items or parts that, in the opinion of the Consultant, are the same or equivalent to items for which the Contractor submitted prices under Optional Items, in the Submission, then such prices shall be used to calculate the amount paid by the Owner for that work or parts of the Work in respect of any such change in the Work.”

### 13.5 GC 6.2.6

(a) Add GC 6.2.6 as follows:

“6.2.6 No compensation for any change in the Work shall be allowed unless such change is first ordered in writing by the Consultant and authorized by the Owner.”

## 14.0 GC 6.3 CHANGE DIRECTIVE

### 14.1 GC 6.3.7

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(a) Delete GC 6.3.7.1 in its entirety and replace with following:

- “.1 salaries, wages and benefits paid to personnel in the direct employ of the Contractor, applying the labour rates set out in the wage schedule in the Contract Documents or as otherwise agreed between the Owner and Contractor for personnel,
- .2 carrying out the Work on-site at the Place of the Work, including necessary supervisory services;
- .3 engaged in expediting the production or transportation of material or equipment, at shops or on the road;
- .4 engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and Contract as-built drawings, or,
- .5 carrying out clerical work to process changes in the Work."

14.2 GC 6.3.8

(a) Add the words "except for GC 6.3.14" after the word "Contract" in the first line.

14.3 GC 6.3.14

(a) Add GC 6.3.14 as follows:

- “6.3.14 For greater certainty, any adjustment of the Contract Price for the Work attributable to the Change Directive shall not include, and no payment shall be made for:
- .1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraphs 6.3.7.2;
  - .2 capital expenses and interest on capital;
  - .3 general clean-up, except where the performance of the Work in the Change Directive causes specific additional clean-up requirements;

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- .4 wages paid for project managers, superintendents, assistants, watch persons and administrative personnel, provided the Change Directive does not result in an extension of Contract Time;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the Place of the Work that are otherwise deemed unreasonable by the Consultant;
- .6 any costs or expenses attributable to the negligence, improper Work, deficiencies, or breaches of Contract by the Contractor or Subcontractor; and
- .7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the Owner."

### **15.0 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

#### 15.1 GC 6.4.5

- (a) Add GC 6.4.5 as follows:

“6.4.5 The Contractor confirms that, prior to bidding, it carefully investigated the character of the Work, the Place of the Work, and all local conditions which might affect its obligations and that it has satisfied itself as to the nature and extent of the Work, the Contract Documents and the Contract and as to the facilities and difficulties in attending and completing the execution of the Work. The Owner shall, upon written request, co-operate with, and provide reasonable assistance to, the Contractor during such investigations. The Contractor confirms that it has applied to its investigations as aforesaid the degree of care and skill described in paragraph 3.15.1. The Contractor is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Contractor by such careful investigation undertaken prior to the submission of its bid.”

#### 15.2 GC 6.4.6

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- (a) Add GC 6.4.6 as follows:

“6.4.6 To the extent the Contractor has not investigated as referenced in paragraph 6.4.5, the Contractor willingly assumes responsibility for all losses, damages, costs, expenses (including all legal costs on a full indemnity basis), liabilities, claims, actions, and demands, whether arising under statute, contract or at common law, which such investigations might have avoided or reduced and shall indemnify and save harmless the Owner from all risk which might make it more onerous and more expensive to fulfill or perform the Work than was contemplated or known when the Contract was signed, and for any and all liability, responsibility and obligations which the Owner may have to any third parties resulting from any failure to investigate.”

### 15.3 GC 6.4.7

- (a) Add GC 6.4.7 as follows:

“6.4.7 If the finding made pursuant to paragraph 6.4.2 is that the subsurface or otherwise concealed physical conditions differ materially and this would cause an increase or decrease in the Contractor’s cost or time to perform the Work, and if the said conditions were otherwise discoverable by the Contractor in the proper performance of its duties and obligations under the Contract, all costs and expenses resulting from any delay (excluding, for clarity, the direct cost of remediating the said conditions) in the completion of the Work that is caused, or contributed to, as a result of the said conditions, will be borne by the Contractor.”

## 16.0 GC 6.5 DELAYS

### 16.1 GC 6.5.1 and GC 6.5.2

- (a) Add after the phrase “as the result of such delay” at the end of GC 6.5.1 and GC 6.5.2, respectively, the following:

“, as determined by the Consultant, subject to GC 6.5.9 and the following:

- .1 the Contractor shall not be reimbursed for any consequential, incidental, indirect or special damages including, without
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limitation, loss of profits, loss of opportunity or loss of productivity resulting from such delay; and

- .2 the Contractor shall not be reimbursed for any costs which, regardless of the delay, would be expected to have been incurred in the regular course of business, including but not limited to the costs of the Contractor's head office personnel during or in relation to such delay."

16.2 GC 6.5.6

- (a) Add GC 6.5.6 as follows:

"6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor, any Subcontractor, or anyone employed or engaged by them, directly or indirectly, or by any cause within the Contractor's control, the Contractor shall devote such additional resources and take all steps necessary (all at the Contractor's own cost and expense), to ensure that the date for attaining Substantial Performance of the Work and Total Performance of the Work under the Contract, as may have been amended in accordance with the provisions of Part 6 of the General Conditions – Changes in the Work, is met. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as a result of such delay, as determined by the Consultant."

16.3 GC 6.5.7

- (a) Add GC 6.5.7 as follows:

"6.5.7 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 paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the Contractor shall be reimbursed by the Owner for the reasonable costs incurred by the Contractor for such care, maintenance and protection. The Contractor's entitlement to costs pursuant to this paragraph 6.5.7, if any, shall be in addition to amounts, if any, to which the Contractor is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3."

16.4 GC 6.5.8

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(a) Add GC 6.5.8 as follows:

“6.5.8 Without limiting the obligations of the Contractor described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the Owner may, by Notice in Writing, direct the Contractor to stop the Work or stop parts of the Work where the Owner determines that there is an imminent risk to the safety of persons or property at the Place of the Work. In the event that the Contractor receives such notice, it shall immediately stop the Work, secure the Place of the Work, rectify the safety issue to the satisfaction of the Owner, and make up any lost time due to the safety issue, all at the Contractor’s cost. The Contractor shall not be entitled to an extension of the Contract Time or to an increase in the Contract Price.”

16.5 GC 6.5.9

(a) Add GC 6.5.9 as follows:

“6.5.9 Regardless of the reason or cause of delay, the Contractor shall:

- .1 have a duty to mitigate the expenses or costs which may be incurred as a result of any delay, which mitigation measures shall include, but not be limited to, reducing the number of the Contractor’s and Subcontractor’s personnel at the Place of the Work, reducing the amount of supplies or the use of Equipment, and there shall be no reimbursement for any costs or expenses that could reasonably have been mitigated; and
- .2 keep such records and documentation as may be necessary to support any claim for reimbursement for expenses or costs which may be incurred as a result of any delay, including any records or documentation which demonstrates compliance with GC 6.5.9.1, and there shall be no reimbursement for any costs that are not sufficiently supported by such necessary records and documentation, as determined by the Consultant.”

16.6 GC 6.5.10

(a) Add GC 6.5.10 as follows:

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“6.5.10 Any finding or recommendation of the Consultant under GC 6.5 not accepted by either party shall be settled in accordance with PART 8 DISPUTE RESOLUTION.”

**PART 7 DEFAULT NOTICE**

**1.0 GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK, SUSPEND THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

1.1 GC 7.1

(a) Add the words “suspend the work” after the words “perform the work” in the first line of the heading for GC 7.1.

1.2 GC 7.1.5.5

(a) Add GC 7.1.5.5 as follows:

“.5 charge the Contractor for any damages the Owner may have sustained as a result of the default.”

1.3 GC 7.1.7

(a) Add GC 7.1.7 as follows:

“7.1.7 The Owner may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 7.1.1 and 7.1.4, suspend performance of the Work, terminate the Contractor’s right to continue with the Work or terminate the Contract, in whole or in part, by giving Notice in Writing to that effect to the Contractor. Such suspension or termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which either party may have against the other. The Owner’s entitlement to so terminate or suspend shall be absolute and unconditional and exercisable by the Owner in its sole discretion.”

1.4 GC 7.1.8

(a) Add GC 7.1.8 as follows:

“7.1.8 The Contractor upon receiving notice of suspension or termination from the Owner shall suspend all operations as soon

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as reasonably possible except for work which, in the Contractor's opinion, is necessary for the safety of personnel and for the care and preservation of the Work, the materials and plant. Subject to any directions in the notice of suspension or termination, the Contractor shall discontinue ordering materials, facilities, and supplies and make every reasonable effort to delay delivery of existing orders and, in the event of termination, to cancel existing orders on the best terms available."

1.5 GC 7.1.9

(a) Add GC 7.1.9 as follows:

"7.1.9 During any period of suspension, the Contractor shall not remove from the site any part of the Work, or any Product or materials without the consent of the Owner."

1.6 GC 7.1.10

(a) Add GC 7.1.10 as follows:

"7.1.10 If the Work should be suspended for a period of sixty (60) consecutive calendar days or less, the Contractor, upon the expiration of the period of suspension, shall resume the performance of the Work in accordance with the Contract Documents. If the suspension was not due to an act or omission of the Contractor, the Contract Price and Contract Time shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 - Delays."

1.7 GC 7.1.11

(a) Add GC 7.1.11 as follows:

"7.1.11 If after sixty (60) consecutive calendar days from the date of notice of suspension of the Work, the Owner and the Contractor agree to continue with and complete the Work, the Contractor shall resume operations and complete the Work in accordance with any terms and conditions agreed upon by the Owner and the Contractor. Failing such an agreement, the provisions of paragraph 7.2.2 shall become applicable."

1.8 GC 7.1.12

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- (a) Add GC 7.1.12 as follows:

“7.1.12 If the Owner terminates the Contract pursuant to paragraph 7.1.7, the Contractor shall only be entitled to receive payment for all work performed up to the date of termination as certified by the Consultant and the direct costs associated with the termination incurred by the Contractor, including the costs of the demobilization, losses sustained on Products and Construction Equipment and Subcontractor and sub-subcontractor cancellation costs (which costs shall not include loss of profit claims) reasonably incurred by the Contractor. The Contractor shall not be entitled to any additional reimbursement on account of the termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the Contract Documents.”

1.9 GC 7.1.13

- (a) Add GC 7.1.13 as follows:

“7.1.13 Notwithstanding any other provision in the *Contract*, the *Owner* shall not be liable to the *Contractor* for any actual or alleged damages of any kind whatsoever (including without limitation indirect, incidental, special, consequential or other damages, including loss of profits) on account of the publication of a Notice of Termination pursuant to the *Act*, and the *Contractor* waives any claim against the *Owner* related to or arising from the publication.”

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

2.1 GC 7.2.1

- (a) Delete GC 7.2.1 in its entirety.

2.2 GC 7.2.2

- (a) Delete the words “20 Working Days” and substitute the words “sixty (60) consecutive calendar days” in the first line of paragraph 7.2.2.

2.3 GC 7.2.3.1

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- (a) Delete GC 7.2.3.1 in its entirety.

2.4 GC 7.2.3.3

- (a) Add the words “, except where the Owner has a claim against the Contractor for set-off,” after the word Consultant” in GC 7.2.3.3.

2.5 GC 7.2.3.4

- (a) Delete the words “, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,” from the first and second lines of GC 7.2.3.4.

2.6 GC 7.2.4

- (a) Delete the word “5” and replace with “15” and add the following sentence to the end of GC 7.2.4:

“If the default cannot be corrected within the 5 Working Days specified herein, the Owner shall be deemed to have cured the default if it

- .1 commences the correction of the default within the specified time; and
- .2 provides the Contractor with an acceptable schedule for such correction; and
- .3 completes the correction in accordance with such schedule.”

2.7 GC 7.2.5

- (a) Delete GC 7.2.5 in its entirety and replace with following:

“7.2.5 If the Contractor terminates the Contract under the conditions set out above, 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 direct costs associated with termination, including the costs of demobilization, and losses sustained on Products and Construction Equipment. The Contractor shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, indirect, incidental, special, consequential or other damages, including loss of profits, notwithstanding any other provision of the Contract Documents.”

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2.8 GC 7.2.6

- (a) Add GC 7.2.6 as follows:

“7.2.6 The Owner’s withholding of a progress payment, holdback payment or final payment due to the Contractor’s failure to pay a Subcontractor or Supplier, to protect the Owner’s interest in the event of the registration of a lien or receipt of notice of lien, or otherwise pursuant to the terms of the Contract, shall not constitute a default under paragraph 7.2.3 which would permit the Contractor to stop the Work or terminate the Contract. In such circumstances, the Contractor shall continue with the Work.”

2.9 GC 7.2.7

- (a) Add GC 7.2.7 as follows:

“7.2.7 If the Contractor stops the Work or terminates the Contract in accordance with this GC 7.2 – Contractor’s Right To Suspend The Work Or Terminate The Contract, the Contractor shall leave the Place of the Work and the Work in a secure condition.”

**PART 8 – DISPUTE RESOLUTION**

**1.0 GC 8.1 AUTHORITY OF THE CONSULTANT**

1.1 GC 8.1.3

- (a) Delete GC 8.1.3 in its entirety and replace with following:

“8.1.3 Unless the Contract has been terminated or completed, the Contractor shall in every case, regardless of claim or dispute, continue to proceed with the Work with due diligence in accordance with the Consultant’s instructions. It is understood by the parties that such actions will not jeopardize any claim that the parties may have.”

**2.0 GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

2.1 GC 8.2.6

- (a) Delete GC 8.2.6 in its entirety and replace with following:
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“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 GC 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 resolved by arbitration pursuant to 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 any other form of dispute resolution, which they have agreed to use.”

2.2 GC 8.2.7

(a) Delete GC 8.2.7 in its entirety.

2.3 GC 8.2.8

(a) Delete GC 8.2.8 in its entirety.

**PART 9 – PROTECTION OF PERSONS AND PROPERTY**

**1.0 GC 9.1 PROTECTION OF WORK AND PROPERTY**

1.1 GC 9.1.1

(a) Delete GC 9.1.1 in its entirety and replace with following:

“9.1.1 The Contractor shall be responsible for security at the Place of the Work and will take such other security measures as may be necessary in respect of the Work and the Place of the Work, as may be determined by the Owner in its sole discretion, and shall protect the Work, the Place of the Work, the Railway Property, and the Owner’s property and property adjacent to the Place of the Work and the Railway Property from damage which may arise as the result of the Contractor’s operations under the Contract, and shall be responsible for such damage, except damage which occurs as the result of:

.1 errors in the Contract Documents which the Contractor could not have discovered applying the Standard of Care;

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.2 acts or omissions by the Owner, the Consultant, other contractors, and their agents and employees.”

1.2 GC 9.1.2

(a) Delete GC 9.1.2 in its entirety and replace with the following:

“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.”

1.3 GC 9.1.3

(a) Add the words “Railway property,” after the word “Work,” in the first line.

1.4 GC 9.1.4

(a) Add the words, “Railway’s property,” after the word “Work” in the first line of GC 9.1.4 and add the words “and Railway’s property” after the word “property” in the second line of GC 9.1.4.

**2.0 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

2.1 GC 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8

(a) Delete the words “toxic and hazardous substances” from GC 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 and substitute the words “Toxic and Hazardous Substances” in their place.

2.2 GC 9.2.5.5

(a) Add GC 9.2.5.5 as follows:

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

2.3 GC 9.2.7.4

(a) Delete GC 9.2.7.4 in its entirety.

2.4 GC 9.2.8.2

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- (a) Add the words "Railway's property," after the words "damage to the Work," in the first line of GC 9.2.8.2.

**3.0 GC 9.4 CONSTRUCTION SAFETY**

**3.1 GC 9.4.1**

- (a) Delete 9.4.1 in its entirety and replace with the following:

"9.4.1 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with Applicable Law and the Metrolinx Safety Guidelines For Vendors, Consultants and Project Coordinators, and shall be responsible for initiating, maintaining and supervising all safety precautions and programs, in connection with the performance of the Work, in accordance with the Standard of Care."

**3.2 GC 9.4.2**

- (a) Add GC 9.4.2 as follows:

"9.4.2 The Contractor shall assume the role of contractor, constructor, prime contractor, or principal contractor as may apply in accordance with applicable Occupational Health and Safety Legislation at the Place of the Work and provide to the Owner copies of the related Health and Safety notices and documents."

- .1 immediately provide written notice to the Owner of any accident at the Place of the Work causing personal or possible personal injury to any individual, and to immediately provide such details to the Owner, including the identity of the personnel, the nature of such injuries which were suffered or may have been suffered and any other information as the Owner may require or request; and
- .2 participate in or provide to its personnel such health and safety training as the Owner may reasonably require, prior to the Commencement of the Work and from time to time."

**3.3 GC 9.4.3**

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- (a) Add GC 9.4.3 as follows:

“9.4.3 The Contractor represents and warrants that it is familiar with the obligations imposed on an “employer” as defined in the *Occupational Health and Safety Act (Ontario)*, and that it has in place a health and safety program to ensure the health and safety of all workers for which it has responsibility under the said *Act*.”

### 3.4 GC 9.4.4

- (a) Add GC 9.4.4 as follows:

“9.4.4 The Contractor shall comply in all respects with the requirements of the Occupational Health and Safety Act (Ontario) and its own health and safety program to take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under the said Act. The Contractor shall maintain and strictly enforce its health and safety program. The Contractor shall also provide such information within such timeframes as may be required in order to allow the Owner to fulfill its obligations pursuant to the Occupational Health and Safety Act (Ontario), including, without limitation, the obligation to notify the Director under such Act in the event of an accident causing personal injury.”

### 3.5 GC 9.4.5

- (a) Add GC 9.4.5 as follows:

“9.4.5 The Contractor shall comply with all requirements of the Workplace Hazardous Materials System (WHMIS) regarding the use, handling and storage of controlled products.”

### 3.6 GC 9.4.6

- (a) Add GC 9.4.6 as follows:

“9.4.6 Prior to commencing the Work the Contractor shall:

- .1 ensure that all prescribed posting requirements are posted on site for all workers to view;

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- .2 provide a copy of the Contractor's Health & Safety Policy to the Owner;
- .3 prepare and submit to the Owner a Site Specific Safety Plan (Job Safety Analysis);
- .4 review and comply with facility specific hazard, safety and orientation requirements as applicable; and
- .5 prepare and submit site-specific hazardous assessment plans as applicable pertaining to but not limited to: live power work, lock out/tag out/shut down/switch covers, confined space entry, cranes and crane lifts, and other hazardous assessment plans as required."

3.7 GC 9.4.7

- (a) Add GC 9.4.7 as follows:

"9.4.7 The Contractor shall indemnify and save harmless the Owner, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor or any of its Subcontractors or their subcontractors under the construction health and safety legislation applicable to the Place of the Work, including but not limited to, payment of legal fees and disbursements on a full indemnity basis."

3.8 GC 9.4.8

- (a) Add GC 9.4.8 as follows:

"9.4.8 The Owner and/or the Consultant shall have the right, from time to time during the performance of the Work, to perform or cause to be performed, an on-site safety audit of the Work and the Place of the Work. The Owner may identify specific safety issues or Safety Incidents as set out in GC 17, and the Contractor shall address such issues or Safety Incidents promptly to the satisfaction of the Owner, at the Contractor's cost, and provide the Owner with sufficient evidence of correction. No act or omission of the Owner during the audit shall constitute a transfer of liability from the Contractor to the Owner. The Contractor

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remains responsible for ensuring safety of the Work and the Place of the Work.”

**4.0 GC 9.5 MOULD**

4.1 GC 9.5.2.2

- (a) Add the words “Railway’s property,” after the words “damage to the Work,” in the first line of GC 9.5.2.2.

4.2 GC 9.5.3.4

- (a) Delete paragraph 9.5.3.4 in its entirety.

**PART 10 GOVERNING REGULATIONS**

**1.0 GC 10.1 TAXES AND DUTIES**

1.1 GC 10.1.2

- (a) Add the following sentence to the end of GC 10.1.2:

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

1.2 GC 10.1.3

- (a) Add GC 10.1.3 as follows:

“10.1.3 Where the Owner is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or Value Added Taxes (including Harmonized Sales Tax) applicable to the Contract, the Contractor shall, at the request of the Owner or the Owner's representative, assist with the 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 section.”

1.3 GC 10.1.4

- (a) Add GC 10.1.4 as follows:
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“10.1.4 The Contractor shall maintain accurate records of Construction Equipment, Product and component costs reflecting the taxes, customs duties, excise taxes and Value Added Taxes paid.”

### 1.4 GC 10.1.5

(a) Add GC 10.1.5 as follows:

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

### 1.5 GC 10.1.6

(a) Add 10.1.6 as follows:

“10.1.6 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 GC 10.1.”

## **2.0 GC 10.2 LAWS, NOTICES, PERMITS AND FEES**

### 2.1 GC 10.2.1

(a) Add the following sentence to the end of GC 10.2.1:

“The Contractor shall comply with all Applicable Law.”

### 2.2 GC 10.2.3

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- (a) Add the words “The Contractor shall provide the Owner with copies of all such permits, licenses, inspections and certificates.” at the end of GC 10.2.3.

### 2.3 GC 10.2.4

- (a) Delete the word “laws” and substitute the words “Applicable Laws” in the first line of GC 10.2.4.
- (b) Delete the words “or codes” and substitute the words “codes, and industry best practices and guidelines” after the word “regulations,” in the first line of GC 10.2.4.
- (c) Add the words “to the environment,” after the words “relate to the Work,” in the second line of GC 10.2.4.
- (d) Add the words “The Contractor shall provide the Owner with copies of all such required notices and related health and safety documents.” at the end of GC 10.2.4.

### 2.4 GC 10.2.5

- (a) Delete the word “The” and substitute the words “Subject to GC 3.4.1, the” at the beginning of GC 10.2.5.
- (b) Delete the words “applicable laws” and substitute the words “Applicable Laws” in the third line of GC 10.2.5.

### 2.5 GC 10.2.6

- (a) Delete GC 10.2.6 in its entirety and replace with the following:

“10.2.6 If the Contractor fails to notify the Owner and the Consultant in writing, fails to obtain direction as required in GC 10.2.5, and/or performs work that it knows or ought to have known that contravenes Applicable Laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the Contractor shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, and, notwithstanding any limitations described in GC 12.1.1, shall indemnify and hold

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harmless the Owner and the Consultant from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure or breach of law."

2.6 GC 10.2.8

- (a) Add GC 10.2.8 as follows:

“10.2.8 Without limiting the generality of any other provision in the Contract Documents, the Contractor shall cause all certificates to be furnished that are required by or given by the appropriate governmental or quasi-governmental authorities as evidence that the Work as installed conforms with Applicable Laws and regulations of any authorities having jurisdiction over the Place of the Work, including, without limitation, 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 or quasi-governmental authorities furnish such certificates.”

**3.0 GC 10.4 WORKER’S COMPENSATION**

3.1 GC 10.4.1

- (a) Add the words “with each application for progress payment,” after the word “Work,” in the first line of GC 10.4.1.
- (b) Add the words “the Certificate of Clearance and” after the word “provide” in the third line of GC 10.4.1 .

**PART 11 INSURANCE AND CONTRACT SECURITY**

**1.0 GC 11.1 INSURANCE**

1.1 GC 11.1

- (a) Delete GC 11.1 INSURANCE in its entirety and replace with the following:

“GC 11.1 INSURANCE

11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, and unless the Owner and the Contractor agree to obtain project-specific insurance, or higher insurance limits, the Contractor shall provide, maintain, and pay for the

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minimum insurance coverages specified in GC 11.1 - INSURANCE.

.1 General Liability Insurance:

The policy shall be in the joint names of the Contractor, the Owner and the Consultant with limits of not less than ten million dollars (\$10,000,000) per occurrence. The insurance coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. Umbrella or excess liability insurance may be used to achieve the desired limit. Where the Contractor maintains a single, blanket policy, the addition of the Owner is limited to liability arising out of the Work and all operations necessary or incidental thereto. Completed Operations Liability coverage shall be maintained continuously from the commencement of the Construction until two (2) years after the date of Substantial Performance of the Work. The policy shall include a waiver of subrogation against Owner.

.2 Automobile Liability Insurance:

The policy covers for bodily injury, death, and damage to property with respect to all licensed vehicles owned or leased by the Contractor. The policy shall have limits of not less than five million dollars (\$5,000,000) inclusive per occurrence. If the policy is issued pursuant to a government-operated automobile insurance system, the Contractor shall provide the Owner with confirmation of automobile insurance coverage for all automobiles registered in the name of the Contractor.

.3 Aircraft and Watercraft Liability Insurance: Not Applicable

.4 Property and Boiler and Machinery Insurance:

.1 All Risks Property Insurance:

All Risks Property Insurance shall be in the joint names of the Contractor, the Owner, the Consultant and all Subcontractors. The insurance coverage shall not be less than the insurance required by IBC

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Forms 4042 and 4047, or their equivalent replacement. The insurance provided shall have limits of not less than the sum of the amount of the Contract Price, the applicable Value Added Taxes, and the full value of products provided by the Owner for incorporation into the Work as specified in the Contract Documents. The policy shall include a waiver of subrogation against the Owner.

.2 **Boiler and Machinery Insurance:**

Boiler and Machinery Insurance shall be in the joint names of the Contractor, the Owner, the Consultant, and all Subcontractors. The insurance coverage shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form". The insurance provided shall have limits of not less than the replacement value of the boilers, pressure vessels, and other insurable objects forming part of the Work. The policy shall include a waiver of subrogation against the Owner.

.3 The policy/policies shall allow for partial or total use or occupancy of the Work. If because of such use or occupancy the Contractor is unable to provide coverage, the Contractor shall notify the Owner in writing. Prior to such use or occupancy, the Owner shall provide, maintain, and pay for all risk property and boiler insurance in the amounts described in subparagraphs (1) and (2), including coverage for such use or occupancy and shall provide the Contractor with proof of such insurance. The policies shall be amended to include permission for completion of Construction and shall include all insureds as specified in subparagraph (1). The Contractor shall refund to the Owner the unearned premiums applicable to the Contractor's policies upon termination of coverage.

.4 The policy/policies shall provide that, in the case of a loss or damage, payment shall be made to the Owner and the Contractor as their respective

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interests may appear. The Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurers. 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 Contract except that the Contractor shall be entitled to a reasonable extension of Contract Time.

- .5 The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, 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 as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT. In addition the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work.
- .6 In the case of loss or damage to the Work arising from the work of another contractor, or Owner's own forces, the Owner, in accordance with the Owner's obligations under paragraph 3.2.2.4 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and as provided in GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 - PROGRESS PAYMENT.

.5 Equipment Insurance:

The policy covers construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels. The policy shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner. Subject to satisfactory proof of financial capability by the Contractor for self-

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insurance, the Owner agrees to waive the equipment insurance requirement.

.6 Pollution Liability Insurance:

The contractor shall, at its own expense, obtain and maintain project-specific Pollution Liability Insurance with a limit of liability of not less than five million (\$5,000,000) per pollution condition and in the aggregate, including 24 months completed operations coverage, against claims for on-site clean-up of new pollutant conditions, third party claims for on-site bodily injury and property damage, and off-site clean up caused by a pollution or contamination incident resulting from covered operations.

.7 Professional Liability (Errors and Omissions) Insurance:

The policy shall provide professional liability insurance covering the professional services rendered by the contractor or its subs of any tier, and/or any engineers/architects/surveyors/consultants and any of their servants or employees including personnel on loan to the contractor or its subs of any tier and personnel who perform normal services of the contractor under this Contract. The policy shall have a limit of liability of not less than five million (\$5,000,000) per occurrence and in the policy aggregate. The policy shall be maintained at all times during the term of this Contract plus coverage for an extended reporting period of not less than thirty-six (36) months.

11.1.2 Unless otherwise stipulated, the duration of each insurance policy shall be from the date of Commencement of the Work until the date of the final certificate for payment.

11.1.3 The Contractor shall be responsible for deductible amounts under the policies except where otherwise provided in GC 11.1 - INSURANCE or where such amounts may be excluded from the Contractor's responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

11.1.4 Proof of Insurance Coverage:

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- .1 Prior to Commencement of Work and upon the placement, 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.
  - .2 Certificates for General Liability Insurance shall include, in addition to the Contractor the following as additional insureds:
    - .1 Metrolinx;
    - .2 Planmac Engineering Inc.
  - .3 Certificates of All Risks Property Insurance and Boiler and Machinery Insurance shall include the Owner, Consultant and all Subcontractors as additional insureds.
  - .4 All Certificates of Insurance shall also include the Contract name and number.
- 11.1.5 Where the full insurable value of the Work is substantially less than the Contract Price, the Owner may reduce the amount of insurance required or waive one or more of the types of insurance requirement.
- 11.1.6 If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence to the Contractor and the Consultant. The Contractor shall pay the cost thereof to the Owner on demand or the Owner may deduct the amount which is due or may become due to the Contractor.
- 11.1.7 All required insurance policies shall be placed with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.
- 11.1.8 All required insurance policies shall be endorsed to provide the Owner with not less than thirty (30) days' notice in writing in advance of any cancellation and material amendment or change restricting coverage.
- 11.1.9 All insureds shall cooperate with the Contractor to comply with any reporting requirements of the insurance policies in order to maintain the
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policies in good standing, to give notice in writing of any incidents which may result in a claim or loss covered by the policies and to provide documentation necessary in the defence or settlement of claims.

11.1.10 The Contractor shall be responsible for providing proof of insurance renewals to the Owner or the Owner's third party representative, via submission of updated insurance certificates, throughout the term of the Contract.

**2.0 GC 11.2 CONTRACT SECURITY**

2.1 GC 11.2.1

(a) Delete the "prior to commencement of the *Work* or within the specified time" and replace with "no later than upon entering into the *Contract*".

(b) Add the following to the end of GC 11.2.1:

"The Contractor shall provide and maintain the following Contract security:

.1 Performance Bond and a Labour and Materials Payment Bond each equal to fifty percent (50%) of the Contract Price"

2.2 GC 11.2.2

(a) Replace the period at the end of the paragraph with: "or in accordance with the forms prescribed by the *Act*, if applicable."

2.3 GC 11.2.3

(a) Add GC 11.2.3 as follows:

"11.2.3 The premiums for the bonds required by the Contract Documents are included in the Contract Price. On or before entering into the *Contract*, the Contractor shall promptly provide the Owner with confirmation of the Contract security with documentary evidence and thereafter provide confirmation and evidence of up-to-date Contract security from time to time upon request by the Owner. If approved changes pursuant to the Contract result in approved increases to the Contract Price, the Contractor shall promptly acquire additional bonding and provide the Owner with confirmation and evidence of the up-to-date Contract security."

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**PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY**

**1.0 GC 12.1 INDEMNIFICATION**

1.1 GC 12.1.1

- (a) Delete paragraph 12.1.1 in its entirety and replace with the following:

“12.1.1 Without restricting the Contractor’s obligation to indemnify as described in paragraph 12.1.4, the Contractor shall indemnify and hold harmless the Owner from and against all claims, demands, losses, costs, damages, actions, suits or proceedings whether in respect to losses suffered by the Owner or in respect to claims by third parties that arise out of, or are attributable in any respect to the Contractor’s involvement as a party to this Contract, provided such claims are caused by:

- .1 the negligent acts or omissions of the Contractor or anyone for whose acts or omissions the Contractor is liable, or
- .2 a failure of the Contractor to fulfil the terms or conditions of the Contract; and
- .3 made by Notice in Writing within a period of six years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE THE WORK or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario.
- .4 The Owner expressly waives the right to indemnity for claims other than those provided for in this Contract.”

1.2 GC 12.1.2

- (a) Delete GC 12.1.2 in its entirety.

**2.0 GC 12.1.3**

- 2.1 Delete the words “either party to indemnify the other” and substitute the words “the Contractor to indemnify the Owner” in the first line of GC 12.1.3.
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**3.0 GC 12.1.4**

3.1 Delete the words “The Owner and the Contractor shall indemnify and hold harmless the other” and substitute the words “The Contractor shall indemnify and hold harmless the Owner” in the first line of GC 12.1.4.

3.2 (Delete the word “their” and substitute the words “the Contractor’s” in the second line of GC 12.1.4.

**4.0 GC 12.1.5**

4.1 Delete GC 12.1.5 in its entirety.

**5.0 GC 12.1.6**

5.1 Delete the words “or the Contractor” from the first line.

(a) GC 12.1.6.2

(i) Delete GC 12.1.6.2 in its entirety and replace with the following:

“12.1.6.2 Should the Contractor be required as a result of its obligation to indemnify the Owner to pay or satisfy a final order, judgment or award made against the Owner, then the Contractor upon assuming all liability for any costs that might result shall have the right to appeal in the name of the Owner until such rights of appeal have been exhausted.”

**6.0 GC 12.1.7**

6.1 Add GC 12.1.7 as follows:

“12.1.7 Notwithstanding anything contained in the Contract Documents to the contrary, the Owner shall have the right to set-off the amount of any claims for which Notice in Writing has been given by the Owner to the Contractor in accordance with GC 6.6 CLAIMS FOR A CHANGE TO CONTRACT PRICE or GC 12.1 INDEMNIFICATION against any amounts which may be otherwise owing or payable to the Contractor pursuant to the terms of the Contract.”

**7.0 GC 12.1.8**

7.1 Add GC 12.1.8 as follows:

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“12.1.8 In addition to and without limiting any other rights the Owner may have under this Contract and at law, the Owner may retain from monies owing to the Contractor under this Contract, at any time, an amount sufficient to cover any outstanding or disputed liabilities including the cost to remedy deficiencies in the Work, the reduction in value of substandard portions of the Work, claims for damages by third parties, undetermined claims by the Owner, and any assessment due to the Workplace Safety and Insurance Board.”

### **8.0 GC 12.2 WAIVER OF CLAIMS**

#### 8.1 GC 12.2.1.2 and 12.2.1.3

- (a) Delete GC 12.2.1.2 and GC 12.2.1.3 in their entirety.

#### 8.2 GC 12.2.2

- (a) Delete the words “those referred in paragraphs 12.2.1.2 and 12.2.1.3 and from GC 12.2.2”.

### **9.0 GC 12.3 WARRANTY**

#### 9.1 GC 12.3

- (a) Delete GC 12.3 in its entirety and replace with the following:

“12.3.1 The Contractor warrants and covenants that the Work (including and all Products, parts and workmanship, including those replaced during the Warranty Period), shall,

- .1 conform to the requirements and specifications, and perform as set out in this Contract, the Standard of Care and Applicable Law;
  - .2 be free of defects and deficiencies;
  - .3 be new, of good quality material, of merchantable quality and fit for their intended purpose as described in the Contract Documents; and
  - .4 materials and equipment shall be of good quality and in compliance with this Contract.
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- 12.3.2 The Contractor warrants the above GC 12.3.1 for the applicable Warranty Period.
- 12.3.2 The Contractor shall be responsible for the proper performance of the Work to the extent that the design and Contract Documents permit such performance.
- 12.3.3 The Owner shall promptly give the Contractor notice in writing of observed defects and deficiencies that occur during the Warranty Period.
- 12.3.4 The Contractor shall be responsible for obtaining Product warranties in excess of two (2) years, if specified in the Contract Documents, on behalf of the Owner from the manufacturer. These Product warranties shall be issued by the manufacturer to the benefit of the Owner.
- 12.3.5 The Contractor shall assign to the Owner all warranties, guarantees or other obligations for Work, services or Products performed or supplied by any Subcontractor, Supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party's contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the Owner under the Contract Documents. Until the expiry of the relevant Warranty Periods enforceable against the Contractor, the Owner shall have in its custody all warranties, guarantees and other obligations of the third parties and the Contractor and the Owner shall not directly exercise any rights under such warranties, guarantees or other obligations without first notifying the Contractor thereof and giving the Contractor the opportunity to correct the relevant defect, or cause it to be corrected.
- 12.3.6 The Contractor shall commence to correct any deficiency within ten (10) Working Days or a longer period of time as agreed to by the Parties acting reasonably, after receiving a notice in writing from the Owner, and shall complete the correction as expeditiously as possible, except that in case the deficiency would prevent maintaining security, compromise safety or keeping basic systems essential to the ongoing business of the Owner, operational as designed, all necessary corrections and/or installation of temporary replacements shall be carried out immediately as an emergency service at the Contractor's
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expense. If the Contractor fails to provide this emergency service within twenty-four (24) hours of a request made in writing during the normal business hours of the Contractor, Owner is authorised to carry out all necessary repairs or replacements at the Contractor's expense.

- 12.3.7 The Contractor warrants any redesigned, repaired or replaced Work against defective materials and workmanship for two (2) years from and after the date of acceptance by the Owner of the redesigned, repaired or replaced Work thereof.
- 12.3.8 The carrying out of warranty work and making good of defects shall be executed at times convenient to the Owner and this may require work outside of normal working hours at the Contractor's expense.
- 12.3.9 Specified Warranty Periods shall not be construed as limiting any indemnification provisions herein.
- 12.3.10 The remedies of the Owner set forth above shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any provisions of the Contract Documents and the periods referred to above, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the Owner may pursue such other action or remedy.
- 12.3.11 During each Warranty Period, the Contractor shall correct and make good all defects arising in respect of the Work, at its own cost. For greater certainty, the Contractor is required to correct and make good any defects related to any Product and any equipment during the applicable Warranty Period despite the Contractor having obtained on the Owner's behalf industry-standard or other equipment warranties.

### 12.3.12 **Intentionally Deleted**

## **10.0 GC 13 FRENCH LANGUAGE SERVICES**

10.1 Add GC 13 FRENCH LANGUAGE SERVICES as follows:

“GC 13 FRENCH LANGUAGE SERVICES

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13.1 Definitions

- .1 "French Language Services Act" means the French Language Services Act, R.S.O. 1990, c.F. 32, as amended.
- .2 "French-designated Area" means an area designated from time to time in the Schedule to the French Language Services Act (Ontario). A map and complete listing of French-designated areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.

13.2 French Language Services

- .1 Insofar as this Contract relates to the provision of Services directly to the public on behalf of the Owner, the French Language Services Act, R.S.O. 1990, c. F. 32 and any amendments thereto (hereinafter referred to as "the FLSA") shall be applicable.
  - .2 A person has the right in accordance with the FLSA to communicate in French with, and to receive available services in French where the Contractor's work is located in or serves an area designated in the FLSA Schedule. It shall be the Contractor's responsibility to provide translation services to any person making such a request as per R.S.O. 1990, c. F.32, s. 5(1).
  - .3 A service refers to any service or procedure provided to the public, including communications.
  - .4 Services being provided in French must be equivalent to those offered in English, available within the same timeframe and of the same quality.
  - .5 Services and communications in designated areas include, but are not limited to:
    - .1 Consultations/Public Meetings
    - .2 Presentation materials, displays, comment cards/feedback mechanism or other materials are available in French. Contractor has at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. When relevant, the
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Contractor will compile and analyze the views of Francophones separately, because they may have different concerns.

- .3 Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage will be bilingual.
- .4 Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information will be bilingual.
- .5 Advertising, promotion, publicity will be undertaken in English and French. A list of Francophone media is available at: <http://www.ofa.gov.on.ca/en/franco-media.html>.
- .6 The Contractor will have a bilingual staff available to attend consultations or public meetings.
- .7 The Contractor will have a staff or procure the services of a professional translator or interpreter, accredited by the Association of Translators and Interpreters of Ontario. <http://www.atio.on.ca/>

### **11.0 GC 14 CONTRACTOR WORK PERFORMANCE RATING**

11.1 Add GC 14 CONTRACTOR WORK PERFORMANCE RATING, as follows:

#### **“GC 14 CONTRACTOR WORK PERFORMANCE RATING**

- 14.1 The Owner shall during the term of the Contract, maintain a record of the performance of the Contractor completing Work for the Owner. This information shall be used to complete a “Contract Performance Appraisal” report, a copy of which will be forwarded to the Contractor upon completion of Total Performance of the Work. Interim “Contractor Performance Appraisal” reports may be issued, as deemed appropriate by the Owner, at any time during the term of the Contract. A copy of the Contract Performance Appraisal template can be found under “Attachments”.
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- 14.2 The overall history of the Contractor in performing work for the Owner, including the Contractor's performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Contractor.
- 14.3 The Owner shall not be held liable for any administrative delays in updating VPR scores, which could result in a Vendor being bypassed for award on any procurement processes.
- 14.4 The Owner reserves the right during any procurement process, to reject any submissions by the Contractor due to unsatisfactory performance history with the Owner.
- 14.5 Non-compliance with Contract requirements will be identified to the Contractor.
- 14.6 The performance category on the Contract Performance Appraisal may be revised by Metrolinx subject to Change Orders. In such instances, the Contractor shall be notified via written communication of the change.
- 14.5 The information contained in the "Contract Performance Appraisal" may be provided to the Ministry of Transportation, other ministries and other government agencies. Such performance reviews may be relied upon to reject the Contractor's submission and disqualify a company from providing a bid on future procurements. This section shall survive any termination or expiry of this Contract."

### **12.0 GC 15 CONFLICT OF INTEREST**

- 12.1 Add GC 15 CONFLICT OF INTEREST, as follows:

#### **"GC 15 CONFLICT OF INTEREST**

- 15.1 For the purposes of this Contract, a "Conflict of Interest" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, 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.
-

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15.2 The Contractor shall:

- .1 avoid all 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; and
- .3 comply with any requirements prescribed by the Owner to resolve any Conflict of Interest.

15.3 In addition to all other contractual rights or rights available at law or in equity, Owner shall have the right to immediately terminate this Contract, by giving Notice in Writing to the Contractor, where:

- .1 the Contractor fails to disclose an actual or potential Conflict of Interest;
- .2 the Contractor fails to comply with any requirements prescribed by Owner to resolve a Conflict of Interest; or
- .3 the Contractor's Conflict of Interest cannot be resolved.

15.4 This section shall survive any termination or expiry of this Contract.

**13.0 GC 17 LIQUIDATED DAMAGES**

13.1 Add GC 17 LIQUIDATED DAMAGES, as follows:

“GC 17 – Liquidated Damages

**17.1 LIQUIDATED DAMAGES FOR FAILURE TO ACHIEVE  
SUBSTANTIAL PERFORMANCE OF THE WORK**

- .1 The Contractor acknowledges and agrees that the Owner will suffer harm in the event the Work is delayed and the date for Substantial Performance of the Work is not met. The Contractor further acknowledges and agrees that it is extremely difficult to determine the actual damages that the Owner will suffer as a result of such late Substantial Performance of the Work and that the amounts stated herein represent a reasonable estimate of such damages.
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.2 The Contractor shall be assessed liquidated damages as follows:

.1 Liquidated Damages in the amount of one hundred Dollars (\$100.00) per Working Day for each and every Working Day that the completion of the Work for Substantial Performance of the Work, as may be amended by Change Order, exceeds the date of Substantial Completion of the Work. The maximum amount assessed for liquidated damages pertaining to Substantial Performance of the Work shall not exceed one thousand Dollars (\$1,000.00).

### 17.2 LIQUIDATED DAMAGES FOR SAFETY INCIDENTS

.1 The Contractor acknowledges and agrees that the Owner will suffer harm in the event of any breach, act or omission of the Contractor that does or can reasonably be expected to create a threat to the health, safety or security of any person or user at the Place of the Work including other members of the public (each, a "Safety Incident").

.2 Whether a Safety Incident has occurred, and the categorization of it as Major Safety Incident or Minor Safety Incident, shall be determined in accordance with this provision by the Owner in its sole discretion in accordance with this Section 17.2.

.3 Minor Safety Incidents

a. A Minor Safety Incident is an incident giving rise to health, safety or security concerns, but not a Major Safety Incident, and may include, but is not limited to: failure to notify the Owner of a safety issue or incident, or a failure to wear personal protective equipment. The occurrence of any of the following events shall constitute a Minor Safety Incident:

i. The Contractor fails to notify the Owner in a timely manner of any event or happening that occurs for which notification is required under this Contract.

ii. The Contractor or any Contractor Personnel are present at the Place of Work and are not wearing

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personal protective equipment as required under CSMP in the circumstances.

iii. The Contractor or any Contractor Personnel fail to comply with CSMP standards at any time while acting in furtherance of any obligations under the Contract.

iv. A failure by the Contractor to punctually submit safety reports as required periodically by the Contract.

- b. For each and every Minor Safety Incident that occurs, the Contractor shall pay the Owner liquidated damages in the amount of One Thousand dollars (\$1000.00) for administrative costs incurred by the Owner to review and, if necessary, address, rectify or cause to be rectified any or all failures which caused or contributed to the Minor Safety Incident and prevent the recurrence of same.

#### .4 Major Safety Incidents

- a. A Major Safety Incident is a a material breach or threat to the health, safety or security of any person or user of the Place of Work, and may include, but is not limited to: work proceeding without an approved work plan, incident causing injury to a person, risk to public safety, or incident giving rise to a report to, or charge or stop work order by the Ministry of Labour. The occurrence of any of the following events shall constitute a Major Safety Incident:
- i. The Contractor or any Contractor Personnel proceed with the Work without appropriate approval pursuant to Contract requirements.
- ii. The Contractor or any Contractor Personnel perform any portion of the Work without the track protection required for that portion of the Work, as the case may be.
- iii. An injury occurs at the Place of Work which is reportable to the Ministry of Labour, including without limitation fatal injuries.
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- iv. An incident occurs at the Place of Work which gives rise to a report to, charge or stop work order by the Ministry of Labour.
  - b. For each and every Major Safety Incident that occurs, the Contractor shall pay the Owner liquidated damages in the amount of Fifteen Thousand dollars (\$15,000.00) for administrative costs incurred by the Owner to interface with the Ministry of Labour, if necessary, in regard to the Major Safety Incident and to review, address and rectify, or cause to be rectified, as the case may be, the failures which caused or contributed to the Major Safety Incident and to prevent the recurrence of same.
  - .5 To ensure clarity, the liquidated damages in this Section 17.5 concern only and are limited to direct administrative costs incurred by the Owner for the administration of safety compliance and related due diligence conducted in accordance with and in furtherance of the Owner's legal and professional obligations to be informed of, monitor and understand workplace safety risks and to reduce, limit and, where possible, prevent potential or actual risks to safety at the Place of Work. The liquidated damages in this Section 16.4 in no way apply to or limit damages available to the Owner in respect of property damage sustained by the Owner or otherwise limit the scope of any indemnity in this Contract regarding claims that may be made against the Owner as a result of or related to any Safety Incident.
  - .6 The Contractor acknowledges and agrees that the liquidated damages in this Section 17.5 constitute a genuine estimate of the administrative costs that the Owner will incur, as described in Section 17.5(5), upon the occurrence of a Minor Safety Incident or a Major Safety Incident, as the case may be, and further acknowledges and agrees that submitting a Submission indicates an unequivocal acceptance by the Contractor that the costs calculus in this Section 17.5 represents bona fide liquidated damages and not a penalty.
  - .7 The Owner shall have the right to set-off any amount owed by the Contractor to the Owner for liquidated damages pursuant to this Section 17.5.
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- .8 Nothing in this Section 17.5 shall limit the rights of the Owner to place the Contractor in default for any Safety Incident, nor limit the legal rights of the Owner in respect of claims against the Contractor for damages resulting from any Safety Incident or default, whether related to a Safety Incident or otherwise.
- 17.3 The Contractor acknowledges and agrees that any amounts payable pursuant to this GC 17 - Liquidated Damages shall not be construed as a penalty imposed on the Contractor by the Owner. The Contractor agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this GC 17 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred. The Contractor acknowledges and agrees that all liquidated damages pursuant to GC 17 shall be payable whether or not the Owner incurs or mitigates these damages, and that Owner shall have no obligation to mitigate these damages.
- 17.4 The Owner shall have the right to deduct the amount of any and all liquidated damages assessed against the Contractor under this GC 17 – Liquidated Damages from any amount due to the Contractor at any time.
- 17.5 Except as expressly provided herein, nothing in this GC 17 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Owner under any other provision of the Contract.

### 14.0 GC 18 SUBSTITUTING FORMS OF HOLDBACK

- 14.1 Add GC 18 SUBSTITUTING FORMS OF HOLDBACK, as follows:

“GC 18 – SUBSTITUTING FORMS OF HOLDBACK

#### 18.1 SUBSTITUTING FORMS OF HOLDBACK

- .1 The *Contractor* may, at any time, submit an application in writing to the *Owner* requesting that all or any holdbacks being retained by the *Owner* in the form of funds be replaced with one or more of the following forms of holdback: a letter of credit (in the form prescribed by the *Act*), a demand-worded holdback repayment bond (in the form prescribed by the *Act*) or any other form of holdback prescribed by the *Act*.
- .2 If the *Owner* agrees to a request made by the *Contractor* under subparagraph 18.1.1, the *Owner* shall notify the *Contractor* that
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it agrees to the *Contractor's* request and the *Contractor* shall then proceed to obtain and provide to the *Owner* the agreed upon substitute form(s) of holdback. Once the *Contractor* has provided the agreed upon substitute form(s) of holdback to the *Owner* and the *Owner* has satisfied itself that the substitute form(s) of holdback are in the appropriate form and are consistent with the form agreed upon by the parties, the *Owner* shall release to the *Contractor* the holdback funds retained.

- .3 Notwithstanding any other provision in the *Contract*, the *Owner* is under no obligation whatsoever to agree to any requests made by the *Contractor* under subparagraph 18.1.1. For greater certainty, the *Owner* has absolute and unfettered discretion in determining whether or not to accept or reject a request made by the *Contractor* under subparagraph 18.1.1.

END OF SECTION

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## GENERAL CONDITIONS OF THE CONTRACT

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### **1.0 General Conditions of the Contract**

- 1.1 The “General Conditions of the Stipulated Price Contract” of CCDC 2 2008 Stipulated Price Contract are herein called the General Conditions of the Contract and shall constitute the General Conditions of this Contract in their entirety as amended by the Supplementary General Conditions of the Contract herein. CCDC 2 2008 is available for purchase on [www.ccdc.org](http://www.ccdc.org).

END OF SECTION

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## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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### **1.0 Documents Required**

1.1 Maintain at the Place of Work, one (1) copy of following:

- (a) Contract Drawings;
- (b) Specifications;
- (c) Addenda;
- (d) Reviewed Shop Drawings;
- (e) Change Orders;
- (f) Other modifications to Contract;
- (g) Field test reports; and
- (h) Contractor's Occupational Health and Safety Policy, the program to implement the Occupational Health and Safety Policy and the Site Safety Plan.

### **2.0 Work Schedule**

2.1 Interim reviews of Work progress based on schedule submitted by the Contractor will be conducted. Update Contractor's schedule and cash flow chart when requested by Consultant.

### **3.0 Hours of Work**

3.1 The Contractor's hours of Work for this Contract are 9:30a.m. to 3:30p.m., Monday to Sunday, statutory holidays excluded.

3.2 Hours other than those stated in 3.1 may be allowed with prior written approval from the Owner.

### **4.0 Subcontractors and Suppliers**

4.1 The Contractor shall submit within five (5) Working Days of execution of the Contract a complete list of Subcontractors and Suppliers that shall include the names of all Subcontractors and Suppliers that will be employed to perform or supply the following Divisions or Sections of the Work:

- (a) Not Applicable
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## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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### 4.2 Pre-qualified Subcontractors and Suppliers

- (a) Contractors shall note that for some Sections or Divisions of the Work specific Subcontractors or Suppliers may be named in the Contract Documents as having been pre-qualified to perform or supply that Section or Division of Work. In such instances only those Subcontractors or Suppliers are to be named as performing or supplying, and shall perform or supply, those Sections or Divisions of the Work. The Contractor shall not use "Own Forces" for such Sections or Divisions of the Work unless the Contractor is named in the Contract Documents as having been pre-qualified for the Section or Division of the Work.
- (b) Where more than one Subcontractor or Supplier is named as having been pre-qualified to supply a Section or Division of the Work, the Contractor shall select one of its own choice from those so named.
- (c) Only the following pre-qualified Subcontractors below are permitted to perform the Work of this Section of this Contract. No other Subcontractor will be permitted to perform this Work. The Contractor shall not use its "Own Forces" for this section of the Work unless its name appears on the list below.
  - (i) Authorized Utility Contractors
    - (A) Bell / 360, Rogers Fibre Allstream:
- (d) The Contractor shall not change the identified Subcontractors or Suppliers listed without written consent of Owner.

## 5.0 Certificate of Recognition

- 5.1 The Contractor shall maintain a valid COR™ "Certified" status with IHSA throughout the Term of the Contract, unless one of the following criteria has been met:
    - (a) The Contractor maintains a valid OHSAS 18001 certification and has initiated the process to obtain COR™ Certified status in Ontario, through IHSA. Prior to commencement of the Work, the Contractor shall provide proof of COR™ Registered status. The Contractor shall achieve COR™ Certified status through IHSA, within eighteen (18) months from the commencement date of the Work of this Contract.
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## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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(b) The Contractor maintains a valid Out-of-Province COR™ Certified status and has initiated the process to obtain COR™ Certified status in Ontario, through IHSA. Prior to commencement of the Work, the Contractor shall provide proof of COR™ Registered status. The Contractor shall achieve COR™ Certified status through IHSA, within eighteen (18) months from the commencement date of the Work of this Contract.

5.2 For more information about COR™ and the certification process in Ontario, please contact:

(a) Infrastructure Health and Safety Association (IHSA)  
5110 Creebank Road, Suite 400  
Mississauga, Ontario  
L4W 0A1  
Email: cor@ihsa.ca  
Website: www.ihsa.ca/cor  
Telephone: 1-800-263-5024

### **6.0 Contractor's Use of Site**

6.1 Perform Work in a manner that will interfere as little as possible with the Owner's operations.

6.2 Storage of materials and equipment and Contractor's temporary office must be contained within designated Contractor's area(s).

6.3 Schedule deliveries to interfere as little as possible with the Owner's operations.

6.4 Park on site only within the designated Contractor's area.

### **7.0 Codes and Standards**

7.1 Perform Work in accordance with Ontario Building Code, Ontario Hydro Electrical Safety Code and applicable acts administered by other authorities having jurisdiction.

7.2 Work to meet or exceed requirements of specified standards, codes and referenced documents.

7.3 Codes, specification standards, manuals and installation, application and maintenance instructions, referred to in the Contract Documents shall be of latest published editions at date of closing of Tender.

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## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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### **8.0 Project Meetings**

- 8.1 Hold project meetings at times and locations approved by Consultant.
- 8.2 Notify parties concerned of meetings, to ensure proper co-ordination of Work.
- 8.3 Designated parties shall take required action on decisions made at meeting. Consultant will record minutes of meetings and distribute to parties prior to next meeting.

### **9.0 Sublet of Work**

- 9.1 Administration, supply and installation of Work specified is the sole responsibility of Contractor.

### **10.0 Examination**

- 10.1 Examine site of Work, and investigate all matters relating to nature of Work to be undertaken.
- 10.2 Examine areas to receive specific Work and ensure that conditions are satisfactory to receive subsequent Work. Do not proceed with subsequent work, until unsatisfactory conditions are corrected.

### **11.0 Setting Out of Work**

- 11.1 Setting out of Work is sole responsibility of the Contractor.
- 11.2 Lay out Work in accordance with Contract Drawings.
- 11.3 Verify all grades, lines, and levels and dimensions indicated, and report errors or inconsistencies to the Consultant before commencing Work or as soon as discovered.

### **12.0 Location of Equipment and Fixtures**

- 12.1 Location of equipment, fixtures and outlets indicated or specified are to be considered as approximate. Final actual placement location within a reasonable distance from that shown on Drawings shall be carried out at no additional cost to the Owner.
  - 12.2 Locate equipment, fixtures and outlets to provide minimum interference and maximum usable space and in accordance with manufacturer's recommendations for safety, access and maintenance.
-

## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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- 12.3 Obtain manufacturer's literature for roughing in and hook-up of equipment and fixtures.
- 12.4 Inform the Consultant of impending installation and obtain his approval for final actual location.
- 12.5 Submit field drawings to indicate relative position of various services and equipment when requested by Consultant.

### **13.0 Concealment**

- 13.1 Conceal wiring in wall and ceiling construction of finished areas except where indicated otherwise.
- 13.2 Cutting, Fitting and Patching
  - (a) Execute cutting, fitting and patching required to make Work fit properly together.
  - (b) Where new Work connects with existing and where existing Work is altered, cut, patch and make good to match existing Work.
- 13.3 Obtain Consultant's approval before cutting, boring or sleeving load-bearing members.
- 13.4 Make cuts with clean, true, smooth edges. Make patches inconspicuous in final assembly.

### **14.0 Existing Services**

- 14.1 Before commencing Work, establish location and extent of service lines in area of Work and notify the Owner of findings.
- 14.2 Where unknown services are encountered, immediately advise authorities having jurisdiction and Consultant and confirm findings in writing.
- 14.3 Record locations of maintained, re-routed and abandoned service lines.

### **15.0 Protection**

- 15.1 Contractor is cautioned to use appropriate construction methods in order to fully protect existing building(s) or plant from any damage. These facilities shall be inspected prior to construction and existing defects noted in a written report, witnessed by Consultant. Repair or restore defects resulting from construction
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## GENERAL REQUIREMENTS: GENERAL INSTRUCTIONS

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under this Contract to the satisfaction of the Owner, at no additional expense to the Owner.

### **16.0 Trades Qualification**

- 16.1 The Contractor shall ensure that persons (trades workers) performing work that the Trades Qualification and Apprenticeship Act (TQAA) sets out certification requirements for, are properly qualified under the TQAA.
- 16.2 The Contractor shall further ensure these trades workers can, upon request, provide written proof of TQAA trades qualification, such as a certificate of qualification or apprenticeship contract, to the Owner, the Consultant or other authority having jurisdiction.

### **17.0 Additional Drawings**

- 17.1 Consultant may furnish additional Drawings to assist proper execution of Work. These Drawings will be issued for clarification only. Such Drawings shall have the same meaning and intent as if they were included with the Contract Documents referred to in Article A-3 of the Agreement Between Owner and Contractor.

### **18.0 Allowable Gross Weight – Hauling Materials**

- 18.1 If applicable, if the Contractor is hauling materials, in whole or in part upon a highway (as such term is defined in the Highway Traffic Act, R.S.O. 1990, c.H.8 as amended from time to time), and where motor vehicle registration is required for such vehicle, the Contractor shall not cause or permit such vehicle to be loaded beyond the legal limit specified in the Highway Traffic Act, whether such vehicle is registered in the name of the Contractor or otherwise. This does not apply where overloading is permitted within the Place of the Work and not on the highway.
- 18.2 The Contractor shall ensure that all vehicles hauling materials on a highway shall be accompanied by a Record of Allowable Gross Weight certificate, available at a truck inspection station or on the Ministry of Transportation website. The allowable limit shall be the vehicle's registered gross weight or the allowable gross weight, whichever is less. The Contractor shall ensure that a copy of the Record of Allowable Gross Weight form is made available to the Owner and left with the weigh person for Owner use.

END OF SECTION

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## GENERAL REQUIREMENTS: MOBILIZATION AND DEMOBILIZATION

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### **1.0 General**

- 1.1 Be responsible for familiarization with the Place of the Work, the location of the Work and any limitations and constraints.
- 1.2 Before commencing Mobilization, where required by the Contract Documents, obtain all required Access Permits before entering onto land impacted by the Work.
- 1.3 Commence Mobilization at the Notice to Proceed date unless otherwise required by the Contract Documents and directed by Consultant.
- 1.4 Transport personnel, equipment and supplies and materials to the Place of the Work, including Contractor's offices, buildings, and other necessary facilities, Consultant's Work Trailer and portable toilet for the Consultant's use at the Place of Work.
- 1.5 Be responsible for all required permits for transportation of the Contractor's equipment.
- 1.6 Check on any roadway and bridge loading and restricted height clearances.
- 1.7 Equipment and materials shall be mobilized and demobilized in accordance with all local, provincial and federal regulations and acts related to transportation and safety.
- 1.8 Mobilize and demobilize equipment by means of access routes shown on the Drawings.
- 1.9 Upon completion of the Work, restore all access areas to the same condition as prior to the start of the Work.
- 1.10 Be responsible for security of Contractor's equipment and materials at the place of the Work

### **2.0 Definitions**

- 2.1 Mobilization and Demobilization: means the mobilization and demobilization of the Contractor's forces and equipment, supplies, appurtenances and the like, manned and ready for prosecuting the Work required under the Contract, and the subsequent demobilization and removal from the Place of the Work of said equipment, materials appurtenances and the like upon completion of the Work.
-

## GENERAL REQUIREMENTS: MOBILIZATION AND DEMOBILIZATION

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Mobilization will not be considered as work in fulfilling the Contract requirements for commencement of the Work.

### **3.0 Mobilization**

3.1 Mobilization is deemed to include the provision of the following:

- (a) Construction permits not obtained by the Owner;
- (b) Initial Construction Schedule;
- (c) Initial Work Block Schedule;
- (d) Initial Shop Drawings and other submittal Schedules;
- (e) Initial Contractor's Cash Flow Schedule; and
- (f) Site Specific Safety Plan.

3.2 Mobilization includes assembly and delivery to the Place of the Work plant equipment, materials and supplies, necessary for the prosecution of the Work that are not intended to be incorporated into the Work; the clearing of and preparation of the Contractor's work area (Note; this activity is separate from and not considered incidental to Grading Work specified in Specifications and Drawings); the complete assembly, in working order, of all equipment necessary to perform the required work; personnel services, and all other preparatory work required to allow commencement of the actual Work on the construction items for which payment is provided under the Contract.

3.3 Mobilization is deemed not to include the provision of the following, which are deemed to be elements of the Contractor's overhead, profit and contract administration costs included and incidental to the Work and included in and incidental to the Unit Prices and Lump Sum prices as quoted in the Schedule of Prices for each Work Item:

- (a) Overhead and Profit;
  - (b) Bond and insurances; and
  - (c) Labour and costs.
-

## **GENERAL REQUIREMENTS: MOBILIZATION AND DEMOBILIZATION**

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### **4.0 Demobilization**

- 4.1 Demobilization includes all activities and costs for transportation of personnel, equipment and supplies and materials not used in the Contract, including disassembly, removal from the Place of the Work, the Contractor's offices, buildings, and other facilities including the Consultant's Work Trailer and portable toilet for the Consultant's use, removal and site cleanup of any offices, buildings or other facilities assembled at the Place of Work for the Contract.
- 4.2 Demobilization includes submission and acceptance of final documentation required to meet the requirements of the Contract.

### **5.0 Changes to the Work**

- 5.1 If additional mobilization and demobilization are required during the performance of the Contract because of changes to the Work, deleted or added items of Work, the Contractor is entitled to an adjustment in the Contract Price, compensation for such costs will be included in the Price of the approved Change Order or Orders for the item or items of Work changed or added.

### **6.0 Management and Disposal of Mobilization and Demobilization Materials**

- 6.1 Dispose of materials resulting from Mobilization and Demobilization activities from the Place of the Work within forty-eight (48) hours of Total Performance of the Work.

END OF SECTION

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# GENERAL REQUIREMENTS: SHOP DRAWINGS AND OTHER SUBMITTALS

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## **1.0 General**

- 1.1 Submit to Consultant for review, product data specified.
- 1.2 Conform to General Condition No. GC 3.10 Shop Drawings.
- 1.3 Until submission is reviewed, work involving relevant product may not proceed.

## **2.0 Product Data**

- 2.1 Manufacturer's standard schematic drawings, catalogue sheets, diagrams, schedules, performance charts, illustrations and other standard descriptive data will only be accepted in lieu of Shop Drawings when authorized by Consultant.
- 2.2 Above will only be accepted if it conforms to the following:
  - (a) delete information which is not applicable to project;
  - (b) supplement standard information to provide additional information applicable to project;
  - (c) show dimensions and clearances required;
  - (d) show performance characteristics and capacities; and
  - (e) show wiring diagrams and controls.

## **3.0 Shop Drawings**

- 3.1 Within five (5) Working Days of execution of the Contract, submit for review by the Consultant, a schedule of Shop Drawings indicating dates, review dates, fabrication and lead times.
  - 3.2 Drawings to be originals prepared by Contractor, Subcontractor, Supplier or Distributor, which illustrate appropriate portion of Work, showing fabrication, layout, setting or erection details as specified in appropriate Sections.
  - 3.3 Identify details by reference to sheet and detail numbers shown on Contract Drawings.
  - 3.4 Maximum sheet size 48" x 36" (1220mm x 915mm).
-



## GENERAL REQUIREMENTS: SHOP DRAWINGS AND OTHER SUBMITTALS

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- 3.5 All Shop Drawings of structural components shall show all pieces, dimensions, materials, weld types and sizes, material treatments and finish to a large scale (metric) suitable to the Product.

### **4.0 Samples & Mock-Ups**

- 4.1 Submit samples in sizes and quantities specified.
- 4.2 Where specified, shown or considered necessary, submit duplicate samples for Consultant's approval.
- 4.3 Where colour, pattern or texture is criterion, submit full range of samples.
- 4.4 Samples must correspond in every aspect to materials supplied for the project.
- 4.5 Construct field samples and mock-ups at locations acceptable to Consultant.
- 4.6 Construct each sample of mock-up completely, including work of all trades required to finish.
- 4.7 Do not proceed with fabrication or delivery of materials until samples are approved.
- 4.8 Reviewed samples or mock-ups will become standards of workmanship and material against which installed work will be checked on project.
- 4.9 Approval of samples does not imply acceptance of finished work.

### **5.0 Coordination of Submissions**

- 5.1 Review Shop Drawings, Product data and samples prior to submission. Any Shop Drawing not bearing evidence of having been checked by the Contractor will not be accepted by the Consultant.
- 5.2 Indicate on Shop Drawings that they have been checked by applying stamp "checked and certified for construction", including date and Contractor's signature.
- 5.3 No claim for delay will be considered as a result of time lost for Drawings returned because the Contractor has failed to check the Drawings as stated above.
- 5.4 Check Shop Drawings and Product data sheets before submission as follows:
-

## GENERAL REQUIREMENTS: SHOP DRAWINGS AND OTHER SUBMITTALS

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- (a) Against Contract Documents and other applicable Shop Drawings to ensure that work adjacent to and affecting other work is accurately detailed.
  - (b) To ensure work conforms to requirements of Contract Documents.
  - (c) Verify field measurements, field construction criteria, catalogue number and similar data.
- 5.5 Coordinate each submission with requirements of Work and Contract Documents. Individual Shop Drawings will not be reviewed until all related drawings are available.
- 5.6 Consultant's review of Shop Drawings and data sheets pertain to general design only. Errors in dimensions, quantities or interference will be marked if noticed, but this will not in any way relieve the Contractor from his responsibility to complete the Work as shown and specified.
- 5.7 Contractor's responsibility for deviations in submission from requirements of Contract Documents is not relieved by the Consultant's review of submission, unless Consultant gives written acceptance of specified deviations.
- 5.8 Notify Consultant, in writing at time of submission, of deviations from requirements of Contract Documents.
- 5.9 Do not proceed with Work covered by Shop Drawings and data sheets until reviewed by Consultant. Any such installation will not be considered for payment until Shop Drawings are approved.
- 5.10 After Consultant's review, distribute copies to all trades affected.

### **6.0 Submission Requirements**

- 6.1 Schedule submissions at least ten (10) Working Days before dates reviewed submissions will be needed.
- 6.2 Submissions shall be as follows:
- (a) Four (4) white prints of Shop Drawings and Product data bearing the review stamp of the Contractor, three (3) of which will be retained by the Consultant;
  - (b) The fourth set will be returned to the Contractor, who is responsible for preparing all additional copies for distribution, and distributing to all required parties; and
-

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- (c) Submit final Shop Drawings as noted in Section 01800 Project Closeout.
- 6.3 Additional copies of Shop Drawings, Product data, reports, procedures, plans and certificates shall be required for distribution by the Contractor.

END OF SECTION

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## GENERAL REQUIREMENTS: QUALITY CONTROL

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### **1.0 Inspection**

- 1.1 Refer to GC 2.3 - REVIEW AND INSPECTION OF THE WORK.
- 1.2 The materials furnished by the Contractor shall be inspected by the Consultant at the time of delivery and at such other times as the Consultant may elect.
- 1.3 The Owner and the Consultant shall have access to the work. If parts of the work are in preparation at locations other than the Place of the Work, access shall be given to such work whenever it is in progress.
- 1.4 The Consultant may order any part of the work to be examined if such work is suspected to be not in accordance with the Contract. If, upon examination such work is found not in accordance with the Contract, correct such work and pay the cost of examination and correction. If such Work is found in accordance with the Contract, the Owner will pay the cost of examination and replacement.
- 1.5 The review of the information covering materials and equipment by the Consultant shall in no release the Contractor from his responsibility for the proper design, installation and performance of any material, equipment or arrangement or from the liability to replace same should it prove defective or deficient.

### **2.0 Independent Inspection Agencies**

- 2.1 Independent Inspection/Testing Agencies will be engaged by the Consultant for inspecting and/or testing portions of work.
  - 2.2 Cost of such services will be borne by the Contractor under the appropriate Cash Allowance item in the Form of Tender.
  - 2.3 Provide samples and/or assistance required for inspection and testing by the appointed agencies.
  - 2.4 Employment of Inspection/Testing Agencies does not remove the responsibility to perform Work in accordance with the Contract Documents.
  - 2.5 If defects are revealed during inspection and/or testing, the appointed agency will request additional inspection and/or testing to ascertain full degree of defect. Correct defects and irregularities as advised by the Consultant at no cost to the Owner. Pay costs for retesting and re-inspection.
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## GENERAL REQUIREMENTS: QUALITY CONTROL

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### **3.0 Procedures**

- 3.1 Notify the appropriate agency and Consultant a minimum of two (2) working days in advance of the requirement for tests, in order that arrangements can be made with the testing company.
- 3.2 Submit samples and/or materials required for testing, as specifically requested in Specifications. Submit with reasonable promptness and in an orderly sequence so as not to cause delay in the Work.
- 3.3 Provide labour and equipment to obtain and handle samples and materials on site.

### **4.0 Rejected Work**

- 4.1 Refer to GC 2.4 - DEFECTIVE WORK.
- 4.2 If, in the opinion of the Consultant, it is not expedient to correct defective work, or work not performed in accordance with the Contract Documents, the Owner may deduct from the Contract Price the difference in value between the work performed and that called for by the Contract Documents, the amount of which shall be determined by the Consultant.

### **5.0 Reports**

- 5.1 Reports on materials testing as arranged by the Consultant shall contain the following information:
    - (a) Date and time of inspection or test.
    - (b) Weather conditions and ambient air temperatures during the inspection.
    - (c) Testing method employed by proper standard reference and specific paragraph or other detailed information as applicable.
    - (d) Inspection description and detailed and other relevant information.
    - (e) Test results in detail, complete with applicable graphs and other clarifying documents and information.
    - (f) Printed name and signature of person having conducted inspection or test, and name, title and signature of Supervisor having verified the report.
  - 5.2 Inspection and Testing Agency shall provide a written report for each inspection and test made, three copies to the Consultant; three copies to the Contractor
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direct, who shall forward one copy to the Subcontractor, supplier or manufacturer concerned.

END OF SECTION

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## GENERAL REQUIREMENTS: TEMPORARY FACILITIES

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### **1.0 Access**

1.1 The Contractor shall be limited to using access onto the site as further directed.

### **2.0 Power**

2.1 Contractor may connect into the Owner's electrical power supply in the existing building for power for construction requirements. All such connections shall be first approved by the Owner.

2.2 The Contractor shall be responsible for all claims and damages resulting from unauthorized or misuse of the Owner's electrical power supply. Verify all circuit and circuit protection capacities with the Owner's Manager of Station Operations of the respective region before making any connections.

END OF SECTION

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## GENERAL REQUIREMENTS: ENVIRONMENTAL PROTECTION

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### **1.0 Fires**

1.1 Fire and burnings of rubbish at the Place of Work will not be permitted.

### **2.0 Disposal of Wastes**

2.1 Do not bury rubbish and waste materials on site.

2.2 Do not dispose of waste or volatile materials, such as mineral spirits, oil or paint thinner into waterways, storm or sanitary sewers.

2.3 Except as indicated otherwise, surplus materials shall become the property of the Contractor and shall be removed from the premises promptly as they become surplus, at the cost of the Contractor.

### **3.0 Drainage**

3.1 Divert surface drainage water away from excavation.

3.2 Provide temporary drainage and pumping as necessary to keep excavations and site free from water from whatever source until backfill operations are completed.

3.3 Do not pump water containing suspended materials into waterways, sewer or drainage systems.

3.4 Provide pumping units of sufficient number to comply with the above requirements and keep a minimum of one (1) unit in operating condition as a spare on site.

### **4.0 Pollution Control**

4.1 Operations generating smoke, fumes, gases, dusts, vapours and odours shall be exhausted at source in a manner approved by the Consultant.

4.2 Take precautions necessary to keep dust, smoke, fumes, dirt and vibration to an acceptable level as determined by the Consultant.

4.3 Prevent extraneous materials from contaminating the environment immediately to and beyond the application area, by providing temporary enclosures or other appropriate preventative measures.

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### **5.0 Noise**

- 5.1 Prevent excessive noise which will be disturbing to the occupant of building. Machine tools which are set up in fixed locations shall be so located to minimize noise and suitable sound deflectors shall be used if directed by the Consultant.
- 5.2 Use air compressors and pneumatic hammers only with the expressed authorization of the Consultant.

### **6.0 Spills**

- 6.1 The Contractor shall provide the Owner with a written program for spills response and reporting. Copies of training records shall also be provided.
- 6.2 All spills shall immediately be reported to the Rail Operations Control Centre, (416) 601-2174, or as directed by the Consultant.

### **7.0 Dust Control**

- 7.1 The Contractor shall take any and all steps necessary to prevent a dust nuisance occurring as a result of his performance of the Work.
- 7.2 Where the Work requires the sawing or grinding of concrete, wet type blades and grinders shall be used together with sufficient water to prevent the occurrence of dust. Cost of all such preventative measures shall be borne by the Contractor.

END OF SECTION

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## GENERAL REQUIREMENTS: SAFETY REQUIREMENTS

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### **1.0 Safety Measures**

- 1.1 The Vendor's representative shall be responsible for ensuring that the provisions of statutes, regulations and by-laws pertaining to safe performance of the work and the work of other vendors/Subvendors at the Place of Work are observed and that the methods of performing the work do not endanger the personnel employed thereon, the general public, and are in accordance with best safety practices and the latest edition of the OHSA and applicable Regulations.
- 1.2 Prior to the Vendor's representative being absent from the Place of Work, the Vendor's representative will name another person, in writing to Metrolinx, who is competent to assume these responsibilities as the Vendor's representative.

### **2.0 Project Health and Safety Compliance**

- 2.1 The Vendor and the Vendor's representative shall ensure that:
    - (a) All measures and procedures prescribed by the following Acts and Regulations (applicable Provincial) are carried out at the Place of Work;
      - (i) The Occupational Health and Safety Act;
      - (ii) The Regulations for Industrial Establishments;
      - (iii) The Canada Labour Code Part II;
      - (iv) The Environmental Protection Act and Regulations;
      - (v) WHMIS Regulations;
      - (vi) Smoke-Free Ontario Act;
      - (vii) All other legislation, regulations and standards as applicable; and
      - (viii) Metrolinx's "Safety Guidelines For Vendors, Consultants and Project Coordinators";
  - 2.2 Every employer and every worker performing work at the Place of Work complies with all of the requirements referred to in Section 2.1 above; and
  - 2.3 The health and safety of workers and the general public are protected in relation to the work performed at the Place of Work. In addition to compliance with all occupational health and safety legislation, every employer and every worker
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performing Work at the Place of Work is required to demonstrate a willingness to participate in occupational health and safety program(s).

### **3.0 Deliverables**

- 3.1 The Vendor shall within five (5) Business Days of the date of final execution of the Contract submit the following to Metrolinx for its review and acceptance:
- (a) A copy of the Vendor's Occupational Health and Safety Policy, and a copy of the Vendor's program to implement its Occupational Health and Safety Policy, which in each case shall comply with all the requirements of Regulations for Industrial Establishments, Occupational Health and Safety Act, as amended from time to time; and
  - (b) A copy of the Vendor's site specific safety plan that includes site-specific hazard and risk assessment plans that will effectively prevent and control incidents and/or accidents. Specific Work plans may be required for tasks deemed to be safety critical such as crane lifts, confined space entry, or working from heights.
  - (c) Work shall not commence at Place of Work until Metrolinx has reviewed and accepted the above referenced documents. Metrolinx shall not entertain any claim on the part of the Vendor for any extension to the Contract Time or the Total Contract Price as a result of the Vendor's failure to submit an Occupational Health and Safety and/or program and Site specific safety plan that are acceptable to Metrolinx.
- 3.2 The Vendor shall, within five (5) Business Days of the date of final execution of the Contract, deliver to Metrolinx copies of all training records for Occupational Health and Safety related courses taken by a "competent person" as defined by the Occupational Health and Safety Act, paragraph 1(i) and designated as the Supervisor as per Part III (2)(c). Relevant course subjects may, without limitation, include or be similar to the following:
- (a) Certified Joint Health and Safety Committee Management Member Training;
  - (b) Basics of Supervising;
  - (c) Occupational Health and Safety Act;
  - (d) Accident Investigation and Reporting; and
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- (e) Any other courses that relate directly to the Occupational Health and Safety Act.

3.3 The Vendor shall deliver to Metrolinx as required:

- (a) A copy of all inspection reports made by the Vendor in compliance with the employer's responsibility under the Occupational Health and Safety Act.
  - (b) A copy of all safety information pertaining to the Contract made and furnished by the Vendor's own "Safety Officer" or outside consultants/advisers engaged for the purpose of inspecting the workplace for occupational health and safety.
  - (c) A verification that all workers in the employ of the Vendor at the Place of Work, have had WHMIS training or refresher course within the last twelve (12) months.
  - (d) Verification that all workers in the employ of the Vendor have had "Explosive Activated Tool Training" on the type of tools being used, as applicable.
  - (e) A verification that the instruction manuals are at the Place of Work for all tools and equipment being used.
  - (f) A copy of the most recent workers compensation experience rating account, i.e., CAD-7, NEER or MAP
  - (g) Copies of all injury and accident reports for occurrences at the Place of Work. This shall include copies of all remedial measures taken to prevent recurrence.
  - (h) Copies of all weekly safety talks shall be maintained on file for review by Metrolinx upon request.
  - (i) Statistical information for the purpose of determining injury frequency and severity rates (hours worked, first-aid injuries, medical aid/reportable injuries, lost time injuries, restricted workday injuries, incident/accident and significant occurrence data), in a timely manner on a monthly basis or as required by Metrolinx.
  - (j) The immediate reporting to Metrolinx of all instances that are defined in the Occupational Health and Safety Act as "Notices of Injuries" and
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"Occurrences" under Sections 51, 52 and 53, and any occasion that a worker exercises their "Right to Refuse Unsafe Work".

- (k) Metrolinx reserves the right to require additional or amended deliverables pertaining to safety during the duration of the Work at no additional cost to Metrolinx.

### **4.0 Due Diligence**

- 4.1 The Vendor acknowledges that it has read and understands the measures and procedures relating to occupational health and safety as prescribed in Sections 2.0 and 3.0 above. The Vendor acknowledges and understands its duties as therein set out and hereby expressly undertakes and agrees to comply with all such requirements and standards in their entirety and at the Vendor's expense.
- 4.2 The Vendor further agrees to fully cooperate with all health and safety requirements, rules, regulations, standards and criteria set out in the Contract, which agreement is in furtherance of the Vendor's duties and responsibilities under occupational health and safety legislation.
- 4.3 The Vendor agrees that if, in the opinion of Metrolinx, the health and safety of a person or persons is endangered or the effective operation of the system put in place to ensure the health and safety of workers on the Place of Work is not being implemented, Metrolinx may take such action as it deems necessary and appropriate in the circumstances, including, without limitation, the following:
  - (a) Require the Vendor to correct the condition forthwith at no expense to Metrolinx;
  - (b) Require that the Place of Work be shut down in whole or in part until such time as the condition has been corrected. Metrolinx will not reimburse the Vendor for any costs caused by such a delay nor will Metrolinx extend the time to complete the Work of the Contract because of such a delay;
  - (c) Correct the problem and deduct the cost thereof from any payment then or thereafter due the Vendor; and/or
  - (d) Terminate the Contract in whole or in part.

### **5.0 Joint Health and Safety Committee and/or Representative**

- 5.1 The Vendor shall be responsible for the establishment and operation of the JHSC as required or the selection of a safety representative as required by the
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Occupational Health and Safety Act or the Canada Labour Code, Part II as applicable to the operations of the Vendor.

- 5.2 In advance of commencement of the Work, the Vendor shall provide its plan of compliance with the Occupational Health and Safety Act, Part II, Administration, to Metrolinx where:
- (a) the number of workers employed at the Place of Work regularly exceeds five (5); or
  - (b) the duration of the Work is three (3) months or longer.
- 5.3 A site file shall be maintained of all information specific to the Joint Health and Safety Committee for the Project. This file shall be made available to Metrolinx for review upon request.

### **6.0 Alcohol and Drug Abuse Prevention**

- 6.1 The following rules shall apply to all persons while at the Place of Work and/or on Metrolinx property:
- (a) The use, possession, distribution and/or sale of illegal drugs or drug paraphernalia is prohibited;
  - (b) The use, possession, distribution and/or sale of any any form of alcohol, including alcoholic beverages;
  - (c) Workers must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;
  - (d) Individuals shall ensure that prescribed or over-the-counter medications are used responsibly and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;
  - (e) No distribution, offering or sale of prescription medications is permitted; and
  - (f) Individuals must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.
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- 6.2 Where a worker is suspected of being intoxicated, the following procedures must be followed:
- (a) The worker will be escorted to a safe location away from the work area, and asked to remain there pending further action;
  - (b) The worker's supervision, worker health and safety representative (if applicable), union steward (if applicable) and the designated Metrolinx's Contract representative will be requested to attend;
  - (c) The group present will determine an appropriate course of action and a means of transport to a suitable safe location;
  - (d) Where there are differences of opinion with respect to the worker's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the worker will be transported home, or required to remain in a safe location until this can be arranged; and
  - (e) The local police may be called if the worker was operating any motorized vehicle requiring a valid driver's license.
- 6.3 Metrolinx will maintain a position of zero tolerance to any violations of these rules. At the sole discretion of Metrolinx, rule contraventions may result in:
- (a) Verbal and written reporting to the person's supervisor/employer;
  - (b) Issuance of a written warning, and recording of same;
  - (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
  - (d) An order to leave the Place of Work temporarily or permanently; or
  - (e) Remedies as may be specified in the Contract.

### **7.0 Smoking in the Workplace**

- 7.1 The Vendor shall comply with, and enforce, all the provisions of the Smoke Free Ontario Act at all times while on Metrolinx's property.
- 7.2 A designated smoking area may be created at the Place of Work providing Metrolinx and the Vendor can mutually agree that one can be provided within the provisions of the Smoke Free Ontario Act. The Vendor shall be responsible for
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providing any and all signage required for the designated smoking area in the event a designated smoking area is created.

### **8.0 Barricades**

- 8.1 Observe all necessary precautions and provide, erect and maintain suitable signs, barricades and lights to protect all persons from injury and all vehicles from damage during the progress of the work, all to the approval of Metrolinx or any authority having jurisdiction at this location.
- 8.2 Provide all means necessary to prevent the entrance of unauthorized personnel at the Place of Work and from using access roads.
- 8.3 Protect the work in conformity with the Contract.

### **9.0 Fit-For-Duty Requirements**

- 9.1 The following rules shall apply to all persons while at the Place of Work and/or on the Owner's property while carrying out all aspects of the Work:
    - (a) The use, possession, offering, distribution and/or sale of illegal drugs, prescription and over-the-counter medications, mood altering substances, chemicals which has the potential to change or adversely affect the way a person thinks, feels or acts and/or may inhibit the ability to perform work safely and productively, is prohibited;
    - (b) The use, possession, distribution and/or sale of drug paraphernalia (property associated with the use of any drug for recreational or illicit purposes), is prohibited.
    - (c) The use, possession, distribution and/or sale of any form of alcohol, including alcoholic beverages, is prohibited;
    - (d) The Contractor's Personnel must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;
    - (e) The Contractor's Personnel shall ensure that prescribed or over-the-counter medications are used responsibly and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;
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- (f) The Contractor's Personnel must report for duty free of extreme fatigue which would adversely affect, in any way and to any extent, their ability to work safely;
  - (g) The Contractor's Personnel must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.
- 9.2 Where any Contractor's Personnel is suspected of being intoxicated, the following procedures must be followed:
- (a) Such Contractor Personnel will be escorted to a safe location away from the work area, and asked to remain there pending further action;
  - (b) The Contractor shall be required to attend a meeting with the Owner and Consultant (hereinafter referred to as a Fit For Duty (FFD) Meeting);
  - (c) The FFD meeting members will determine an appropriate course of action and a means of transport to a suitable safe location for the Contractor Personnel in question;
  - (d) Where there are differences of opinion between the Owner and Contractor with respect to the Contractor Personnel's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the Contractor's Personnel will be transported home, or will be required to remain in a safe location until transportation can be arranged; and
  - (e) The local police may be called if the Contractor's Personnel was operating any motorized vehicle requiring a valid driver's license.
- 9.3 The Owner maintains a position of zero tolerance to any violations of Sections 6.1 and 6.2 above. At the sole discretion of the Owner, non-compliance may result in:
- (a) Verbal and written reporting to the person's supervisor/employer;
  - (b) Issuance of a written warning, and recording of same;
  - (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
  - (d) An order to leave the project site temporarily or permanently; or
  - (e) Remedies as may be specified in the Contract
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### 9.4 Contractor's Fit For Duty Policy

- (a) The Contractor is required to ensure all Contractor Personnel at the Place of Work have read and understand the Contractor's fit for duty policy requirements in addition to the Metrolinx fit for duty requirements stated in this Section 6.0.
- (b) The Contractor shall provide a copy of its Fit-For-Duty Policy and Program within thirty (30) Business Days after final execution of the Contract. (The Metrolinx Fit For Duty Policy is attached solely as an example, for reference purposes.)

## 10.0 Vehicle Traffic Protection

- 10.1 Provide qualified signal persons to protect vehicular and pedestrian traffic during the operations, at any time when workers or equipment could endanger such traffic, all to the complete satisfaction of Metrolinx and any other authority having jurisdiction at this location.
- 10.2 Accept responsibility for any damage to vehicles and damage and injury to pedestrians or occupants of vehicles resulting from the operations or the operating of equipment by others. Provide adequate protection to the satisfaction of Metrolinx.
- 10.3 Wherever the Place of Work is intersected by public or private roads, provide convenient openings to pass and maintain all crossings in a condition so they can be used safely and without any just grounds for complaint during the progress of the work; all to the satisfaction of Metrolinx and respective road authority.

## 11.0 Workplace Hazardous Materials Information System (WHMIS)

- 11.1 Be familiar with and comply to WHMIS Regulations:
  - 11.2 Properly label controlled products.
  - 11.3 Provide proper warning labels and training at the Place of Work.
  - 11.4 Prior to delivery of products to the Place of Work, provide copies of the material safety data sheets (MSDS) for any controlled products.
  - 11.5 Be responsible for all applicable requirements of the regulations.
  - 11.6 Before commencing any work at the Place of Work, attend a meeting in a location to be determined by Metrolinx and provide a proposal as to how hazardous
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materials will be stored and dispensed at the Place of Work. Also, present a proposal as to how hazardous and contaminated materials will be removed from the Place of Work. The disposal of hazardous materials shall comply with all legislative and municipal requirements.

11.7 Provide a list and proper handling procedures for all hazardous materials.

### **12.0 Metrolinx Safety Guidelines**

12.1 Metrolinx will issue an appropriate number of copies of its "Safety Guidelines For Vendors, Consultants and Project Coordinators" to the Vendor in advance of commencement of the Work. This will also be made available electronically in PDF format, to the Vendor.

12.2 Vendors are responsible for familiarizing themselves and their employees with the contents of this manual.

12.3 Vendors shall distribute copies of this manual to their Subvendors and shall ensure that they, and their employees, are familiar with its content.

12.4 This manual shall form part of the orientation for new employees and acknowledged as being included.

12.5 The requirements of this manual shall apply to the Work and the Place of the Work.

### **13.0 Safety Personnel at the Place of Work**

13.1 In the event Metrolinx deems it necessary, because of the Work and/or Safety Performance, the Vendor shall assign to the Place of Work a full time "Safety Officer" to assist the Vendor's representative in the discharging of safety responsibility at the Place of Work, at no additional costs to Metrolinx.

13.2 The Safety Officer shall have the training, experience and credentials to ensure compliance to the Occupational Health and Safety Act and regulations that pertain to the Work at the Place of Work.

### **14.0 Security at the Place of Work**

14.1 The Vendor shall ensure all personnel employed at the Place of Work, whether its own employees or a Subvendor's, wear an identification badge. At Metrolinx's locations where access is restricted Metrolinx shall supply the identification badges. At all other locations it shall be the Vendor's responsibility to provide the

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identification badges. The "GO Safe" Railway Orientation badge with photo I.D. will meet this requirement.

- 14.2 A daily site log shall be maintained of all persons granted access to the "Place of Work" under the control and custody of the Vendor.
- 14.3 The Vendor shall ensure that all required documentation is available upon request by Metrolinx.
- 14.4 The Vendor shall not allow "Unauthorized" persons to access the "Place of Work".

**END OF SECTION**

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## GENERAL REQUIREMENTS: MATERIALS AND EQUIPMENT

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### **1.0 General**

- 1.1 Provide material and equipment of specified design and quality, performing to published ratings and for which replacement parts are readily available.
- 1.2 Use products of one manufacturer for equipment or material of same type or classification unless otherwise specified.

### **2.0 Manufacturer's Instructions**

- 2.1 Unless otherwise specified, comply with manufacturer's latest printed instructions for materials and installation methods.
- 2.2 Notify the Owner in writing of any conflict between these Specifications and manufacturer's instructions. The Owner will designate which document is to be followed.

### **3.0 Fastenings**

- 3.1 Provide metal fastenings and accessories in same texture, colour and finish as base metal in which they occur. Prevent electrolytic action between dissimilar metals. Use non-corrosive fasteners, anchors and spacers for securing exterior work.
- 3.2 Space anchors within limits of load bearing or shear capacity and ensure that they provide positive permanent anchorage. Wood plugs are not acceptable.
- 3.3 Keep exposed fastenings to minimum, space evenly and lay out neatly.
- 3.4 Fastenings which cause spalling or cracking of material to which anchorage is made are not acceptable.
- 3.5 Do not use explosive actuated fastening devices.

### **4.0 Fastening Equipment**

- 4.1 Use fastenings of standard commercial sizes and patterns with material and finish suitable for service.
  - 4.2 Use heavy hexagon heads, semi-finished unless otherwise specified.
  - 4.3 Bolts may not project more than one diameter beyond nuts.
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- 4.4 Use plain type washers on equipment, sheet metal and shaft gasket lock type washers where vibrations occur. Use resilient washers with stainless steel.

### **5.0 Delivery and Storage**

- 5.1 Deliver, store and maintain packaged material and equipment with manufacturer's seals and labels intact.
- 5.2 Prevent damage, adulteration and soiling of material and equipment during delivery, handling and storage. Immediately remove rejected material and equipment from the site.
- 5.3 Store material and equipment in accordance with suppliers' instructions.
- 5.4 Touch-up damaged factory finished surfaces to the Owner's satisfaction. Use primer or enamel to match original. Do not paint over name plates.

### **6.0 Origin of Materials**

- 6.1 Materials, plant and equipment supplied for Work shall be as far as possible and unless otherwise specified, of Canadian manufacture.

### **7.0 Ownership of Materials**

- 7.1 Unless otherwise specified, materials existing on site at time of signing Contract shall remain the property of Owner.
- 7.2 Equipment and materials delivered on site to form part of Work shall be property of the Owner but the Owner shall not be liable for any loss or damage from any cause.
- 7.3 Contractor shall remove surplus or rejected materials off site when notified by Consultant as required by site conditions.

### **8.0 Specified Material and Equipment**

- 8.1 Materials and equipment shall be as specified.

### **9.0 Substitutions After Contract Execution**

- 9.1 Request for substitutions of specified materials and equipment other than alternatives accepted during the in-market tendering period and prior to tender closing, will not be considered unless the request is accompanied by a written statement from Contractor giving reasons why specified item cannot or should not
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## GENERAL REQUIREMENTS: MATERIALS AND EQUIPMENT

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be used, evidence of quality of substitution and amount of change in Contract amount.

- 9.2 Written statement shall include full details, stating clearly name of manufacturer or supplier, together with a detailed description of substitutions, and stating reduction from or addition to the Contract Price, if any for the use of alternative material or equipment.
- 9.3 The Consultant reserves right to accept or reject substitution as he sees fit and also to claim for the Owner financial benefit of substitution if accepted. Rejection by Consultant of proposed alternative material or equipment is final and does not become obligated to give any reason for his action.
- 9.4 Approved equipment substitutions must not exceed space requirements allocated on Drawings. Be responsible for additional cost resulting from acceptance of a substitute piece of equipment for this Division of Work.
- 9.5 Substitutions shall not be considered accepted unless authorized in writing by the Consultant.

### **10.0 Date-Related Compliance**

- 10.1 All materials, equipment, systems and components thereof used in connection with the provision of the Work, individually or in combination as the case may be, shall accurately and automatically process any and all date and date-related data including, but not limited to calculating, comparing and sequencing when used in accordance with the documentation provided by the Contractor.

END OF SECTION

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## GENERAL REQUIREMENTS: CLEANING

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### **1.0 General**

- 1.1 Conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws.
- 1.2 Store volatile wastes in covered metal containers, and remove from premises daily.
- 1.3 Prevent accumulation of wastes which create hazardous conditions.
- 1.4 Provide adequate ventilation during use of volatile or noxious substances.

### **2.0 Products**

- 2.1 Use only cleaning materials recommended by manufacturer of surface to be cleaned, and as recommended by cleaning material manufacturer.

### **3.0 Execution**

#### **3.1 Cleaning During Construction**

- (a) Ensure that the work site is kept clean and tidy at all times throughout the construction period. Remove all rubbish and debris promptly as it accumulates. Ensure that all sub-trades conform similarly.
- (b) Promptly remove from site and dispose of surplus materials.
- (c) Do not accumulate scrap piles at any time. Fires will not be permitted on the site.
- (d) Provide on-site containers for collection of waste materials, and rubbish.
- (e) Vacuum clean interior work areas when ready to receive finish painting, and continue vacuum cleaning on an as-needed basis until work area is ready for substantial completion or occupancy.
- (f) Schedule cleaning operations so that resulting dust and other contaminants will not fall on wet, newly painted surfaces.

END OF SECTION

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## GENERAL REQUIREMENTS: PROJECT CLOSEOUT

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### 1.0 Final Cleaning

- 1.1 Remove dust and soil from all surfaces affected by Work by vacuuming, damp mopping, washing or scrubbing, as required.
- 1.2 Clean all equipment and accessories.
- 1.3 Remove all temporary labels, protective coatings, markings and tags, and thoroughly clean adhesive off surfaces.
- 1.4 Avoid contamination of surrounding surfaces with cleaning fluids. Install temporary protection, if required, and remove same immediately upon completion of cleaning operation involved.
- 1.5 Methods of cleaning shall be in accordance with Manufacturer's recommendations of the finishes involved.
- 1.6 Soaps, detergents, waxes, and other cleaning materials and methods shall be as recommended by Manufacturer of finish surface material involved.
- 1.7 Use a heavy duty type industrial machine for all vacuum cleaning.
- 1.8 Exercise extreme care with abrasive and chemical cleaning agents and verify their compatibility with finish and material to be cleaning.

### 2.0 Systems Demonstration

- 2.1 Prior to final inspection, demonstrate operation of each system to the Owner.
- 2.2 Instruct personnel in operation, adjustment, and maintenance of equipment and systems, using provided operation and maintenance data as basis for instruction.

### 3.0 Project Record Drawings

- 3.1 The Consultant will provide one set of white prints for each major trade section of this Contract for recording "as constructed" information.
  - 3.2 The Contractor shall co-ordinate and maintain project "as-constructed" record drawings and record accurately significant deviations from Contract Documents caused by site conditions and changes ordered by Consultant and approved by the Owner.
  - 3.3 Record following information:
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## GENERAL REQUIREMENTS: PROJECT CLOSEOUT

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- (a) field changes of dimension and detail; and
  - (b) changes made by Change Order or Field Instructions.
- 3.4 At each project meeting "as-constructed" record drawings shall be reviewed for completeness.
- 3.5 At completion of project and prior to final inspection, submit "as-constructed" drawings to Consultant.

### **4.0 Operations and Maintenance Data**

- 4.1 On completion of project, submit to Consultant four (4) copies of Operations Data and Maintenance Manual, made up as follows:
- (a) bind data in vinyl, hard covered, three ring, loose leaf binder for 215 x 280mm sized paper;
  - (b) enclose title sheet, labelled "Operation Data and Maintenance Manual", project name, date and list of contents; and
  - (c) organize contents into applicable sections of work. Mark each section by labelled tabs protected with celluloid covers fastened to hard paper dividing sheets.
- 4.2 Include following information plus data specified:
- (a) description operation and maintenance instructions for equipment and systems, including a complete list of equipment and parts list. Indicate nameplate information such as make, size, capacity, serial number;
  - (b) names, addresses and phone numbers of subcontractors and suppliers;
  - (c) guarantees, warranties and bonds showing:
    - (i) name and address of projects;
    - (ii) guarantee commencement date (date of Final Certificate of Completion);
    - (iii) duration of guarantee;
    - (iv) clear indication of what is being guaranteed and what remedial action will be taken under guarantee; and
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## GENERAL REQUIREMENTS: PROJECT CLOSEOUT

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- (v) signature and seal of Contractor; and
  - (vi) additional material used in project listed under various sections showing name of manufacturer and source supply.
- 4.3 Neatly type lists and notes. Use clear Drawings, diagrams or manufacturer's literature.
- 4.4 Include four complete sets of final Shop Drawings, bound separately, indicating corrections and changes made during fabrication and installation.

### 5.0 Inspection/Takeover Procedures

- 5.1 Procedures for Substantial and Total Performance of Work and completion takeover procedures shall be according to OAA/OGCA Document No. 100, December 12, 2007.

### 6.0 Date-Related Compliance

- 6.1 The Owner may, at no additional cost to itself, require the Contractor to demonstrate Date-Related Compliance as specified by General Requirements: Material and Equipment and/or compliance techniques and test procedures the Contractor followed in order to comply with these requirements.

**END OF SECTION**

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