



OPS GENERAL CONDITIONS OF CONTRACT

Table of Contents

SECTION GC 1.0 - INTERPRETATION

GC 1.01	Captions	6
GC 1.02	Abbreviations	6
GC 1.03	Gender and Singular References	6
GC 1.04	Definitions	6
GC 1.05	Substantial Performance.....	11
GC 1.06	Completion	11
GC 1.07	Final Acceptance	11
GC 1.08	Interpretation of Certain Words.....	11

SECTION GC 2.0 - CONTRACT DOCUMENTS

GC 2.01	Reliance on Contract Documents	12
GC 2.02	Order of Precedence.....	12

SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT

GC 3.01	Contract Administrator's Authority	14
GC 3.02	Working Drawings.....	15
GC 3.03	Right of the Contract Administrator to Modify Methods and Equipment.....	16
GC 3.04	Emergency Situations	16
GC 3.05	Layout	16
GC 3.06	Extension of Contract Time.....	16
GC 3.07	Delays	17
GC 3.08	Assignment of Contract.....	17
GC 3.09	Subcontracting by the Contractor	18

GC 3.10	Changes	18
GC 3.10.01	Changes in the Work	18
GC 3.10.02	Extra Work	19
GC 3.10.03	Additional Work	19
GC 3.11	Notices	19
GC 3.12	Use and Occupancy of the Work Prior to Substantial Performance.....	19
GC 3.13	Claims, Negotiations, Mediation	20
GC 3.13.01	Continuance of the Work	20
GC 3.13.02	Record Keeping	20
GC 3.13.03	Claims Procedure	20
GC 3.13.04	Negotiations	21
GC 3.13.05	Mediation.....	21
GC 3.13.06	Payment	21
GC 3.13.07	Rights of Both Parties	21
GC 3.14	Arbitration.....	21
GC 3.14.01	Conditions for Arbitration	21
GC 3.14.02	Arbitration Procedure	22
GC 3.14.03	Appointment of Arbitrator	22
GC 3.14.04	Costs	22
GC 3.14.05	The Decision	23
GC 3.15	Archaeological Finds.....	23

SECTION GC 4.0 - OWNER'S RESPONSIBILITIES AND RIGHTS

GC 4.01	Working Area	24
GC 4.02	Approvals and Permits.....	24
GC 4.03	Management and Disposition of Materials.....	24
GC 4.04	Construction Affecting Railway Property	25
GC 4.05	Default by the Contractor	25
GC 4.06	Contractor's Right to Correct a Default	25

GC 4.07	Owner's Right to Correct a Default	26
GC 4.08	Termination of Contractor's Right to Continue the Work	26
GC 4.09	Final Payment to Contractor	26
GC 4.10	Termination of the Contract	26
GC 4.11	Continuation of Contractor's Obligations	27
GC 4.12	Use of Performance Bond.....	27
GC 4.13	Payment Adjustment.....	27

SECTION GC 5.0 - MATERIAL

GC 5.01	Supply of Material	28
GC 5.02	Quality of Material	28
GC 5.03	Rejected Material	28
GC 5.04	Substitutions.....	29
GC 5.05	Owner Supplied Material.....	29
GC 5.05.01	Ordering of Excess Material.....	29
GC 5.05.02	Care of Material.....	29

SECTION GC 6.0 - INSURANCE, PROTECTION AND DAMAGE

GC 6.01	Protection of Work, Persons, and Property	31
GC 6.02	Indemnification	31
GC 6.03	Contractor's Insurance	32
GC 6.03.01	General	32
GC 6.03.02	General Liability Insurance	32
GC 6.03.03	Automobile Liability Insurance	33
GC 6.03.04	Aircraft and Watercraft Liability Insurance	33
GC 6.03.04.01	Aircraft Liability Insurance	33
GC 6.03.04.02	Watercraft Liability Insurance.....	33
GC 6.03.05	Property and Boiler Insurance	33
GC 6.03.05.01	Property Insurance.....	33
GC 6.03.05.02	Boiler Insurance	34
GC 6.03.05.03	Use and Occupancy of the Work Prior to Completion	34
GC 6.03.05.04	Payment for Loss or Damage	34

GC 6.03.06	Contractor's Equipment Insurance.....	35
GC 6.03.07	Insurance Requirements and Duration	35
GC 6.04	Bonding	35
GC 6.05	Workplace Safety and Insurance Board	36

SECTION GC 7.0 - CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

GC 7.01	General	37
GC 7.02	Layout	39
GC 7.03	Working Area	39
GC 7.04	Damage by Vehicles or Other Equipment	40
GC 7.05	Excess Loading of Motor Vehicles.....	40
GC 7.06	Condition of the Working Area	40
GC 7.07	Maintaining Roadways and Detours	40
GC 7.08	Access to Properties Adjoining the Work and Interruption of Utility Services	41
GC 7.09	Approvals and Permits	41
GC 7.10	Suspension of Work.....	42
GC 7.11	Contractor's Right to Stop the Work or Terminate the Contract	42
GC 7.12	Notices by the Contractor	42
GC 7.13	Obstructions	43
GC 7.14	Limitations of Operations	43
GC 7.15	Cleaning Up Before Acceptance.....	43
GC 7.16	Warranty.....	43
GC 7.17	Contractor's Workers	44
GC 7.18	Drainage.....	44

SECTION GC 8.0 - MEASUREMENT AND PAYMENT

GC 8.01	Measurement	45
GC 8.01.01	Quantities	45
GC 8.01.02	Variations in Tender Quantities.....	45

GC 8.02	Payment	46
GC 8.02.01	Price for Work	46
GC 8.02.02	Advance Payments for Material	46
GC 8.02.03	Certification and Payment.....	47
GC 8.02.03.01	Progress Payment Certificate	47
GC 8.02.03.02	Certification of Subcontract Completion	47
GC 8.02.03.03	Subcontract Statutory Holdback Release Certificate and Payment	47
GC 8.02.03.04	Certification of Substantial Performance	48
GC 8.02.03.05	Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates	48
GC 8.02.03.06	Certification of Completion.....	49
GC 8.02.03.07	Completion Payment and Completion Statutory Holdback Release Payment Certificates	49
GC 8.02.03.08	Interest	50
GC 8.02.03.09	Interest for Late Payment.....	50
GC 8.02.03.10	Interest for Negotiations and Claims.....	51
GC 8.02.03.11	Owner's Set-Off.....	51
GC 8.02.03.12	Delay in Payment.....	51
GC 8.02.04	Payment on a Time and Material Basis	51
GC 8.02.04.01	Definitions	51
GC 8.02.04.02	Daily Work Records	52
GC 8.02.04.03	Payment for Work	53
GC 8.02.04.04	Payment for Labour	53
GC 8.02.04.05	Payment for Material.....	53
GC 8.02.04.06	Payment for Equipment	53
GC 8.02.04.06.01	Working Time	53
GC 8.02.04.06.02	Standby Time	53
GC 8.02.04.07	Payment for Hand Tools	54
GC 8.02.04.08	Payment for Work by Subcontractors	54
GC 8.02.04.09	Submission of Invoices	54
GC 8.02.04.10	Payment Other Than on a Time and Material Basis.....	55
GC 8.02.04.11	Payment Inclusions.....	55
GC 8.02.05	Final Acceptance Certificate	55
GC 8.02.06	Payment of Workers	55
GC 8.02.07	Records.....	55
GC 8.02.08	Taxes	56
GC 8.02.09	Liquidated Damages	56

SECTION GC 1.0 - INTERPRETATION

GC 1.01 Captions

- .01 The captions appearing in these General Conditions have been inserted as a matter of convenience and for ease of reference only and in no way define, limit, or enlarge the scope or meaning of the General Conditions or any provision hereof.

GC 1.02 Abbreviations

- .01 The abbreviations on the left below are commonly found in the Contract Documents and represent the organizations and phrases listed on the right:

"AASHTO"	-	American Association of State Highway Transportation Officials
"ACI"	-	American Concrete Institute
"ANSI"	-	American National Standards Institute
"ASTM"	-	American Society for Testing and Materials
"AWG"	-	American Wire Gauge
"AWWA"	-	American Water Works Association
"CCIL"	-	Canadian Council of Independent Laboratories
"CESA"	-	Canadian Engineering Standards Association
"CGSB"	-	Canadian General Standards Board
"CSA"	-	Canadian Standards Association
"CWB"	-	Canadian Welding Bureau
"GC"	-	General Conditions
"ISO"	-	International Organization for Standardization
"MOE"	-	Ontario Ministry of the Environment
"MTO"	-	Ontario Ministry of Transportation
"MUTCD"	-	Manual of Uniform Traffic Control Devices (Replaced by OTM)
"OPS"	-	Ontario Provincial Standard
"OPSD"	-	Ontario Provincial Standard Drawing
"OPSS"	-	Ontario Provincial Standard Specification
"OTM"	-	Ontario Traffic Manual
"PEO"	-	Professional Engineers Ontario
"SAE"	-	Society of Automotive Engineers
"SCC"	-	Standards Council of Canada
"SSPC"	-	Structural Steel Painting Council
"UL"	-	Underwriters Laboratories
"ULC"	-	Underwriters Laboratories Canada

GC 1.03 Gender and Singular References

- .01 References to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural and vice versa, as the context requires.

GC 1.04 Definitions

- .01 For the purposes of this Contract the following definitions apply:

Actual Measurement means the field measurement of that quantity within the approved limits of the Work.

Addendum means an addition or change in the tender documents issued by the Owner prior to tender closing.

Additional Work means work not provided for in the Contract and not considered by the Contract Administrator to be essential to the satisfactory completion of the Contract within its intended scope.

Agreement means the agreement between the Owner and the Contractor for the performance of the Work that is included in the Contract Documents.

Base means a layer of material of specified type and thickness placed immediately below the pavement wearing surface layers, curb and gutter, or sidewalk.

Business Day means any Day except Saturdays, Sundays, and statutory holidays.

Certificate of Subcontract Completion means the certificate issued by the Contract Administrator in accordance with clause GC 8.02.03.02, Certification of Subcontract Completion.

Certificate of Substantial Performance means the certificate issued by the Contract Administrator at Substantial Performance.

Change Directive means any written instruction signed by the Owner, or by the Contract Administrator where so authorized, directing that a Change in the Work or Extra Work be performed.

Change in the Work means the deletion, extension, increase, decrease, or alteration of lines; grades; dimensions; quantities; methods; drawings; substantial changes in geotechnical, subsurface, surface, or other conditions; changes in the character of the Work to be done; or materials of the Work or part thereof, within the intended scope of the Contract.

Change Order means a written amendment to the Contract signed by the Contractor and the Owner, or the Contract Administrator where so authorized, covering contingencies, a Change in the Work, Extra Work, Additional Work, and changed subsurface conditions; and establishing the basis for payment and the time allowed for the adjustment of the Contract Time.

Completion Certificate means the certificate issued by the Contract Administrator at completion.

Constructor means, for the purposes of, and within the meaning of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended and amendments thereto, the Contractor who executes the Contract.

Contract means the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities, and obligations as prescribed in the Contract Documents.

Contract Administrator means the person, partnership, or corporation designated by the Owner to be the Owner's representative for the purposes of the Contract.

Contract Documents mean the executed Agreement between the Owner and the Contractor, Tender, General Conditions of Contract, Supplemental General Conditions of Contract, Standard Specifications, Special Provisions, Contract Drawings, addenda incorporated in a Contract Document before the execution of the Agreement, such other documents as may be listed in the Agreement, and subsequent amendments to the Contract Documents made pursuant to the provisions of the Agreement.

Contract Drawings or **Contract Plans** mean drawings or plans, any Geotechnical Report, any Subsurface Report, and any other reports and information provided by the Owner for the Work, and without limiting the generality thereof, may include soil profiles, foundation investigation reports, reinforcing steel schedules, aggregate sources lists, Quantity Sheets, and cross-sections.

Contract Time means the time stipulated in the Contract Documents for Substantial Performance of the Work, including any extension of Contract Time made pursuant to the Contract Documents.

Contractor means the person, partnership, or corporation undertaking the Work as identified in the Agreement.

Controlling Operation means any component of the Work that, if delayed, may delay the completion of the Work.

Cost Plus has the same meaning as "Time and Material."

Cut-Off Date means the date up to which payment shall be made for work performed.

Daily Work Records mean daily Records detailing the number and categories of workers and hours worked or on standby, types and quantities of Equipment and number of hours in use or on standby, and description and quantities of Material utilized.

Day means a calendar day.

Drawings or Plans mean any Contract Drawings or Contract Plans, or any Working Drawings or Working Plans, or any reproductions of drawings or plans pertaining to the Work.

End Result Specification means specifications that require the Contractor to be responsible for supplying a product or part of the Work. The Owner accepts or rejects the final product or applies a price adjustment that is commensurate with the degree of compliance with the specification.

Equipment means all machinery and equipment used for preparing, fabricating, conveying or erecting the Work and normally referred to as construction machinery and equipment.

Estimate means a calculation of the quantity or cost of the Work or part of it depending on the context.

Extra Work means work not provided for in the Contract as awarded but considered by the Contract Administrator to be essential to the satisfactory completion of the Contract within its intended scope, including unanticipated work required to comply with legislation and regulations that affect the Work.

Final Acceptance Certificate means the certificate issued by the Contract Administrator at Final Acceptance of the Work.

Final Detailed Statement means a complete evaluation prepared by the Contract Administrator showing the quantities, unit prices, and final dollar amounts of all items of work completed under the Contract, including variations in tender items and Extra Work, all as set out in the same general form as the monthly estimates.

Force Account has the same meaning as "Time and Material."

Geotechnical Report means a report or other information identifying soil, rock, and ground water conditions in the area of any proposed Work.

Grade means the required elevation of that part of the Work.

Hand Tools means tools that are commonly called tools or implements of the trade and include small power tools.

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

Lot means a specific quantity of material or a specific amount of construction normally from a single source and produced by the same process.

Lump Sum Item means a tender item indicating a portion of the Work for which payment will be made at a single tendered price. Payment is not based on a measured quantity, although a quantity may be given in the Contract Documents.

Major Item means any tender item that has a value, calculated on the basis of its actual or estimated tender quantity, whichever is the larger, multiplied by its tender unit price, which is equal or greater than the lesser of,

- a) \$100,000, or
- b) 5% of the total tender value calculated on the basis of the total of all the estimated tender quantities and the tender unit prices.

Material means material, machinery, equipment and fixtures forming part of the Work.

Owner means the party to the Contract for whom the Work is being performed, as identified in the Agreement, and includes, with the same meaning and import, "Authority."

Pavement means a wearing course or courses placed on the Roadway and consisting of asphaltic concrete, hydraulic cement concrete, Portland cement concrete, or plant or road mixed mulch.

Performance Bond means the type of security furnished to the Owner to guarantee completion of the Work in accordance with the Contract and to the extent provided in the bond.

Plan Quantity means that quantity as computed from within the boundary lines of the Work as shown in the Contract Documents.

Project means the construction of the Work as contemplated by this Contract.

Quantity Sheet means a list of the quantities of Work to be done.

Quarried Rock means material removed from an open excavation made in a solid mass of rock that, prior to removal, was integral with the parent mass.

Quarry means a place where Aggregate has been or is being removed from an open excavation made in a solid mass of igneous, sedimentary, or metamorphic rock or any combination of these that, prior to removal, was integral with the parent areas.

Rate of Interest means the rate of interest as determined under the *Financial Administration Act* by the Minister of Finance of Ontario and issued by, and available from, the Owner.

Records mean any books, payrolls, accounts, or other information that relate to the Work or any Change in the Work or claims arising therefrom.

Roadway means that part of the Highway designed or intended for use by vehicular traffic and includes the Shoulders.

Shoulder means that portion of the Roadway between the edge of the travelled portion of the wearing surface and the top inside edge of the ditch or fill slope.

Special Provisions mean directions containing requirements specific to the Work.

Standard Drawing or Standard Specification means a standard practice required and stipulated by the Owner for performance of the Work.

Subbase means a layer of material of specified type and thickness between the Subgrade and the Base.

Subcontractor means a person, partnership or corporation undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

Subgrade means the earth or rock surface, whether in cut or fill, as prepared to support the pavement structure, consisting of Base, Subbase, and Pavement.

Subsurface Report means a report or other information identifying the location of Utilities, concealed and adjacent structures, and physical obstructions that fall within the influence of the Work.

Superintendent means the Contractor's authorized representative in responsible charge of the Work.

Surety means the person, partnership or corporation, other than the Contractor, licensed in Ontario to transact business under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, executing a bond provided by the Contractor.

Tender means an offer in writing from the Contractor, submitted in the format prescribed by the Owner, to complete the Work.

Time and Material means costs calculated according to clause GC 8.02.04, Payment on a Time and Material Basis. Where "Cost Plus" and "Force Account" are used they shall have the same meaning.

Utility means an aboveground or underground facility maintained by a municipality, public utility authority or regulated authority and includes services such as sanitary sewer, storm sewer, water, electric, gas, oil, steam, data transmission, telephone, and cable television.

Warranty Period means the period of 12 months from the date of Substantial Performance or such longer period as may be specified in the Contract Documents for certain Materials or some or all of the Work. Where a date of Substantial Performance is not established, the Warranty Period shall commence on the date of Completion.

Work means the total construction and related services required by the Contract Documents.

Working Area means all the lands and easements owned or acquired by the Owner for the construction of the Work.

Working Day means any Day,

- a) except Saturdays, Sundays and statutory holidays;
- b) except a Day as determined by the Contract Administrator, on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom, from proceeding with a Controlling Operation. For the purposes of this definition, this shall be a Day during which the Contractor cannot proceed with at least 60% of the normal labour and Equipment force effectively engaged on the Controlling Operation for at least 5 hours;
- c) except a Day on which the Contractor is prevented from proceeding with a Controlling Operation, as determined by the Contract Administrator by reason of,
 - i. any breach of the Contract by the Owner or if such prevention is due to the Owner, another contractor hired by the Owner, or an employee of any one of them, or by anyone else acting on behalf of the Owner.
 - ii. non-delivery of Owner supplied Materials.
 - iii. any cause beyond the reasonable control of the Contractor that can be substantiated by the Contractor to the satisfaction of the Contract Administrator.

Working Drawings or Working Plans means any Drawings or Plans prepared by the Contractor for the execution of the Work and may, without limiting the generality thereof, include formwork, falsework, and shoring plans; Roadway protection plans; shop drawings; shop plans; or erection diagrams.

GC 1.05 Substantial Performance

- .01 The Work is substantially performed,
- a) when the Work to be performed under the Contract or a substantial part thereof is ready for use or is being used for the purpose intended; and
 - b) when the Work to be performed under the Contract is capable of completion or, where there is a known defect, the cost of correction, is not more than
 - i. 3% of the first \$500,000 of the Contract price,
 - ii. 2% of the next \$500,000 of the Contract price, and
 - iii. 1% of the balance of the Contract price.
- .02 For the purposes of this Contract, where the Work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the Work cannot be completed expeditiously for reasons beyond the control of the Contractor or, where the Owner and the Contractor agree not to complete the Work expeditiously, the price of the services or materials remaining to be supplied and required to complete the Work shall be deducted from the Contract price in determining Substantial Performance.

GC 1.06 Completion

- .01 The Work shall be deemed to be completed and services or Materials shall be deemed to be last supplied to the Work when the price of completion, correction of a known defect, or last supply is not more than the lesser of,
- a) 1% of the Contract price; or
 - b) \$1,000.

GC 1.07 Final Acceptance

- .01 Final Acceptance shall be deemed to occur when the Contract Administrator is satisfied that, to the best of the Contract Administrator's knowledge at that time, the Contractor has rectified all imperfect work and has discharged all of the Contractor's obligations under the Contract.

GC 1.08 Interpretation of Certain Words

- .01 The words "acceptable," "approval," "authorized," "considered necessary," "directed," "required," "satisfactory," or words of like import, shall mean approval of, directed, required, considered necessary, or authorized by and acceptable or satisfactory to the Contract Administrator, unless the context clearly indicates otherwise.

SECTION GC 2.0 - CONTRACT DOCUMENTS

GC 2.01 Reliance on Contract Documents

- .01 The Owner warrants that the information furnished in the Contract Documents can be relied upon with the following limitations or exceptions:
- a) The location of all mainline underground Utilities that may affect the Work shall be shown to a tolerance of:
 - i. 1 m horizontal, and
 - ii. 0.3 m vertical
- .02 The Owner does not warrant or make any representation with respect to:
- a) interpretations of data or opinions expressed in any Subsurface Report available for the perusal of the Contractor, whether or not such report is included as part of the Contract Documents, and
 - b) other information specifically excluded from this warranty.

GC 2.02 Order of Precedence

- .01 In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:
- a) Agreement
 - b) Addenda
 - c) Special Provisions
 - d) Contract Drawings
 - e) Standard Specifications
 - f) Standard Drawings
 - g) Instructions to Tenderers
 - h) Tender
 - i) Supplemental General Conditions
 - j) General Conditions
 - k) Working Drawings
- Later dates shall govern within each of the above categories of documents.
- .02 In the event of any conflict among or inconsistency in the information shown on Drawings, the following rules shall apply:
- a) Dimensions shown in figures on a Drawing shall govern where they differ from dimensions scaled from the same drawing;
 - b) Drawings of larger scale shall govern over those of smaller scale;

- c) Detailed Drawings shall govern over general Drawings; and
 - d) Drawings of a later date shall govern over those of an earlier date in the same series.
- .03 In the event of any inconsistency or conflict in the contents of Standard Specifications the following descending order of precedence shall govern:
- a) Owner's Standard Specifications
 - b) Ontario Provincial Standard Specifications
 - c) Other Standard Specifications, such as those produced by CSA, CGSB, ASTM, and ANSI and referenced in the Ontario Provincial Standard Specifications
- .04 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT

GC 3.01

Contract Administrator's Authority

- .01 The Contract Administrator shall be the Owner's representative during construction and until the issuance of the Completion Certificate or the issuance of the Final Acceptance Certificate, whichever is later. All instructions to the Contractor, including instructions from the Owner, shall be issued by the Contract Administrator. The Contract Administrator shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- .02 All claims, disputes and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator in writing by the Contractor.
- .03 The Contract Administrator may inspect the Work for its conformity with the Plans and Standard Specifications, and to record the necessary data to establish payment quantities under the schedule of tender 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.
- .04 The Contract Administrator shall determine the amounts owing to the Contractor under the Contract and shall issue certificates for payment in such amounts as provided for in Section GC 8.0, Measurement and Payment.
- .05 The Contract Administrator shall, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as shop drawings, product data, and samples in accordance with the Contract Documents.
- .06 The Contract Administrator shall investigate all allegations of a Change in the Work made by the Contractor and issue appropriate instructions.
- .07 The Contract Administrator shall prepare Change Directives and Change Orders for the Owner's approval.
- .08 Upon written application by the Contractor, the Contract Administrator and the Contractor shall jointly conduct an inspection of the Work to establish the date of Substantial Performance of the Work or the date of Completion of the Work or both.
- .09 The Contract Administrator shall be, in the first instance, the interpreter of the Contract Documents and the judge of the performance thereunder by both parties to the Contract. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents and, in making these decisions, the Contract Administrator shall not show partiality to either party.
- .10 The Contract Administrator shall have the authority to reject part of the Work or Material that does not conform to the Contract Documents.
- .11 In the event that the Contract Administrator determines that any part of the Work performed by the Contractor is defective, whether the result of poor workmanship; the use of defective material; or damage through carelessness or other act or omission of the Contractor and whether or not incorporated in the Work; or otherwise fails to conform to the Contract Documents, then the Contractor shall if directed by the Contract Administrator promptly remove the Work and replace, make good, or re-execute the Work at no additional cost to the Owner.
- .12 Any part of the Work destroyed or damaged by such removals, replacements, or re-executions shall be made good, promptly, at no additional cost to the Owner.

- .13 If, in the opinion of the Contract Administrator, it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, the amount that will be determined in the first instance by the Contract Administrator.
- .14 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective work or Material shall not constitute acceptance of defective work or Material.
- .15 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary:
- a) to facilitate the checking of any portion of the Contractor's construction layout;
 - b) to facilitate the inspection of any portion of the Work; or
 - c) for the Contractor to remedy non-compliance in the case of such non-compliance with the provisions of the Contract by the Contractor.
- The Contractor shall not be entitled to any compensation for suspension of the Work in these circumstances.
- .16 The Owner has the right to terminate the Contract for wilful or persistent violation by the Contractor or its workers of the Occupational Health and Safety Act legislation and regulations, Workplace Safety and Insurance Board Act, and Regulation 309 of the Environmental Protection Act.
- .17 If the Contract Administrator determines that any worker employed on the Work is incompetent, as defined by the Occupational Health and Safety Act, or is disorderly, then the Contract Administrator shall provide written notice to the Contractor and the Contractor shall immediately remove the worker from the Working Area. Such worker shall not return to the Working Area without the prior written consent of the Contract Administrator.

GC 3.02 Working Drawings

- .01 The Contractor shall arrange for the preparation of clearly identified and dated Working Drawings as called for by the Contract Documents.
- .02 The Contractor shall submit Working Drawings to the Contract Administrator with reasonable promptness and in orderly sequence so as to not cause delay in the Work. If either the Contractor or the Contract Administrator so requests, they shall jointly prepare a schedule fixing the dates for submission and return of Working Drawings. Working Drawings shall be submitted in printed form. At the time of submission the Contractor shall notify the Contract Administrator in writing of any deviations from the Contract requirements that exist in the Working Drawings.
- .03 The Contract Administrator shall review and return Working Drawings in accordance with an agreed upon schedule, or otherwise, with reasonable promptness so as not to cause delay.
- .04 The Contract Administrator's review shall be to check for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the Working Drawings or of responsibility for meeting all requirements of the Contract Documents, unless a deviation on the Working Drawings has been approved in writing by the Contract Administrator.

- .05 The Contractor shall make any changes in Working Drawings that the Contract Administrator may require to make the Working Drawings consistent with the Contract Documents and resubmit, unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.
- .06 Work related to the Working Drawings shall not proceed until the Working Drawings have been signed and dated by the Contract Administrator and marked with the words "Reviewed. Permission to construct granted."
- .07 The Contractor shall keep one set of the reviewed Working Drawings, marked as above, at the site at all times.

GC 3.03 Right of the Contract Administrator to Modify Methods and Equipment

- .01 The Contractor shall, when requested in writing, make alterations in the method, Equipment, or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe, or damaging to either the Work or existing facilities or the environment.
- .02 The Contractor shall, when requested in writing, alter the sequence of its operations on the Contract so as to avoid interference with work being performed by others.
- .03 Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.

GC 3.04 Emergency Situations

- .01 The Contract Administrator has the right to determine the existence of an emergency situation and, when such an emergency situation is deemed to exist, the Contract Administrator may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action or, if the Contractor is not available, the Contract Administrator may direct others to remedy the situation.
- .02 If the emergency situation was the fault of the Contractor, the remedial work shall be done at the Contractor's expense. If the emergency situation was not the fault of the Contractor, the Owner shall pay for the remedial work.

GC 3.05 Layout

- .01 The Contract Administrator shall provide baseline and benchmark information for the general location, alignment, and elevation of the Work. The Owner shall be responsible only for the correctness of the information provided by the Contract Administrator.

GC 3.06 Extension of Contract Time

- .01 An application for an extension of Contract Time shall be made in writing by the Contractor to the Contract Administrator as soon as the need for such extension becomes evident and at least 15 Days prior to the expiration of the Contract Time. The application for an extension of Contract Time shall enumerate the reasons, and state the length of extension required.
- .02 Circumstances suitable for consideration of an extension of Contract Time include the following:
 - a) Delays, subsection GC 3.07.
 - b) Changes in the Work, clause GC 3.10.01.
 - c) Extra Work, clause GC 3.10.02.

- d) Additional Work, clause GC 3.10.03.
- .03 The Contract Administrator shall, in considering an application for an extension to the Contract Time, take into account whether the delays, Changes in the Work, Extra Work, or Additional Work involve a Controlling Operation.
- .04 The Contract Time shall be extended for such additional time as may be recommended by the Contract Administrator and deemed fair and reasonable by the Owner.
- .05 The terms and conditions of the Contract shall continue for such extension of Contract Time.

GC 3.07 Delays

- .01 If the Contractor is delayed in the performance of the Work by,
 - a) war, blockades, and civil commotions, errors in the Contract Documents;
 - b) an act or omission of the Owner or Contract Administrator, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents;
 - c) a stop work order issued by a court or public authority, provided that such order was not issued as the result of an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly;
 - d) the Contract Administrator giving notice under subsection GC 7.10, Suspension of Work;
 - e) abnormal inclement weather; or
 - f) archaeological finds in accordance with subsection GC 3.15, Archaeological Finds,then the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay, provided that in the case of an application for an extension of Contract Time due to abnormal inclement weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada in support of such application. Extension of Contract Time may be granted in accordance with subsection GC 3.06, Extension of Contract Time.
- .02 If the Work is delayed by labour disputes, strikes or lock-outs, including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound, are beyond the Contractor's control, which then the Contract Time shall be extended in accordance with subsection GC 3.06, Extension of Contract Time. In no case shall the extension of Contract Time be less than the time lost as the result of the event causing the delay, unless a shorter extension is agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are the result of actions by the Owner.
- .03 The Contractor shall not be entitled to payment for the cost of delays incurred as a result of a dispute between the Contractor and Owner. The Contractor shall execute the Work and may pursue resolution of the dispute in accordance with subsection GC 3.13, Claims, Negotiations, Mediations.

GC 3.08 Assignment of Contract

- .01 The Contractor shall not assign the Contract, either in whole or in part, without the prior written consent of the Owner.

GC 3.09 Subcontracting by the Contractor

- .01 The Contractor may subcontract any part of the Work, subject to these General Conditions and any limitations specified in the Contract Documents.
- .02 The Contractor shall notify the Contract Administrator 10 Days prior to the start of construction, in writing, of the intention to subcontract. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.
- .03 The Contract Administrator shall, within 5 Days of receipt of such notification, accept or reject the intended Subcontractor. The rejection shall be in writing and shall include the reasons for the rejection.
- .04 The Contractor shall not, without the written consent of the Owner, change a Subcontractor who has been engaged in accordance with this subsection.
- .05 The Contractor shall preserve and protect the rights of the parties under the Contract with respect to that part of the Work to be performed under subcontract and shall,
 - a) enter into agreements with the intended Subcontractors to require them to perform their work in accordance with the Contract Documents; and
 - b) be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- .06 The Owner's consent to subcontracting by the Contractor shall not be construed to relieve the Contractor from any obligation under the Contract and shall not impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.

GC 3.10 Changes

GC 3.10.01 Changes in the Work

- .01 The Owner, or the Contract Administrator where so authorized, may, by order in writing, make a Change in the Work without invalidating the Contract. The Contractor shall not be required to proceed with a Change in the Work until in receipt of a Change Order or Change Directive. Upon the receipt of such Change Order or Change Directive the Contractor shall proceed with the Change in the Work.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection GC 3.06, Extension of Contract Time.
- .03 If the Change in the Work relates solely to quantities, payment for that part of the Work shall be made according to the conditions specified in clause GC 8.01.02, Variations in Tender Quantities. If the Change in the Work does not solely relate to quantities, then either the Owner or the Contractor may initiate negotiations upwards or downwards for the adjustment of the Contract price in respect of the Change in the Work pursuant to subsection GC 3.13, Claims, Negotiations, Mediation or payment may be made according to the conditions contained in clause GC 8.02.04, Payment on a Time and Material Basis.

GC 3.10.02 Extra Work

- .01 The Owner, or Contract Administrator where so authorized, may instruct the Contractor to perform Extra Work without invalidating the Contract. The Contractor shall not be required to proceed with the Extra Work until in receipt of a Change Order or Change Directive. Upon receipt of such Change Order or Change Directive the Contractor shall proceed with the Extra Work.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection GC 3.06, Extension of Contract Time.
- .03 Either the Owner or Contractor may initiate negotiations upwards or downwards for the payment for the Extra Work pursuant to subsection GC 3.13, Claims, Negotiations, Mediation, or payment may be made according to the conditions contained in clause GC 8.02.04, Payment on a Time and Material Basis.

GC 3.10.03 Additional Work

- .01 The Owner, or Contract Administrator where so authorized, may request the Contractor to perform Additional Work without invalidating the Contract. If the Contractor agrees to perform Additional Work, the Contractor shall proceed with such Additional Work upon receipt of a Change Order.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection GC 3.06, Extension of Contract Time.
- .03 Payment for the Additional Work may be negotiated pursuant to subsection GC 3.13, Claims, Negotiations, Mediation, or payment may be made according to the conditions contained in clause GC 8.02.04, Payment on a Time and Material Basis.

GC 3.11 Notices

- .01 Any notice permitted or required to be given to the Contract Administrator or the Superintendent in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery if delivered by hand, email, or by facsimile transmission and on the fifth Day after the date of mailing, if sent by mail.
- .02 The Contractor and the Owner shall provide each other with the mail and email addresses; pager, cell phone, and telephone numbers; and facsimile terminal numbers for the Contract Administrator and the Superintendent at the commencement of the Work, and update as necessary.
- .03 In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing within 2 Days.
- .04 Any notice permitted or required to be given to the Owner or the Contractor shall be given in accordance with the notice provision of the Contract.

GC 3.12 Use and Occupancy of the Work Prior to Substantial Performance

- .01 Where it is not contemplated elsewhere in the Contract Documents, the Owner may use or occupy the Work or any part thereof prior to Substantial Performance, provided that at least 30 Days written notice has been given to the Contractor.
- .02 The use or occupancy of the Work or any part thereof by the Owner prior to Substantial Performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work in accordance with the Contract

Documents. The Owner shall be responsible for any damage that occurs because of the Owner's use or occupancy. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages in accordance with the terms of the Contract.

GC 3.13 Claims, Negotiations, Mediation

GC 3.13.01 Continuance of the Work

- .01 Unless the Contract has been terminated or completed, the Contractor shall in every case, after serving or receiving any notification of a claim or dispute, verbal or written, continue to proceed with the Work with due diligence and expedition. It is understood by the parties that such action shall not jeopardize any claim it may have.

GC 3.13.02 Record Keeping

- .01 Immediately upon commencing work that may result in a claim, the Contractor shall keep Daily Work Records during the course of the Work, sufficient to substantiate the Contractor's claim, and the Contract Administrator shall keep Daily Work Records to be used in assessing the Contractor's claim, all in accordance with clause GC 8.02.07, Records.
- .02 The Contractor and the Contract Administrator shall attempt to reconcile their respective Daily Work Records on a daily basis, to simplify review of the claim, when submitted. If the Contractor and the Contract Administrator fail to reconcile their respective Daily Work Records, then the Contractor shall submit its Daily Work Records as part of its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim.
- .03 The keeping of Daily Work Records by the Contract Administrator or the reconciling of such Daily Work Records with those of the Contractor shall not be construed to be acceptance of the claim.

GC 3.13.03 Claims Procedure

- .01 The Contractor shall give verbal notice of any situation that may lead to a claim for additional payment immediately upon becoming aware of the situation.
- .02 The Contractor shall provide written notice in the standard form "Notice of Intent to Claim" within 7 Days of the commencement of any part of the Work that may be affected by the situation.
- .03 The Contractor shall submit detailed claims as soon as reasonably possible and in any event no later than 30 Days after completion of the work affected by the situation. The detailed claim shall:
 - a) identify the item or items in respect of which the claim arises;
 - b) state the grounds, contractual or otherwise, upon which the claim is made; and
 - c) include the Records maintained by the Contractor supporting such claim.

In exceptional cases, the 30 Days may be increased to a maximum of 90 Days with approval in writing from the Contract Administrator.

- .04 Within 30 Days of the receipt of the Contractor's detailed claim, the Contract Administrator may request the Contractor to submit any further and other particulars as the Contract Administrator considers necessary to assess the claim. The Contractor shall submit the requested information within 30 Days of receipt of such request.

- .05 Within 90 Days of receipt of the detailed claim, the Contract Administrator shall advise the Contractor, in writing, of the Contract Administrator's opinion with regard to the validity of the claim.

GC 3.13.04 Negotiations

- .01 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.
- .02 Should the Contractor disagree with the opinion given in paragraph GC 3.13.03.05, with respect to any part of the claim, the Contract Administrator shall enter into negotiations with the Contractor to resolve the matters in dispute. Where a negotiated settlement cannot be reached and it is agreed that payment cannot be made on a Time and Material basis in accordance with clause GC 8.02.04, Payment on a Time and Material Basis, the parties shall proceed in accordance with clause GC 3.13.05, Mediation, or subsection GC 3.14, Arbitration.

GC 3.13.05 Mediation

- .01 If a claim is not resolved satisfactorily through the negotiation stage noted in clause GC 3.13.04, Negotiations, within a period of 30 Days following the opinion given in paragraph GC 3.13.03.05, and the Contractor wishes to pursue the issue further, the parties may, upon mutual agreement, utilize the services of an independent third party mediator.
- .02 The mediator shall be mutually agreed upon by the Owner and Contractor.
- .03 The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the parties together or separately, as necessary, to review all aspects of the issue. In a final attempt to assist the parties in resolving the issue themselves prior to proceeding to arbitration the mediator shall provide, without prejudice, a non-binding recommendation for settlement.
- .04 The review by the mediator shall be completed within 90 Days following the opinion given in paragraph GC 3.13.03.05.
- .05 Each party is responsible for its own costs related to the use of the third party mediator process. The cost of the third party mediator shall be equally shared by the Owner and Contractor.

GC 3.13.06 Payment

- .01 Payment of the claim shall be made no later than 30 Days after the date of resolution of the claim or dispute. Such payment shall be made according to the terms of Section GC 8.0, Measurement and Payment.

GC 3.13.07 Rights of Both Parties

- .01 It is agreed that no action taken under subsection GC 3.13, Claims, Negotiations, Mediation, by either party shall be construed as a renunciation or waiver of any of the rights or recourse available to the parties, provided that the requirements set out in this subsection are fulfilled.

GC 3.14 Arbitration

GC 3.14.01 Conditions of Arbitration

- .01 If a claim is not resolved satisfactorily through the negotiation stage noted in clause GC 3.13.04, Negotiations, or the mediation stage noted in clause GC 3.13.05, Mediation, either party may invoke the provisions of subsection GC 3.14, Arbitration, by giving written notice to the other party.

- .02 Notification that arbitration shall be implemented to resolve the issue shall be communicated in writing as soon as possible and no later than 60 Days following the opinion given in paragraph GC 3.13.03.05. Where the use of a third party mediator was implemented, notification shall be within 120 Days of the opinion given in paragraph GC 3.13.03.05.
- .03 The parties shall be bound by the decision of the arbitrator.
- .04 The rules and procedures of the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended, shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of subsection GC 3.14, Arbitration.

GC 3.14.02 Arbitration Procedure

- .01 The following provisions are to be included in the agreement to arbitrate and are subject only to such right of appeal as exist where the arbitrator has exceeded his or her jurisdiction or have otherwise disqualified him or herself:
 - a) All existing actions in respect of the matters under arbitration shall be stayed pending arbitration;
 - b) All outstanding claims and matters to be settled are to be set out in a schedule to the agreement. Only such claims and matters as are in the schedule shall be arbitrated; and
 - c) Before proceeding with the arbitration, the Contractor shall confirm that all matters in dispute are set out in the schedule.

GC 3.14.03 Appointment of Arbitrator

- .01 The arbitrator shall be mutually agreed upon by the Owner and Contractor to adjudicate the dispute.
- .02 Where the Owner and Contractor cannot agree on a sole arbitrator within 30 Days of the notification of arbitration noted in paragraph GC 3.14.01.02, the Owner and the Contractor shall each choose an appointee within 37 Days of the notice of arbitration.
- .03 The appointees shall mutually agree upon an arbitrator to adjudicate the dispute within 15 Days after the last appointee was chosen or they shall refer the matter to the Arbitration and Mediation Institute of Ontario Inc., which may select an arbitrator to adjudicate the dispute within 7 Days of being requested to do so.
- .04 The arbitrator shall not be interested financially in the Contract nor in either party's business and shall not be employed by either party.
- .05 The arbitrator may appoint independent experts and any other persons to assist him or her.
- .06 The arbitrator is not bound by the rules of evidence that govern the trial of cases in court but may hear and consider any evidence that the arbitrator considers relevant.
- .07 The hearing shall commence within 90 Days of the appointment of the arbitrator.

GC 3.14.04 Costs

- .01 The arbitrator's fee shall be equally shared by the Owner and the Contractor.
- .02 The fees of any independent experts and any other persons appointed to assist the arbitrator shall be shared equally by the Owner and the Contractor.

- .03 The arbitration hearing shall be held in a place mutually agreed upon by both parties or in the event the parties do not agree, a site shall be chosen by the arbitrator. The cost of obtaining appropriate facilities shall be shared equally by the Owner and the Contractor.
- .04 The arbitrator may, in his or her discretion, award reasonable costs, related to the arbitration.

GC 3.14.05 The Decision

- .01 The reasoned decision shall be made in writing within 90 Days of the conclusion of the hearing. An extension of time to make a decision may be granted with consent of both parties. Payment shall be made in accordance with clause GC 3.13.06, Payment.

GC 3.15 Archaeological Finds

- .01 If the Contractor's operations expose any items that may indicate an archaeological find, such as building remains, hardware, accumulations of bones, pottery, or arrowheads, the Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator. Notification may be verbal provided that such notice is confirmed in writing within 2 Days. Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, in accordance with subsection GC 7.10, Suspension of Work.
- .02 Any delay in the completion of the Contract that is caused by such a suspension of Work shall be considered to be beyond the Contractor's control in accordance with paragraph GC 3.07.01.
- .03 Any work directed or authorized in connection with an archaeological find shall be considered as Extra Work in accordance with clause GC 3.10.02, Extra Work.
- .04 The Contractor shall take all reasonable action to minimize additional costs that may accrue as a result of any work stoppage.

SECTION GC 4.0 - OWNER'S RESPONSIBILITIES AND RIGHTS

GC 4.01 Working Area

- .01 The Owner shall acquire all property rights that are deemed necessary by the Owner for the construction of the Work, including temporary working easements, and shall indicate the full extent of the Working Area on the Contract Drawings.
- .02 The Geotechnical Report and Subsurface Report that may be provided by the Owner as part of the tender documents shall form part of the Contract Drawings.

GC 4.02 Approvals and Permits

- .01 The Owner shall pay for all plumbing and building permits.
- .02 The Owner shall obtain and pay for all permits, licences, and certificates solely required for the design of the Work.

GC 4.03 Management and Disposition of Materials

- .01 The Owner shall identify in the Contract Documents the materials to be moved within or removed from the Working Area and any characteristics of those materials that necessitates special materials management and disposition.
- .02 In accordance with regulations under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended, the Owner advises that,
 - a) the designated substances silica, lead, and arsenic are generally present throughout the Working Area occurring naturally or as a result of vehicle emissions;
 - b) the designated substance asbestos may be present in cement products, asphalt, and conduits for Utilities;
 - c) the following hazardous materials are ordinarily present in construction activities: limestone, gypsum, marble, mica, and Portland cement; and
 - d) exposure to these substances may occur as a result of activities by the Contractor such as sweeping, grinding, crushing, drilling, blasting, cutting, and abrasive blasting.
- .03 The Owner shall identify in the Contract Documents any designated substances or hazardous materials other than those identified above and their location in the Working Area.
- .04 If the Owner or Contractor discovers or is advised of the presence of designated substances or hazardous materials that are in addition to those listed in paragraph GC 4.03.02, or not clearly identified in the Contract Documents according to paragraph GC 4.03.03, then verbal notice shall be provided to the other party immediately with written confirmation within 2 Days. The Contractor shall stop work in the area immediately and shall determine the necessary steps required to complete the work in accordance with applicable legislation and regulation.
- .05 The Owner shall be responsible for any reasonable additional costs of removing, managing and disposing of any material not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering. All work under this paragraph shall be deemed to be Extra Work.

- .06 Prior to commencement of the Work, the Owner shall provide to the Contractor a list of those products controlled under the Workplace Hazardous Materials Information System (WHMIS), that the Owner may supply or use on the Contract, together with copies of the Materials Safety Data Sheets for these products. All containers used in the application of products controlled under WHMIS shall be labelled. The Owner shall notify the Contractor in writing of changes to the list and provide relevant Material Safety Data Sheets.

GC 4.04 Construction Affecting Railway Property

- .01 The Owner shall pay the costs of all flagging and other traffic control measures required and provided by the railway company unless such costs are solely a function of the Contractor's chosen method of completing the Work.
- .02 Every precaution shall be taken by the Contractor to protect all railway property at track crossings; or otherwise, on which construction operations are to take place in accordance with the terms of this Contract.
- .03 The Contractor shall be required to conduct the construction operations in such a manner as to avoid a possibility of damaging any railway property in the vicinity of the works. Every reasonable precaution shall be taken by the Contractor to ensure the safety of the workers, Subcontractors, and Equipment, as well as railway property throughout the duration of the Contract.

GC 4.05 Default by the Contractor

- .01 If the Contractor fails to commence the Work within 14 Days of a formal order to commence work signed by the Contract Administrator or, upon commencement of the Work, should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract and, if the Contract Administrator has given a written statement to the Owner and Contractor that sufficient cause exists to justify such action, the Owner may, without prejudice to any other right or remedy the Owner may have, notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default in the 5 Working Days immediately following the receipt of such notice.
- .02 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Contractor's insolvency or if a receiver is appointed because of the Contractor's insolvency, the Owner may, without prejudice to any other right or remedy the Owner may have, by giving the Contractor or receiver or trustee in bankruptcy notice in writing, terminate the Contract.

GC 4.06 Contractor's Right to Correct a Default

- .01 The Contractor shall have the right within the 5 full Working Days following the receipt of a notice of default to correct the default and provide the Owner with satisfactory proof that appropriate corrective measures have been taken.
- .02 If the correction of the default cannot be completed within the 5 full Working Days following receipt of the notice, the Contractor shall not be in default if the Contractor,
- a) commences the correction of the default within the 5 full Working Days following receipt of the notice;
 - b) provides the Owner with an acceptable schedule for the progress of such correction; and
 - c) completes the correction in accordance with such schedule.

GC 4.07 Owner's Right to Correct Default

- .01 If the Contractor fails to correct the default within the time specified in subsection GC 4.06, Contractor's Right to Correct a Default, or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor.

GC 4.08 Termination of Contractor's Right to Continue the Work

- .01 Where the Contractor fails to correct a default within the time specified in subsection GC 4.06, Contractor's Right to Correct a Default, or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.
- .02 If the Owner terminates the Contractor's right to continue with the Work in whole or in part, the Owner shall be entitled to,
- a) take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
 - b) use the Equipment of the Contractor and any Material within the Working Area that is intended to be incorporated into the Work, the whole subject to the right of third parties;
 - c) withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
 - d) charge the Contractor the additional cost over the Contract price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator and any additional compensation paid to the Contract administrator for such additional service arising from the correction of the default;
 - e) charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under subsection GC 7.16, Warranty;
 - f) charge the Contractor for any damages the Owner sustained as a result of the default; and
 - g) charge the Contractor the amount by which the cost of corrections to the Work under subsection GC 7.16, Warranty, exceeds the allowance provided for such corrections.

GC 4.09 Final Payment to Contractor

- .01 If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under subsection GC 4.08, Termination of Contractor's Right to Continue the Work, the Owner shall pay the balance to the Contractor as soon as the final accounting for the Contract is complete.

GC 4.10 Termination of the Contract

- .01 Where the Contractor is in default of the Contract the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contract by giving written notice of termination to the Contractor, the Surety, and any trustee or receiver acting on behalf of the Contractor's estate or creditors.

- .02 If the Owner elects to terminate the Contract, the Owner may provide the Contractor and the trustee or receiver with a complete accounting to the date of termination.

GC 4.11 Continuation of Contractor's Obligations

- .01 The Contractor's obligation under the Contract as to quality, correction, and warranty of the Work performed prior to the time of termination of the Contract or termination of the Contractor's right to continue with the Work in whole or in part shall continue to be in force after such termination.

GC 4.12 Use of Performance Bond

- .01 If the Contractor is in default of the Contract and the Contractor has provided a Performance Bond, the provisions of Section GC 4.0, Owner's Responsibilities and Rights, shall be exercised in accordance with the conditions of the Performance Bond.

GC 4.13 Payment Adjustment

- .01 If any situation should occur in the performance of the Work that would result in a Change in the Work, the Owner shall be entitled to an adjustment and those adjustments shall be managed in accordance with subsection GC 3.10.01, Changes in the Work.

SECTION GC 5.0 - MATERIAL

GC 5.01 Supply of Material

- .01 All Material necessary for the proper completion of the Work, except that listed as being supplied by the Owner, shall be supplied by the Contractor. The Contract price for the appropriate tender items shall be deemed to include full compensation for the supply of such Material.

GC 5.02 Quality of Material

- .01 All Material supplied by the Contractor shall be new, unless otherwise specified in the Contract Documents.
- .02 Material supplied by the Contractor shall conform to the requirements of the Contract.
- .03 As specified in the Contract Documents or as requested by the Contract Administrator, the Contractor shall make available, for inspection or testing, a sample of any Material to be supplied by the Contractor.
- .04 The Contractor shall obtain for the Contract Administrator the right to enter onto the premises of the Material manufacturer or supplier to carry out such inspection, sampling, and testing as specified in the Contract Documents or as requested by the Contract Administrator.
- .05 The Contractor shall notify the Contract Administrator of the sources of supply sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling, and testing.
- .06 The Owner shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling, and testing before the scheduled shipping date.
- .07 The Contractor shall not change the source of supply of any Material without the written authorization of the Contract Administrator.
- .08 Material that is not specified shall be of a quality best suited to the purpose required, and the use of such Material shall be subject to the approval of the Contract Administrator.
- .09 All Material inspection, sampling, and testing shall be carried out on random basis in accordance with the standard inspection or testing methods required for the Material. Any approval given by the Contract Administrator for the Materials to be used in the Work based upon the random method shall not relieve the Contractor from the responsibility of incorporating Material that conforms to the Contract Documents into the Work or properly performing the Contract and of any liability arising from the failure to properly perform as specified in the Contract Documents.

GC 5.03 Rejected Material

- .01 Rejected Material shall be removed from the Working Area expeditiously after the notification to that effect from the Contract Administrator. Where the Contractor fails to comply with such notice, the Contract Administrator may cause the rejected Material to be removed from the Working Area and disposed of, in what the Contract Administrator considers to be the most appropriate manner, and the Contractor shall pay the costs of disposal and the appropriate overhead charges.

GC 5.04**Substitutions**

- .01 Where the Contract Documents require the Contractor to supply a Material designated by a trade or other name, the Tender shall be based only upon supply of the Material so designated, that shall be regarded as the standard of quality required by the Contract Documents. After the acceptance of the Tender, the Contractor may apply to the Contract Administrator to substitute another Material identified by a different trade or other name for the Material designated as aforesaid. The application shall be in writing and shall state the price for the proposed substitute Material designated as aforesaid, and such other information as the Contract Administrator may require.
- .02 Rulings on a proposed substitution shall not be made prior to the acceptance of the Tender. Substitutions shall not be made without the prior approval of the Contract Administrator. The approval or rejection of a proposed substitution shall be at the discretion of the Contract Administrator.
- .03 If the proposed substitution is approved by the Contract Administrator, the Contractor shall be entitled to the first \$1,000 of the aggregate saving in cost by reason of such substitution and to 50% of any additional saving in cost in excess of such \$1,000. Each such approval shall be conveyed to the Contractor in writing or by issuance of a Certificate of Equality on the Owner's standard form of "Certification of Equality" and, if any adjustment to the Contract price is made by reason of such substitution, a Change Order shall be issued as well.

GC 5.05**Owner Supplied Material****GC 5.05.01****Ordering of Excess Material**

- .01 Where Material is supplied by the Owner and where this Material is ordered by the Contractor in excess of the amount specified to complete the Work, such excess Material shall become the property of the Contractor on completion of the Work and shall be charged to the Contractor at cost plus applicable overheads.

GC 5.05.02**Care of Material**

- .01 The Contractor shall, in advance of receipt of shipments of Material supplied by the Owner, provide adequate and proper storage facilities acceptable to the Contract Administrator, and on the receipt of such Material shall promptly place it in storage, except where it is to be incorporated forthwith into the Work.
- .02 The Contractor shall be responsible for acceptance of Material supplied by the Owner, at the specified delivery point and for its safe handling and storage. If such Material is damaged while under the control of the Contractor, it shall be replaced or repaired by the Contractor at no expense to the Owner, and to the satisfaction of the Contract Administrator. If such Material is rejected by the Contract Administrator for reasons that are not the fault of the Contractor, it shall remain in the care and at the risk of the Contractor until its disposition has been determined by the Contract Administrator.
- .03 Where Material supplied by the Owner arrives at the delivery point in a damaged condition or where there are discrepancies between the quantities received and the quantities shown on the bills of lading, the Contractor shall immediately report such damage or discrepancies to the Contract Administrator who shall arrange for an immediate inspection of the shipment and provide the Contractor with a written release from responsibility for such damage or deficiencies. Where damage or deficiencies are not so reported, it shall be assumed that the shipment arrived in good condition and order, and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.

- .04 The full amount of Material supplied by the Owner in each shipment shall be accounted for by the Contractor and such Material shall be at the risk of the Contractor after taking delivery. Such Material shall not, except with the written permission of the Contract Administrator, be used by the Contractor for purposes other than the performance of the Work under the Contract.
- .05 Empty reels, crates, containers, and other type of packaging from Material supplied by the Owner shall become the property of the Contractor when they are no longer required for their original purpose and shall be disposed of by the Contractor, unless otherwise specified in the Contract Documents.
- .06 Immediately upon receipt of each shipment, the Contractor shall provide the Contract Administrator copies of bills of lading, or such other documentation the Contract Administrator may require to substantiate and reconcile the quantities of Material received.
- .07 Where Material supplied by the Owner is ordered and stockpiled prior to the award of the Contract, the Contractor shall, at no extra cost to the Owner, immediately upon commencement of operations, check the Material, report any damage or deficiencies to the Contract Administrator and take charge of the Material at the stockpile site. Where damage or deficiencies are not so recorded by the Contractor, it shall be assumed that the stockpile was in good condition and order when the Contractor took charge of it, and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.

SECTION GC 6.0 - INSURANCE, PROTECTION AND DAMAGE

GC 6.01 Protection of Work, Persons and Property

- .01 The Contractor, the Contractor's agents, and all workers employed by or under the control of the Contractor, including Subcontractors, shall protect the Work, persons, and property from damage or injury. The Contractor shall be responsible for all losses and damage that may arise as the result of the Contractor's operations under the Contract, unless indicated to the contrary below.
- .02 The Contractor is responsible for the full cost of any necessary temporary protective work or works and the restoration of all damage where the Contractor damages the Work or property in the performance of the Contract. If the Contractor is not responsible for the damage that occurs to the Work or property, the Contractor shall restore such damage, and such work and payment shall be administered according to these General Conditions.
- .03 The Contractor shall immediately inform the Contract Administrator of all damage and injuries that occur during the term of the Contract. The Contractor shall then investigate and report back to the Contract Administrator within 15 Days of occurrence of incident, or as soon as possible.
- .04 The Contractor shall not be responsible for loss and damage that occurs as a result of,
 - a) war;
 - b) blockades and civil commotions;
 - c) errors in the Contract Documents; or
 - d) acts or omissions of the Owner, the Contract Administrator, their agents and employees, or others not under the control of the Contractor, but within the Working Area with the Owner's permission.
- .05 The Contractor and the Contractor's Surety shall not be released from any term or provision of any responsibility, obligation, or liability under the Contract or waive or impair any of the rights of the Owner, except by a release duly executed by the Owner.

GC 6.02 Indemnification

- .01 The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, their elected officials, agents, officers, and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work, provided such claims are,
 - a) attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property;
 - b) caused by negligent acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable; and
 - c) made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the Certificate of Substantial Performance of the Work or, where so specified in the Contract Documents, from the date of certification of Final Acceptance.

- .02 The Contractor shall indemnify and hold harmless the Owner from all and every claim for damages, royalties or fees for the infringement of any patented invention or copyright occasioned by the Contractor in connection with the Work performed or Material furnished by the Contractor under the Contract.
- .03 The Owner expressly waives the right to indemnity for claims other than those stated in paragraphs GC 6.02.01 and GC 6.02.02.
- .04 The Owner shall indemnify and hold harmless the Contractor, their elected officials, agents, officers, and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract that are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Working Area.
- .05 The Contractor expressly waives the right to indemnity for claims other than those stated in paragraph GC 6.02.04.

GC 6.03 Contractor's Insurance

GC 6.03.01 General

- .01 Without restricting the generality of subsection GC 6.02, Indemnification, the Contractor shall provide, maintain, and pay for the insurance coverages listed under clauses GC 6.03.02 and GC 6.03.03. Insurance coverage in clauses GC 6.03.04, GC 6.03.05, and GC 6.03.06 shall only apply when so specified in the Contract Documents.
- .02 The Contractor shall provide the Contract Administrator with an original Certificate of Insurance for each type of insurance coverage that is required by the Contract Documents. The Contractor shall ensure that the Contract Administrator is, at all times in receipt of a valid Certificate of Insurance for each type of insurance coverage, in such amounts as specified in the Contract Documents. The Contractor will not be permitted to commence work until the Contract Administrator is in receipt of such proof of insurance. The Contract Administrator may withhold payments of monies due to the Contractor until the Contractor has provided the Contract Administrator with original valid Certificates of Insurance as required by the provisions of the Contract Documents.

GC 6.03.02 General Liability Insurance

- .01 General liability insurance shall be in the name of the Contractor, with the Owner and the Contract Administrator named as additional insureds, with limits of not less than five million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, with a property damage deductible of not more than \$5,000. The form of this insurance shall be the Insurance Bureau of Canada Form IBC 2100.
- .02 Another form of insurance equal to or better than that required in IBC Form 2100 may be used, provided all the requirements listed in the Contract are included. Approval of this insurance shall be conditional upon the Contractor obtaining the services of an insurer licensed to underwrite insurance in the Province of Ontario and obtaining the insurer's certificate of equivalency to the required insurance.
- .03 The Contractor shall maintain in force such policies of insurance specified by the Contract Documents at all times from the commencement of the Work until the end of any Warranty Period or as otherwise required by the Contract Documents.
- .04 The Contractor shall submit annually to the Owner, proof of continuation of the completed operations coverage and, if the Contractor fails to do so, the limitation period for claiming indemnity described in paragraph GC 6.02.01 c), shall not be binding on the Owner.

- .05 Should the Contractor decide not to employ Subcontractors for operations requiring the use of explosives for blasting, pile driving or caisson work, removal or weakening of support of property building or land, IBC Form 2100 as required shall include the appropriate endorsements.
- .06 The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change or amendment restricting coverage.
- .07 "Claims Made" insurance policies shall not be permitted.

GC 6.03.03 Automobile Liability Insurance

- .01 Automobile liability insurance in respect of licensed vehicles shall have limits of not less than five million dollars inclusive per occurrence for bodily injury, death and damage to property, in the following forms endorsed to provide the Owner with not less than 30 Days written notice in advance of any cancellation, change, or amendment restricting coverage:
 - a) standard non-owned automobile policy including standard contractual liability endorsement, and
 - b) standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by the Contractor.

GC 6.03.04 Aircraft and Watercraft Liability Insurance

GC 6.03.04.01 Aircraft Liability Insurance

- .01 Aircraft liability insurance with respect to owned or non-owned aircraft used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than five million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and limits of not less than five million dollars for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change, or amendment restricting coverage.

6.03.04.02 Watercraft Liability Insurance

- .01 Watercraft liability insurance with respect to owned or non-owned watercraft used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than five million dollars inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. Such insurance shall be in a form acceptable to the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change, or amendment restricting coverage.

GC 6.03.05 Property and Boiler Insurance

GC 6.03.05.01 Property Insurance

- .01 All risks property insurance shall be in the name of the Contractor, with the Owner and the Contract Administrator named as additional insureds, insuring not less than the sum of the amount of the Contract price and the full value, as may be stated in the Contract Documents, of Material that is specified to be provided by the Owner for incorporation into the Work, with a deductible not exceeding 1% of the amount insured at the site of the Work. This insurance shall be in a form acceptable to the Owner and shall be maintained continuously until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.

GC 6.03.05.02 Boiler Insurance

- .01 Boiler insurance insuring the interests of the Contractor, the Owner and the Contract Administrator for not less than the replacement value of boilers and pressure vessels forming part of the Work, shall be in a form acceptable to the Owner. This insurance shall be maintained continuously from commencement of use or operation of the property insured until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.

GC 6.03.05.03 Use and Occupancy of the Work Prior to Completion

- .01 Should the Owner wish to use or occupy part or all of the Work prior to Substantial Performance, the Owner shall give 30 Days written notice to the Contractor of the intended purpose and extent of such use or occupancy. Prior to such use or occupancy, the Contractor shall notify the Owner in writing of the additional premium cost, if any, to maintain property and boiler insurance, which shall be at the Owner's expense. If because of such use or occupancy the Contractor is unable to provide coverage, the Owner upon written notice from the Contractor and prior to such use or occupancy shall provide, maintain, and pay for property and boiler insurance insuring the full value of the Work, including coverage for such use or occupancy, and shall provide the Contractor with proof of such insurance. The Contractor shall refund to the Owner the unearned premiums applicable to the Contractor's policies upon termination of coverage.
- .02 The policies shall provide that, in the event of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. The Contractor shall act on behalf of both the Owner and the Contractor for the purpose of adjusting the amount of such loss or damage payment with the insurers. 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 such reasonable extension of Contract Time relative to the extent of the loss or damage as the Contract Administrator may decide in consultation with the Contractor.

GC 6.03.05.04 Payment for Loss or Damage

- .01 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 in accordance with the requirements of Section GC 8.0, Measurement and Payment. In addition, the Contractor shall be entitled to receive from the payments made by the insurers the amount of the Contractor's interest in the restoration of the Work.
- .02 The Contractor shall be responsible for deductible amounts under the policies, except where such amounts may be excluded from the Contractor's responsibility by the terms of this Contract.
- .03 In the event of a loss or damage to the Work arising from the action or omission of the Owner or others, the Owner shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and in accordance with the requirements of Section GC 8.0, Measurement and Payment.

GC 6.03.06 Contractor's Equipment Insurance

- .01 All risks Contractor's equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels, shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner. The policies shall be endorsed to provide the Owner with not less than 30 Days written notice in advance of cancellation, change, or amendment restricting coverage. Subject to satisfactory proof of financial capability by the Contractor for self-insurance of the Contractor's Equipment, the Owner agrees to waive the equipment insurance requirement, and for the purpose of this Contract, the Contractor shall be deemed to be insured. This policy shall be amended to provide permission for the Contractor to grant prior releases with respect to damage to the Contractor's Equipment.

GC 6.03.07 Insurance Requirements and Duration

- .01 Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the Work until 10 Days after the date of Final Acceptance of the Work, as set out in the Final Acceptance Certificate.
- .02 The Contractor shall provide the Owner, on a form acceptable to the Owner, proof of insurance prior to commencement of the Work and signed by an officer of the Contractor and either the underwriter or the broker.
- .03 The Contractor shall, on request, promptly provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature by an officer of the Contractor and, in addition, a signature by an officer of the insurer or the underwriter or the broker.
- .04 Where a policy is renewed, the Contractor shall provide the Owner, on a form acceptable to the Owner, renewed proof of insurance immediately following completion of renewal.
- .05 Unless specified otherwise, the Contractor shall be responsible for the payment of deductible amounts under the policies.
- .06 If the Contractor fails to provide or maintain insurance as required in subsection GC 6.03, Contractor's Insurance, or elsewhere in the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence thereof to the Contractor. The Owner's cost thereof shall be payable by the Contractor to the Owner on demand.
- .07 If the Contractor fails to pay the cost of the insurance placed by the Owner within 30 Days of the date on which the Owner made a formal demand for reimbursement of such costs, the Owner may deduct the costs thereof from monies which are due or may become due to the Contractor.

GC 6.04 Bonding

- .01 The Contractor shall provide the Owner with the surety bonds in the amount required by the tender documents.
- .02 Such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be to the satisfaction of the Owner. The bonds shall be maintained in good standing until the fulfilment of the Contract.

GC 6.05**Workplace Safety and Insurance Board**

- .01 The Contractor shall provide the Contract Administrator with a copy of a Certificate of Clearance indicating the Contractor's good standing with the Workplace Safety and Insurance Board, as follows:
- a) Immediately prior to the Contract Administrator authorizing the Contractor to commence Work.
 - b) Prior to issue of the Certificate of Substantial Performance.
 - c) Prior to expiration of the Warranty Period.
 - d) At any other time when requested by the Contract Administrator.

SECTION GC 7.0 - CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

GC 7.01

General

- .01 The Contractor warrants that the site of the Work has been visited during the preparation of the Tender and the character of the Work and all local conditions that may affect the performance of the Work are known.
- .02 The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received a written order to commence the Work, signed by the Contract Administrator.
- .03 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work.
- .04 The Contractor shall provide adequate labour, Equipment, and Material to ensure the completion of the Contract in accordance with the Contract Documents. The Work shall be performed as vigorously and as continuously as weather conditions or other interferences may permit.
- .05 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .06 Notwithstanding paragraph GC 7.01.05, where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- .07 The Contractor shall execute the terms of the Contract in strict compliance with the requirements of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended, (the "Act") and Ontario Regulation 213/91, as amended, (that regulates Construction Projects) and any other regulations as amended under the Act (the "Regulations") that may affect the performance of the Work, as the "Constructor" or "employer," as defined by the Act, as the case may be. The Contractor shall ensure that:
 - a) worker safety is given first priority in planning, pricing, and performing the Work;
 - b) its officers and supervisory employees have a working knowledge of the duties of a "Constructor" and "employer" as defined by the Act and the provisions of the Regulations applicable to the Work, and a personal commitment to comply with them;
 - c) a copy of the most current version of the Act and the Regulations are available at the Contractor's office within the Working Area, or, in the absence of an office, in the possession of the supervisor responsible for the performance of the Work;
 - d) workers employed to carry out the Work possess the knowledge, skills, and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
 - e) its supervisory employees carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers; and

- f) all Subcontractors and their workers are properly protected from injury while they are at the Work Area.
- .08 The Contractor, when requested, shall provide the Owner with a copy of its health and safety policy and program at the pre-start meeting and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with the Act and Regulations. The Contractor shall cooperate with representatives of the Owner and the inspectors appointed to enforce the Act and the Regulations in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense that the Owner may incur to have the Work performed as a result of the Contractor's failure to comply with the requirements of the Act and the Regulations.
- .09 Prior to commencement of the Work, the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Materials Information System or WHMIS, which the Contractor expects to use on the Contract. Related Materials Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labelled. The Contractor shall notify the Contract Administrator in writing of changes in the products to be used and provide relevant Material Safety Data Sheets.
- .10 The Contractor shall have an authorized representative on the site while any Work is being performed, to supervise the Work and act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names; addresses; positions; and cell phone, pager, and telephone numbers of the Contractor's representatives who can be contacted at any time to deal with matters relating to the Contract, and update as necessary.
- .11 The Contractor shall designate a person to be responsible for traffic control and work zone safety. The designated person shall be a competent worker who is qualified because of knowledge, training, and experience to perform the duties; is familiar with Book 7 of the Ontario Traffic Manual; and has knowledge of all potential or actual danger to workers and motorists. Prior to the commencement of construction, the Contractor shall notify the Contract Administrator of the name; address; position; cell phone, pager, and telephone numbers of the designated person, and update as necessary. The designated person may have other responsibilities, including other construction sites, and need not be present in the Working Area at all times.
- .12 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities, and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .13 The Contractor shall prepare and update, as required, a construction schedule of operations, indicating the proposed methods of construction and sequence of work and the time the Contractor proposes to complete the various items of work within the time specified in the Contract Documents. The schedule shall be submitted to the Contract Administrator within 14 Days from the Contract award. If the Contractor's schedule is materially affected by changes, the Contractor shall submit an updated construction schedule, if requested by the Contract Administrator, within 7 Days of the request. This updated schedule shall show how the Contractor proposes to perform the balance of the Work, so as to complete the Work within the time specified in the Contract Documents.
- .14 Where the Contractor finds any error, inconsistency, or omission relating to the Contract, the Contractor shall promptly report it to the Contract Administrator and shall not proceed with the activity affected until receiving direction from the Contract Administrator.
- .15 The Contractor shall promptly notify the Contract Administrator in writing if the subsurface conditions observed in the Working Area differ materially from those indicated in the Contract Documents.

- .16 The Contractor shall arrange with the appropriate Utility authorities for the stake out of all underground Utilities and service connections that may be affected by the Work. The Contractor shall observe the location of the stake outs prior to commencing the Work and in the event that there is a discrepancy between the location of the stake outs and the locations shown on the Contract Documents, that may affect the Work, the Contractor shall immediately notify the Contract Administrator and the affected Utility companies, in order to resolve the discrepancy. The Contractor shall be responsible for any damage done to the underground Utilities and service connections by the Contractor's forces during construction if the stake out locations are within the tolerances given in paragraph GC 2.01.01 a).

GC 7.02 Layout

- .01 Prior to commencement of construction, the Contract Administrator and the Contractor shall locate on site those property bars, baselines, and benchmarks that are necessary to delineate the Working Area and to lay out the Work, all as shown on the Contract Drawings.
- .02 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars that must be removed to facilitate the Work. Any other property bars disturbed, damaged, or removed by the Contractor's operations shall be replaced under the supervision of an Ontario Land Surveyor, at the Contractor's expense.
- .03 At no extra cost to the Owner, the Contractor shall provide the Contract Administrator with such materials and devices as may be necessary to lay out the baseline and benchmarks, and as may be necessary for the inspection of the Work.
- .04 The Contractor shall provide qualified personnel to lay out and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out, so that the same may be checked by the Contract Administrator.
- .05 The Contractor shall install and maintain substantial alignment markers and secondary benchmarks as may be required for the proper execution of the Work. The Contractor shall supply one copy of all alignment and grade sheets to the Contract Administrator.
- .06 The Contractor shall assume full responsibility for alignment, elevations, and dimensions of each and all parts of the Work, regardless of whether the Contractor's layout work has been checked by the Contract Administrator.
- .07 All stakes, marks, and reference points shall be carefully preserved by the Contractor. In the case of their destruction or removal, such stakes, marks, and reference points shall be replaced at the Contractor's expense.
- .08 Benchmarks and survey monuments identified in the Contract Documents shall be protected by the Contractor. In the case of their destruction or removal, such benchmarks and survey monuments shall be replaced by the Owner at the Contractor's expense.

GC 7.03 Working Area

- .01 The Contractor's sheds, site offices, toilets, other temporary structures, and storage areas for Material and Equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.
- .02 The Contractor shall confine the construction operations to the Working Area. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall obtain such space at no additional cost to the Owner.

- .03 The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from the property owner.

GC 7.04 Damage by Vehicles or Other Equipment

- .01 If at any time, in the opinion of the Contract Administrator, damage is being done or is likely to be done to any Roadway or any improvement thereon, outside the Working Area, by the Contractor's vehicles or other Equipment, whether licensed or unlicensed Equipment, the Contractor shall, on the direction of the Contract Administrator, and at no extra cost to the Owner, make changes or substitutions for such vehicles or Equipment, and shall alter loadings, or in some other manner, remove the cause of such damage to the satisfaction of the Contract Administrator.

GC 7.05 Excess Loading of Motor Vehicles

- .01 Where a vehicle is hauling Material for use on the Work, in whole or in part; upon a Highway; 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*, R.S.O. 1990, c.H.8, as amended, whether such vehicle is registered in the name of the Contractor or otherwise, except where there are designated areas within the Working Area where overloading is permitted. The Contractor shall bear the onus of weighing disputed loads.

GC 7.06 Condition of the Working Area

- .01 The Contractor shall maintain the Working Area in a tidy condition and free from the accumulation of debris and prevent dust nuisance, mud, and ponding water, other than that caused by the Owner or others.

GC 7.07 Maintaining Roads and Detours

- .01 Unless otherwise specified in the Contract Documents, if an existing Roadway is affected by construction, it shall be kept open to both vehicular and pedestrian traffic.
- .02 Subject to the approval of the Contract Administrator, the Contractor shall, at no additional cost to the Owner, be responsible for providing and maintaining for the duration of the Work an alternative route for both pedestrian and vehicular traffic through the Working Area in accordance with the OTM, whether along the existing Highway under construction or on a detour road beside or adjacent to the Highway under construction.
- .03 Subject to the approval of the Contract Administrator, the Contractor may block traffic for short periods of time to facilitate construction of the Work in accordance with the OTM. Any temporary lane closures shall be kept to a minimum.
- .04 The Contractor shall not be required to maintain a road through the Working Area until such time as the Contractor has commenced operations or during seasonal shut down or on any part of the Contract that has been accepted in accordance with these General Conditions. The Contractor shall not be required to apply de-icing chemicals or abrasives or carry out snowplowing.
- .05 Where localized and separated sections of the Highway are affected by the Contractor's operations, the Contractor shall not be required to maintain intervening sections of the Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract.
- .06 Where the Contract Documents provide for or the Contract Administrator requires detours at specific locations, payment for the construction of the detours and, if required, for the subsequent removal of the detours, shall be made at the Contract prices appropriate to such work.

- .07 Compensation for all labour, Equipment, and Materials to do this Work shall be at the Contract prices appropriate to the Work and, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of blading required to maintain the surface of such roads and detours shall be deemed to be included in the prices bid for the various tender items and no additional payment shall be made.
- .08 Where work under the Contract is discontinued for any extended period, including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Roadway and detours in a passable, safe, and satisfactory condition for public travel.
- .09 Where the Contractor constructs a detour that is not specifically provided for in the Contract Documents or required by the Contract Administrator, the construction of the detour and, if required, the subsequent removal shall be performed at the Contractor's expense. The detour shall be constructed and maintained to structural and geometric standards approved by the Contract Administrator. Removal and site restoration shall be performed as directed by the Contract Administrator.
- .10 Where, with the prior written approval of the Contract Administrator, the Highway is closed and the traffic diverted entirely off the Highway to any other Highway, the Contractor shall, at no extra cost to the Owner, supply, erect, and maintain traffic control devices in accordance with the OTM.
- .11 Compliance with the foregoing provisions shall in no way relieve the Contractor of obligations under subsection GC 6.01, Protection of Work, Persons, and Property, dealing with the Contractor's responsibility for damage claims, except for claims arising on sections of Highway within the Working Area that are being maintained by others.

GC 7.08 Access to Properties Adjoining the Work and Interruption of Utility Services

- .01 The Contractor shall provide at all times and at no extra cost to the Owner,
 - a) adequate pedestrian and vehicular access; and
 - b) continuity of Utility servicesto properties adjoining the Working Area.
- .02 The Contractor shall provide at all times and at no extra cost to the Owner access to fire hydrants, water and gas valves, and all other Utilities located in the Working Area.
- .03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice in accordance with subsection GC 7.12, Notices by the Contractor, and shall arrange such interruptions so as to create a minimum of interference to those affected.

GC 7.09 Approvals and Permits

- .01 Except as specified in subsection GC 4.02, Approval and Permits, the Contractor shall obtain and pay for any permits, licences, and certificates, which at the date of tender closing, are required for the performance of the Work.
- .02 The Contractor shall arrange for all necessary inspections required by the approvals and permits specified in paragraph GC 7.09.01.

GC 7.10**Suspension of Work**

- .01 The Contractor shall, upon written notice from the Contract Administrator, discontinue or delay any or all of the Work and work shall not be resumed until the Contract Administrator so directs in writing. Delays, in these circumstances, shall be administered according to subsection GC 3.07, Delays.

GC 7.11**Contractor's Right to Stop the Work or Terminate the Contract**

- .01 If the Owner is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner or receiver or trustee in bankruptcy written notice, terminate the Contract.
- .02 If the Work is stopped or otherwise delayed for a period of 30 Days or more under an order of a court or other public authority and provided that such order was not issued as the result of an act or fault of the Contractor or of anyone directly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Owner written notice, terminate the Contract.
- .03 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if,
- a) the Contract Administrator fails to issue certificates in accordance with the provisions of Section GC 8.0, Measurement and Payment;
 - b) the Owner fails to pay the Contractor, within 30 Days of the due dates identified in clause GC 8.02.03, Certification and Payment, the amounts certified by the Contract Administrator or within 30 Days of an award by an arbitrator or court; or
 - c) the Owner violates the requirements of the Contract.
- .04 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 7 Days immediately following receipt of the written notice, the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- .05 If the Contractor terminates the Contract under the conditions set out in subsection GC 7.11, the Contractor shall be entitled to be paid for all work performed according to the Contract Documents and for any losses or damage as the Contractor may sustain as a result of the termination of the Contract.

GC 7.12**Notices by the Contractor**

- .01 Before work is carried out that may affect the property or operations of any Ministry or agency of government or any person; company; partnership; or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Documents, the Contractor shall give at least 48 hours advance written notice of the date of commencement of such work to the person, company, partnership, corporation, board, or commission so affected.
- .02 In the case of damage to or interference with any Utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner, Contract Administrator, and the owner of the works of the location and details of such damage or interference.

GC 7.13 Obstructions

- .01 Except as otherwise noted in these General Conditions, the Contractor assumes all the risks and responsibilities arising out of any obstruction encountered in the performance of the Work and any traffic conditions, including traffic conditions on any Highway or road giving access to the Working Area caused by such obstructions, and the Contractor shall not make any claim against the Owner for any loss, damage, or expense occasioned thereby.
- .02 Where the obstruction is an underground Utility or other man-made object, the Contractor shall not be required to assume the risks and responsibilities arising out of such obstruction, unless the location of the obstruction is shown on the Plans or described in the Contract Documents and the location so shown is within the tolerance specified in paragraph GC 2.01.01 a), or unless the presence and location of the obstruction has otherwise been made known to the Contractor or could have been determined by the visual site investigation made by the Contractor in accordance with these General Conditions.
- .03 During the course of the Contract, it is the Contractor's responsibility to consult with Utility companies or other appropriate authorities for further information in regard to the exact location of these Utilities, to exercise the necessary care in construction operations, and to take such other precautions as are necessary to safeguard the Utilities from damage.

GC 7.14 Limitations of Operations

- .01 Except for such work as may be required by the Contract Administrator to maintain the Work in a safe and satisfactory condition, the Contractor shall not carry out operations under the Contract on Saturdays, Sundays, and Statutory Holidays without permission in writing from the Contract Administrator.
- .02 The Contractor shall cooperate and coordinate the Work with other Contractors, Utility companies, and the Owner and they shall be allowed access to their work or plant at all reasonable times.

GC 7.15 Cleaning Up Before Acceptance

- .01 Upon attaining Substantial Performance of the Work, the Contractor shall remove surplus materials, tools, construction machinery and equipment not required for the performance of the remaining Work. The Contractor shall also remove all temporary works and debris other than that caused by the Owner or others and leave the Work and Working Area clean and suitable for occupancy by the Owner, unless otherwise specified.
- .02 The Work shall not be deemed to have reached Completion until the Contractor has removed surplus materials, tools, construction machinery, and equipment. The Contractor shall also have removed debris, other than that caused by the Owner, or others.

GC 7.16 Warranty

- .01 Unless otherwise specified in the Contract Documents for certain Materials or components of the Work, the Contractor shall be responsible for the proper performance of the Work only to the extent that the design and standards permit such performance.
- .02 Subject to the previous paragraph the Contractor shall correct promptly, at no additional cost to the Owner, defects or deficiencies in the Work that appear,
 - a) prior to and during the period of 12 months from the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work,

- b) where the work is completed after the date of Substantial Performance, 12 months after Completion of the Work,
- c) where there is no Certificate of Substantial Performance, 12 months from the date of Completion of the Work as set out in the Completion Certificate, or
- d) such longer periods as may be specified in the Contract Documents for certain Materials or some of the Work.

The Contract Administrator shall promptly give the Contractor written notice of observed defects or deficiencies.

- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph GC 7.16.02.

GC 7.17 Contractor's Workers

- .01 The Contractor shall only employ orderly, competent, and skillful workers to do the Work and whenever the Contract Administrator shall inform the Contractor in writing that any worker or workers involved in the Work are, in the opinion of the Contract Administrator, incompetent, or disorderly such worker or workers shall be removed from the work and shall not be employed on the work again without the consent in writing of the Contract Administrator.

GC 7.18 Drainage

- .01 During construction and until the Work is completed, the Contractor shall make all reasonable efforts to keep all portions of the Work properly and efficiently drained, to at least the same degree as that of the existing drainage conditions.

SECTION GC 8.0 - MEASUREMENT AND PAYMENT

GC 8.01 Measurement

GC 8.01.01 Quantities

- .01 The Contract Administrator shall make an Estimate once a month, in writing, of the quantity of Work performed. The first Estimate shall be the quantity of Work performed since the Contractor commenced the Contract, and every subsequent Estimate, except the final one, shall be of the quantity of Work performed since the preceding Estimate was made. The Contract Administrator shall provide the copy of each Estimate to the Contractor within 10 Days of the Cut-Off Date.
- .02 Such quantities for progress payments shall be construed and held to approximate. The final quantities for the issuance of the Completion Payment Certificate shall be based on the measurement of Work completed.
- .03 Measurement of the quantities of the Work performed may be either by Actual Measurement or by Plan Quantity principles as indicated in the Contract. Adjustments to Plan Quantity measurements shall normally be made using Plan Quantity principles but may, where appropriate, be made using Actual Measurements. Those items identified on the Tender by the notation (P) in the unit column shall be paid according to the Plan Quantity. Items where the notation (P) does not occur shall be paid according to Actual Measurement or lump sum.

GC 8.01.02 Variations in Tender Quantities

- .01 Where it appears that the quantity of Work to be done or Material to be supplied or both by the Contractor under a unit price tender item may exceed or be less than the tender quantity, the Contractor shall proceed to do the Work or supply the Material or both required to complete the tender item and payment shall be made for the actual amount of Work done or Material supplied or both at the unit prices stated in the Tender except as provided below:
 - a) In the case of a Major Item where the quantity of Work performed or Material supplied or both by the Contractor exceeds the tender quantity by more than 15%, either party to the Contract may make a written request to the other party to negotiate a revised unit price for that portion of the Work performed or Material supplied or both which exceeds 115% of the tender quantity. The negotiation shall be carried out as soon as reasonably possible. Any revision of the unit price shall be based on the actual cost of doing the Work or supplying the Material or both under the tender item plus a reasonable allowance for profit and applicable overhead.
 - b) In the case of a Major Item where the quantity of Work performed or Material supplied or both by the Contractor is less than 85% of the tender quantity, the Contractor may make a written request to negotiate for the portion of the actual overheads and fixed costs applicable to the amount of the underrun in excess of 15% of the tender quantity. For purposes of the negotiation, the overheads and fixed costs applicable to the item are deemed to have been prorated uniformly over 100% of the tender quantity for the item. Overhead costs shall be confirmed by a statement certified by the Contractor's senior financial officer or auditor and may be audited by the Owner. Alternatively, where both parties agree, an allowance equal to 10% of the unit price on the amount of the underrun in excess of 15% of the tender quantity shall be paid.

Written requests for compensation must be received no later than 60 Days after the issuance of the Completion Payment Certificate.

GC 8.02 Payment

GC 8.02.01 Price for Work

- .01 Prices for the Work shall be full compensation for all labour, Equipment and Material required in its performance. The term "all labour, Equipment, and Material" shall include Hand Tools, supplies, and other incidentals.
- .02 Payment for work not specifically detailed as part of any one item and without specified details of payment shall be deemed to be included in the items with which it is associated.

GC 8.02.02 Advance Payments for Material

- .01 The Owner shall make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:
 - a) The Contractor shall deliver the Material to a site approved by the Contract Administrator and the Contractor shall, in advance of receipt of the shipment of the Material, arrange for adequate and proper storage facilities.
 - b) The value of aggregates, processed and stockpiled, shall be assessed by the following procedure:
 - i. Sources Other Than Commercial
 - (1) Granular A, B, BI, BII, BIII, M, and O shall be assessed at the rate of 60% of the Contract price.
 - (2) Coarse and fine aggregates for hot mix asphaltic concrete, surface treatment and Portland cement concrete shall be assessed at the rate of 25% of the Contract price for each aggregate stockpiled.
 - ii. Commercial Sources
 - Payment for separated coarse and fine aggregates shall be considered at the above rate when such materials are stockpiled at a commercial source where further processing is to be carried out before incorporating such materials into a final product. Advance payments for other materials located at a commercial source shall not be made.
 - c) Payment for all other materials, unless otherwise specified elsewhere in the Contract Documents, shall be based on the invoice price, and the Contractor shall submit proof of cost to the Contract Administrator before payment can be made by the Owner.
 - d) The payment for all Materials shall be prorated against the appropriate tender item by paying for sufficient units of the item to cover the value of the material. Such payment shall not exceed 80% of the Contract price for the item.
 - e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location immediately upon receipt of the material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security, or remove any Material from the storage locations, except for inclusion in the Work, without the consent, in writing, of the Contract Administrator.
 - f) Such materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use, or destruction of the material however caused.
- .02 Where the Owner makes advance payments subject to the conditions listed in paragraph GC 8.02.02.01, such payment shall not constitute acceptance of the Material by the Owner. Acceptance shall only be determined when the material meets the requirements of the appropriate specification.

GC 8.02.03 Certification and Payment

GC 8.02.03.01 Progress Payment Certificate

- .01 The value of the Work performed and Material supplied shall be calculated once a month by the Contract Administrator in accordance with the Contract Documents and clause GC 8.01.01, Quantities.
- .02 The progress Payment Certificate shall show,
 - a) the quantities of Work performed;
 - b) the value of Work performed;
 - c) any advanced payment for Material;
 - d) the amount of statutory holdback, liens, Owner's set-off;
 - e) the amount of GST, as applicable; and
 - f) the amount due to the Contractor.
- .03 One copy of the progress Payment Certificate shall be sent to the Contractor.
- .04 Payment shall be made within 30 Days of the Cut-Off Date.

GC 8.02.03.02 Certification of Subcontract Completion

- .01 Before the Work has reached the stage of Substantial Performance, the Contractor may notify the Contract Administrator, in writing that a subcontract is completed satisfactorily and ask that the Contract Administrator certify the completion of such subcontract.
- .02 The Contract Administrator shall issue a Certificate of Subcontract Completion, if the subcontract has been completed satisfactorily, and all required inspection and testing of the works covered by the subcontract have been carried out and the results are satisfactory.
- .03 The Contract Administrator shall set out in the Certificate of Subcontract Completion the date on which the subcontract was completed and, within 7 Days of the date the subcontract is certified complete, the Contract Administrator shall give a copy of the certificate to the Contractor and to the Subcontractor concerned.

GC 8.02.03.03 Subcontract Statutory Holdback Release Certificate and Payment

- .01 Following receipt of the Certificate of Subcontract Completion, the Owner shall release and pay the Contractor the statutory holdback retained in respect of the subcontract. Such release shall be made 46 Days after the date the subcontract was certified complete and providing the Contractor submits the following to the Contract Administrator:
 - a) a document satisfactory to the Contract Administrator that shall release the Owner from all further claims relating to the subcontract, qualified by stated exceptions such as holdback monies;
 - b) evidence satisfactory to the Contract Administrator that the Subcontractor has discharged all liabilities incurred in carrying out the subcontract;

- c) a satisfactory clearance certificate or letter from the Workplace Safety and Insurance Board relating to the subcontract; and
 - d) a copy of the contract between the Contractor and the Subcontractor and a satisfactory statement showing the total amount due the Subcontractor from the Contractor.
- .02 Paragraph GC 8.02.03.03.01 d), shall only apply to Lump Sum Items and then only when the Contract Administrator specifically requests it.
- .03 Upon receipt of the statutory holdback, the Contractor shall forthwith give the Subcontractor the payment due under the subcontract.
- .04 Release of statutory holdback by the Owner in respect of a subcontract shall not relieve the Contractor, or the Contractor's Surety, of any of their responsibilities.

GC 8.02.03.04 Certification of Substantial Performance

- .01 Upon application by the Contractor and when the Contract Administrator has verified that the Contract has been substantially performed, the Contract Administrator shall issue a Certificate of Substantial Performance.
- .02 Upon verifying that the Contract has been substantially performed, the Contract Administrator shall issue a certificate of Substantial Performance and shall set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and, within 7 Days after signing the said certificate, the Contract Administrator shall provide a copy to the Contractor.
- .03 Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall forthwith, as required by Section 32(1) Paragraph 5 of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended, publish a copy of the certificate in a construction trade newspaper. Such publication shall include placement in the Daily Commercial News.
- .04 Where the Contractor fails to publish a copy of the Certificate of Substantial Performance as required above within 7 Days after receiving a copy of the certificate signed by the Contract Administrator, the Owner may publish a copy of the certificate at the Contractor's expense.
- .05 Except as otherwise provided for in Section 31 of the *Construction Lien Act*, the 45 Day lien period prior to the release of holdback as referred to in clause GC 8.02.03.05, Substantial Performance Payment and Statutory Holdback Release Payment Certificates, shall commence from the date of publication of the Certificate of Substantial Performance as provided for above.

GC 8.02.03.05 Substantial Performance Payment and Substantial Performance Statutory Holdback Release Payment Certificates

- .01 When the Contract Administrator issues the Certificate of Substantial Performance, the Contract Administrator shall also issue the Substantial Performance Payment Certificate and the Substantial Performance Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.
- .02 The Substantial Performance Payment Certificate shall show,
- a) the value of Work performed to the date of Substantial Performance;
 - b) the value of outstanding or incomplete Work;
 - c) the amount of the statutory holdback, allowing for any previous releases of statutory holdback to the Contractor in respect of completed subcontracts and deliveries of pre-selected equipment;

- d) the amount of maintenance security required; and
 - e) the amount due the Contractor.
- .03 Payment of the amount certified shall be made within 30 Days of the date of issuance of the payment certificate.
- .04 The Substantial Performance Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the statutory holdback due in respect of Work performed up to the date of Substantial Performance. Payment of such statutory holdback shall be due 46 Days after the date of publication of the Certificate of Substantial Performance but subject to the provisions of the *Construction Lien Act* and the submission by the Contractor of the following documents:
- a) a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions such as outstanding work or matters arising out of subsection GC 3.13, Claims, Negotiations, Mediation;
 - b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged except for statutory holdbacks properly retained;
 - c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board; and
 - d) proof of publication of the Certificate of Substantial Performance.

GC 8.02.03.06 Certification of Completion

- .01 Upon application by the Contractor and when the Contract Administrator has verified that the Contract has reached Completion, the Contract Administrator shall issue a Completion Certificate.
- .02 The Contract Administrator shall set out in the Completion Certificate the date on which the Work was completed and, within 7 Days of signing the said certificate, the Contract Administrator shall provide a copy to the Contractor.

GC 8.02.03.07 Completion Payment and Completion Statutory Holdback Release Payment Certificates

- .01 When the Contract Administrator issues the Completion Certificate, the Contract Administrator shall also issue the Completion Payment Certificate and the Completion Statutory Holdback Release Payment Certificate or where appropriate, a combined payment certificate.
- .02 The Completion Payment Certificate shall show,
- a) measurement and value of Work at Completion;
 - b) the amount of the further statutory holdback based on the value of further work completed over and above the value of work completed shown in the Substantial Performance Payment Certificate referred to above; and
 - c) the amount due the Contractor.
- .03 The Completion Statutory Holdback Release Payment Certificate shall be a payment certificate releasing to the Contractor the further statutory holdback. Payment of such statutory holdback shall be due 46 Days after the date of Completion of the Work as established by the Completion Certificate but subject to the provisions of the *Construction Lien Act* and the submission by the Contractor of the following documents:

- a) a release by the Contractor in a form satisfactory to the Contract Administrator releasing the Owner from all further claims relating to the Contract, qualified by stated exceptions where appropriate;
- b) a statutory declaration in a form satisfactory to the Contract Administrator that all liabilities incurred by the Contractor and the Contractor's Subcontractors in carrying out the Contract have been discharged, qualified by stated exceptions where appropriate; and
- c) a satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.

GC 8.02.03.08 Interest

- .01 Interest due the Contractor is based on simple interest and is calculated using the applicable Rate of Interest.

GC 8.02.03.09 Interest for Late Payment

- .01 Provided the Contractor has complied with the requirements of the Contract, including all documentation requirements, when payment by the Owner to the Contractor for Work performed, or for release of statutory holdback, is delayed by the Owner, then the Contractor shall be entitled to receive interest on the outstanding payment at the Rate of Interest, if payment is not received on the dates set out below:
 - a) Progress Payment Certificates: 30 Days after the Cut-Off Date;
 - b) Certificate of Subcontract Completion: 30 Days after the date certified as the date on which the subcontract was completed;
 - c) Subcontract Statutory Holdback Release Payment Certificate: 76 Days after the date on which the subcontract was completed;
 - d) Substantial Performance Payment Certificate: 30 Days after the date of issuance of the certificate;
 - e) Substantial Performance Statutory Holdback Release Payment Certificate: 76 Days after publication of the Payment Certificate of Substantial Performance;
 - f) Completion Payment Certificate: 30 Days after the date certified as the date on which the Contract reached Completion; and
 - g) Completion Statutory Holdback Release Payment Certificate: 76 Days after the date certified as the date that the Work was completed.
- .02 If the Contractor has not complied with the requirements of the Contract, including all documentation requirements, prior to expiration of the time periods described in paragraph GC 8.02.03.09.01, interest shall only begin to accrue when the Contractor has completed those requirements.

GC 8.02.03.10 Interest for Negotiations and Claims

- .01 Except as hereinafter provided, where a notice of negotiation, notice of intent to claim and the subsequent claims are submitted in accordance with the time limits or procedure or both described by subsection GC 3.13, Claims, Negotiations, Mediation, the Owner shall pay the Contractor the Rate of Interest on the amount of the negotiated price for that part of the Work or on the amount of the settled claim. Such interest shall not commence until 30 Days after the satisfactory completion of that part of the Work.
- .02 Where the Contractor does not attempt to resolve the negotiation or the claim in an expeditious manner, interest shall be negotiable.
- .03 Where the Contractor fails to give notice of a claim within the time limit prescribed by subsection GC 3.13, Claims, Negotiations, Mediation, interest shall not be paid.
- .04 Where a Contractor fails to comply with the 30 Day time limit and the procedures prescribed in paragraph GC 3.13.03.03 for submission of claims, interest shall not be paid for the delay period.

GC 8.02.03.11 Owner's Set-Off

- .01 Pursuant to Section 12 of the *Construction Lien Act*, the Owner may retain from monies owing to the Contractor under this Contract an amount sufficient to cover any outstanding or disputed liabilities, including the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner under paragraph GC 8.01.02.01 a), any assessment due the Workplace Safety and Insurance Board, and any monies to be paid to the workers in accordance with clause GC 8.02.06, Payment of Workers.
- .02 Under these circumstances the Owner will give the Contractor appropriate notice of such action.

GC 8.02.03.12 Delay in Payment

- .01 The Owner shall not be deemed to be in default of the Contract provided any delay in payment does not exceed 30 Days from the due dates as defined in paragraph GC 8.02.03.09.01.

GC 8.02.04 Payment on a Time and Material Basis

GC 8.02.04.01 Definitions

- .01 For the purpose of clause GC 8.02.04 the following definitions apply:

Cost of Labour means the amount of wages, salary, travel, travel time, food, lodging, or similar items and Payroll Burden paid or incurred directly by the Contractor to or in respect of labour and supervision actively and necessarily engaged on the Work based on the recorded time and hourly rates of pay for such labour and supervision but shall not include any payment or costs incurred for general supervision, administration, and management time spent on the entire Work or any wages, salary, or Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Equipment.

Cost of Material means the cost of Material purchased or supplied from stock and valued at current market prices for the purpose of carrying out Extra Work by the Contractor or by others, when such arrangements have been made by the Contractor for completing the Work, as shown by itemized invoices.

Operated Rented Equipment means Rented Equipment for which an operator is provided by the supplier of the equipment and for which the rent or lease includes the cost of the operator.

Payroll Burden means the payments in respect of workplace insurance, vacation pay, employment insurance, public liability and property damage insurance, sickness and accident insurance, pension fund, and such other welfare and benefit payments forming part of the Contractor's normal labour costs.

Rented Equipment means equipment that is rented or leased for the special purpose of Work on a Time and Material Basis from a person, firm, or corporation that is not an associate of the lessee as the word "associate" is defined by the *Securities Act*, R.S.O. 1990, c.S.5, as amended, and is approved by the Contract Administrator.

Road Work means the preparation, construction, finishing, and construction maintenance of roads, streets, Highways, and parking lots and includes all work incidentals thereto other than work on structures.

Sewer and Watermain Work means the preparation, construction, finishing, and construction maintenance of sewer systems and watermain systems, and includes all work incidental thereto other than work on structures.

Standby Time means any period of time that is not considered Working Time and which together with the Working Time does not exceed 10 hours in any one Working Day and during which time a unit of equipment cannot practically be used on other work but must remain on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

Structure Work means the construction, reconstruction, repair, alteration, remodelling, renovation, or demolition of any bridge, building, tunnel, or retaining wall and includes the preparation for and the laying of the foundation of any bridge, building, tunnel, or retaining wall and the installation of equipment and appurtenances incidental thereto.

The 127 Rate means the rate for a unit of Equipment as listed in OPSS 127, Schedule of Rental Rates for Construction Equipment, Including Model and Specification Reference, that is current at the time the work is carried out or for Equipment that is not so listed, the rate that has been calculated by the Owner, using the same principles as used in determining The 127 Rates.

Work on a Time and Material Basis means Changes in the Work, Extra Work, and Additional Work approved by the Contract Administrator for payment on a Time and Material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, Standard Specifications and provisions of the Contract.

Working Time means each period of time during which a unit of Equipment is actively and of necessity engaged on a specific operation and the first 2 hours of each immediately following period during which the unit is not so engaged but during which the operation is otherwise proceeding and during which time the unit cannot practically be transferred to other work but must remain on the site in order to continue with its assigned tasks and during which time the unit is in a fully operable condition.

GC 8.02.04.02 Daily Work Records

- .01 Daily Work Records, prepared as the case may be by either the Contractor's representative or the Contract Administrator reporting the labour and Equipment employed and the Material used on each Time and Material project, should be reconciled and signed each Day by both the Contractor's representative and the Contract Administrator. If it is not possible to reconcile the Daily Work Records, then the Contractor shall submit the un-reconciled Daily Work Records with its claim, whereby the resolution of the dispute about the Daily Work Records shall not be resolved until there is a resolution of the claim.

GC 8.02.04.03 Payment for Work

- .01 Payment as herein provided shall be full compensation for all labour, Equipment, and Material to do the Work on a Time and Material Basis except where there is agreement to the contrary prior to the commencement of the Work on a Time and Material Basis. The payment adjustments on a Time and Material basis shall apply to each individual Change Order authorized by the Contract Administrator.

GC 8.02.04.04 Payment for Labour

- .01 The Owner shall pay the Contractor for labour employed on each Time and Material project at 135% of the Cost of Labour up to \$3,000, then at 120% of any portion of the Cost of Labour in excess of \$3,000.
- .02 The Owner shall make payment in respect of Payroll Burden for Work on a Time and Material Basis at the Contractor's actual cost of Payroll Burden.
- .03 At the Owner's discretion, an audit may be conducted in which case the actual Payroll Burden so determined shall be applied to all Time and Material work on the Contract.

GC 8.02.04.05 Payment for Material

- .01 The Owner shall pay the Contractor for Material used on each Time and Material project at 120% of the Cost of the Material up to \$3,000, then at 115% of any portion of the Cost of Material in excess of \$3,000.

GC 8.02.04.06 Payment for Equipment

GC 8.02.04.06.01 Working Time

- .01 The Owner shall pay the Contractor for the Working Time of all Equipment, other than Rented Equipment and Operated Rented Equipment, used on the Work on a Time and Material basis at The 127 Rates with a cost adjustment as follows:
- a) Cost \$10,000 or less - no adjustment;
 - b) Cost greater than \$10,000 but not exceeding \$20,000 - payment \$10,000 plus 90% of the portion in excess of \$10,000; and
 - c) Cost greater than \$ 20,000 - \$19,000 plus 80% of the portion in excess of \$20,000.
- .02 The Owner shall pay the Contractor for the Working Time of Rented Equipment used on the Work on a Time and Material Basis at 110% of the invoice price approved by the Contract Administrator up to a maximum of 110% of The 127 Rate. This constraint shall be waived when the Contract Administrator approves the invoice price prior to the use of the Rented Equipment.
- .03 The Owner shall pay the Contractor for the Working Time of Operated Rented Equipment used on the Work on a Time and Material Basis at 110% of the Operated Rented Equipment invoice price approved by the Contract Administrator prior to the use of the Equipment on the Work on a Time and Material Basis.

GC 8.02.04.06.02 Standby Time

- .01 The Owner shall pay the Contractor for Standby Time of Equipment at 35% of The 127 Rate or 35% of the invoice price whichever is appropriate. The Owner shall pay reasonable costs for Rented Equipment where this is necessarily retained in the Working Area for extended periods agreed to by

the Contract Administrator. This shall include Rented Equipment intended for use on other work, but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis.

- .02 In addition, the Owner shall include the Cost of Labour of operators or associated labourers who cannot be otherwise employed during the standby period or during the period of idleness caused by the circumstances giving rise to the Work on a Time and Material Basis.
- .03 The Contract Administrator may require Rented Equipment idled by the circumstances giving rise to the Work on Time and Material Basis to be returned to the lessor until the work requiring the equipment can be resumed. The Owner shall pay such costs as a result from such return.
- .04 When Equipment is transported, solely for the purpose of the Work on a Time and Material Basis, to or from the Working Area on a Time and Material basis, payment shall be made by the Owner only in respect of the transporting units. When Equipment is moved under its own power it shall be deemed to be working. The method of moving Equipment and the rates shall be subject to the approval of the Contract Administrator.

GC 8.02.04.07 Payment for Hand Tools

- .01 Notwithstanding any other provision of this Section, no payment shall be made to the Contractor for or in respect of Hand Tools or equipment that are tools of the trade.

GC 8.02.04.08 Payment for Work By Subcontractors

- .01 Where the Contractor arranges for Work on a Time and Material Basis, or a part of it, to be performed by Subcontractors on a Time and Material basis and has received approval prior to the commencement of such work, in accordance with the requirements of subsection GC 3.09, Subcontracting by the Contractor, the Owner shall pay the cost of Work on a Time and Material Basis by the Subcontractor calculated as if the Contractor had done the Work on a Time and Material Basis, plus a markup calculated on the following basis:
 - a) 20% of the first \$3,000; plus
 - b) 15% of the amount from \$3,000 to \$10,000; plus
 - c) 5% of the amount in excess of \$10,000.
- .02 No further markup shall be applied regardless of the extent to which the work is assigned or sublet to others. If work is assigned or sublet to an associate, as defined by the *Securities Act*, no markup whatsoever shall be applied.

GC 8.02.04.09 Submission of Invoices

- .01 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Equipment rates not already submitted to the Contract Administrator during the course of such work.
- .02 Separate summaries shall be completed by the Contractor according to the standard form "Summary for Payment of Accounts on a Time and Material Basis." Each summary shall include the Change Directive or Change Order number and covering dates of the work and shall itemize separately the labour, Materials, and Equipment. Invoices for Materials, Rented Equipment, and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.

- .03 Each month the Contract Administrator shall include with the monthly progress payment certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all in accordance with the contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.
- .04 The final "Summary for Payment of Accounts on a Time and Material Basis" shall be submitted by the Contractor within 60 Days after the completion of the Work on a Time and Material Basis.

GC 8.02.04.10 Payment Other Than on a Time and Material Basis

- .01 Clause GC 8.02.04 does not preclude the option of the Contract Administrator and the Contractor negotiating a Lump Sum Item or unit price payment for Change in the Work, Extra Work, and Additional Work.

GC 8.02.04.11 Payment Inclusions

- .01 Except where there is agreement in writing to the contrary, the compensation, as herein provided, shall be accepted by the Contractor as compensation in full for profit and all costs and expenses arising out of the work, including all cost of general supervision, administration, and management time spent on the work, and no other payment or allowance shall be made in respect of such work.

GC 8.02.05 Final Acceptance Certificate

- .01 After the acceptance of the Work, the Contract Administrator shall issue the Final Acceptance Certificate, or, where applicable, after the Warranty Period has expired. The Final Acceptance Certificate shall not be issued until all known deficiencies have been adjusted or corrected, as the case may be, and the Contractor has discharged all obligations under the Contract.

GC 8.02.06 Payment of Workers

- .01 The Contractor shall, in addition to any fringe benefits, pay the workers employed on the Work in accordance with the labour conditions set out in the Contract and at intervals of not less than twice a month.
- .02 The Contractor shall require each Subcontractor doing any part of the Work to pay the workers employed by the Subcontractor on the Work in accordance with paragraph GC 8.02.06.01.
- .03 Where any person employed by the Contractor or any Subcontractor or other person on the Work is paid less than the amount required to be paid under the Contract, the Owner may set off monies in accordance with clause GC 8.02.03.11, Owner's Set-Off.

GC 8.02.07 Records

- .01 The Contractor shall maintain and keep accurate Records relating to the Work, Changes in the Work, Extra Work, and claims arising therefrom. Such Records shall be of sufficient detail to support the total cost of the Work, Changes in the Work, and Extra Work. The Contractor shall preserve all such original Records until 12 months after the Final Acceptance Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors employed by the Contractor preserve all original Records pertaining to the Work, Changes in the Work, Extra Work, and claims arising therefrom for a similar period of time.
- .02 The Owner may inspect and audit the Contractor's Records relating to the Work, Extra Work, and Changes in the Work at any time during the period of the Contract. The Contractor shall supply certified copies of any part of its Records required, whenever requested by the Owner.

GC 8.02.08**Taxes**

- .01 Where a change in Canadian Federal or Provincial taxes occurs after the date of tender closing for this Contract, and this change could not have been anticipated at the time of bidding, the Owner shall increase or decrease Contract payments to account for the exact amount of tax change involved.
- .02 Claims for compensation for additional tax cost shall be submitted by the Contractor to the Contract Administrator on forms provided by the Contract Administrator to the Contractor. Such claims for additional tax costs shall be submitted not less than 30 Days after the date of Final Acceptance.
- .03 Where the Contractor benefits from a change in Canadian Federal or Provincial taxes, the Contractor shall submit to the Contract Administrator, on forms provided by the Contract Administrator, a statement of such benefits. This statement shall be submitted not later than 30 Days after Final Acceptance.
- .04 Changes in Canadian Federal or Provincial taxes that impact upon commodities, which when left in place form part of the finished Work, or the provision of services, where such services form part of the Work and where the manufacture or supply of such commodities or the provision of such services is carried out by the Contractor or a Subcontractor, are subject to a claim or benefit as detailed above. Services in the latter context means the supply and operation of equipment, the provision of labour, and the supply of commodities that do not form part of the Work.

GC 8.02.09**Liquidated Damages**

- .01 When liquidated damages are specified in the Contract and the Contractor fails to complete the Work in accordance with the Contract, the Contractor shall pay such amounts as are specified in the Contract Documents.