

# CCDC 2 – Stipulated Price Contract (2020): Government of Yukon Standard Supplementary General Conditions

The Articles of Agreement between Owner and Contractor, the General Conditions of the Canadian Standard Construction Document Stipulated Price Contract CCDC 2 – 2020, the Instructions to Bidders, these Standard Supplementary General Conditions, and any Project Specific Terms and Conditions (if applicable) shall apply to, modify, and be incorporated into this Contract.

## AGREEMENT BETWEEN THE OWNER AND CONTRACTOR

### ARTICLE A-1 THE WORK

- Amend Article 1.3 by deleting the word “Ready-for-Takeover” in the second line and replace with the following:  
“Substantial Performance of the Work”.
- Add the following Articles after Article 1.3:
  - “1.4 The Contractor shall achieve full completion of the Work in accordance with the terms of the Contract and ensure the Work is fully ready for the purposes intended under the Contract within **60** calendar days after the date of Substantial Performance of the Work, and meet the requirements for a final certificate of payment in accordance with GC 5.5 – FINAL PAYMENT.
  - 1.5 The Contractor is solely responsible for and shall diligently commence and perform the Work in order to meet any Critical Dates and achieve both Substantial Performance of the Work and full completion of the Work on or before the dates stated under the Contract.”

### ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- Delete Article 2.1 in its entirety and replace with the following:
  - “2.1 This Contract, which includes the Contract Documents, constitutes the entire agreement between the parties in respect of the subject matter of this Contract and supersedes all prior negotiations, representations (whether written or oral), communications, and other agreements in respect of it, unless they are specifically incorporated by reference into this Contract. If applicable, where a conflict exists between any term of this Contract and a term of the bidding documents, the terms of this Contract shall prevail.”

### ARTICLE A-3 CONTRACT DOCUMENTS

- Amend Article 3.1 by deleting the following words: “The following are the Contract Documents referred to in Article A-1 of the Agreement – THE WORK:
  - Agreement between Owner and Contractor
  - Definitions
  - General Conditions” and replace with the following:

“The Contractor shall perform the Work in accordance with the following Contract Documents:

- .1 any amendments to the Contract Documents;
- .2 Project Specific General Conditions (if applicable);
- .3 Government of Yukon Standard Supplementary General Conditions;
- .4 Agreement Between Owner and Contractor;
- .5 Definitions;
- .6 General Conditions;
- .7 Specifications;
- .8 Drawings; and
- .9 any other documents or materials as described below:”

### ARTICLE A-4 CONTRACT PRICE

- Delete Article 4.1 in its entirety and replace with the following: “The Contract Price and total amount (including Value Added Taxes, if applicable) payable by the Owner to the Contractor for the Work shall not exceed the total amount stated in Article 4.3.”
- Delete Article 4.2 in its entirety and replace with the following:
  - “4.2 The Work under this Contract is being purchased by the Owner for a public purpose and is not subject to the Goods and Services Tax or Harmonized Sales Tax (“GST/HST”) under authority number R107442840. The Contractor shall not add or include the GST/HST in any invoices or payments due and payable by the Owner for the work performed under this Contract. The Contractor shall be responsible for applying directly to the Canada Revenue Agency for any Input Tax Credits on any GST or HST paid by it in relation to the Work or this Contract, including: any work performed by Subcontractors or Suppliers. The Contractor shall fully cooperate with and provide all reasonable assistance and information to the Owner to permit recovery of any applicable tax exemptions or rebates by the Owner.”

## ARTICLE A-5 PAYMENT

### ○ Delete Article 5.1 in its entirety, and replace with the following:

"5.1 The Owner shall, in accordance with any applicable legislative requirements and the terms of this Contract, holdback from each payment to the Contractor, the following amount:

**Subcontractor Holdback of 5%; and**

**Performance Holdback of 5%.**

The Owner's obligation to pay the Contractor under this Contract is subject to the following:

- .1 the *Financial Administration Act* (Yukon), RSY 2002, c. 87 and its regulations (as amended), including subsection 24(2) which reads as follows: "It is a term of every contract that money that becomes due under the contract is not payable unless a provision of this or another Act authorizes the payment to be made in the fiscal year when the payment falls due"; and
- .2 the Contractor abiding by the terms and conditions of this Contract."

### ○ Delete Article 5.2 in its entirety and replace with the following:

"5.2 If either party fails to pay any valid amounts payable under this Contract within 30 calendar days from when they become due, interest at the current Bank of Canada rate (as it may change from time to time) shall be applied to such unpaid amounts calculated from the date under this Contract until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount. Any interest payable by the Owner shall be subject to the Yukon's Interest Regulations (OIC 1986/039)."

### ○ Add the following Articles after Article 5.2:

- "5.3 The Owner shall retain from payments or amounts due to the Contractor a subcontractor holdback as stated in the Contract. The Owner may, at its discretion, retain out of the subcontractor holdback or any payment to the Contractor an amount necessary to satisfy any claim or claims from a Subcontractor or Supplier.
- 5.4 The Owner shall retain from payment or amounts due to the Contractor a separate performance holdback as stated in the Contract. The performance holdback is in addition to and separate from any other holdback under the Contract, and is held to ensure proper performance of the Work and Contract, including: performance of any warranty terms and compliance with any YFNPA. The performance holdback is not held in trust for the Contractor, the property of the Contractor, earned by the Contractor or due and payable by the Owner until all the conditions for release of the performance holdback are satisfied. The Owner reserves the right, at its discretion, and at any time, to deduct from or apply the performance holdback against any liability from or amount properly owing by the Contractor to the Owner related to or arising from the Work or Contract. The value of the performance holdback shall be adjusted from time to time proportional with any adjustment to the Contract Price. The Owner reserves the right, at its discretion, to increase the amount of the performance holdback retained by: the amount of any outstanding third party claims or defects in the Work; or amounts sustained or incurred by the Owner from the Contractor failing to comply with or meet the terms under this Contract. After a certificate for *Substantial Performance of the Work* has been issued, the Owner may, at its discretion, release the performance holdback if the Contractor has provided to the Owner, sufficient security, in a form and with content acceptable to the Owner, that sufficiently secures any outstanding Work or obligations, including warranty obligations, under the Contract.
- 5.5 In addition to any rights the Owner may have under this Contract, in law or in equity, the Owner may set off any liability arising from the Contractor to the Owner under this Contract or in relation to the Work against any liability arising from the Owner to the Contractor. The Owner may withhold amounts payable to the Contractor, or deduct from amounts payable to the Contractor a reasonable amount sufficient to cover any costs, expenses, or liability which the Owner may incur related to or arising from the Contractor's breach or failure to comply with the terms and requirements of this Contract."

## Article A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

### ○ Delete Articles 6.1 to 6.5 in their entirety and replace with the following:

- "6.1 Notices in Writing will be addressed to the Parties at the address set out below. The delivery of a Notice in Writing will be by hand; by courier; by mail; facsimile or electronic mail during the transmission of which no indication of failure of receipt is communicated to the sender. A Notice in Writing delivered by one party in accordance with this Contract will be deemed to have been received by the other party:
- .1 if delivered in person or by courier, on the date of delivery;
  - .2 if sent by mail, five Working Days after the date on which it was mailed;
  - .3 if sent by facsimile or electronic mail, on the date of its transmission if there is no indication of failure of receipt communicated to the sender and the date of transmission is a Working Day and received at the place of receipt during normal business hours, if not received on a Working Day or during normal business hours, then it shall be deemed to have been received at the opening of business at the place of receipt on the next Working Day following the transmission thereof.

An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance

with this Article.”

## Article A-8 SUCCESSION

### ○ Add the following Articles after Article 8.1:

- “8.2 Each party represents and warrants that it has full power and authority to enter into, perform, and execute this Contract, and that each person signing this Contract on behalf of a party has been properly authorized and empowered to enter into and execute this Contract.
- 8.3 This Contract may be executed in counterparts, each of which will be deemed as an original and all of which will constitute one and the same document.”

## DEFINITIONS

### ○ Delete the definition of “Contract Price” in its entirety and replace with the following:

“**Contract Price** means the amount stipulated in Article 4.3 of the Agreement – CONTRACT PRICE and includes any and all direct and indirect costs and expenses related to or arising from the performance of the Work and Contract, including costs and expenses for the following: labour (including specialized labour), Subcontractors, Products, Construction Equipment, or any other materials or equipment used in the performance of the Work; shipping, handling, delivery, and storage of all Products, Construction Equipment, or any other materials or machinery related to the Work; fuel; repair and maintenance costs; inflation and escalation costs; scheduling; supervision, management, administration and overhead; mark-up and profit; insurance and bonding/security; costs for specialized knowledge or expertise or certification thereof; testing and commissioning; costs related to access to, nature, condition, and location of the Work or Place of the Work; existing structures, Temporary Work, and the surrounding environment; site security and clean up; soil or subsurface conditions; the quantities and nature of the Work; mobilization and demobilization; travel and accommodation; creating, managing, and complying with all regulatory, environmental, traffic, and health and safety requirements, permits, approvals, plans, or programs and YFNPA; complying with all applicable laws, including: permits, licenses and other regulatory approvals required for the performance of the Work; all applicable tariffs, duties, and foreign, federal, provincial, territorial and municipal taxes; bonding/contract security and insurance requirements or changes thereto; and all other costs, expenses, risks, contingencies, or other circumstances which are stated in the Contract or may be required or reasonably implied in the Contract or from the performance of the Work.”

### ○ Delete the definition of “Contract Time” in its entirety and replace with the following:

#### “Contract Time

The Contract Time means the timeframe from commencement of the Work stipulated in Article 1.3 of the Agreement – THE WORK to the end of the warranty period stipulated under GC 12.3 – WARRANTY.”

### ○ Delete the definition of “Place of the Work” in its entirety and replace with the following:

#### “Place of the Work

Place of the Work means the designated site or location of the Work identified in the Contract Documents and also includes a “workplace” as defined under Part 3 of the WSCA.”

### ○ Delete the definition of “Ready-for-Takeover” in its entirety and replace with the following:

#### “Total Performance of the Work

Total Performance of the Work means all of the following have been completed:

- .1 all of the terms and conditions of the Contract have been fulfilled for Total Performance of the Work in accordance with the terms of the Contract;
- .2 the Work is fully completed in accordance with the terms of the Contract and is fully ready for use or is being used for the purposes intended; and
- .3 a certificate for Total Performance of the Work has been issued by the Consultant and the Owner.”

### ○ Delete the definition of “Substantial Performance of the Work” in its entirety and replace with the following:

#### “Substantial Performance of the Work

The Substantial Performance of the Work means all of the following have been completed:

- .1 all of the terms and conditions of the Contract have been fulfilled for Substantial Performance of the Work in accordance with the terms of the Contract
- .2 the Work is 95% complete and ready for use or is being used for the purposes intended in accordance with the Contract, and is capable of completion or correction at a cost of not more than 5% of the total Contract Price at the time this cost is calculated; and
- .3 a certificate for Substantial Performance of the Work has been issued by the Consultant and the Owner.”

### ○ Amend the definition of “Work” by adding the following wording at the end of the definition: “and everything to be done, supplied, or performed by or through the Contractor under the Contract, including: every thing necessary to ensure timely and

proper completion of the Project; any ancillary work or services related to, arising from, or reasonably assumed from the work under the Contract; any work that is related to or arises under any warranty as specified in the Contract; and any work or services performed by: Subcontractors, Suppliers, or the Contractor's officers, employees, consultants, representatives, agents, successors or assigns; every thing necessary to ensure timely and proper completion of the Project."

○ **Delete the definition of "Working Day" in its entirety and replace with the following:**

**"Working Day(s)**

*Working Day* means a day that is not a Saturday, Sunday, or statutory holiday in the Yukon."

○ **Add the following definitions to Definitions:**

**"Construction Schedule**

The *Construction Schedule* means the schedule for the performance of the *Work* as determined pursuant to section GC 3.4 – CONSTRUCTION SCHEDULE and includes any amendments thereto in accordance with the Contract.

**Critical Dates**

*Critical Dates* means the dates identified under Article 1.3 of the Agreement – THE WORK and any dates identified in writing as critical, important, or material under the Contract or in the *Construction Schedule*.

**Excusable Event**

Excusable Event means:

- .1 a major disabling event or circumstance beyond the reasonable control of the Owner and may include: strikes, lock-outs, war, riots, fire, pandemic/epidemic, substantial changes in applicable laws, permitting, licences, or authorizations after execution of this Contract, the discovery of substantially different conditions as determined in accordance with GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, or a discovery in accordance with GC 9.3 – ARTIFACTS AND FOSSILS; or
- .2 a major disabling event or circumstance beyond the reasonable control of the Contractor, and may include: strikes, lock-outs, war, riots, fire, pandemic/epidemic, substantial changes in applicable laws, permitting, licences, or authorizations after execution of this Contract, the discovery of substantially different conditions as determined in accordance with GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, or a discovery in accordance with GC 9.3 – ARTIFACTS AND FOSSILS, but excludes:
  - .1 failure by the Contractor or its officers, employees, Subcontractors, Suppliers, representatives, or agents to secure or enforce contracts related to: the Work, Products, Construction Equipment or other tools, equipment, and materials required for the Work;
  - .2 economic hardship or lack of money, financing, or credit; or
  - .3 delays resulting from adverse weather conditions including: rain, snow, hail, cold or hot temperatures, wet, muddy, or frozen conditions, or high winds.

**Final Records of Construction**

*Final Records of Construction* means the controlled and complete set of documents upon which the Contractor records each and every instance of differences between the *Work* as executed and the *Work* as designed and depicted in the documents issued by the Contractor or its Subcontractors or Suppliers in relation to the performance of the *Work*.

**Records**

*Records* means any works, information, data (including field data and metadata), reports, documents, manuals, plans, drawings (including: *Shop Drawings* and *Drawings*), *Final Records of Construction*, sketches, designs, specifications, diagrams, tender calls, subcontracts, certificates, illustrations, photos, videos, graphics, schedules, charts, inspection reports, permits, test results, product, correspondence, or materials that, directly or indirectly, are produced by the Contractor, its employees, Subcontractors, or Suppliers or produced under or related to the *Work* or this Contract, whether in electronic or written format.

**Substantial Completion Deficiency List**

The *Substantial Completion Deficiency List* means the list of remaining or outstanding *Work* to be completed, rectified, or corrected as described under paragraph 5.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK.

**WSCA**

*WSCA* means the *Workers' Safety and Compensation Act*, R.S.Y. 2012, c.11, its regulations, and all safety regulations applicable to the *Place of the Work* (as amended).

**YFNPA**

The *YFNPA* means the Yukon First Nation Participation Plan or Agreement incorporated and described under the Contract Documents."

## General Conditions PART 1 GENERAL PROVISIONS

### GC 1.1 CONTRACT DOCUMENTS

- **Delete the following sentence from paragraph 1.1.1:** "It is not intended, however, that the Contractor shall supply products or perform work not consistent with, not covered by, or not properly inferable from the Contract Documents."
- **Delete the following sentence from paragraph 1.1.2:** "Performance by the Contractor shall be required only to the extent consistent with the Contract Documents."
- **Delete paragraph 1.1.4 in its entirety and replace with the following:**

"1.1.4 The Contractor shall review the Contract Documents and promptly report to the Consultant and Owner any errors, inconsistencies, or omissions in the Contract Documents or Work discovered by the Contractor, and shall promptly consult with the Consultant and Owner to correct or remedy such error, inconsistency or omission prior to proceeding with the work affected. If a critical dimension has been omitted or is in error, the Contractor shall be responsible for rectifying or inserting the missing or erroneous dimension."
- **Delete subparagraph 1.1.5.1 in its entirety and replace with the following:**

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

  - .1 any Change Orders to the Contract Documents;
  - .2 Project Specific General Conditions (if applicable);
  - .3 Government of Yukon Standard Supplementary General Conditions;
  - .4 the Definitions;
  - .5 Agreement Between the Owner and Contractor;
  - .6 the General Conditions;
  - .7 Specifications; and
  - .8 the Drawings."
- **Delete paragraph 1.1.9 in its entirety and replace with the following:**

"1.1.9 Neither the organization of the Specifications nor the arrangement of Drawings shall limit the Contractor in dividing the work among Subcontractors and Suppliers or in establishing the extent of the work to be performed by trade."
- **Delete paragraph 1.1.10 in its entirety and replace with the following:**

"1.1.10 If any term of this Contract (in whole or in part) is determined to be invalid, illegal or otherwise void or unenforceable, it shall be severed from this Contract and the remaining terms of this Contract shall continue in full force and effect."
- **Add the following paragraphs to the end of GC 1.1:**

"1.1.12 All time limits stated in this Contract and *Critical Dates* are to be construed as being material and of the essence in this Contract.

1.1.13 If the Owner designates any Records or other materials as confidential or proprietary (whether express or implied), the Contractor shall treat such Records and materials as confidential, and shall not use, copy, disclose, permit to be disclosed, or otherwise communicate any such Records and materials except:

  - .1 with the prior written consent of the Owner; or
  - .2 as required by law provided that the Contractor gives Notice in Writing to the Owner promptly upon becoming aware of such a requirement.

1.1.14 The Contractor shall ensure that any employees, agents, Subcontractors, Suppliers, or any third party with whom the Contractor shares or provides access to or possession of the confidential or proprietary Records or other materials shall, in favor of the Owner, be bound by the same terms or terms no less stringent than the confidentiality terms of this Contract. The Contractor will ensure its facilities, systems and files are secure and that access to any such confidential or proprietary Records and materials are strictly controlled.

1.1.15 The Contractor shall maintain full records of the Contractor's actual cost of the Work including all changes to the Work together with all tender calls, quotations, contracts, correspondence, invoices, receipts, and vouchers relating to the Work.

1.1.16 The Contractor shall keep such records intact in an organized manner during the term of this Contract and for a period of six (6) years after the date that final payment is accepted and made by the Owner pursuant to GC 5.5 – FINAL PAYMENT or after settlement or final disposition of any claim or dispute related to the Contract, whichever is the later.

1.1.17 upon request by the Owner or Consultant, the Contractor shall promptly provide any other Records to the Owner or Consultant within the timeframe specified in the request, including:

  - .1 reviewed and approved Shop Drawings;
  - .2 Drawings and Specifications, as marked up and amended to date;
  - .3 requests for pricing or bids or contracts with Subcontractors or Suppliers;
  - .4 clarifications to the Contract;

- .5 field test reports;
  - .6 a copy of the most recent Construction Schedule;
  - .7 manufactures' installation and application instructions;
  - .8 all Change Orders;
  - .9 all Change Directives; and
  - .10 submittals, reports, and records of meetings between the Owner and the Contractor or the Contractor and its Subcontractors or Suppliers."
- 1.1.18 In the case of a dispute or upon request by the Owner, the Contractor will provide or allow the Owner and its consultants and representatives to inspect and copy any or all Records, reports and other documentation reasonably required by the Owner to: sufficiently verify proper performance of the Work; support or resolve any payments or applications for payment related to: any changes to the Work, dispute, additional costs or expenses, claims for delay, or any other claims by the Contractor.
- 1.1.19 The Contractor shall grant to the Owner, its officers, employees, consultants, successors, assigns, and subsequent owners a non-exclusive, royalty-free, fully paid, world-wide, perpetual and irrevocable license to fully use and copy: all Records; any works created by the Contractor's employees, Subcontractors, Suppliers, consultants, agents, or any third party hired by the Contractor; Drawings; Shop Drawings; Final Records of Construction; plans; Specifications; and other materials produced or provided in the performance of the Work or this Contract for any government purpose, including: the use, operation, ownership, assignment, sale, transfer, or disposal of the Work or Project; repair, maintenance, alteration, replacement, or completion of any Work or additional work; for reference purposes in connection with other operations, activities, and projects of the Owner. Such license may also be sublicensed or assigned, at the discretion of the Owner, to any third party who may be involved with the project or has or may acquire an interest or obligation related to the Work or Project. The Contractor shall also permanently and irrevocably waive all moral rights to such Records, works, Drawings, Shop Drawings, Final Records of Construction, plans, Specifications and other materials, including: the right of paternity, integrity, and association. Any full or partial payment under the Contract in no way changes the effect of this license.
- 1.1.20 The parties shall execute such further documents and give such further assurances as are reasonably required to give effect to this Contract or the terms therein.
- 1.1.21 For greater certainty, paragraphs 1.1.13 to 1.1.21 shall survive the expiry or termination of the Contract.
- 1.1.22 This Contract shall be interpreted according to the following provisions:
- .1 each requirement for a thing or action to be in accordance or in compliance with any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
  - .2 each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision, and includes any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute;
  - .3 "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
  - .4 where a right or discretion is given to the Owner, whether using words such as: "at its discretion", "at the Owner's discretion", or "at the discretion of the Owner", such discretion shall be interpreted in preference to the Owner and deemed for any and all purposes to be exercisable by the Owner at the Owner's sole discretion taking into account solely what the Owner subjectively considers to be in the interests of the Owner, all without consideration of the interests of the other party or any other person;
  - .5 where a term states it is "notwithstanding", "despite", or "regardless of" any other term in this Contract, the term shall take precedence and govern over all other provisions of this Contract that are inconsistent or conflict with the term;
  - .6 if there is any conflict between the Construction Schedule prepared by the Contractor and the Critical Dates stated in this Contract, the Critical Dates in this Contract, including any Change Orders, shall govern;
  - .7 if there is a conflict within the terms in the Contract Documents, the terms establishing the higher quality, manner or method of performing the Work, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail; and
  - .8 no rule of law will apply that would construe this Contract or any part of it against the party who drafted, prepared or put forward the Contract or any part of it."

## GC 1.2 LAW OF THE CONTRACT

### ○ Delete paragraph 1.2.1 in its entirety and replace with the following:

"1.2.1 This Contract will be deemed to have been made in and will be governed, interpreted and enforced by the laws of the Yukon without regard to conflict of law principles that would impose a law of another jurisdiction, and both parties irrevocably submit to the exclusive jurisdiction of the courts in the Yukon."

## GC 1.3 RIGHTS AND REMEDIES

### ○ Add the following to the end of paragraph 1.3:

"1.3.3 Each provision of this Contract will be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or illegality and to restore this Contract as nearly as possible to its original intent and effect."

## GC 1.4 ASSIGNMENT

### ○ Delete paragraph 1.4.1 in its entirety and replace with the following:

"1.4.1 The Contractor will not, without the prior written consent of the Owner, assign, either directly or indirectly, any term under this Contract or any right or obligation of the Contractor under this Contract. Any assignment may be subject to approval under the Yukon Assignment Regulations OIC 1984/201."

## PART 2 ADMINISTRATION OF THE CONTRACT

### GC 2.1 AUTHORITY OF THE CONSULTANT

○ Amend paragraph 2.1.2 by: deleting the " " in the second line and replacing it with the word "and"; and deleting the following from the second line: "and the Contractor"

### GC 2.2 ROLE OF THE CONSULTANT

#### ○ Delete paragraphs 2.2.4 and 2.2.5 in their entirety and replace with the following:

"2.2.4 The Consultant will promptly inform the Owner of the date of receipt of the Contractor's applications for payment. Based on the Consultant's observations and evaluation of the Contractor's applications for payment, the Consultant will provide recommendations to the Owner regarding the amounts owing to the Contractor under the Contract in accordance with the terms of the Contract.

2.2.5 The Consultant will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures or for safety precautions and programs carried out by the Contractor in performance of the Work. The Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents."

○ Amend paragraph 2.2.6 by deleting the following from the first line: "Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER"; and capitalize the letter "t" in the word "the".

#### ○ Delete paragraph 2.2.10 in its entirety and replace with the following:

"2.2.10 With respect to claims for concealed or unknown conditions, delays, or a changes in Contract Price, the Consultant will make findings and recommendations in accordance with GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, GC 6.5 – DELAYS and GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE."

#### ○ Delete paragraphs 2.2.14 and 2.2.15 in their entirety and replace with the following:

"2.2.14 The Consultant will prepare Change Orders and Change Directives in accordance with GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE for review and approval by the Owner.

2.2.15 The Consultant will conduct reviews of the Work in order to make a recommendation to the Owner as to whether the Contractor has achieved Substantial Performance of the Work as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK and verify that Total Performance of the Work has been attained."

○ Amend paragraph 2.2.16 by deleting the following sentence: "By issuing any certificate, the Consultant does not guarantee the Work is correct or complete."

### GC 2.3 REVIEW AND INSPECTION OF THE WORK

#### ○ Delete paragraphs 2.3.1 to 2.3.3 in their entirety and replace with the following:

"2.3.1 The Owner, the Consultant and their representatives shall at all times have access to the Project and be permitted to examine the Work and materials used or to be used for the Work. The Contractor shall provide sufficient, safe and proper facilities at all times for the review and inspection of the Work by the Owner and the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner and the Consultant shall be given access to such work whenever it is in progress."

- 2.3.2 If work is designated for tests, inspections or approvals in the Contract Documents, or by the Owner or Consultant's instructions, or by the laws or ordinances of the Place of the Work, the Contractor shall give the Consultant and Owner reasonable notification of when the work will be ready for review and inspection. The Contractor shall arrange for and shall give the Consultant and Owner reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The Contractor shall furnish promptly to the Consultant and Owner two copies of certificates and inspection reports relating to the Work.”

**○ Delete paragraph 2.3.5 in its entirety and replace with the following:**

“2.3.5 The Consultant or Owner may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of the Contract Documents or the laws or ordinances applicable to the Place of the Work. If the Work is not in accordance with the requirements of the Contract Documents, law, or ordinances, the Contractor shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the Contract Documents, law or ordinances, the Owner shall pay the cost of examination and restoration.”

**○ Add the following paragraph to the end of GC 2.3:**

“2.3.8 All Work shall conform to the Contract Documents, and the most recent version of the National Building Code of Canada (as applicable).”

**GC 2.4 DEFECTIVE WORK**

**○ Delete paragraphs 2.4.1 to 2.4.3 in their entirety and replace with the following:**

“2.4.1 The Contractor shall, promptly or no later than 30 calendar days after Notice in Writing has been given by the Consultant or Owner, unless otherwise agreed to and duly authorized in writing by both Parties, correct and rectify any defects related to or arising from the Work or non-conformance with the Contract Documents that has been rejected by the Consultant or Owner, regardless of whether the defect or non-conformance has been incorporated into the Work, and regardless of whether defect or non-conformance is the result of an act, error, or omission by a Subcontractor or Supplier. The Contractor shall consult with the Owner prior to correcting and rectifying any defect or non-conformance, and upon request by the Owner, provide the Owner with a detailed schedule and plan to perform the corrective or remedial work. The Contractor shall also be responsible for the reasonable costs of any inspections incurred by the Owner arising from or related to the defect or non-conformance, or failure by the Contractor to follow any instructions by the Owner or Consultant.

2.4.2 The Contractor shall, promptly or no later than 30 calendar days after Notice in Writing has been given by the Consultant or Owner, unless otherwise agreed to and duly authorized in writing by both Parties, make good any Subcontractors or other contractors' work destroyed or damaged by such corrections or rectifications, at the Contractor's expense.

2.4.3 If the Contractor, or person for whom the Contractor is responsible, does not correct or rectify such defects or non-conformance promptly or if in the opinion of the Owner or Consultant it is not expedient to correct or rectify the defective or non-conforming Work, then the Owner may, without prejudice to any other right or remedy under this Contract or in law, do one or more of the following:

- .1 holdback or deduct a reasonable amount to correct or remedy the defective or non-conforming Work and any related costs or work from any amount or payment due to the Contractor;
- .2 correct or rectify such Work and deduct the cost thereof and any related costs or work from any amount or payment due to the Contractor;
- .3 terminate the Contractor's right to continue with the Work (in whole or in part) and have Other Contractor's perform such Work; or
- .4 take such other action or remedy as the Owner deems fit or reasonable in the circumstances or exercise any other right or remedy available under this Contract or in law or equity.

If the Owner and the Contractor do not agree on the costs to remedy the defective or non-conforming Work, they shall refer the matter to the Consultant for a determination in accordance with PART 8 – DISPUTE RESOLUTION.

2.4.4 Defective or non-conforming Work shall be covered by warranties under GC 12.3 - WARRANTY, which shall begin at the time identified in GC 12.3 – WARRANTY or the time that such work is remedied to the reasonable satisfaction of the Consultant and Owner, whichever is the later.

2.4.5 No failure to act or object by the Owner, nor payment by the Owner nor use of the Work by the Owner shall constitute an approval, acquiescence, or acceptance of any portion of the Work which is defective, non-conforming, or otherwise not in accordance with the terms of the Contract Documents, except as may be specifically and explicitly agreed to through Change Order that is duly authorized and signed by both parties.

2.4.6 For greater certainty, paragraphs 2.4.1 to 2.4.6 shall survive the expiry or termination of the Contract.”

## PART 3 EXECUTION OF THE WORK

### GC 3.1 CONTROL OF THE WORK

**○ Add the following paragraphs to the end of GC 3.1:**

- “3.1.3 The Contractor shall be responsible for requesting any additional instructions or clarifications from the Owner or the Consultant that may be required for the performance of the Work and shall request such instructions or clarifications in a timely manner so as to minimize any delay of the Work. All changes involving credits or extras to the Contract Price shall be carried out in accordance with the provisions of Part 5 – PAYMENT and Part 6 – CHANGES IN THE WORK.
- 3.1.4 The Contractor shall, in performance of the Contract, ensure that the Work is performed in a good, proper, workmanlike, and expeditious manner, and shall exercise the degree of care, skill, judgment and diligence that would reasonably be exercised by an experienced, skilled and prudent contractor supplying comparable services for comparable projects in a good, proper, workmanlike and expeditious manner. The Contractor represents and warrants that the Contractor and its officers, employees, Subcontractors, Suppliers, and agents are qualified and competent to perform the Work, and have the necessary skills, knowledge, training, licensing, certification, and ability to perform the Work. The Contractor shall also employ and ensure that Subcontractors employ a sufficient number of sufficiently skilled workers to perform the Work in compliance with this Contract.
- 3.1.5 The Contractor shall implement and comply with any applicable YFNPA in the performance of the Work and Contract and fulfill any commitments or obligations thereunder, including any labour or subcontracting commitments, which shall be deemed to form part of the Work and this Contract. Upon request by the Owner, the Contractor shall, in a form and with content reasonably acceptable to the Owner and within the timeframe specified by the Owner in the request, provide the Owner with sufficient evidence that it has completed or complied with its YFNPA, including: a statutory declaration from an authorized representative of the Contractor that it has completed or complied with the terms and obligations under its YFNPA, contact information for any Yukon First Nation Business listed or proposed by the Contractor related to their YFNPA, or verification of the wages, amount, or dollar value of any proposed Yukon First Nation labour or subcontractor commitments. If the Contractor fails to sufficiently demonstrate or prove that it has properly completed or complied with the terms and obligations of its YFNPA, then the Owner may, at its discretion, be entitled to: withhold any amounts payable to the Contractor or deduct from any amounts payable to the Contractor an amount to properly perform such terms and obligations and cover any liability or additional costs which the Owner may incur resulting from the Contractor’s failure to complete or comply with such terms or obligations.
- 3.1.6 The Contractor acknowledges and agrees that its performance of this Contract and Work is subject to review and evaluation under Government of Yukon’s Vendor Performance Review Program (“VPR”). For further information on the VPR process and evaluation criteria or for any inquiries, please email: [contracts@yukon.ca](mailto:contracts@yukon.ca). The Contractor’s scoring and rating resulting from the VPR may be used to: determine the Contractor’s eligibility for future Government of Yukon procurement or contracting opportunities, evaluate the Contractor for any Government of Yukon procurement or contracting opportunities, and/or be considered in any decisions by Government of Yukon to purchase goods or services or award a contract or work to the Contractor. The Contractor shall, at its own cost, fully participate in and cooperate with the Owner during the VPR process, and upon request by the Owner, promptly provide any relevant information, documents, or materials that are reasonably necessary to: complete the VPR evaluation process within any timeframes stated under the VPR, determine or finalize the Contractor’s scoring or rating under the VPR process, and/or resolve any disagreement or contestation of the Contractor’s score or rating under the VPR process.”

### GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

**○ Delete paragraph 3.2.1 in its entirety and replace with the following:**

- “3.2.1 The Owner reserves the right to award separate contracts to Other Contractors or to perform work with its own forces for: any changes to the Work; other parts of the Project, remedy defective or non-conforming work, or complete the Work where the Contractor’s right to continue with the Work has been terminated (in whole or in part).”

**○ Delete paragraph 3.2.2 in its entirety.**

**○ Amend paragraph 3.2.3 by deleting the first two lines in the paragraph and replacing with the following:**

- “3.2.3 When separate contracts are awarded to Other Contractors, or when work is performed by the Owner’s own forces, the Contractor shall:”

**○ Amend subparagraph 3.2.3.4 by adding the following to the first line after the word “Consultant”:** “and Owner”

**○ Delete paragraph 3.2.4 in its entirety and replace with the following:**

- “3.2.4 Where the Contract Documents identify work to be performed by other contractors or the Owner’s own forces, the Contractor shall co-ordinate and schedule the Work with the work of other contractors and the Owner’s own forces as specified in the Contract Documents.”

- Delete the following sentence from paragraph 3.2.5:** “In the absence of Other Contractors having reciprocal obligations, disputes and other matters in question initiated by the Contractor against Other Contractors will be considered disputes and

other matters in question between the Contractor and the Owner.”

- **Delete paragraph 3.2.6 in its entirety.**

#### **GC 3.4 CONSTRUCTION SCHEDULE**

- **Delete paragraph 3.4.1 in its entirety and replace with the following:**

- “3.4.1 Within 10 Working Days following the award or execution of the Contract, whichever is the earlier, the Contractor shall consult with its Subcontractors and Suppliers to prepare and submit to the Owner and the Consultant for review, a construction schedule, in a form and with content acceptable to the Owner and Consultant, that indicates the timing of the major activities of the Work, including, but not limited to: the work of any Subcontractors and Suppliers, and provides sufficient detail of the Critical Dates and their inter-relationship to demonstrate the Work will be performed in conformity with: any Critical Dates, schedule of values under paragraph 5.2.4, and terms of this Contract.
- 3.4.2 The Owner and Consultant shall review the Construction Schedule and may require the Contractor to make any revisions to the Construction Schedule or request further information or materials to support the Construction Schedule. The Contractor shall promptly make any revisions to the form or content of the Construction Schedule to the Consultant and Owner’s reasonable satisfaction.
- 3.4.3 Once the Parties have agreed on the Construction Schedule, the Contractor shall adhere to the Construction Schedule and the Critical Dates for the progress of the Work, and shall be responsible for ensuring all aspects of the Work meet the Construction Schedule and any Critical Dates
- 3.4.4 The Contractor shall monitor the progress of the Work relative to the Construction Schedule and advise the Owner and Consultant promptly of any facts or conditions which may affect or delay the Construction Schedule and revisions required to the Construction Schedule as the result of delays pursuant to GC 6.5 – DELAYS, and shall update the Construction Schedule in accordance with the terms of this Contract on a monthly basis in consultation with the Consultant and with written approval of the Owner. If the Construction Schedule is revised or updated, the Contractor shall include in each updated schedule: a sufficient description of progress to date, including a comparison to the previously submitted schedule; the reasons for any changes from the previous schedule; and a forecast to achieving Substantial Performance of the Work and final completion of the Project. If there is any conflict between the Construction Schedule prepared by the Contractor and the Critical Dates stated in this Contract, the Critical Dates in this Contract and in any subsequent Change Orders shall govern.
- 3.4.5 If the Contractor does not maintain the progress necessary to comply with the Contract Documents, the Construction Schedule and the Critical Dates, the Contractor shall, in consultation with the Consultant and Owner, accelerate the Work and shall take such actions as is necessary to maintain the progress required by the Contract Documents, the Construction Schedule and the Critical Dates. Upon request by the Owner, the Contractor shall create and implement a remedial plan and schedule acceptable to the Owner, and supply additional labour, additional hours of work, and additional materials, equipment, techniques, and resources in order to comply with such remedial plan and schedule, at the Contractor’s sole expense.
- 3.4.6 Any extension or change to Critical Dates must be authorized and made by Change Order. Any extension or change to Critical Dates proposed by the Contractor without a Change Order or failure by the Contractor to provide a Construction Schedule will not, in any way, constitute acceptance by the Owner of any extension or change to Critical Dates nor waive or limit the Owner’s right to: claim default or breach under this Contract or take such other remedy as may be available to the Owner under this Contract, in law or in equity.”

#### **GC 3.5 SUPERVISION**

- **Add the following to the end of paragraph GC 3.5.1:** “and Notice in Writing of the change shall be promptly provided to the Owner and Consultant.”
- **Amend paragraph 3.5.2 by adding the following to the second line after the word “Consultant”:** “or Owner”

#### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

- **Add the following to the end of paragraph GC 3.6.2:**  
“Once so employed, the Contractor shall not replace any Subcontractor without cause and without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The parties agree, that, the Owner’s request to change, object to, or consent to replace any Subcontractor or Supplier does not mean that the Owner assumes any responsibilities or obligations of the Contractor or over the performance of the Subcontractor or Supplier, including those relating to GC 9.4 – CONSTRUCTION SAFETY.”
- **Amend paragraph 3.6.3 by deleting the words “one of the other subcontract bidders” in line 2 and replace with the following:** “another subcontractor mutually agreed upon by the Parties.”
- **Amend paragraph 3.6.6 by adding the following after “payment” in the second line at the end of the paragraph:** “, subject to law, including any privacy laws.”

### GC 3.7 LABOUR AND PRODUCTS

○ **Add the following to the end of paragraph 3.7.1:**

"Upon request by the Owner or Consultant, the Contractor shall remove from the Work or Place of the Work, any officer, employee, Subcontractor, Supplier, representative or agent of the Contractor who, in the reasonable opinion of the Owner or Consultant: has acted in an offensive or belligerent manner, is incompetent or acting in a fashion that is adversely affecting the performance of the Work or Contract, or endangering the safety of persons engaged in the Work or members of the public. The Contractor shall promptly provide and designate a replacement officer, employee, Subcontractor, Supplier, representative or agent that is sufficiently skilled, experienced, competent, and qualified who is reasonably acceptable to the Owner."

○ **Amend paragraph 3.7.2 by adding the following at the end of line 1 after the word "power": "safety equipment,"**

○ **Delete paragraph 3.7.3 in its entirety and replace with the following:**

"The Contractor shall promptly supply and properly install all Products as specified under the Contract. The Contractor shall ensure that any Products provided shall be new, unused, and in a safe, serviceable, good and clean condition, unless otherwise explicitly stated under this Contract, and shall conform to all current applicable specifications, codes, standards, and laws, including, but not limited to: the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, Yukon Building Standards Act RSY 2002 c. 19, National Fire Prevention Association and all governmental and regulatory authorities having jurisdiction at the Place of the Work. Products which are not specified shall be consistent with the quality, performance, and durability of the Products specified, and their use acceptable to the Consultant and Owner. Any substitution of Products shall be pre-approved in writing by the Owner. Products which are not specified shall be of quality consistent with those specified, and their use acceptable to the Owner. The Contractor represents and warrants that the Products provided are not subject to any conditional sales contract or any security interest, liens or other claims of any third party which may subject any of the Products to seizure and/or removal from the Place of the Work."

○ **Add the following paragraphs to the end of GC 3.7:**

3.7.4 All Products shall be used strictly according to manufacturers' printed directions or recommendations.. All Products shall be stored as recommended by the manufacturer and kept dry at the recommended temperature where applicable.

3.7.5 The Contractor shall be responsible for the protection and security of the Products stored at the Place of the Work. The Contractor represents and warrants that the Products provided are not subject to any conditional sales contract or any security interest, liens or other claims of any third party which may subject any of the Products to seizure and/or removal from the Place of the Work

3.7.6 The Contractor shall, at the Contractor's expense, remove replace any material damaged or stolen from the Place of the Work. Upon request by the Owner, the Contractor shall, at the Contractor's expense, remove all surplus or rejected Products, Construction Equipment, Temporary Works, or materials from the Place of the Work.

3.7.7 The Contractor shall ensure that all Construction Equipment provided or used in the performance of the Work shall be stored and used in a safe, serviceable, and good working condition, and shall conform to all current applicable specifications, standards, laws, and safety requirements.

3.7.8 All Work, Products and materials delivered by the Contractor which will form part of the Work shall be considered the property of the Owner provided always that title, but not the risk of loss, shall pass to the Owner upon delivery to the Place of the Work or other location agreed to in writing by the parties.

### GC 3.8 SHOP DRAWINGS

○ **Amend paragraph 3.8.2 by adding the following to the first line after the word "Consultant": "and Owner".**

○ **Amend paragraph 3.8.4 by adding the following to the first line after the word "Consultant": "or Owner's".**

○ **Amend paragraph 3.8.5 by adding the following to the first line after the word "Consultant": "and Owner"**

○ **Amend paragraph 3.8.6 by adding the following to the first line after the word "Consultant": "and Owner's"**

○ **Add the following to the end of GC 3.8:**

3.8.8 The Contractor shall provide Shop Drawings in the form specified, or if not specified, as directed by the Consultant or Owner.

3.8.9 The Contractor shall provide revised Shop Drawings to correct those which the Consultant or Owner rejects as inconsistent with the Contract Documents. The Contractor shall notify the Consultant or Owner in writing of any revisions to the Shop Drawings other than those requested by the Consultant or Owner.

3.8.10 Upon the issuance of the final certificate of payment for the Work or upon request by the Owner, the Contractor shall submit to the Owner all Shop Drawings and related documents (as marked up and amended) that, in the opinion of the Owner, may assist in the preparation of a set of reproducible record drawings showing all significant changes in the Work made during construction."

○ **Add the following General Conditions to the end of PART 3 EXECUTION OF THE WORK:**

### GC 3.9 USE OF THE WORK

- “3.9.1 The Contractor shall not use any service, materials, or equipment installed as part of the Work without the prior written consent of the Owner. Upon such consent, the Contractor shall be subject to any conditions set out by the Owner.
- 3.9.2 The Owner reserves the right to take possession of and use any completed or partially completed portion of the Work for any use, regardless of the time or completion of the entire Work, provided that taking possession or use of the partially completed Work does not reasonably interfere with the Contractor’s activities in undertaking the Work. Such taking of possession or use of the partially completed portions of the Work shall not be construed as *Substantial Performance of the Work* or an acknowledgement of fulfillment of the Contract or any portion thereof, and shall not in any way relieve the Contractor from any of its obligations under the Contract.
- 3.9.3 Where the Project involves the renovation of a building which will be in use or be occupied during the course of the Work or where the Project involves Work that is adjacent to a structure which is in use or occupied, the Contractor, shall take all reasonable steps to: avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities; suppress dust and noise; and, take all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such buildings, structures or adjacent structures.
- 3.9.4 The Contractor shall not erect or permit the erection of any sign or advertising at the Work or the Place of the Work without the prior written consent of the Owner. The Contractor shall not use any logos or names by the Owner, or materials which depict or refer to the Work or the Project in connection with any of the Contractor’s promotional activities without the prior consent of the Owner.

### GC 3.10 CLEANUP

- 3.10.1 The Contractor will maintain the Work and Place of the Work in a clean, tidy, and orderly condition, including: keeping the Work and Place of the Work free from the accumulation of waste products and debris and storing any Construction Equipment, Products, Temporary Work, or any other equipment or materials in a manner that does not unreasonably encumber the Place of the Work or other activities adjacent to the Place of the Work.
- 3.10.2 After Substantial Performance of the Work, Total Performance of the Work, and completion of any other applicable Work, including completed work during the warranty period stated under this Contract, the Contractor will promptly ensure that the Place of the Work is left in a clean and orderly condition, and suitable for proper and safe use by the Owner, including: removal of any camps, debris, garbage and waste materials, machinery, Construction Equipment or other equipment, Temporary Work, structures, facilities, tools, supplies, or materials of the Contractor, its officers, employees, Subcontractors, Suppliers, representatives, or agents.
- 3.10.3 In the event that the Contractor fails to meet its obligations under GC 3.10 – CLEANUP, the Owner or the Consultant may give Notice in Writing to the Contractor and a timeframe to meet its obligations. Should the Contractor fail to meet its obligations within the timeframe provided by the Owner or Consultant, the Owner may, at its discretion, remove any camps, debris, garbage and waste materials, machinery, Construction Equipment or other equipment, Temporary Work, structures, facilities, tools, supplies, or materials, and deduct or withhold from payments otherwise due to the Contractor, the Owner’s costs or any other costs for such clean up, including a reasonable mark-up for administration, or exercise any further rights and remedies the Owner may have under the Contract or in law.”

## PART 4 ALLOWANCES

### GC 4.1 CASH ALLOWANCES

- **Add the following at the end of paragraph 4.1.3:**

“The Contractor shall obtain the prior written approval of the Owner before incurring any costs that exceed the stipulated total of a cash allowance item or total amount of all cash allowances.”
- **Delete paragraph 4.1.4 in its entirety and replace with the following:**

“4.1.4 Where the actual cost of the Work under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the Consultant’s or Owner’s direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the Contract Price for overhead and profit. Only where the actual cost of the Work under all cash allowances exceeds the total amount of all cash allowances and the Owner has pre-approved in writing the exceeding cost, shall the Contractor be entitled to be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, in accordance with and subject to the Contract Documents.”
- **Amend paragraph 4.1.7 by adding the following to the first line after the word “Contractor”:** “, Owner”
- **Add the following to the end of GC 4.1:**

“4.1.8 The Contractor shall keep accurate records of costs under cash allowances and provide them to the Consultant and Owner in support of the value of the cash allowances.”

## PART 5 PAYMENT

### GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- Delete GC 5.1 in its entirety.

### GC 5.2 APPLICATIONS FOR PAYMENT

- Add the following to the end of paragraph 5.2.1: “, unless otherwise agreed to by the parties in writing.”
- Add the following to the end of paragraph 5.2.2:  
“Upon request by the Owner, acting reasonably, the Contractor shall provide a statutory declaration and any supporting information or materials to support the application for payment prior to payment by the Owner.”
- Amend paragraph 5.2.3 by deleting the words “as of the last day of the payment period.” in line 2 and replace with the following:  
“and properly installed or incorporated into the Work as of the last day of the payment period, unless otherwise agreed to by the parties in writing.”
- Amend paragraph 5.2.4 by adding the following to the first line after the word “Consultant”: “and Owner” and add the following to the end of paragraph 5.2.4: “The schedule of values shall be in a form and with content acceptable to the Consultant and Owner and fairly and reasonably aggregate and divide the total amount of any Work over the course of the Project taking into account any Critical Dates and performance of any terms or obligations in any applicable YFNPA, so as to facilitate evaluation of payments to the Contractor. The Contractor shall, at its own cost, promptly update the schedule of values according to changes in the Work and promptly submit the updated schedule to the Owner and Consultant.”
- Amend paragraph 5.2.5 by adding the following to the second line after the word “Consultant”: “and Owner”

### GC 5.3 PAYMENT

- Delete paragraph 5.3.1 in its entirety and replace with the following:

- “5.3.1 After receipt by the Consultant and the Owner of an application for payment submitted by the Contractor in accordance with GC 5.2 - APPLICATIONS FOR PAYMENT:
- .1 if not already notified, the Consultant will promptly inform the Owner of the date of receipt of the Contractor’s application for payment;
  - .2 the Consultant will issue to the Owner, no later than ten (10) calendar days after receipt of the application for payment from the Contractor, recommendations regarding the application for payment and whether a certificate should be issued in the amount applied for, or in such other amount as the Consultant may recommend. The Owner after reviewing the recommendations of the Consultant will, subject to the terms of this Contract, determine the amount properly due to the Contractor and will issue to the Contractor, no later than twenty (20) calendar days after the receipt of the recommendations of the Consultant, a certificate for payment in the amount the Owner determines to be properly due. If the Owner certifies a different amount, or rejects or disputes the application or part thereof, the Owner will promptly advise the Contractor in writing giving reasons for the revision, rejection, dispute, or withholding of certification and/or payment; and
  - .3 subject to the terms of this Contract, the Owner shall make payment to the Contractor on any undisputed amounts on account as provided in Article A-5 - PAYMENT on or before thirty (30) calendar days after actual receipt by the Owner and the Consultant of the application for payment, and in any event, in compliance with Payment Legislation.
- 5.3.2 Despite paragraph 5.3.1, the Owner may withhold certification and payment from the Contractor (in whole or in part) until the Contractor has provided the Consultant and Owner with sufficient evidence that it has complied with:
- .1 the Construction Schedule and terms of GC 3.4 – CONSTRUCTION SCHEDULE;
  - .2 the schedule of values and terms of GC 5.2 – APPLICATIONS FOR PAYMENT;
  - .3 the terms for insurance and security in accordance with GC 11.1 - INSURANCE and GC - 11.2 CONTRACT SECURITY; and
  - .4 the YFNPA or any other term of this Contract.
- 5.3.3 Despite any other term under this Contract, and in addition to any other rights or remedies the Owner may have under this Contract or in law, if the Contractor is declared to be in default by the Owner or fails to sufficiently demonstrate that it has met and maintained the terms or requirements under the Contract for: the Construction Schedule (including any Critical Dates), insurance, workers’ compensation, contract security, health and safety, environmental compliance, YFNPA, or any other material term under this Contract, then the Owner may, at its discretion, be entitled to: withhold any amounts payable to the Contractor, or deduct from amounts payable to the Contractor an amount sufficient to cover any liability or additional costs which the Owner may incur resulting from any failure by the Contractor, Subcontractors, or Suppliers to comply with such terms or requirements.
- 5.3.4 The Owner is not obliged to pay for any Work that does not conform to the requirements of the Contract, unless otherwise agreed to by the parties via Change Order in accordance with the terms of this Contract.”

#### GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

**○ Delete paragraphs 5.4.1 to 5.4.6 in their entirety and replace with the following:**

- "5.4.1 The Contractor shall make written application to the Consultant and Owner for a certificate of Substantial Performance of the Work if it believes it has achieved Substantial Performance of the Work.
- 5.4.2 Prior to a certificate of Substantial Performance of the Work being issued or approved, the Contractor shall organize, complete, and submit to the Consultant and Owner all of the following, in a form and with content reasonably acceptable to the Consultant and Owner:
- .1 all inspection, certificate, guarantee, and warranty documentation required for the Work or Products or from Subcontractors or Suppliers in accordance with the terms of the Contract. The Contractor shall be responsible for securing, transferring, and assigning to the Owner, all warranties and guarantees related to the Work as may be available from Subcontractors and Suppliers. The Contractor shall promptly deliver to the Owner the originals of such warranties and guarantees;
  - .2 all applicable maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials as specified in the Contract Documents or related to the Work or Products;
  - .3 sufficient evidence and confirmation that all applicable Products, equipment, electrically operated devices, mechanical systems, electrical systems, and other systems are in place, commissioned, have received required certifications, and are demonstrated to be fully and consistently in good working order, operational, stable, and in accordance with the terms of the Contract;
  - .4 all approvals and permits for the Work from local or regulatory authorities having jurisdiction;
  - .5 all Final Records of Construction, submittals, data, and other information or documents to the extent commensurate with Substantial Performance of the Work in accordance with the terms of the Contract, including: all marked-up prints and other data stated in the Contract necessary for the production of the Final Records of Construction showing all changes in the Work made during construction;
  - .6 a statement reconciling all Change Orders, Change Directives and claims arising under this Contract or the Work up to the date of Substantial Performance of the Work;
  - .7 a clearance letter or sufficient evidence from the applicable Workers' Health and Safety authority indicating that all current assessments due from the Contractor and all Subcontractors and Suppliers have been paid;
  - .8 a statutory declaration by an authorized officer or senior management employee of the Contractor or other sufficient evidence stating that all accounts for labour, subcontracts, Products, materials, construction machinery and Construction Equipment, Temporary Work, and other indebtedness which may have been incurred by the Contractor in performing the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute;
  - .9 sufficient evidence that the Contractor has completed or complied with any applicable terms and obligations of its YFNPA up to the date of Substantial Performance of the Work, including: a statutory declaration from an authorized representative of the Contractor that it has fulfilled such terms and obligations and verification of any wages, amount, or dollar value of any proposed Yukon First Nation labour or subcontractor commitments;
  - .10 confirmation of completion of any training specified in the Contract;
  - .11 sufficient evidence or confirmation that cleaning under GC 3.10 – CLEANUP has been completed to the extent commensurate with Substantial Performance of the Work;
  - .12 a Substantial Performance Deficiency List in accordance with the terms of the Contract;
  - .13 sufficient evidence or confirmation that any other requirements specified in the Contract have been fully completed with respect to achieving Substantial Performance of the Work; and
  - .14 an occupancy permit for the Work and all approvals and permits for the Project from local authorities having jurisdiction;
  - .15 a schedule for prompt completion of all remaining Work by the Contractor; and
  - .16 any other information, documentation, or materials that are reasonably required by the Consultant or Owner or by any party on behalf of the Owner to complete and make use of the Work for its intended purpose or to sufficiently prove that the Work is in accordance with the terms of the Contract.
- 5.4.3 In addition to the above, as a condition of Substantial Performance of the Work, the Contractor shall, in consultation with the Owner and Consultant, provide to the Consultant and Owner, for approval by the Consultant and Owner, an organized, detailed, and comprehensive list of remaining or outstanding Work to be completed, rectified, or corrected, including a detailed and organized estimated value for each listed item of Work. The Consultant or Owner, may, at their discretion, supplement, add to, or modify the list, which shall become part of the Substantial Performance Deficiency List. Prior to finalizing the Substantial Performance Deficiency List and during any remaining term of this Contract, the Contractor shall: review the list; fully inform the Owner and Consultant of any other defects or non-conformances not stated in the list that are known or ought to have been reasonably known to the Contractor exercising due diligence, and add to or supplement the list with any other defects or non-conformances not stated in the list; and submit the list with any revisions or updates for further

review by the Owner and Consultant and so on until the list is approved by the Consultant and the Owner. The *Substantial Performance Deficiency List* may be further supplemented, added to, or modified by the Owner, Consultant, or Contractor at any time if further defects or non-conformances are found. The Owner's acceptance of the *Substantial Performance Deficiency List* shall not constitute that the Work conforms to the Contract or that no other defects or non-conformances exist, and shall not in any way limit, waive, or relieve the Contractor from the fulfillment of any of its obligations under the Contract.

- 5.4.4 The Owner will, acting reasonably and in consultation with the Consultant, determine and retain out of the amount due and owing to the Contractor upon *Substantial Performance of the Work* an amount that is two (2) times the estimated value of the Work that is still to be satisfactorily rectified, replaced, or performed under the *Substantial Performance Deficiency List* or under the Contract. The Consultant or Owner, may at their discretion, increase the amount retained under the *Substantial Performance Deficiency List* or under the Contract if further defects or non-conformances are found. Such increase in the amount retained will also be multiplied by 2 times the estimated value of the Work that is still to be satisfactorily rectified, replaced, or performed related to or arising from the further defects or non-conformances. Unless otherwise agreed to by the parties, such amounts and any increase thereto will be released by the Owner upon the Owner verifying that the identified work is complete, replaced, and/or defects or non-conformances rectified. The withholding of such amounts will not limit, negate, reduce, diminish or abrogate any right of setoff or claim which the Owner may have pursuant to the Contract, at law or in equity.
- 5.4.5 The Owner, acting reasonably, and with input from the Contractor and Consultant, will establish a reasonable date and schedule to promptly finish any remaining Work, including any work to be rectified or remedied under the *Substantial Performance Deficiency List*, and to achieve *Total Performance of the Work*. The Owner will provide a copy of such schedule to the Contractor. The Contractor will promptly perform and fully complete any remaining Work, including any work to be rectified or remedied under the *Substantial Performance Deficiency List* in accordance with the such schedule, and at times and in a manner which causes as little inconvenience to the Owner's use of the Work and operations on and adjacent to the Place of the Work as is reasonably possible.
- 5.4.6 In addition to any other rights or remedies under the Contract or in law or equity, the Owner may, at its discretion, carry out, or have Other Contractors carry out any remaining Work under the Contract or any work to be rectified or remedied under the *Substantial Performance Deficiency List*, and deduct the cost to perform such work from any amounts due to the Contractor, if:
- .1 the Contractor does not complete the work in accordance with the schedule under paragraph 5.4.5 or in accordance with the Contract, and the Owner gives Notice in Writing to the Contractor and the Contractor does not correct or remedy the defect within 14 calendar days of such Notice in Writing or such other timeframe agreed to by the Owner in writing; or
  - .2 the nature of the work is such that it creates a risk to the health or safety at the Place of the Work, a risk of damage to the existing Work or Site, a risk to the environment or any property, and the Owner gives Notice in Writing to the Contractor.
- 5.4.7 The Consultant will, not later than 10 calendar days after the receipt of an application from the Contractor for a certificate of *Substantial Performance of the Work*, review, assess, and verify the application and whether *Substantial Performance of the Work* has been achieved and the Work conforms to the terms and requirements set out in the Contract, including: receipt and sufficiency of the submissions under paragraph 5.4.2, and there are no substantial defects or non-conformances in the Work. The Consultant will then provide its recommendations to the Owner, and the Owner will, no later than 20 calendar days after receipt of the Consultant's recommendation, notify the Contractor of either approval or the reasons for disapproval of the application for a certificate of *Substantial Performance of the Work*.
- 5.4.8 In the event of disapproval, the Contractor will rectify all matters that prevent the issuance of a certificate for *Substantial Performance of the Work*, and the Consultant will within 10 calendar days after Notice in Writing from the Contractor that the matter has been rectified, make a recommendation to the Owner to approve or disapprove of the application, and so on, until such time as the Consultant and Owner determines that *Substantial Performance of the Work* has been achieved.
- 5.4.9 When the Owner, acting reasonably, determines that *Substantial Performance of the Work* has been achieved, the Owner will issue certificate of *Substantial Performance of the Work* to the Contractor stating the date of *Substantial Performance of the Work*, and a list with values of outstanding defects or non-conformances that is required to be rectified, replaced, or performed by the Contractor

- 5.4.10 The Owner may, at its discretion, retain out of the amount due and owing to the Contractor upon *Substantial Performance of the Work*:
- .1 any sums required by law to satisfy any liens or claims against the Work or amounts set-off or withheld in accordance with this Contract, law, or equity;
  - .2 any applicable holdbacks specified in accordance with this Contract; and
  - .3 2 (two) times the estimated value of the Work that is still to be satisfactorily rectified, replaced, or performed under the *Substantial Performance Deficiency List* or under the Contract.
- 5.4.11 The Contractor will be responsible for all costs and expenses related to any additional reviews by the Consultant and Owner after the first application by the Contractor for *Substantial Performance of the Work*, including: reviews related to the correction of any defects or non-conformances identified by the Consultant and Owner during the Contractor's first application for *Substantial Performance of the Work*. Such costs and expenses may be deducted by the Owner from any amounts or payments due to the Contractor.
- 5.4.12 Upon application for a certificate for *Substantial Performance of the Work*, the Contractor represents and warrants that the Contractor has paid in full all applicable taxes, employment insurance, Canada Pension Plan contributions, duties, royalties, and all other monies required to be paid by applicable laws.
- 5.4.13 The Owner shall release any applicable subcontractor holdback amount, except for amounts in dispute, after all of the following have been completed:
- .1 the issuance of a certificate of *Substantial Performance of the Work*;
  - .2 receipt of sufficient evidence, in a form and with content acceptable to the Owner, acting reasonably, that all accounts for labour, subcontracts, Products, materials, construction machinery and *Construction Equipment*, *Temporary Work*, and other indebtedness which may have been incurred by the Contractor in performing the Work and for which the Owner might in any way be held responsible have been paid in full. Such evidence may include receipt of a statutory declaration, in a form and with content acceptable to the Owner; and
  - .3 the Owner's receipt and approval of the Consultant's recommendation for payment of the subcontractor holdback amount.
- Subject to the above and terms of this Contract, the Contractor may apply for payment of the applicable subcontractor holdback and payment will be made in accordance with GC 5.2 –APPLICATIONS FOR PAYMENT.
- 5.4.14 The Owner will release any applicable performance holdback, less deductions for amounts owing to the Owner, after all of the following have been completed:
- .1 at the end of the warranty period under GC 12.3 – WARRANTY or certification that all Work has been completed in accordance with the terms of the Contract, whichever is the later; and
  - .2 upon full completion of the Work and the fulfillment of all the Contractor's obligations under the Contract.
- Subject to the above and terms of this Contract, the Contractor may apply for payment of the applicable performance holdback and payment will be made in accordance with GC 5.2 –APPLICATIONS FOR PAYMENT.
- 5.4.15 The Owner reserves the right, at its discretion, to retain a warranty holdback of 5% or less of the Contract Price upon the issuance of a certificate of *Substantial Performance of the Work* to ensure performance of any warranty obligations or terms during the warranty period under GC 12.3 – WARRANTY or any other warranty obligations specified under the Contract. The Owner will release any applicable warranty holdback, less deductions for amounts owing to the Owner, after all of the following have been completed:
- .1 full completion of all warranty work and fulfillment of the Contractor's warranty obligations under the Contract;
  - .2 receipt of sufficient evidence, in a form and with content acceptable to the Owner, acting reasonably, that all accounts for labour, subcontracts, Products, materials, construction machinery and *Construction Equipment*, *Temporary Work*, and other indebtedness which may have been incurred by the Contractor in performing the Work or any warranty obligations for which the Owner might in any way be held responsible have been paid in full. Such evidence may include receipt of a statutory declaration, in a form and with content acceptable to the Owner; and
  - .3 the Owner's receipt and approval of the Consultant's recommendation for payment of the warranty holdback amount.
- Subject to the above and terms of this Contract, the Contractor may apply for payment of the applicable warranty holdback and payment will be made in accordance with GC 5.2 –APPLICATIONS FOR PAYMENT."

## GC 5.5 FINAL PAYMENT

### **O Delete paragraphs 5.5.1 to 5.5.4 in their entirety and replace with the following:**

- “5.5.1 The Contractor shall make written application to the Consultant and Owner for a certificate of Total Performance of the Work if it believes it has achieved Total Performance of the Work.
- 5.5.2 Prior to a certificate of Total Performance of the Work being issued or approved, the Contractor shall organize, complete, and submit to the Consultant and Owner all of the following, in a form and with content reasonably acceptable to the Consultant and Owner:
- .1 ensure that all building systems have been brought to a state of full readiness for operation to the Owner’s reasonable satisfaction and in accordance with the Contract;
  - .2 sufficient evidence or confirmation that all remaining Work, defects, and non-conformances in the Work or under this Contract, including: any defects or non-conformances specified in the Substantial Performance Deficiency List have been rectified or completed in accordance with the terms of the Contract;
  - .3 sufficient evidence or confirmation of final completion of cleaning in accordance with GC 3.10 – CLEANUP and the Contract;
  - .4 sufficient evidence of release and discharge of any applicable liens or encumbrances;
  - .5 all remaining inspection, certificate, guarantee, and warranty documentation required for the Work or Products or from Subcontractors and Suppliers as specified in the Contract. The Contractor shall be responsible for securing, transferring, and assigning to the Owner, all warranties and guarantees related to the Work as may be available from Subcontractors, Suppliers, and Product manufacturers or distributors. The Contractor shall promptly deliver to the Owner the originals of such warranties and guarantees;
  - .6 all up to date and current items under paragraph 5.4.2 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK have been provided, including: any final commissioning reports; final inspections, including: structural and environmental approvals (if applicable), and final deficiency reports;
  - .7 one (1) complete set of paper printed Final Records of Construction that record the completed Work, signed and certified by the Contractor or other authority where appropriate; and one (1) complete electronic copy of such Final Records of Construction in a format and with content acceptable to the Owner, acting reasonably, which may include: AutoCAD DWG and Adobe PDF formats;
  - .8 a statement reconciling all Change Orders, Change Directives and claims arising under or from the Work;
  - .9 a written statement from the Contractor that all claims for payment for Work done under this Contract, including: Change Orders, Change Directives and all claims have been presented to the Owner;
  - .10 a clearance letter or sufficient evidence from the applicable Workers’ Compensation Health and Safety authority indicating that all current assessments due from the Contractor and all Subcontractors and Suppliers have been paid;
  - .11 a statutory declaration by an authorized officer or senior management employee of the Contractor or other sufficient evidence, in a form and with content acceptable to the Owner, stating that all accounts for labour, subcontracts, Products, materials, construction machinery and Construction Equipment, Temporary Work, and other indebtedness which may have been incurred by the Contractor in performing the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute;
  - .12 sufficient evidence that the Contractor has completed or complied with all the terms and obligations of its YFNPA, including: a statutory declaration from an authorized representative of the Contractor that it has fulfilled such terms and obligations and verification of any wages, amount, or dollar value of any proposed Yukon First Nation labour or subcontractor commitments;
  - .13 sufficient evidence or confirmation that any other requirements specified in the Contract have been fully completed with respect to achieving Total Performance of the Work; and
  - .14 all final updated technical specifications, applicable maintenance manuals, operating instructions, or any other information, documentation, or materials that are reasonably required by the Consultant, Owner or by any party on behalf of the Owner to rightfully and properly make use of the Work.
- 5.5.3 The Consultant will, not later than 10 calendar days after the receipt of an application from the Contractor for a certificate of Total Performance of the Work, review, assess, and verify the application and whether Total Performance of the Work has been achieved and any other requirements or standards related to or arising from the Work have been met, including: receipt and sufficiency of the submissions under paragraph 5.5.2.
- 5.5.4 The Consultant will then provide its recommendations to the Owner, and the Owner will, not later than 20 calendar days after receipt of the Consultant’s recommendation, notify the Contractor of either approval or the reasons for disapproval of the application for a certificate of Total Performance of the Work.
- 5.5.5 In the event of disapproval, the Contractor will rectify all matters that prevent the issuance of the certificate for Total Performance of the Work, and the Consultant will within 10 calendar days after Notice in Writing from the Contractor that the

matter has been rectified, make a recommendation to the Owner to approve or disapprove of the application, and so on, until such time as the Consultant and Owner determines that Total Performance of the Work has been achieved.

- 5.5.6 When the Owner, acting reasonably, determines that Total Performance of the Work has been achieved, the Owner will issue a certificate of Total Performance of the Work to the Contractor stating the date of Total Performance of the Work, and certify for payment the amounts due to the Contractor under this Contract, less any amount still retained for any applicable holdbacks, amounts in dispute, or any amount set-off or withheld in accordance with the Contract, law, or equity.
- 5.5.7 The Contractor will be responsible for all costs and expenses related to any additional reviews by the Consultant and Owner after the first application by the Contractor for Total Performance of the Work, including: reviews related to the correction of any defects or non-conformances identified by the Consultant and Owner during the Contractor's first application for Total Performance of the Work. Such costs and expenses may be deducted by the Owner from any amounts or payments due to the Contractor.
- 5.5.8 Upon application for a certificate of Total Performance of the Work, the Contractor represents and warrants that the Contractor has paid in full all applicable taxes, employment insurance, Canada Pension Plan contributions, duties, royalties, and all other monies required to be paid by applicable laws.
- 5.5.9 The Contractor represents and warrants that title to the Work and any part of the Work will vest solely in the Owner, and pass to the Owner free and clear of all liens and encumbrances."

#### GC 5.6 DEFERRED WORK

- Delete GC 5.6 and 5.6.1 in their entirety.

### PART 6 CHANGES IN THE WORK

#### GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- Amend subparagraph 6.1.1.2 by adding the following after the word "Change Order": "or Change Directive"

- Add the following to the end of GC 6.1:

"6.1.3 The maximum and sole cost to which the Contractor will be entitled to in any way: for a change to the Work or under a Change Order or Change Directive will be limited to the following:

- .1 the additional reasonable and proper amounts actually expended by or legally payable by the Contractor that are directly within one of the classes of expenditures and rates set out under GC 6.3.7, except such expenses or costs resulting from the fault or a failure to reasonably mitigate by the Contractor or a Subcontractor or Supplier; plus
- .2 a maximum markup equal to 10% on the amounts charged under subparagraph 6.1.3.1 as full compensation for the Contractor's overhead, administration, and profit and all other costs and expenses directly or indirectly related to the subject matter of the change. For greater certainty, the Contractor's overhead, administration, and profit shall not be included in the amounts charged under subparagraph 6.1.3.1.

- 6.1.4 Notwithstanding any other provisions contained in the General Conditions of the Contract, the costs referred to in paragraph 6.1.3 shall cover and include any and all direct, indirect, and consequential costs or liabilities attributable to the change to the Work, Change Order, or Change Directive other than those which are the result of or occasioned by any fault or failure on the part of the Contractor to reasonably mitigate or exercise reasonable care and diligence in the Contractor's attention to the Work. Any cost due to such fault or failure on the part of the Contractor shall be borne by the Contractor.
- 6.1.5 Upon request by the Owner or Consultant, the Contractor shall promptly provide to the Owner or Consultant, a sufficient, full, organized, and detailed account and record of the cost of performing the Work attributable to a change to the Work, Change Order, or Change Directive.
- 6.1.6 If the Owner and the Contractor do not agree on the method or proposed adjustment in the Contract Time or Contract Price attributable to the change in the Work, Change Order, or Change Directive, the matter shall be referred to the Consultant for a finding and if either party disagrees with the Consultant's finding, the matter shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION.
- 6.1.7 In the event of a change in the Work or an extension of the Contract Time pursuant to GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE, the Contractor shall notify both the surety issuing contract security to the Contractor under GC 11.2 - CONTRACT SECURITY and its insurer issuing insurance to the Contractor under GC 11.1 - INSURANCE of the change or extension, and shall ensure that the contract security and insurance coverage is adjusted accordingly and maintained during the Contract Time."

## GC 6.2 CHANGE ORDER

### ○ Add the following to the end of paragraph 6.2.2:

"6.2.3 Each Change Order executed by the Owner and Contractor shall constitute full and final payment for the change in the Work described therein, including: all costs and expenses related to or arising from the change, and no claim for additional costs or expenses related to or arising from such change and related Work for any reason shall be considered or paid by the Owner. Despite any other term of this Contract, if there is a conflict between paragraph 6.2.3 and any other term of the Contract, including any term in a Change Order or there is a term in another Contract Document that has a higher priority, then paragraph 6.2.3 shall prevail and take higher priority."

## GC 6.3 CHANGE DIRECTIVE

○ Add the following to the end of paragraph 6.3.2: ", unless otherwise agreed to by the parties The issuance of a Change Directive is discretionary by the Owner and the Owner does not have a duty or obligation in any way to issue a Change Directive."

○ Delete paragraph 6.3.3 in its entirety and replace with the following:

"6.3.3 The adjustment in the Contract Price for a change carried out by way of a Change Directive shall be determined by the parties. The Contractor shall, promptly or within 30 calendar days of the Owner or Consultant's Notice in Writing, supply to the Consultant and Owner any information or documentation, including labour and materials breakdowns to substantiate the value for a change or claim for payment for any change in the Work."

○ Add the following to the end of paragraph 6.3.4: "The Contractor shall not delay the Work pending agreement or resolution of the valuation of changes."

○ Delete GC 6.3.7 in its entirety and replace with the following:

"6.3.7 Any additional cost of performing the work attributable to the Change Directive or change to the Work shall be limited to the actual and direct cost of the following:

- .1 payments to Subcontractors or Suppliers based on amounts in subcontracts with pricing mechanism approved by Owner;
- .2 wages and salaries of employees of the Contractor while they are actually and properly engaged on the Work, excluding: wages, salaries, bonuses of personnel of the Contractor generally employed at the head office, or at a general office, of the Contractor unless such personnel is engaged at the Place of the Work, with the written approval of the Owner. Such wages and salaries shall not exceed applicable rates stated in the Contract or otherwise agreed to in writing by the parties;
- .3 payments for Products, supplies, or materials necessary for and incorporated in the Work or necessary for and consumed in the performance of the Work;
- .4 payments for Construction Equipment necessary for and incorporated into the Work, including: payments for renting equipment (but not tools), and allowances for equipment (but not tools) owned by the Contractor, provided that such payments or allowances are reasonable or have been agreed to in writing by the Contractor and the Owner. Such payments shall not exceed applicable rates stated in the Contract or otherwise agreed to in writing by the parties;
- .5 payments for tools, other than tools customarily provided by tradespersons, necessary for and used in the performance of the Work;
- .6 payments for preparation, inspection, transportation, delivery, safety, installation, commissioning and removal of equipment and materials necessary for the performance of the Work;
- .7 assessments payable under any statutory scheme relating to workers' compensation, unemployment insurance or holidays with pay;
- .8 payments for adjustments in premiums for any contract security or insurance stated or required under this Contract;
- .9 payments for adjustments in taxes (where applicable); and
- .10 reasonable costs for travel, accommodations, and temporary facilities that are necessary for the performance of the Work; and
- .11 other payments, made with the prior written approval of the Owner that are necessary for the performance of the Work.

For greater certainty, the above expenditures shall not include any additional markups or costs for overhead, administration, and profit for the Contractor, except as otherwise stated in paragraph 6.1.3.2. The Contractor will use all reasonable efforts to mitigate any extension of time or additional cost or expense or any loss, damages incurred or sustained by the Contractor related to or arising from a Change Directive or change in the Work. Upon request from the Owner, the Contractor will promptly submit an organized and detailed description, supported by any documentation as the Owner may reasonably require, of the measures and steps taken by the Contractor to mitigate such additional time, costs, expenses, loss or damages."

○ Amend paragraph 6.3.9 by adding the words "and Owner" after "Consultant" in line 2.

#### GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

**○ Delete paragraph 6.4.1 in its entirety and replace with the following:**

"6.4.1 If the Contractor discovers soil, subsurface conditions, or other physical conditions that are:

- .1 substantially different from those ordinarily found to exist at *Place of the Work*;
- .2 substantially different from those generally recognized as inherent in construction activities; or
- .3 substantially different from those indicated in the *Contract Documents* or other documents supplied to the Contractor for its use in preparing its pricing/tender,; or a reasonable assumption of fact that ought to have been made by the Contractor based thereon,

then the Contractor shall give clear and sufficient *Notice in Writing* to the *Consultant* and *Owner* of such conditions before they are significantly disturbed and take all reasonable steps to the extent required to minimize the impact on the *Work* and ensure that no person, property, or the environment is harmed or damaged by such conditions. The *Consultant* will promptly investigate such conditions and promptly provide its finding and recommendation to the *Owner*. For greater certainty, soil or subsurface conditions, or other physical conditions that are caused by the Contractor or due to adverse weather conditions shall not be considered substantially different and no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor in any way or for any reason related to or arising from such conditions."

**○ Amend paragraph 6.4.2 by deleting the word "materially" in line 2 and replacing with: "substantially"**

**○ Amend paragraph 6.4.3 by deleting the word "materially" in line 1 and replacing with: "substantially"**

**○ Add the following to the end of paragraph 6.4.3: ", and the parties shall continue with the performance of the Work without delay in accordance with the *Contract Documents*."**

**○ Delete paragraph 6.4.4 in its entirety and replace with the following:**

"6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, or artifacts and fossils, the parties will be governed by the provisions of GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES and GC 9.3 - ARTIFACTS AND FOSSILS."

**○ Add the following to the end of GC 6.4:**

"6.4.5 The Contractor shall promptly give clear and sufficient *Notice in Writing* to the *Consultant* and *Owner* of any intent to claim or claims attributable or related to the conditions referenced under paragraph 6.4.1 not later than 10 calendar days from the date the conditions described above were first observed or encountered or within such other timeframe as agreed to clearly in writing by the *Owner*. Without limiting the foregoing, such *Notice in Writing* from the Contractor shall include:

1. a full, organized, and detailed account of the reasonable and proper costs claimed based on an assessment of the conditions reasonably known or ought to have been reasonably known by the Contractor exercising due diligence;
2. a sufficient and detailed description of the facts and circumstances of the occurrence or conditions that is the subject of the claim to enable the *Consultant* and *Owner* to determine whether or not the claim is justified and a description of the portions of the *Work* affected; and
3. any supporting information or documentation as may be reasonably necessary to support the claim, including: all steps taken or reasonably available to mitigate the costs, expenses, loss, or damages related to the amounts claimed.

6.4.6 Despite any other term in this *Contract*, if the conditions discovered are not substantially different in accordance with the criteria under paragraph 6.4.1 or clear and sufficient *Notice in Writing* to the *Consultant* and *Owner* is not provided in accordance with the terms and timeframe under paragraph 6.4.5, then no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor, directly or indirectly, for any reason related to or arising from such conditions.

6.4.7 If there is a dispute between the *Owner* or Contractor related to the *Consultant's* finding under GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS, then the matter shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

#### GC 6.5 DELAYS

**○ Delete GC 6.5 in its entirety and replace with the following:**

"6.5.1 GC 6.5 – DELAYS applies to any delays or claims for delay related to or arising from this *Contract* or *Work*. No extension of time or change to *Critical Dates* shall be given or made to the Contractor without a *Change Order* or *Change Directive* that is issued in accordance with the terms of this *Contract*.

6.5.2 If, taking into account the critical path of the *Work*, the Contractor is delayed or impacted in the performance of the *Work* by an *Excusable Event* that occurs more than 48 hours consecutively, then the date of *Substantial Performance* of the *Work* and any other affected *Critical Dates* may be extended for a reasonable time as recommended by the *Consultant*, but no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor for any reason related to or arising from such delay or *Excusable Event*, except where such delay or event is compensable in accordance with paragraph 6.5.3.

- 6.5.3 Subject to Notice in Writing in accordance with paragraph 6.5.8, if, taking into account the critical path of the Work, the Contractor is delayed or impacted in the performance of the Work directly caused by:
- .1 the discovery of substantially different conditions as determined in accordance with GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS;
  - .2 the neglect of the Owner,
  - .3 a failure by the Owner to provide access to the Place of the Work within the Owner's reasonable control; or
  - .4 a material breach by the Owner of the terms of this Contract,
- then the date of Substantial Performance of the Work and any other affected Critical Dates will be extended for a reasonable time as recommended by the Consultant, and the Contractor will be reimbursed for reasonable and proper costs directly resulting from such delay in accordance with the terms of Part 6 – CHANGES IN THE WORK. The Contractor must provide Notice in Writing in accordance with paragraph 6.5.8 and any supporting information or documentation to enable the Consultant and Owner to determine whether or not the extension of time or additional cost or expense is justified, before an extension of time or compensation for any delays or impacts will be considered.
- 6.5.4 If the Contractor neglects to perform or causes a delay in the Work, does not perform the Work substantially in accordance with the Construction Schedule or any Critical Dates, or the Contractor is otherwise delayed in the performance of the Work for any reason other than that for which an extension of time or costs is permitted under paragraphs 6.5.2 or 6.5.3, then the Contractor will, at its own cost, accelerate the Work to meet the date of Substantial Performance of the Work and any other affected Critical Dates and no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor for any reason related to or arising from such delay.
- 6.5.5 If there is a delay caused by an Excusable Event or by the Owner in accordance with paragraph 6.5.3, and the Owner, acting reasonably, determines that the date of Substantial Performance of the Work or any other affected Critical Dates can still be met, the Owner, reserves the right, at its discretion, to require the Contractor to accelerate the Work through an authorized Change Order or Change Directive, upon which the Contractor will accelerate its efforts to meet the date of Substantial Performance of the Work and any other affected Critical Dates requested by the Owner, and the Contractor will be reimbursed for reasonable and proper costs directly resulting from undertaking such acceleration efforts in accordance with the terms of Part 6 – CHANGES IN THE WORK. Upon request by the Owner or Consultant, the Contractor shall submit to the Owner and Consultant for review, a remedial plan to effectively address the cost and impact of any delay.
- 6.5.6 Despite any other term in this Contract, the Owner shall not be liable for any delay arising from the exercise or enforcement of a statutory power or duty by Government of Yukon or its agencies, and no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor for any reason related to or arising from such delay.
- 6.5.7 In addition to any other rights or remedies under this Contract or in law, if the Contractor does not complete the Work by the date of Substantial Performance of the Work or any other Critical Dates stated under this Contract, the Contractor shall pay to the Owner an amount equal to the aggregate of:
- .1 all salaries, wages, consultant fees, and travel and accommodation expenses incurred by the Owner in respect of persons overseeing the performance of the Work after such dates;
  - .2 the costs incurred by the Owner as a result of the inability to use the completed Work after such dates; and
  - .3 all other reasonable and proper expenses, costs, loss, damages, or compensation incurred or sustained by the Owner resulting from the Work not being completed by such dates, including delays to Other Contractors or Subcontractors.
- The Owner reserves the right, at its discretion, to deduct the amounts above as a debt owing from any holdbacks or amounts payable to the Contractor under this Contract or may require payment thereof by the Contractor on demand.
- 6.5.8 The Contractor shall promptly give clear and sufficient Notice in Writing to the Consultant and Owner of any intent to claim for delay, not later than 10 calendar days from the date that the Contractor becomes aware or ought to have reasonably become aware of the event causing the delay or within such other timeframe as agreed to in writing by the Owner. Without limiting the foregoing, the Contractor shall include the following with any such Notice in Writing:
- .1 a full, organized, and detailed account of the reasonable and proper costs claimed based on an assessment of the value of the claim that are reasonably known or ought to have been reasonably known by the Contractor exercising due diligence;
  - .2 the reasons for the delay, including: the justification under this Contract for the claim and a sufficient and detailed description of the facts and circumstances of the delay that is the subject of the claim to enable the Consultant and Owner to determine whether or not the claim is justified, including: the date the delay or impact commenced, the anticipated duration of the delay or impact, the effect of the delay on any Critical Dates, the impact of the delay and a description of the portions of the Work affected by the delay, and all steps taken or available to reasonably mitigate the delay or impact; and
  - .3 any supporting information or documentation as may be reasonably necessary to support the claim.
- 6.5.9 In the event of a continuing delay, if there are any changes to the costs being claimed or relevant changes to the information

or documentation required in any *Notice in Writing* under paragraph 6.5.8, the Contractor shall promptly update the *Notice in Writing* and provide a sufficient, detailed, and organized description of the changes to the Consultant and Owner within 7 calendar days from such change or within such other timeframe as determined by the Owner, acting reasonably. For greater certainty, such updates will not for any reason: revive a claim for delay that has been waived or explicitly denied payment for under the terms of the Contract, and will not extend the timeframe for delivery of *Notice in Writing* and any supporting information or documentation under paragraph 6.5.8.

- 6.5.10 Despite any other term in this Contract, if the Contractor fails to provide clear and sufficient *Notice in Writing* of a delay in accordance with the terms and timeframe specified under paragraphs 6.5.8 and 6.5.9, then the Contractor is deemed to fully waive any: claim for an extension of time, change to any *Critical Dates*, and any adjustment to the *Contract Price*, and no entitlement nor payment shall be made to the Contractor for any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor, directly or indirectly, for any reason related to or arising from the delay.
- 6.5.11 The Contractor's entitlement to any extension of time or compensation for additional costs or expenses related to any delay shall be subject to the Contractor using all reasonable efforts to avoid, mitigate, or minimize the duration, cost, effects, and impact of any delay and provide sufficient evidence thereof to the Consultant and Owner. Upon request by the Owner or Consultant, the Contractor shall provide additional and sufficient evidence of its efforts to avoid, mitigate, or minimize the duration, costs, effects, and impacts of any delay.
- 6.5.12 Where there are concurrent delays or impacts that are caused by two or more independent events, some of which are caused by the Contractor directly or indirectly and some of which are not, the Contractor shall not be entitled to an extension of time or compensation for costs, extra expenses, loss or damages arising from the concurrent delay or impact.
- 6.5.13 Any claim for delay that is based on a particular event or circumstance must be submitted, and shall be considered, individually and separately. No claim shall be allowed for an extension of time or compensation based upon the cumulative impact of two or more particular events causing delay or impact.
- 6.5.14 If there is a dispute between the Owner or Contractor related to any delay, including: entitlement, costs, or extension of time, then either party may refer the matter to the Consultant for determination. The Consultant shall review both parties views on the matter and make a finding in accordance with the terms of the Contract, and provide its findings and make a finding in accordance with GC 8.3 - NEGOTIATION, MEDIATION AND ARBITRATION. If such finding is acceptable to the parties, the parties will issue a change under the Contract in accordance with GC 6.2 - CHANGE ORDER. If either party disagrees with the Consultant's finding, then the matter shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION."

#### **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

**○ Delete paragraph 6.6.1 in its entirety and replace with the following:**

"6.6.1 For any claims related to a change in the *Contract Price* outside the scope of GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS and GC 6.5 - DELAYS, including: a claim for an increase to the *Contract Price* or any other claim for additional costs or compensation by the Contractor, the Contractor shall give timely and sufficient *Notice in Writing* of the claim to the Owner and Consultant no later than 10 *Working Days* from the commencement of the event or series of events giving rise to the claim, whichever is the earlier. Such *Notice in Writing* must include: a full, sufficient, organized, and detailed account of: the amount claimed, a sufficient and detailed description of the facts and circumstances of the occurrence or conditions that is the subject of the claim to enable the Owner and Consultant to determine whether or not the claim is justified and a description of the portions of the *Work* affected; and any supporting information or documentation as may be necessary to support the claim and amounts claimed. If, due to a change in the *Work*, there is any reduction in costs or expenses related to the performance of the *Work* or this Contract, then the Owner shall be entitled to claim a credit/rebate or decrease for such costs or expenses on the total amount payable under the Contract and any related costs or expenses to perform the *Work* or this Contract.

**○ Delete paragraphs 6.6.2 to 6.6.6 in their entirety and replace with the following:**

"6.6.3 Subject to paragraph 6.6.1, if there is a dispute between the Owner or Contractor related to any claim for an increase to the *Contract Price* or any other claim for additional costs or compensation, then either party may refer the matter to the Consultant for determination. The Consultant shall review both parties views on the claim and make a finding in accordance with GC 8.3 - NEGOTIATION, MEDIATION AND ARBITRATION. If such finding is acceptable to the parties, the parties will issue a change in the *Work* or *Contract Price* in accordance with GC 6.2 - CHANGE ORDER. If either party disagrees with the Consultant's finding, then the matter shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION.

6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, if there are any changes to the costs being claimed or relevant changes to the information or documentation required in any *Notice in Writing* under paragraph 6.6.1, the Contractor shall promptly update the *Notice in Writing* and provide a sufficient, detailed, and organized description of the changes to the Consultant and Owner within 7 calendar days from such change or within such other timeframe as determined by the Owner, acting reasonably. For greater certainty, such updates will not for any reason: revive a claim for delay that has been waived or explicitly denied payment for under the terms of the Contract, and will not extend the timeframe for delivery of *Notice in Writing* and any supporting information or documentation under paragraph 6.6.1.

- 6.6.5 Despite any other term in this Contract, if the Contractor fails to provide clear and sufficient Notice in Writing of any claim to the Owner and Consultant within the timeframe provided under paragraphs 6.6.1 and 6.6.4, then no entitlement nor payment shall be made to the Contractor for any additional expense, cost, or any loss, damages, or compensation incurred or sustained by the Contractor, directly or indirectly, for any reason related to or arising from the claim.”

## **PART 7 DEFAULT NOTICE**

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

**○ Delete GC 7.1 in its entirety and replace with the following:**

- “7.1.1 The Owner may, at its discretion and without prejudice to any other right or remedy the Owner may have, give Notice in Writing to the Contractor that it is in default under the Contract if the Contractor:
- .1 is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
  - .2 neglects to properly prosecute the Work;
  - .3 fails to make payment to Subcontractors or creditors when such payment is properly due;
  - .4 refuses to perform or abandons the Work (in whole or in part);
  - .5 breaches a material term of this Contract;
  - .6 breaches the terms or plans for: insurance, workers' compensation, contract security, health and safety, environmental compliance, or YFNPA under this Contract;
  - .7 makes a material misrepresentation or breaches a representation or warranty set out in this Contract;
  - .8 has delivered documentation or a statutory declaration in support of application for payment under this Contract that was false or materially inaccurate;
  - .9 has made an assignment of this Contract or any Work thereunder without the required written consent of the Owner;
  - .10 fails to achieve or properly perform the Work in order to achieve Substantial Performance of the Work or Total Performance of the Work by the date stated in this Contract, fails to achieve or properly perform the Work in order to achieve any Work by any Critical Dates, fails to comply with the Construction Schedule, or there is a material delay caused by the Contractor;
  - .11 breaches the warranty terms under the Contract, including: under GC 12.3 – WARRANTY; or
  - .12 otherwise fails to perform or refuses to comply with the terms and requirements of the Contract.
- 7.1.2 Upon Notice in Writing of default by the Owner, the Contractor will remedy the default within 5 calendar days immediately following such Notice in Writing. The Owner may at its discretion, extend the timeframe to remedy the default through Notice in Writing to the Contractor. Upon Notice in Writing of default by the Owner, the Contractor will promptly provide the Owner with a well-organized, detailed, and comprehensive schedule to remedy the default for acceptance by the Owner. Such schedule shall be in a form and with content acceptable to the Owner and include any supporting information or documentation requested by the Owner. Unless otherwise clearly agreed to by the Owner in writing through a Change Order, the submission of a schedule to rectify a default or extension of time given by the Owner to remedy a default will not, in any way, be considered as a forbearance or waiver of the default by the Owner or any other term of this Contract, and will not in any way limit, negate, reduce, diminish or abrogate any right, remedy, or claim which the Owner may have pursuant to the Contract, at law or in equity.
- 7.1.3 If a default under paragraph 7.1.1 occurs, or if the Contractor fails to rectify any default in accordance with the terms of this Contract or within the timeframe provided under paragraph 7.1.2, then the Owner may, at any time, by Notice in Writing to the Contractor and without prejudice to any contract security or other right or remedy the Owner may have under the Contract or in law or equity, exercise any or all of the following rights:
- .1 terminate the Contractor's right to continue with the Work (in whole or in part) and have Other Contractors complete such Work;
  - .2 withhold any further payment to the Contractor or correct the default and deduct the cost thereof from any payment due to the Contractor;
  - .3 terminate this Contract; or
  - .4 take such other action or remedy as the Owner deems appropriate in the circumstances, or exercise any other right or remedy under this Contract, in law or in equity.

- 7.1.4 If this Contract is terminated or the Contractor's right to continue with the Work (in whole or in part) is terminated by the Owner, then the following rights and obligations shall survive and apply:
- .1 the Contractor will:
    - .1 upon Notice in Writing of the termination, immediately terminate all operations to the extent commensurate with the termination or portion of the Work being terminated, as soon as reasonably possible except those, which are necessary to ensure the safety of personnel and the public, avoid damage or loss to the environment, or for the care and preservation of the Work, Products, and other materials, and subject to any written directions by the Owner, the Contractor will:
      - .1 discontinue ordering Products, Construction Equipment, and other materials;
      - .2 not enter into any further contracts with Subcontractors and Suppliers, except such contracts as are necessary for the safety of personnel or for the care, preservation, and warranting of the Work; and
      - .3 make every reasonable effort in the event of termination to cancel existing subcontracts and orders on the best terms available taking into consideration the Owner's interests, or, upon request by the Owner, the Contractor shall make all reasonable efforts to sell, assign and set over at reasonable cost to the Owner, without further consideration, those agreements, arrangements and contracts with Subcontractors, Suppliers, and others to which the Contractor is a party with respect to the performance of the Work, and in forms and with terms reasonably satisfactory to the Owner, execute such further assignments to give effect to the foregoing; and
    - .2 not remove from the Place of the Work any of the Work, Products, or related materials, without the prior written consent of the Owner;
    - .3 upon request by the Owner, provide the Owner with any Drawings, Shop Drawings, Specifications, Final Records of Construction, or any other Records reasonably necessary to perform the remaining Work; and
    - .4 after the date of termination, not be entitled to any further payment under the Contract or for any Work to the extent that such Work has been terminated; and
  - .2 the Owner will be entitled to:
    - .1 take possession of the Work or any part of the Work that has been terminated;
    - .2 take possession of: any Drawings, Shop Drawings, Specifications, or Final Records of Construction as marked up or amended to date; or any other Records reasonably necessary to perform the remaining Work, complete the Project, and fulfill the terms of this Contract; and
    - .3 finish the Work or any part of the Work by whatever reasonable method the Owner at its discretion may consider expedient.
  - .3 For greater certainty, the Contractor's obligation under this Contract as to quality, correction, or rectification of defects or non-conformances, and warranty of the Work by the Contractor up to the time of termination shall survive and continue in full force after any termination of this Contract or termination of the right to continue with the Work in whole or in part.
- 7.1.5 In addition to the rights and obligations under paragraph 7.1.4, if the Owner terminates the right to continue with all or part of the Work or terminates this Contract under paragraph 7.1.3, then the Owner will be entitled to:
- .1 charge the Contractor for: the full cost of finishing the Work and correcting any defects or non-conformances, and a reasonable allowance to cover the cost of any corrections to the Work performed by the Contractor that may be required during the warranty period; and
  - .2 on expiry of the warranty period, charge the Contractor the amount by which the reasonable cost of corrections to Work under GC 12.3 - WARRANTY exceeds the amount provided for such corrections under paragraph 7.1.5.1.
- 7.1.6 The termination of the Contract or the termination of the right to continue with the Work (in whole or in part) does not relieve or discharge the Contractor from any other outstanding obligations under this Contract, including any contract security, nor does it relieve the Contractor from any compensation, loss or damage owed to the Owner arising from the breach, default or termination of this Contract.
- 7.1.7 Despite whether the Contractor is in default of the terms of this Contract or not, the Owner may, at its discretion, upon 30 calendar days prior Notice in Writing to the Contractor, terminate this Contract for its own convenience and without cause.
- 7.1.8 If the Contract is terminated pursuant to paragraphs 7.1.7 or paragraph 7.2.3, the rights and obligations under paragraph 7.1.4 shall apply, and the extent of the Owner's liability to the Contractor is limited to payment in accordance with this Contract for:
- .1 Work actually and properly performed in accordance with the terms of the Contract up to the date of termination, less any payments made by the Owner prior to the date of termination; and

- .2 the costs and expenses directly incurred by the Contractor to demobilize from *Place of the Work* and all direct costs reasonably and properly incurred by the Contractor in accordance with the terms of the Contract during the period prior to the date of termination, except for any costs or expenses that could have been mitigated by the Contractor using all reasonable efforts.

If the Owner and the Contractor do not agree on the costs, expenses, or any other matter related to the termination, then they shall refer the matter to the Consultant for determination, and if either party disagrees with the Consultant's finding, then the matter shall be resolved in accordance with Part 8 – DISPUTE RESOLUTION.”

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

### ○ Delete GC 7.2 in its entirety and replace with the following:

- “7.2.1 The Contractor may by giving *Notice in Writing* to the Owner declare the Owner in default under this Contract for any of the following:
- .1 the Owner has failed to pay the Contractor within 60 calendar days of the date that any payment becomes properly due to the Contractor, subject to and in accordance with the terms of this Contract, except where the Owner has reasonable grounds to dispute such payment;
  - .2 a failure by the Owner to provide material access to the *Place of the Work*; or
  - .3 breach by the Owner of a material term under this Contract and the Consultant confirms by written statement to the Contractor that sufficient cause exists.
- 7.2.2 On the occurrence of a default under paragraph 7.2.1, the Contractor will specify in writing a rectification period of 30 calendar days within which the Owner will remedy the event of default, unless the nature of such default is that it cannot be reasonably corrected within a 30 calendar day period, in which case, the Owner will promptly, within such 30 calendar day period, provide the Contractor with a schedule for rectification of the default within a reasonable timeframe and correct the default in accordance with such schedule or such other timeframe as agreed to by the parties in writing.
- 7.2.3 If the Owner fails to remedy a default in accordance with and within the timeframe provided under paragraph 7.2.2, then the Contractor may, upon prior *Notice in Writing* to the Owner:
- .1 further extend the rectification period;
  - .2 suspend all or part of the *Work* in accordance with the terms of this Contract; or
  - .3 terminate this Contract upon 30 calendar days prior *Notice in Writing* to the Owner.
- 7.2.4 If the Contractor terminates this Contract under paragraph 7.2.3, then the termination shall be conducted in accordance with the terms and conditions set out under paragraphs 7.1.4, 7.1.6, and 7.1.8.”

## PART 8 DISPUTE RESOLUTION

### GC 8.1 AUTHORITY OF THE CONSULTANT

#### ○ Delete paragraph 8.1.2 in its entirety and replace with the following:

- “8.1.2 If a dispute arises under the Contract in respect of a matter in which the Consultant has no authority under the Contract to make a finding, the procedures set out in paragraphs 8.3.5 to 8.3.9 in GC 8.3 - NEGOTIATION, MEDIATION AND ARBITRATION and in GC 8.4 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.”

#### ○ Amend paragraph 8.1.3 by deleting the last sentence in the paragraph beginning with “If it is subsequently determined” and replace with the following:

“If it is subsequently determined that a party was in error or at variance with the Contract Documents, that party shall pay the other party's direct and reasonable costs incurred by the error or variance with the Contract Documents, including costs resulting from interruption of the *Work*.”

### GC 8.2 ADJUDICATION

#### ○ Delete GC 8.2 in its entirety.

### GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

#### ○ Delete paragraphs 8.3.1 to 8.3.8 in their entirety and replace with the following:

- “8.3.1 Unless otherwise agreed to in writing by the parties, all disputes will follow the process and be resolved in accordance with GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION. Pursuing resolution of a dispute under GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION does not relieve either party of its general responsibility to ensure performance of its obligations under this Contract or perform such obligations in a timely manner.
- 8.3.2 In order to facilitate resolution of the dispute, each party will provide to the other party and Consultant: an organized and sufficiently detailed written description of the nature, entitlement and magnitude of any dispute as applicable to each party, including the provisions of this Contract relied upon.
- 8.3.3 Pursuant to paragraph 8.1.1, disputes shall in the first instance be referred to the Consultant for a finding by sending *Notice in Writing* to both the Consultant and the other party. The Consultant's finding will be given in writing to both parties and within

a reasonable period of time, but no later than 14 calendar days from receipt of the *Notice in Writing* referring the dispute to the Consultant, unless the circumstances, complexity, or magnitude of the dispute is such that a finding cannot be provided within such time, in which case, the finding shall be provided promptly within a reasonable timeframe.

- 8.3.4 A party shall be conclusively deemed to have accepted a finding of the Consultant and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 14 calendar days after receipt of that finding, the party sends *Notice in Writing* disputing the Consultant's finding to the other party and Consultant, and the other party in response shall send a *Notice in Writing* of reply to the dispute within 14 calendar days after receipt of such *Notice in Writing*.
- 8.3.5 If a dispute is not resolved promptly, the Consultant will give such instructions as in the Consultant's opinion are necessary for the proper performance of the Work and to prevent delays pending settlement of the Dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the Contract, the party carrying out such instructions shall be entitled to reimbursement from the other party for reasonable costs incurred in carrying out such instructions which the party was required to do beyond what the Contract correctly would have required.
- 8.3.6 Upon receipt of the *Notice in Writing* of reply from the other party under paragraph 8.3.4, the designated representative for each party will enter into negotiations to resolve the dispute, and make bona fide efforts to resolve the dispute by amicable negotiations, and handle the dispute in a confidential and respectful manner.
- 8.3.7 If the dispute has not been resolved by amicable negotiations under paragraph 8.3.6 within 30 calendar days from the receipt of the *Notice in Writing* of reply from the other party under paragraph 8.3.4, then either party may, upon prior *Notice in Writing* to the other party of its intent to do so, refer the unresolved dispute to the courts or, upon mutual written agreement by the parties, to any other form of alternate dispute resolution process, including: mediation or arbitration.
- 8.3.8 Any endeavor to resolve a dispute by negotiation, mediation, arbitration, or other alternate dispute resolution process will be conducted on a confidential basis and in accordance with rules agreed to by the parties. The parties shall bear the costs of any mediation, arbitration, or alternative dispute resolution process equally.
- 8.3.9 The parties agree to attain to and submit to the exclusive jurisdiction of the courts in the Yukon if a dispute is to be resolved by the courts, or to mediation, arbitration, or alternate dispute resolution in the Yukon if a dispute is to be resolved by mediation, arbitration, or alternate dispute resolution."

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

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

- Amend paragraph 9.1.2 by adding the following after the words "location of" in line 1: ", and protect"
- Add the following to the end of GC 9.1:
  - "9.1.5 The Contractor shall take all precautions necessary to minimize the spread of dust, dirt and noise from the Place of the Work to adjacent properties and streets and shall be responsible for all cleaning operations necessary for failure to exercise such precautions.
  - 9.1.6 The Contractor shall provide all barricades, doors, gates, locks, scaffold, barriers, fences, warning signs, lights and personnel necessary for the protection of Work and property on and adjacent to the Place of the Work.
  - 9.1.7 Without in any way limiting the Contractor's obligations under this GC 9.1 – PROTECTION OF WORK AND PROPERTY, if the Contractor or any Subcontractor or Supplier cause loss or damage to trees or other flora, whether owned by the Owner or third parties, the Contractor shall pay all costs for any replacement of the trees or other flora damaged, including the cost of any consultant retained by the Owner or third party, and such costs, if paid by the Owner, may be deducted by the Owner from amounts otherwise owing to the Contractor.
  - 9.1.8 The Contractor shall be solely responsible for security at the Place of the Work. The Owner will not be responsible for the theft, loss or damage to the machinery, Construction Equipment or other equipment, temporary structures and other temporary facilities, tools, supplies, or materials of the Contractor, its officers, employees, Subcontractors, Suppliers, representatives, or agents, which may be used or stored in, on or about the Place of the Work during the Work or Contract."

### **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- Delete paragraph 9.2.1 in its entirety.
- Amend paragraph 9.2.4 by adding the following after the word "Contract" in line 1: "or law".
- Add the following to the end of paragraph 9.2.5:
  - "5 and; take any further steps necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials."
- Delete subparagraph 9.2.7.4 in its entirety.

### **GC 9.3 ARTIFACTS AND FOSSILS**

- Amend paragraph 9.3.2 by adding the following after the numbers "9.3.1" in line 2: "and comply with Yukon's Historic Resources Act RSY 2002, c. 109 (as amended)"

## GC 9.4 CONSTRUCTION SAFETY

### ○ Delete paragraphs 9.4.1 to 9.4.5 in their entirety and replace with the following:

- “9.4.1 The Contractor acknowledges and agrees that it will be fully in control of and responsible for: establishing, initiating, implementing, managing, supervising, maintaining, and complying with all health and safety precautions and programs in connection with the performance of the Work in accordance with the WSCA, any other applicable health and safety legislation, and all health and safety obligations under this Contract.
- 9.4.2 Prior to commencement of the Work, the Contractor will develop and establish:
- .1 a well-organized, detailed, and comprehensive hazards assessment for performance of the Work, including an assessment of: all reasonably foreseeable hazards and potential hazards at or near the Place of the Work, and all reasonably foreseeable and potential hazards that may occur during the performance of the Work or Project; and
  - .2 a well-organized, detailed, and comprehensive health and safety system, including development of safety plans and programs for the Place of the Work, Work, and Project in compliance with the WSCA and any other health and safety laws or requirements, and which fully addresses the safety of: Subcontractors, Other Contractors, Owner, and any other workers or persons who may be at on or near the Place of the Work (collectively, the “Health and Safety Management System”).
- 9.4.3 The Contractor shall update, review, revise, and maintain the Health and Safety Management System during the performance of the Work and Project. The Contractor shall promptly provide Notice in Writing to the Owner of any substantial changes to the Health and Safety Management System. Upon request by the Consultant or Owner, the Contractor shall promptly provide the Consultant or Owner with a full copy of its Health and Safety Management System and any supporting information or materials, including any changes or updates thereto.
- 9.4.4 The Contractor shall have full and sole control of the Work for the purposes of health and safety and WSCA, including: taking all precautions and adopting and carrying out all work techniques, procedures and systems to prevent or reduce the risk of injury or death to other employers’ workers and other persons at or near the Place of the Work.
- 9.4.5 The Contractor fully undertakes and assumes the role and all of the responsibilities and duties of the “prime contractor” as defined under the WSCA related to the Work, Project, and Place of the Work, including complying with all requirements and filing of any notices, reports, or other documents necessary to comply with the WSCA.
- 9.4.6 The Contractor shall be fully and solely in control of and responsible for:
- .1 ensuring that every person who is involved in the Work on the Project, including any: Subcontractors, Other Contractors, and any other workers or persons at or near the Place of the Work complies with all rules, practices, and requirements of the WSCA and any other health and safety laws related to the Work, Project, and Place of the Work;
  - .2 ensuring the adequacy and contents of the Health and Safety Management System and conducting any related consultations, and that all: Subcontractors, Other Contractors, and any other workers or persons at or near the Place of the Work comply with the Health and Safety Management System;
  - .3 ensuring that any work techniques, equipment, personal protective equipment, procedures and systems in relation to the Work, Project, or Place of the Work are in compliance with the WSCA and any other health and safety laws,
  - .4 ensuring that there is adequate supervision on Place of the Work, and carrying out all safety training, measures and procedures related to the Work, Project, or Site in accordance with the WSCA and Health and Management System;
  - .5 providing a health and safety orientation session and information in accordance with the Health and Safety Management System and WSCA to any person prior to their access to the Place of the Work or Work;
  - .6 fully cooperate with any person who is performing a duty under the WSCA or for the purposes of health and safety;
  - .7 arranging and conducting regular safety meetings in accordance with the Health and Safety Management System and WSCA, and recording the minutes of such meetings for review, and
  - .8 maintaining a complete, detailed, and well-organized record of all information, instruction, and training undertaken or required under the Health and Safety Management System and WSCA related to the Work, Project or Place of the Work for review by the appropriate authorities.
- 9.4.7 If the Contractor fails to comply with GC 9.4 – CONSTRUCTION SAFETY or any other health and safety terms, obligations and responsibilities under this Contract, the Consultant or Owner may, at its discretion, require the Contractor to take any remedial measures reasonably necessary to ensure that all applicable requirements of GC 9.4 – CONSTRUCTION SAFETY and this Contract are complied with, including: exercising the rights and remedies under GC 7.1 - OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT . For greater certainty, the Owner’s right to take remedial measures or the exercise of such right, does not, in any way or for any reason, relieve the Contractor of its obligations and responsibilities under this Contract, including its obligations as “prime contractor” with respect to the Work, Project, and Place of the Work.
- 9.4.8 The Contractor shall promptly provide Notice in Writing with full details and statements of witnesses (if any) to the Consultant and Owner of all incidents and injuries as defined under subsection 57(2) of the WSCA, or safety issues of any sort arising out

of or in connection with the performance of the Work, Project, or Place of the Work (whether on or near the Place of the Work). If death or serious injuries or damages occur during the performance of the Work, Project, or on or near the Place of the Work, the Contractor shall immediately, but no later than 24 hours from when the accident occurred, report the accident to the Owner and Consultant by telephone or in person in addition to any reporting required under the WSCA or other applicable laws.

9.4.9 Prior to commencing the Work and as a condition of receiving any payments under this Contract, the Contractor will provide the Owner with sufficient written evidence of its compliance with any requirements under the WSCA, including payments assessed or due as determined by the Yukon Workers' Safety and Compensation Board.

9.4.10 If the Contract Price is \$100,000.00 or more, then the Contractor shall maintain in good standing one of the following safety certifications issued by the Northern Safety Network Yukon during the performance of the Work and this Contract:

- .1 COR (Certificate of Recognition);
- .2 SECOR (Small Employers Certificate of Recognition);
- .3 OCOP (Owner Operator Certificate of Proficiency);
- .4 TLC (Temporary Letter of Certification); or
- .5 COREL (COR Equivalency Letter).

The Contractor may, if appropriate, move from a TLC, OCOP, or COREL to a COR or SECOR certification during the term of the Contract.

9.4.11 For greater certainty, the obligations of the Contractor related to health and safety under this Contract are included in the Work and Contract Price, and no additional or separate payment will be made to the Contractor for the performance of such obligations.

9.4.12 If requested by the Consultant or Owner, the Contractor will, at any time, promptly provide to the Consultant or Owner sufficient evidence of its compliance with the provisions of the WSCA or other applicable health and safety legislation, any terms under GC 9.4 – CONSTRUCTION SAFETY, or any terms under this Contract related to health and safety.”

#### GC 9.5 MOULD

- Delete paragraph 9.5.3.4 in its entirety.

### PART 10 GOVERNING REGULATIONS

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

- Delete paragraphs 10.2.1 to 10.2.3 in their entirety and replace with the following:

“10.2.1 The Contractor shall comply with all applicable Owner policies and standards as stated in this Contract, and all applicable laws in the performance of the Work and this Contract, and shall ensure that all Subcontractors, Suppliers, and the Contractor's officers, employees, and agents also comply with such policies, standards, and any applicable laws in the performance of the Work and this Contract. Upon request by the Owner or Consultant, the Contractor shall provide proof of compliance with any law, policy, or standard to the reasonable satisfaction of the Owner. This Contract does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Government of Yukon or any of its agencies in order to perform the Work or this Contract. Nothing in this Contract is to be construed as interfering with the exercise or enforcement of any statutory power or duty by the Government of Yukon or its agencies. Government of Yukon and its agencies shall not be liable in any way for any delay or any extra or additional expense, costs, or any loss, damages, or compensation incurred or sustained by the Contractor for any reason related to or arising from the exercise or enforcement of or any failure to exercise or enforce any statutory duty, function, or power or duty by the Government of Yukon or its agencies. The Contractor shall comply with all applicable provisions of the Yukon's Employment Standards Act RSY 2002, c 72 ("ESA"), including, but not limited to: paying applicable wage rates in accordance with the most current version of the Fair Wage Schedule under the ESA (as amended). The Contractor shall post and keep posted a copy of the most current Fair Wage Schedule in a conspicuous place on the work site where it is most likely to come to the attention of employees and subcontractors. The Contractor shall promptly comply with any order or pay any fine, compensation, penalty, or valid claim it incurs arising from or related to the ESA. Upon request by the Owner, the Contractor shall, in a form and with content acceptable to the Owner, provide sufficient proof of compliance with this clause. If the Contractor fails to comply with this clause, then, in addition to any other rights and remedies available under this Contract or in law, the Owner shall be entitled to withhold any amounts payable to the Contractor, or deduct from amounts payable to the Contractor an amount sufficient to cover any liability which may be incurred resulting from any failure to comply with this clause.

10.2.2 The Contractor is responsible for and shall obtain and pay for building permits, and all other necessary approvals and permits related to the Work, except for the permits and fees for which the Contract Documents specify as the responsibility of the Owner.

10.2.3 The Contractor shall be responsible for the procurement and maintaining of permits, licences, inspections, and certificates, which are necessary for the performance of the Work in the jurisdiction of the Place of the Work after the issuance of the

building permit. The Contract Price includes the cost of these permits, licences, inspections, and certificates, and their procurement and maintenance.”

○ **Delete paragraphs 10.2.5 to 10.2.7 in their entirety and replace with the following:**

“10.2.5 If, subsequent to the time of bid closing or after the date this Contract is executed, which ever is the earlier, there is a change in applicable laws, ordinances, rules, regulations, or codes affecting the Work or requiring changes to the Contract Documents, the Contractor shall promptly, but not later than 10 calendar days after becoming aware of the change, provide Notice in Writing to the Consultant and Owner requesting direction immediately upon such change becoming known, and if requested in writing by the Consultant or Owner, the Contractor shall perform no further work on the affected components of the Work until the necessary changes to the Work or Contract Documents have been obtained by the Contractor from the Consultant and Owner. The parties will make the changes required to the Work and Contract Documents as provided in GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.

10.2.6 If the Contractor fails to provide Notice in Writing to the Consultant and Owner, or fails to obtain direction as required for any change in applicable laws, ordinances, rules, regulations, or codes, and performs Work knowing or reasonably ought to have known it to be contrary to any applicable laws, ordinances, rules, regulations, or codes, the Contractor shall be fully responsible for and shall correct any breach or violation of applicable laws, ordinances, rules, regulations, or codes, and shall bear the full costs, expenses and damages attributable to the failure to comply with applicable laws, ordinances, rules, regulations, or codes.”

○ **Add the following to the end of GC 10.2:**

“10.6.7 For the purposes of paragraph 10.6.7, the terms: “personal information” have the same meaning as defined under the Access to Information and Protection of Privacy Act SY 2018 c.9 and its regulations (as amended) (“ATIPP”), and “personal health information” has the same meaning as defined in the Health Information Privacy and Management Act, SY 2013, c. 16, and its regulations (as amended) (“HIPMA”). The Contractor acknowledges and agrees that:

- .1 the Contractor will comply with any applicable provisions of ATIPP or HIPMA, including: any applicable obligations or requirements where the Contractor is a “service provider” as defined under ATIPP, or a “custodian” or “agent” as defined under HIPMA;
- .2 any personal information or personal health information provided to the Contractor by the Owner or collected by the Contractor as agent of the Owner remains the sole property of the Owner, and, upon the expiry or termination of this Contract or upon request by the Owner, the Contractor will promptly destroy or return to the Owner all personal information or personal health information provided by or under the control of the Owner, without making any copies, except where the Contractor is specifically authorized and required by law or professional obligation to retain such information;
- .3 the Contractor will not collect, use, disclose or permit to be collected, used or disclosed any personal information or personal health information provided by or under the control of the Owner or collected by the Contractor as a “service provider” as defined under ATIPP or agent of the Owner for any purpose other than as necessary for the performance of the Work, Contract, or to comply with the law;
- .4 the Contractor will apply administrative, technical and physical measures to ensure that its facilities, systems and files are secure and that access to any personal information or personal health information is secure, strictly controlled, limited to those persons with a need to access such information, and protected by making reasonable security arrangements against unauthorized access, collection, use, disclosure or disposal of such personal information or personal health information, including: ensuring that its officers, employees, agents, Subcontractors, Suppliers, or any third party with whom the Contractor shares or provides access to or possession of the personal information or personal health information complies with the Contractor's obligations under paragraph 10.6.7, and is bound, in favor of the Owner, by the same terms or terms no less restrictive than the terms under paragraph 10.6.7, and the Contractor shall, at its own cost, take any action or execute any documents required to give effect to such terms;
- .5 the Contractor will fully cooperate with and assist the Owner for the purposes of the Contractor or the Owner complying with or meeting any obligations or requirements under ATIPP, HIPMA, or paragraphs 10.6.7 to 10.6.8;
- .6 the Contractor will notify the Owner immediately in writing of any breach or suspected breach of paragraph 10.6.7 or any applicable statutory provision under ATIPP or HIPMA, and promptly take all reasonable steps to mitigate the breach and prevent any further harm arising from the breach; and
- .7 the Contractor will provide Notice in Writing as soon as reasonably possible to the Owner of any breach of paragraph 10.6.7 and will promptly take reasonable steps to mitigate the breach, prevent any further harm from the breach, and fully cooperate with the Owner in managing and mitigating the breach.

10.6.8 The Contractor agrees that any records, information, documents, or materials provided by the Contractor are subject to applicable access to information legislation, including: ATIPP, and may be disclosable by the Owner under ATIPP. No records, information, documents or materials provided by or through the Contractor are subject to confidentiality or non-disclosure by YG except to the extent expressly agreed to in writing by the Owner. In addition, if the Contractor wishes the Owner to treat

any records, information, documents or materials as confidential or non-disclosable, it must make a formal request for same and must provide the Owner with accurate, complete and detailed information, materials, or evidence sufficient to support the Contractor's request for confidentiality or non-disclosure and to meet any applicable legislative requirements. Any purported undertaking for non-disclosure or confidentiality by the Owner to the Contractor that conflicts with a legislative requirement or that is not explicitly agreed to in writing by the Owner, is void and unenforceable, and the Owner shall not be liable in any way for such undertaking.

10.6.9 For greater certainty, paragraphs 10.6.7 to 10.6.9 shall survive the expiry or termination of the Contract."

### GC 10.3 PATENT FEES

- Delete paragraph 10.3.2 in its entirety.

## PART 11 INSURANCE

### GC 11.1 INSURANCE

- Delete paragraph 11.1.1 to 11.1.8 in their entirety and replace with the following:

- "11.1.1 The Contractor will, at its own cost, obtain and maintain in full force and at all times during the performance of the Work and this Contract the applicable insurance specified under GC 11 – INSURANCE.
- 11.1.2 Before beginning the Work and upon the renewal, amendment, or extension of any insurance (in whole or in part), the Contractor will deliver to the Owner a certificate of insurance, including any insurance policy terms and applicable additional insured endorsement for any insurance coverage described under this Contract.
- 11.1.3 The Contractor shall obtain and maintain commercial general liability insurance in an amount not less than \$2,000,000.00 inclusive per occurrence. The Contractor shall ensure that the Government of Yukon is specified as an additional insured on any commercial general liability insurance policy required under this Contract. The commercial general liability insurance will cover all operations related to the Work whether conducted on the Place of the Work or elsewhere, and shall be maintained at all times during the performance of the Work until one year from the date of Substantial Performance of the Work. Liability coverage shall be provided for completed operations hazards from the date of Substantial Performance of the Work on a continuing basis for a period of 6 years following the date of Substantial Performance of the Work. Such commercial general liability insurance will include, at a minimum, coverage for:
- .1 death, bodily injury and property loss or damage to third parties arising out of the operations of the Contractor, including loss of use;
  - .2 products and completed operations coverage, including for: bodily injury or property damage arising out of goods or products manufactured, sold, handled, or distributed by the Contractor and/or arising out of operations that have been completed by the Contractor. The completed operations liability coverage will remain in effect for a period of 12 months after the date of the issuance of the Substantial Performance of the Work or during the warranty period under GC 12.3 - WARRANTY, whichever is the later;
  - .3 personal injury, including coverage for violation of privacy, libel and slander, false arrest, detention or imprisonment and defamation of character;
  - .4 owners' or contractors' protective liability: covering the damages that the Contractor becomes legally obligated to pay arising out of the operations of a Subcontractor or Supplier;
  - .5 blanket written contractual liability: the policy must, on a blanket basis or by specific reference to the Contract, extend to assumed liabilities with respect to contractual provisions;
  - .6 non-owned automobile liability, including coverage for suits against the Contractor resulting from the use of hired or non-owned vehicles;
  - .7 cross liability/separation of insured: without increasing the limit of liability, the policy must protect all insured parties to the full extent of coverage provided. Further, the policy must apply to each insured in the same manner and to the same extent as if a separate policy had been issued to each;
  - .8 employees and, if applicable, volunteers, as additional insureds;
  - .9 employers' liability (or confirmation that all employees are covered by Worker's compensation or similar program);
  - .10 sudden and accidental pollution liability coverage;
  - .11 broad form property coverage, in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as insureds all Subcontractors and Suppliers and include completed operations that expands the property damage coverage to include certain losses that would otherwise be excluded by the standard of care, custody or control exclusion found in a standard policy;
  - .12 contractors' equipment and operation of attached machinery;
  - .13 removal or weakening of support of any structure or land whether such support be natural or otherwise if the work is performed by the insured contractor; and
  - .14 where applicable or becomes part of the Work, the policy will include or be endorsed to include coverage for: blasting, demolition, pile driving, caisson or tunneling work; pressure vessels; elevator and hoist liability or

collapse; marine and aircraft operations; or hot work, where such further risks exist or may arise from the performance of the Work or Contract.

11.1.4 The Contractor shall obtain and maintain all risks builders risks/course of construction insurance covering: the full replacement value of the Work completed at the time of any loss; all Products and materials to be incorporated into the finished part of the Work, whether at the Place of the Work or elsewhere; and all form-work, tarpaulins, scaffolding and materials used for temporary protection for winter work. The All risks builders risks/course of construction insurance will include coverage for the following:

- .1 the insurance will cover all risks while materials are being transported;
- .2 the insurance will cover property and civil works above and below ground and underground shoring;
- .3 coverage will include the perils of fire, flood, earthquake, explosion (with or without resulting fire), damage and loss from defective materials, construction errors, design errors, and testing; and
- .4 the policy will be endorsed to cover boiler & machinery and equipment breakdown (including testing) (where applicable).

The Contractor shall ensure that the Government of Yukon is specified as a loss payee and additional insured on the all risks builders risks/course of construction insurance policy, and that the Owner has the right to make a claim directly to the insurer. The loss payee for any claim will be the Owner, or the Contractor as their respective interests may appear. Other additional insureds on the policy will include Subcontractors and Suppliers, whether named or unnamed in the policy, and all others having an insurable interest in the Work. The all risks builders risks/course of construction insurance shall permit use of the Project, or any part thereof, where such use is for the purposes for which the Project is intended upon completion.

11.1.5 The Contractor shall obtain and maintain automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor used in the performance of the Work in an amount not less than \$2,000,000.00 inclusive per occurrence. The Contractor will ensure that its Subcontractors and Suppliers provide their own automobile liability insurance in an amount not less than \$2,000,000.00 inclusive. The automobile policy must include the following:

- .1 Third Party Liability - \$2,000,000 Minimum Limit per Accident or Occurrence;
- .2 Accident Benefits - all jurisdictional statutes; and
- .3 Uninsured Motorist Protection.

11.1.6 The Contractor will be responsible for the costs of any deductible amounts under the policies of coverage and insurance described under this Contract.

11.1.7 In the event of a claim, the Contractor must, without delay, do such things and execute such documents as are necessary to effect prompt and expeditious resolution of the claim and payment of the proceeds for any insurance under this Contract.

11.1.8 All insurance required under this Contract will be issued by an insurer licensed to carry out business in Yukon, shall be in accordance with the Insurance Act RSY 2002, c. 119 and its regulations (as amended), and be in forms acceptable to the Owner, acting reasonably.

11.1.9 Unless otherwise explicitly stated in this Contract, required insurance coverages will be maintained continuously from the commencement of the Work and during the performance of the Work or this Contract, including any warranty period stated under GC 12.3 - WARRANTY. Compliance with the insurance requirements does not in any way release the Contractor from or reduce its liability under the Contract.

11.1.10 If requested by the Owner or in the event of a claim, the Contractor will promptly provide a certified true copy signed by the insurer or its authorized agent of any insurance policy described under this Contract. Delivery to and examination by the Owner of any policy of insurance or certificate or other form of documentation evidencing such insurance will not in any way relieve the Contractor of any of its obligations pursuant to the provisions of this Contract and will not operate as a waiver by the Owner of any rights.

11.1.11 The Contractor shall immediately provide Notice in Writing to the Owner and Consultant of any material change in, cancellation or lapse of, or expiration of coverage in the insurance described under this Contract. Where reasonably possible, the Contractor shall ensure that each insurance policy shall contain a provision that 30 calendar days' prior written notice, or the statutory notice period for cancellation for non-payment of premium, shall be given by the insurer to the Contractor and the Owner in the event of any material change in, cancellation or lapse of, or expiration of insurance coverage. Upon request by the Owner, the Contractor will promptly provide confirmation of replacement, renewal, or material change of insurance policies via a certificate of insurance.

11.1.12 If any insurance required by this Contract is not provided, lapses, is cancelled, becomes void or is materially altered for any reason, the Owner may, at its discretion, require the Contractor, at the Contractor's sole risk and expense, to stop all Work contemplated by this Contract until satisfactory evidence of insurance is produced, or exercise any of the rights and remedies under GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT.

11.1.13 The Contractor will obtain, maintain and pay for any other insurance that the Contractor is required by law to carry.

11.1.14 If the Contractor fails to obtain, maintain and pay for insurance as required by this Contract, other than automobile liability insurance, the Owner may, at its discretion, obtain and pay for the required insurance, the cost of which will be payable by the

Contractor on demand or deducted or set off from any amounts due to the Contractor.

11.1.15 Prior to any final authorization for a change in the Work or Contract, Change Order, or Change Directive and commencing any work thereto, the Contractor shall notify its insurer issuing insurance to the Contractor of any change in the Work or Contract, Change Order, or Change Directive that may affect a claim or coverage under any insurance described under this Contract, and shall ensure that the change in the Work or Contract, Change Order, or Change Directive is approved by the insurer and that any insurance coverage is adjusted accordingly, commensurate with the change, and maintained until completion of the Work and fulfillment of the Contract. Upon request by the Owner, the Contractor shall provide to the Owner sufficient proof and confirmation from the insurer of such adjustment and approval or that such approval is not required."

**○ Add the following General Condition to the end of PART 11 INSURANCE:**

**"GC 11.2 CONTRACT SECURITY**

- "11.2.1 Within 14 calendar days from the date of notice of contract award from the Owner or on the date of execution of the Contract, whichever is the earlier, the Contractor will, at its own cost, obtain and promptly deliver contract security to the Owner, in a form and with content acceptable to the Owner, as follows:
- .1 an executed performance bond and a labour and material payment bond ("Bonds"), each in an amount equal to or more than 50% of the Contract Price. The Bonds shall be in a form and have terms acceptable to the Owner. The Owner will accept Bonds in accordance with the latest edition of the Canadian Construction Document Committee ("CCDC") approved bond form or in substantially equivalent form with terms acceptable to the Owner. The Bonds shall be issued by a surety licensed to transact the business of a surety in Yukon. The Bonds shall properly identify the Contract and parties to the Bonds, and shall be valid and properly completed, with original signatures, and sealed. The Contractor will pay for and continually maintain the Bonds in force and in good standing until completion of the Work and fulfilment of the Contract; OR
  - .2 if the Contract Price is less than \$1,000,000.00, contract security may be provided in the amount of 10% of the Contract Price (as amended), in the form of a bank draft, certified cheque, Canadian Postal money order, or unconditional irrevocable letter of credit, that is in a form and with content acceptable to the Owner, to be retained by the Owner until completion of the Work and fulfillment of the terms of the Contract, unless otherwise agreed to in writing by the Owner.
- 11.2.2 If the contract security is in the form of Bonds, the Contractor will ensure that:
- .1 it obtains the prior, written consent of the surety for any change to the Work or Contract that may affect a claim or coverage under the Bonds, and will upon request by the Owner provide confirmation from the surety of such consent or that such consent is not required;
  - .2 where the surety notifies either party that the Bonds are or are going to be terminated or cancelled, obtain and provide the Owner with valid bonds effective from the date of termination or cancellation of the original bonds that comply with the terms of this Contract; and
  - .3 where contract security includes a labour and materials bond, upon entering into a subcontract with a Subcontractor or Supplier advise the Subcontractor and Supplier that a labour and materials payment bond is in effect and will supply a copy of the bond to the Subcontractor on request, and post notice of any existing or pending labour and materials bond in common work areas, along with information about how further information about the bond can be obtained. The Contractor also fully and irrevocably consents to the Owner's full disclosure of its Labour and Materials Bond and the information contained therein to any Subcontractors or Suppliers.
- 11.2.3 The Owner may, at its discretion, convert the contract security to the Owner's use if:
- .1 the Contractor is in default under GC 7.1 of the Contract;
  - .2 the Contractor is in breach of the warranty terms under GC 12.3 - WARRANTY;
  - .3 the Contractor is otherwise in breach of or in default under the Contract; or
  - .4 the Contractor otherwise fails or refuses to perform or complete the terms under Contract;
- 11.2.4 Upon issuance of the certificate for Substantial Performance of the Work or Total Performance of the Work, whichever applies, the Owner may, at its discretion, permit the Contractor to adjust the amount of the contract security to an amount that is then required for the completion of the Work and fulfilment of the Contract, subject to any defects, non-conformances, or holdbacks.
- 11.2.5 The Owner will pay to the Contractor any balance of the security amount realized that remains after payment of all costs, losses, damage and claims of or against the Owner, Subcontractors, Suppliers, and other persons, if, in the reasonable opinion of Owner, it is not required for the purposes of the Contract. For greater certainty, the forfeiture of the contract security will not limit the Owner from seeking additional claims, damages, or remedies the Owner may be entitled to by reason of the Contractor's failure to successfully complete the Contract in accordance with its terms and conditions.
- 11.2.6 The Contractor shall immediately notify the Owner of any material change in, cancellation or lapse of, or expiration of coverage in the contract security required under this Contract.
- 11.2.7 Prior to any final authorization for a change to the Work or Contract, Change Order, or Change Directive and commencing any work thereto, the Contractor shall, where applicable, notify the surety or issuer of contract security to the Contractor of the

change to the Work or Contract, Change Order, or Change Directive, and shall ensure that the change to the Work or Contract, Change Order, or Change Directive is approved by the surety or issuer and that the contract security is adjusted accordingly, commensurate with the change, and maintained until completion of the Work and fulfillment of the Contract. Upon request by the Owner, the Contractor shall provide to the Owner sufficient proof and confirmation from the surety or issuer of such adjustment and approval or that such approval is not required.”

## **PART 12 OWNER TAKEOVER**

○ **Delete GC 12.1 in its entirety.**

○ **Delete paragraph 12.2.1 to 12.2.4 in their entirety and replace with the following:**

“12.2.1 The Owner reserves the right, at its discretion, to take possession of and use any completed or partially completed portion of the Work for its use, regardless of the time or completion of the entire Work, provided that taking possession or use of the partially completed Work does not reasonably interfere with the Contractor’s activities in undertaking the Work. Such taking of possession or use shall not in any way be construed as Substantial Performance of the Work, acknowledgement of fulfillment of the Contract, or that the Work conforms to the Contract, and shall not in any way limit, waive, or relieve the Contractor from any of its obligations under the Contract.”

## **GC 12.3 WARRANTY**

○ **Delete GC 12.3 in its entirety and replace with the following:**

“12.3.1 Upon Notice in Writing from the Owner or Consultant, the Contractor will, in consultation with the Consultant and Owner, promptly correct, at the Contractor’s expense, any defects or non-conformances in the Work or under the Contract that are discovered or appear during the period of 12 months after the date of Substantial Performance of the Work or any extension thereof under paragraph 12.3.9.

12.3.2 The Contractor will fully and diligently correct any defects or non-conformances at times and in a manner which causes as little inconvenience to the Owner’s use of the Work and operations on and adjacent to the Place of the Work as is reasonably possible.

12.3.3 Upon Notice in Writing to the Contractor, the Owner may, at its discretion, carry out, or have Other Contractors carry out work required under GC 12.3 – WARRANTY, at the Contractor’s cost, if:

- .1 the Contractor fails to fully or diligently correct the defects or non-conformances within the reasonable timeframe provided by the Owner, unless there is sufficient evidence that the nature of the defect or non-conformance is such that it cannot be corrected within such time and the Owner, acting reasonably, agrees to an extension of such time; or
- .2 the nature of the defect or non-conformance is such that it substantially affects the Owner’s operations or use of the Work; creates a risk to the health or safety of any person on or adjacent to the Place of the Work; risk of damage to the Work, the environment, or any property; or creates undue financial burden on the Owner.

12.3.4 If the Owner carries out or has Other Contractors carry out work under paragraph 12.3.3, it shall not in any way limit, waive, or relieve the Contractor from the fulfillment of any of its obligations under the Contract.

12.3.5 The Contractor shall not be entitled to any additional payment or compensation for correcting or remediating any defects or non-conformances that are discovered or appear during the warranty period, and shall be solely responsible for paying for the cost of correcting or remediating such defects and non-conformances, including: all reasonable costs for inspection, examination, testing and re-testing of the Work, reasonable costs arising from or related to any delay in the correcting or remediating of such defects and non-conformances, making good Other Contractors’ work destroyed or damaged arising from or related to the correction or remedying of such defects or non-conformances, and removing or replacing adjacent affected Work, Products and materials and completely restoring such Work, Products and materials to their original finish or state.

12.3.6 The Contractor will correct, at its own cost, or pay the Owner for any damages resulting from the defect or non-conformance and for any damages resulting from the correction or remediating of any defect or non-conformance under GC 12.3 – WARRANTY.

12.3.7 In addition to any warranties or guarantees required under the Contract, the Contractor will, at its own cost, provide and assign to the Owner, in favor of and benefit to the Owner, all warranties and guarantees from Subcontractors, Suppliers, and Product and equipment manufacturers or distributors related to or arising from the Work or Products, including any extended warranties provided by Subcontractors, Suppliers, and Product and equipment manufacturers or distributors. The Contractor shall do all things and provide all assistance reasonably necessary to enable the Owner to enforce warranties and guarantees provided by any Subcontractors, Suppliers, and Product and equipment manufacturers or distributors. The Owner shall have the right to assign all warranties and guarantees to a new owner or owners and the Contractor shall make, do, execute and deliver such documents in writing as may be necessary or desirable to assure the enforceability of such assignment.

12.3.8 The Contractor shall, at its own cost, take any action or execute any documents required to give effect to GC 12.3 – WARRANTY in respect of its Subcontractors and Suppliers, and promptly enforce such warranty obligations, including:

- .1 ensuring Subcontractors promptly and fully correct any defects or non-conformances that are discovered or appear prior to or during the warranty period; and

- .2 ensuring Subcontractors and Suppliers correct or pay the Owner for any damage resulting from correction or remediation of any defects or non-conformance under GC 12.3 – WARRANTY.
- 12.3.9 When defects or non-conformances in the Work or under Contract are discovered or appear during the warranty period have not been properly corrected by the Contractor within the warranty period, then the warranty period and this Contract shall be reasonably extended, at no additional cost to the Owner, so as to end at such time when such defects or non-conformances are fully and properly corrected. For greater certainty, GC 12.3 – WARRANTY will not limit, negate, reduce, diminish or abrogate any right, remedy, or claim which the Owner may have related to or arising from any latent defects in the Work.
- 12.3.10 Issuance of the certificate for Substantial Performance of the Work and the Total Performance of the Work, and payment to the Contractor, in no way relieves the Contractor from its obligations and responsibilities under GC 12.3 - WARRANTY. For greater certainty, GC 12.3 – WARRANTY will not limit, negate, reduce, diminish or abrogate any right, remedy, or claim which the Owner may have pursuant to the Contract, at law or in equity.
- 12.3.11 For greater certainty, GC.12.3 – WARRANTY shall survive the expiry or termination of this Contract.”

## **PART 13 INDEMNIFICATION AND WAIVER**

### **GC 13.1 INDEMNIFICATION**

**○ Delete paragraphs 13.1.1 to 13.1.6 in their entirety and replace with the following:**

“13.1.1 The Contractor shall indemnify and hold harmless the Owner from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this Contract, provided such claims are:

- .1 caused by:
  - .1 the errors, omissions, or negligent acts of the Contractor, or
  - .2 a breach by the Contractor to fulfill its terms or conditions under this Contract; and
- .2 made by Notice in Writing from the Owner 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 issued under GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work.

13.1.2 If any claim or demand is made or a lien is registered by a builder, Subcontractor, Supplier or labourer against the Owner, the Project, the Work or property interest of the Owner, caused by the Contractor, the Contractor shall indemnify and hold harmless the Owner with respect to any action or proceeding which may arise as a result of such claim, demand or lien and reimburse the Owner for damages which may result from such action or proceeding and any costs related to the removal of such liens.

13.1.3 The obligation to indemnify under paragraphs 13.1.1 and 13.1.2 shall be inclusive of interest and all reasonable legal costs, and shall survive the termination or expiry of this Contract.”

### **GC 13.2 WAIVER OF CLAIMS**

**○ Delete GC 13.2 in its entirety.**