

SUPPLEMENTARY TERMS AND CONDITIONS

The following Supplementary Terms and Conditions are hereby added to the Purchase Order Terms and form part of the Contract for the Deliverables:

S.1. Definitions

“Contractor” means the Supplier as further defined in the Contract.

“work” includes all work and services to be performed or supplied in connection with the project to be completed under the Contract, as further described in the Deliverables.

S.2. Occupational Health and Safety Act

The Contractor shall:

- (a) be the designated "constructor", as defined in the *Occupational Health and Safety Act* (“OHSA”), for the work site and shall fulfill the responsibilities of the position under the OHSA, related statutes and regulations;
- (b) comply with the OHSA and ensure that the persons assigned to perform or provide the work under the Contract adhere to the OHSA and all applicable statutes and regulations; and
- (c) give immediate notice by telephone or personal communication to the College as to any damage or injury, or threat of damage or injury, to persons or property during the performance of the services contemplated by this contract.

The Contractor’s failure to comply with any of the above requirements shall be cause for either immediate termination or suspension of the Contract until the deficiency, in the opinion of the College and/or Workplace Safety and Insurance Board (“WSIB”) is rectified at no cost to the College.

S.3. Drug-free Workplace

The manufacture, distribution, dispensation, possession (either externally or internally), sale, or use of illegal drugs by the Contractor's or its Subcontractor’s employees while on duty at or near the Site or the Project is prohibited. The Contractor shall ensure that its and its Subcontractors’ employees are prohibited from working at or near the Site or the Project while impaired by alcohol or under the influence of illegal or illicit substances. The Contractor represents and warrants that it has in place a current fit for duty and drug and alcohol policy which it enforces.

S.4. Contractor Warranties and Representations

The Contractor hereby warrants that the Contractor has expertise and experience in the work to be performed under the Contract, which expertise and experience the College does not possess.

The Contractor further warrants and confirms that prior to entering into the Contract, the Contractor has disclosed to the College all convictions under the OHSA.

The Contractor represents that it has carefully examined the Contract documents, visited the work site, become familiar with local conditions under which the work is to be performed,

examined all available reports related to the work site, and has fully informed itself as to conditions and matters which might affect the work.

S.5. Information about Work Site

The College does not warrant the accuracy of information provided to the Contractor about the work site, and the Contractor is not relieved of its obligation to investigate conditions on, under and around the work site by reason of the College making such information available to the Contractor.

S.6. Responsibility for the Work

The Contractor shall be solely responsible and have sole control over the means, methods, techniques, sequences, and procedures of construction, and for coordinating all work under the Contract, as well as safety precautions and programs in connection with the work.

The College will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility.

The Contractor shall provide competent, suitably qualified personnel to perform the work, and shall ensure that any personnel engaged to perform the work has and shall maintain for the term of this Contract any licences, regulatory approvals and certifications as may be necessary to perform the work under this Contract.

The Contractor is solely responsible to the College for any acts and omissions of its employees, subcontractors and their agents and employees, and any other persons or entities performing any portion of the work for or on behalf of the Contractor.

The College will not have control over or charge of and will not be responsible for acts or omission of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the work.

S.7. Supervisor and Subcontractors

The Contractor shall supervise, direct, and inspect the work competently and efficiently, devoting such attention and applying such skills and expertise as necessary, to perform the work.

Prior to commencing the work, the Contractor shall identify to the College the designated work site supervisor, the designated health and safety representative, any subcontractors, and any additional personnel representing the Contractor, along with their respective roles and responsibilities in the performance of the work. The Contractor shall not replace or substitute any of the identified individuals without the prior approval of the College.

The site supervisor Supervisor shall have knowledge of any potential or actual danger to health or safety related to the work and shall have the authority and responsibility to act for and represent the Contractor.

The Contractor shall cause every subcontractor to enter into a written subcontract with terms and conditions that require that every subcontractor assume all of the duties toward the Contractor that the Contractor assumes toward the College under the Contract, including, but

not limited to, all health and safety obligations, processes and procedures required by the College.

The College reserves the right to require the Contractor to bar any subcontractor, employee of the Contractor or employee of any subcontractor from the work site for any reason, in its reasonable discretion.

S.8. Health and Safety Reporting and Audits

The Contractor shall submit a [daily/weekly/monthly] safety report to the College.

The Contractor is required to immediately report all work-related incidents, including but not limited to “critical incidents” and “near misses”, to the College and any other authorities as required. An incident is defined as a work-related injury, illness, vehicle collision, property damage, or another unwanted safety-related event. A “critical incident” is places life in jeopardy, produces unconsciousness, results in substantial loss of blood, involves a fracture of a leg, arm, hand or foot, involves the amputation of a leg, arm, hand or foot, consists of burns to major portion of the body, causes the loss of sight in one eye, results in any fire, overnight stay in the hospital, struck by a vehicle or moving equipment, damage over \$5,000.00, hazardous energy control failure (Lock out Tag Out). A “near miss” is an event or circumstances which could have resulted in an incident but did not.

The Contractor must, within 24 hours of occurrence of an incident or near miss, complete an incident investigation report using a format that, at a minimum, contains the following information:

- (a) Name and address of the injured person(s);
- (b) Address of the incident;
- (c) Description of the equipment/machinery used;
- (d) The nature and circumstances of the incident and/or injury;
- (e) The time and location of the incident;
- (f) The name and addresses of all witnesses;
- (g) The name and address where medical treatment was provided;
- (h) The steps taken to prevent reoccurrence.

The College reserves the right to attend at the work site unannounced to audit the Contractor’s compliance with health and safety measures. The College’s representative shall be accompanied by a representative of the Contractor during any site audits.

The Contractor must immediately report to the College if the Ministry of Labour attends at the work site and shall provide copies of any field visit reports and orders issued. The Contractor must provide the College with a copy of any Notice of Compliance submitted following the issuance of any orders.

S.9. Protection of the Work and the College’s Property

The Contractor shall observe all of the College’s procedures with regard to the security of the facility where the work contemplated by this Contract are performed and shall adequately protect the work, property, and premises of the College. The Contractor shall be responsible for any damages caused by the Contractor’s employees, agents, contractors, subcontractors and those others for whom the Contractor is responsible.

S.10. Licenses and Permits

The Contractor shall obtain and hold throughout the term of the Contract any and all permits, approvals, and licenses required by any municipal, provincial, or federal government or authority having jurisdiction over the whole, or any part of, the work to be performed by the Contractor pursuant to the Contract. The Contractor shall provide the College with copies upon request.

S.11. WSIB Assessments

The Contractor shall, at all times, pay, or cause to be paid, any assessment or compensation required to be paid pursuant to the *Workplace Safety and Insurance Act*. Upon failure to do so, the College may withhold an amount equal to any unpaid assessment or compensation from monies due, or to become due, to the Contractor. The College shall not release such withheld funds until the Contractor provides it a statutory declaration that all assessments and any compensation payable to the WSIB have been paid.

S.12. Contractor's Lawful Obligations to its Subcontractors

The Contractor shall comply with the *Construction Act* and other applicable statute and regulation, and discharge its lawful obligations to its sub-contractors. The Contractor shall satisfy any claims against the Contractor or the College by its sub-contractors. The issuance of the final payment shall not be construed as a representation that the College has made any examination to ascertain:

- (i) how and for what purpose the Contractor has used the monies paid to the Contractor in accordance with the terms of the Contract; or
- (ii) whether the Contractor has discharged the obligations imposed on the Contractor by the *Construction Act*, the *OHSA*, or other applicable statute or regulation, noncompliance with which may render the College personally liable for the Contractor's default.

S.13. Co-operation of the Contractor

The College may perform, or retain or permit others to perform other work on or near the work site and may permit public utility companies and others to do work on or near the work site during the Contractor's performance of the work. The Contractor shall conduct and schedule the performance of the work and co-operate with those other parties so as to cause as little interference as possible with any such other work being carried out.

S.14. Commencement of the Work

The Contractor may not commence the performance of the work until the Contractor has:

- (a) received the Purchase Order from the College;
- (b) delivered to the College
 - (i) the required Contract securities as set out in procurement solicitation document,
 - (ii) the certificate(s) of insurance coverage, covering all required policies and endorsements, complying with the form and amounts specified in procurement solicitation document; and
 - (iii) the performance and labour bonds, complying with the form and amounts specified in

- (iv) the procurement solicitation document; and
 - (v) the construction schedule for the work;
 - (v) the Contractor's health and safety policy and training records;
 - (vi) a work site hazard assessment report, including an acceptable plan to address all expected hazards, as applicable, any task-specific standard operating procedures or job hazard analyses; and
- (c) obtained written authorization in the form of a purchase order to commence work on the site from the College.

S.15. Right to Stop Work

If the College becomes aware of any condition which poses a serious or imminent danger to the health or safety of the public or the College's or Contractor's personnel, the College shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. If the Contractor fails or refuses to promptly take satisfactory corrective action, in the sole opinion of the College, the College may issue an order stopping all or part of the work until satisfactory corrective action has been taken. Work may resume only upon satisfactory corrective action by the Contractor and the issuance of a notice to resume work, provided at the sole discretion of the College. The Contractor shall not be entitled to any equitable adjustment of the contract price on any stop work order issued under this clause and shall be responsible for any and all third-party costs incurred by the College that are a direct result of the stop work order.

S.16. Risk of Loss or Damage

The Contractor shall bear all risk of loss or damage from any cause, which may occur to any part or portion of the work, until the work have been completely accepted by the College in writing.

If any loss or damage occurs to the work before the College accepts the work in writing, the Contractor shall immediately repair or re-execute any damaged part of the work at the Contractor's expense.

S.17. Specifications and Materials

The Contractor shall carefully study and compare all specifications, drawings, and other instructions relating to the performance of the work and comply with the requirements of the Contract. The Contractor shall not substitute any supplies or materials where a specific brand or model has been specified in the Contract without first obtaining written approval from the College.

Unless otherwise expressly provided in the Contract, the Contractor shall furnish and assume full responsibility for materials, equipment, labour, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the work, whether or not incorporated therein.

S.18. Condition of Site

The Contractor shall at all times maintain strict discipline and good order at the work site. The Contractor shall confine all work to the site. The Contractor shall keep the site free from

accumulations of waste material or rubbish caused by the Contractor's activities during the performance of the work and shall remove all rubbish from the site and the vicinity upon the completion of the work.

S.19. Inspections and Warranty

- a. The Contractor shall complete all of the work to the satisfaction of the College and in accordance with timelines set out in the Contract. The Contractor shall permit the College Representative and all others authorized by the College, from time to time, at all times to have access to the work for the purposes of inspecting the work. The Contractor shall uncover any work for examination as required by the College at the Contractor's expense when the work has been previously covered up without prior approval or consent from the College.
- b. The Contractor shall rectify any defective or deficient work at the Contractor's own expense to the satisfaction of the College from the date on which the Contractor commences the work pursuant to the Contract to the completion date and for a warranty period of one (1) year after the completion date. An inspection by the College Representative does not relieve the Contractor of responsibility for the quality of the work, or from any obligation to perform the work in accordance with the requirements of this Contract.

S.20. Payment Terms

The Contractor shall submit an invoice monthly for work completed to date in accordance with the payment schedule set out in the Contract.

The College may adjust any invoice to reflect the College Representative's estimate of the work completed satisfactorily as of the invoice date. Notwithstanding any other provision of the Contract, the Contractor shall not receive any payment from the College for any unacceptable work, unauthorized work, economic loss or loss of profits.

All payments under this Contract shall be subject to the holdback and other provisions of the *Construction Act*.

The Contractor acknowledges that payments do not represent a final evaluation or acceptance of the work by the College.

S.21. Completion of the Work

Completion of the work occurs when the College Representative determines that the work has been completed in accordance with this Contract and the College accepts the work in writing. The College shall not accept the work in writing unless and until the Contractor;

- (a) has cleaned up and restored the work site to the satisfaction of the College; and
- (b) has rectified any defects as identified in writing by the College.

S.22. Extension of the Completion Date

If the Contractor fails to complete the work in accordance with the timelines set out in the Contract, the College may elect to do the following:

- (a) extend the completion date by a written notice to the Contractor; or
- (b) terminate the Contract as set out in section 9.01(g) of the College's General Terms and Conditions.

S.23. Construction Act Holdback

The release of the holdback shall be in accordance with the requirements of the *Construction Act*.

Prior to release of the holdback the Contractor shall submit to the College the following documents:

- (a) WSIB Certificate of Clearance dated after the commencement of the 60-day lien period;
- (b) a Standard Statutory Declaration; and
- (c) proof of publication of certification of substantial performance under Section 32 of the *Construction Act*.

Subject to the *Construction Act*, upon expiration of the 60-day lien period and confirmation that the Contract is free of liens or unsettled claims, the lien holdback shall be released.