

**TITLE (policies, standards and specifications)**

**Comments received by Email:**

Comment ID	Organization	Comment	Response
1.	ORBA	MTO changed “shall” to will in 79 instances—all involving its own obligations— while retaining “shall” for the contractor’s responsibilities.	MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
2	ORBA	In the one instance where the MTO changed the more permissive “may” to “shall”, it was to impose more stringent requirements on the contractor applying for contract completion in GC 8.02.04.07.01, to the MTO’s advantage.	MTO will retain the language change to “shall”.
3	ORBA	The revisions undermine the mandatory nature of MTO obligations, such as issuing instructions, making decisions, and processing payments	MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

4.	ORBA	<p>“Shall” is the legal standard for expressing binding obligations. Courts consistently interpret “shall” to mean “has a duty to”.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
5.	ORBA	<p>“Will”, by contrast, is generally construed as less binding and more indicative of future actions, events, or intentions, instead of a clear contractual duty.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
6.	ORBA	<p>The shift in language may signal that MTO’s obligations are discretionary, not mandatory, and this creates ambiguity. The resulting uncertainty increases the risk of disputes and litigation surrounding the enforceability of contract obligations.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
7	ORBA	<p>Although some contract drafters include interpretative provisions that define “shall” and “will” as synonymous, legal scholars criticize this approach as a poor substitute for precise drafting.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
8	ORBA	<p>ORBA recommends that MTO uses shall and will in a consistent and unbiased manner. MTO should reinstate or use the word shall in all cases where the MTO or its representatives have a duty to satisfy or must perform an action for the fair, timely, and proper performance of work and the contract. Such actions</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>

		include issuing decisions, investigating changes, issuing instructions, issuing change orders, and making payments.	
<b>(9,10)</b>	ORBA	Members have identified that the proposed changes do not adequately address or facilitate the government's mandate to build highways faster. Despite the weather, temperature, and other constraints that are unique to roadwork, in many OPSS 100 provisions, the contract administrator has no prescribed timeline to respond or give instructions, and its only standard is "within a reasonable time". There are more specific references in the comments below. Slow response times from the contract administrator exacerbates the risks to timely project completion.	MTO will review timelines for future updates of the GCs.
<b>11</b>	ORBA	ORBA recommends that the MTO considers more stringent and explicit response timelines and standards for the contract administrator.	MTO will review timelines for future updates of the GCs.
<b>12</b>	ORBA	The proposed definition of critical path, excerpted below, is unclear, confusing, and deviates from other generally accepted definitions: Critical Path means the longest sequence of logically connected activities on the Contractor's schedule that determines the shortest duration required to complete the Work.	After review, MTO will adopt ORBA's final proposed definition, limited to the first sentence only, as shown below: "Critical Path means the sequence of Controlling Operations whose cumulative

			duration determines the earliest possible completion of the Work.”
<b>13</b>	ORBA	The proposed definition could convey the impression that the critical path is fixed in relation to the contractor’s schedule and never changes. The reality is that the                      may change as work progresses and the contractor submits updated schedules.	After review, MTO will adopt ORBA’s final proposed definition, limited to the first sentence only, as shown below: “Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work.”
<b>14</b>	ORBA	Additionally, the inclusion of the phrases “longest sequence ... of activities” and sequence that determines the “shortest duration required to complete the Work” may be confusing without proper context, especially for readers unfamiliar with project scheduling. It should be made clear that the path with the greatest total duration of dependent tasks—the one that drives the completion date—is the critical path, not the one that finishes the quickest.	After review, MTO will adopt ORBA’s final proposed definition, limited to the first sentence only, as shown below: “Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work.”
<b>15</b>	ORBA	Further, the definition is inconsistent with and not as clear as other generally accepted definitions of critical path, for instance, that used by AACE International or the Society of	After review, MTO will adopt ORBA’s final proposed definition, limited to the first sentence only, as shown below:

		Construction Law. Other definitions highlight the effect of delaying the critical path on project completion.	“Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work.”
<b>16</b>	ORBA	<p>ORBA recommends that MTO considers a clearer, more accurate, and more generally accepted definition of critical path, for instance, the following:</p> <p>Critical Path: The longest sequence of activities through a project network from start to finish, the sum of whose durations determines the overall project duration. There may be more than one critical path depending on workflow logic. A delay to progress of any activity on the critical path will, without acceleration or re-sequencing, cause the overall project duration to be extended, and is therefore referred to as a ‘critical delay’.</p>	<p>After review, MTO will adopt ORBA’s final proposed definition, limited to the first sentence only, as shown below:</p> <p>“Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work.”</p>
<b>17</b>	ORBA	MTO’s exclusion of data interpretation and opinions in reports from the contract documents creates uncertainty and is inconsistent with generally accepted practice. The exclusion forces contractors to make subjective assessments about which	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

		portions of a report forms part of the contract and which portions do not.	
<b>18</b>	ORBA	Furthermore, the proposed change is inconsistent with the definitions of “Contract Drawings or Contract Plans”, in the Definition section of OPSS 100, which define the term to include: ... drawings or plans provided by the Owner for the Work and without limiting the generality thereof may include soil profiles, foundation investigation reports, reinforcing steel schedules, aggregate sources lists, quantity sheets, and cross--sections.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>19</b>	ORBA	All the above, including foundation investigation reports and other reports, form part of the “Contract Documents”	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>20</b>	ORBA	An exclusion of this sort is not practical or commercially feasible—it is entirely inconsistent with industry customs and practices. The risk and viability of a project is predicated on the information that the reports convey, as a whole. Courts recognize that in most cases contractors must rely on the reports that owners make available. Among other reasons, the tendering time is short, it	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

		would be wasteful and a commercial absurdity for each bidder to procure their own reports, and owners have the time, control over the physical site, and consultant resources that make it feasible for them to procure a single report that all bidders can rely on. An owner's report puts all bidders on equal footing as far as site-specific information is concerned.	
<b>21</b>	ORBA	Notably, the original language, which did not warrant interpretations of data or opinions in subsurface reports, aligned with the format of geotechnical reports. Geotechnical reports typically separate borehole and other factual data, on which the contractor is entitled to rely, and interpretations and opinions, on which the contractor was not entitled to rely. This differentiation in subsurface reports has long been understood and accepted by geotechnical consultants, drillers, and other professionals.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>22</b>	ORBA	The proposed revision to GC 2.01.02, which now extends this generally understood limitation on reliance to all reports included in the contract documents, is inappropriate.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>23</b>	ORBA	The consultants and other professionals that MTO retains have a	MTO will revert back to the original language from

		duty of care to provide reasonably accurate interpretations, opinions, and reports; contractors ought to be able to rely on these reports in their entirety. It is unfair and unrealistic for MTO to, in effect make contractors the insurer of professional services that the MTO procures.	OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>24</b>	ORBA	The proposed exclusions will artificially and irrationally inflate tender prices as bidders attempt to price the added risk arising from an inability to rely on reports. Alternatively, the proposed changes increase the risk of claims for changes to work and change orders once the project is underway.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>25</b>	ORBA	ORBA recommends that if the MTO has concerns about reliance on particular reports, it addresses them on a project-specific basis, rather than a blanket exclusion in the OPSS 100.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>26</b>	ORBA	The proposed changes accidentally delete subparagraph “g” and requires the relettering of GC 2.02.01.	MTO will correct the formatting error.
<b>27</b>	ORBA	This provision is an example where several of the contract administrator’s duties have been changed from will to shall. ORBA recommends that MTO reverts to “shall” for all duties.	MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

<p><b>28</b></p>	<p>ORBA</p>	<p>While MTO excludes proposals for corrective actions and proposals for preventive measures from the 5-business-day response timeline, it has not defined these events or provided timelines or procedures for the contract administrator's responses. MTO appears to leave responses to the contract administrator's discretion.</p>	<p>MTO will not make further changes to GC 3.01.05 at this time, however, will review for future updates. MTO will review if CAIS requirements can be reinforced.</p>
<p><b>29</b></p>	<p>ORBA</p>	<p>ORBA recommends clarifying the nature of, and response times to, these events.</p>	<p>MTO will not make further changes to GC 3.01.05 at this time, however, will review for future updates. MTO will review if CAIS requirements can be reinforced.</p>
<p><b>30</b></p>	<p>ORBA</p>	<p>The proposed changes prohibit the storage of flammable or combustible materials under or within certain distances of bridge structures, the structure's drip line, and structural culverts</p>	<p>MTO will revise the language to better define the intent of "storage."</p>
<p><b>31</b></p>	<p>ORBA</p>	<p>However, on many bridge projects where heating and hoarding is required, the only place to store the generator for the heating system is in a prohibited location. There are several other instances where flammable or combustible materials must be stored under a structure, for</p>	<p>MTO will revise the language to better define the intent of "storage."</p>

		instance, due to dewatering, work area or traffic control limitations.	
<b>32</b>	ORBA	ORBA recommends that the MTO reviews and amends this provision accordingly.	MTO will revise the language to better define the intent of “storage.”
<b>33</b>	ORBA	The proposed changes use fixed calendar months to assess abnormal weather events. However, weather events do not follow strict calendar boundaries. A major weather event could span multiple months, and under the proposed changes, it would not meet the contract definitions. For example, a heavy rainfall event from January 30 to February 2 might not appear extreme in either January or February taken separately	MTO will make the edits to change the provision to a 30-day rolling period.
<b>34</b>	ORBA	As such, fixed calendar months may dilute extreme data or fail to capture spikes because the averaging smooths out anomalies. A rolling window approach better reflects actual weather behaviours. Further, the proposed changes force comparisons only between same-named calendar periods, possibly ignoring when weather truly deviates from the norm.	MTO will make the edits to change the provision to a 30-day rolling period.
<b>35</b>	ORBA	Ultimately, these limitations may make it harder for contractors to prove abnormal weather, and may therefore forfeit compensation or time extensions.	MTO will make the edits to change the provision to a 30-day rolling period.

36	ORBA	By contrast, rolling periods, such as 3 consecutive days, 30 consecutive days, or 90 consecutive days, more accurately match the actual pattern and impact of weather events. Contractors will be better able to demonstrate weather abnormality whenever it occurs, not just when it fits a monthly box	MTO will make the edits to change the provision to a 30-day rolling period.
37	ORBA	ORBA recommends that the MTO reconsiders the use of fixed calendar months.	MTO will make the edits to change the provision to a 30-day rolling period.
38	ORBA	The proposed changes permit records from nearby weather stations to supplement incomplete weather data but restrict usable weather data to stations within 75 kms from the work area.	MTO will remove clauses e)(iii) and e)(iv).
39	ORBA	In Northern Ontario, weather stations are far apart. Therefore, it will be problematic to use multiple locations to complete the missing data set, as GC 3.07.02(e)(i) and (ii) permit, and also meet the 75-km restriction in GC 3.07.02(e)(iii)	MTO will remove clauses e)(iii) and e)(iv).
40	ORBA	It would be unreasonable to prohibit extensions of time on Northern Ontario or other contracts because the MTO's project is more than 75 km from the weather station. Members seek contractual clarity around the MTO's	MTO will remove clauses e)(iii) and e)(iv).

		plan if data from such stations are unacceptable. Some members have proposed that the MTO should accept the contractors' submission of incomplete records if complete data is unavailable, or otherwise revise these proposed changes to address the challenges identified.	
<b>41</b>	ORBA	Members have provided feedback that the proposed changes are unnecessary, the original clauses are clear as they relate to the contractor's entitlement to additional time and compensation, and should be reinstated.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>42</b>	ORBA	ORBA recommends that the MTO reconsiders and reinstates what was previously GC 3.07.05(c), (d) and (e).	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>43</b>	ORBA	Members have provided feedback that the proposed changes are unnecessary, the original clauses are clear as they relate to the contractor's entitlement to additional time and compensation, and should be reinstated.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>44</b>	ORBA	ORBA recommends that the MTO reconsiders and reinstates what was previously GC 3.07.05(c) and (d).	MTO will revert back to the original language from OPSS.PROV 100 – MTO General

			Conditions of Contract – April 2023.
<b>45</b>	ORBA	The proposed changes should accommodate submission of claim costs and schedule impacts “known at the time” as opposed to “all costs” or impacts, by facilitating interim and updated cost and schedule estimates.	MTO agrees to add the word “known” before “all costs”.
<b>46</b>	ORBA	At the time of submission, the contractor may not know and cannot accurately predict all costs and schedule impacts, particularly in complex projects. Variables such as evolving site conditions, the interaction of new work with ongoing activities, and downstream impacts on subcontractors or procurement timelines may only become apparent as the work progresses. Therefore, any previously unidentified or uncrystallized costs or time arising from the change in the work, should be eligible for compensation once they are quantified. Failure to accommodate interim or progressive evaluations may inadvertently penalize the contractor or lead to disputes over what was reasonably foreseeable at the time of pricing.	MTO agrees to add the word “known” before “all costs”.

47	ORBA	ORBA recommends that the MTO considers revisions to the proposed changes to ensure fairness to the contractor.	MTO agrees to add the word “known” before “all costs”.
48	ORBA	The proposed changes nullify any settlement offer in the decision issued in response to a compensation request, if the contractor invokes the dispute resolution mechanisms in the contract.	MTO confirms that no changes in intent have been made from the original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.. Language has been refined solely to align with the updated GC format.
(49.50)	ORBA	These changes are punitive. They penalize contractors for trying to resolve compensation requests promptly. Some members view the proposed changes as an attempt to "strong arm" contractors into accepting lower compensation, by dangling the settlement offer and the risk of receiving nothing—plus the financial burden of a lengthy, risky, and difficult dispute resolution process—despite the potential for greater compensation as the dispute progresses.	MTO will retain current update in the GC however, review for future updates.
51	ORBA	The threat to revoke settlement offers does not convey a good faith intention to resolve disputes collaboratively.	MTO will retain current update in the GC however, review for future updates.

52	ORBA	Some members have suggested that the settlement offer be paid upfront with the ability to recoup any overpayment if the investigations later determine that the contractor was entitled to less. They note that this approach would ease the contractor's financial strain while also motivating the MTO and contract administrator to resolve compensation requests more quickly.	MTO will retain current update in the GC however, review for future updates.
53	ORBA	ORBA recommends that the MTO retracts the proposal to nullify settlement offers if contractors invoke the dispute resolution procedures and considers other proposals to expedite the processing of compensation requests.	MTO will retain current update in the GC however, review for future updates.
54	ORBA	The proposed changes would treat settlement offers as without prejudice and non-disclosable to third parties in adjudications, alternative dispute resolution proceedings, and legal proceedings.	MTO will be removing Clause GC 3.14.13.
55	ORBA	However, amounts presented in a decision on a compensation request are not true settlement offers. Rather, they are contractual determinations, instructions or other directions issued under dispute-resolution mechanisms—as a cost-effective resolution to a potentially viable claim	MTO will be removing Clause GC 3.14.13.

<p><b>56</b></p>	<p>ORBA</p>	<p>Accordingly, in all subsequent proceedings, the contractor should be entitled to rely on and disclose the full and amount in the decision. The amounts form a documented and disclosable basis for the MTO's position, enabling the contractor to make an informed decision as to how to proceed. The proposed changes are prejudicial to the contractor and lack transparency.</p>	<p>MTO will be removing Clause GC 3.14.13.</p>
<p><b>57</b></p>	<p>ORBA</p>	<p>Full disclosure supports more efficient future proceedings, by better enabling the parties to narrow the scope of disputes to relevant issues, amounts, and documents. Disclosure would also facilitate more efficient resolution by adjudicators or other decision-makers.</p>	<p>MTO will be removing Clause GC 3.14.13.</p>
<p><b>58</b></p>	<p>ORBA</p>	<p>Any attempt to restrict or redact portions of a decision, while disclosing others, would distort the context surrounding the decisions and diminish the effectiveness and clarity of the decision as a whole. It is neither reasonable nor appropriate to place the burden on the contractor to parse or redact a formal decision before relying on it in subsequent proceedings.</p>	<p>MTO will be removing Clause GC 3.14.13.</p>

59	ORBA	ORBA therefore recommends that the contractor be permitted to rely on and disclose the entire decision issued in response to a compensation request. This would not preclude the MTO from making without-prejudice settlement offers outside the compensation request mechanism if it chooses.	MTO will be removing Clause GC 3.14.13.
60	ORBA	Members have identified that GC 3.14 should include provisions:  i. Mandating that the MTO delivers a detailed rationale for denying all or part of a compensation request; and ii. Specifying standards for timely delivery of decisions.	MTO recognizes that current contract language already exists to deliver more details.  Thank you for bringing to MTO attention. MTO will emphasize as part of the on-going training. Please refer to GC 3.14.08 for timely delivery.
61	ORBA	ORBA recommends that the MTO considers these additional provisions	MTO recognizes that current contract language already exists to deliver more details.
62	ORBA	The proposed changes align the expiry of adjudication with the Construction Act. However, MTO did not consult ORBA, and members see no clear rationale for the proposed change.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the</i>

			<i>Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>63</b>	ORBA	Before the proposed changes, contractors had 90 days from the contractually defined contract completion date to adjudicate—a clear, typically undisputed benchmark, especially for participants lower in the construction pyramid.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>64</b>	ORBA	By contrast, the parameters for expiry of adjudication in the Construction Act, is 90 days from the time that the Construction Act defines project completion; when the value of incomplete work is no more than 1% of the contract price and \$5,000.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>65</b>	ORBA	The parameters for expiry under the Construction Act are sometimes unclear and there is often a lack of consensus about the attainment of	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April

		<p>statutory completion. The lack of consensus will increase jurisdictional challenges during adjudications and make it more difficult for adjudicators to rule on jurisdictional issues.</p>	<p>2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>(66,67)</b>	ORBA	<p>Critically, under the proposed changes, the right to adjudicate could expire much sooner. Before the proposed changes, contractors could avail themselves of adjudication for a much longer period, because adjudication rights did not expire until 90 days after the work passed all inspection and testing requirements, the contractor rectified all deficient work, and fulfilled all contract obligations apart from warranty obligations.</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>68</b>	ORBA	<p>Therefore, pre-change timelines allow for adjudication of a wider range of disputes related to deficiencies, liquidated damages, and other late-stage issues.</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the</i></p>

			<i>Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>69</b>	ORBA	Ultimately, the proposed changes are inconsistent with the government’s mandate to make dispute resolution more accessible and efficient for contractors, owners, and other project participants, through adjudications.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>70</b>	ORBA	ORBA recommends that MTO abandons the proposed changes to the adjudication expiry timeline.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>71</b>	ORBA	The proposed changes revoke settlement offers if the other party commences another form of dispute resolution.	MTO notes that settlements have always included the terminology of “null and void”, staying

			consistent with GC 3.14.12. MTO will retain current update.
<b>72</b>	ORBA	The proposed changes will disproportionately affect contractors because they are more likely than the MTO to initiate a claim. As explained at section (n) above, it is punitive to automatically revoke settlement offers merely because the contractor avails itself of its contractual or other legal right to resolve its dispute.	MTO notes that settlements have always included the terminology of “null and void”, staying consistent with GC 3.14.12. MTO will retain current update.
<b>73</b>	ORBA	In some instances, a contractor may have to preserve and perfect a lien or initiate alternative dispute resolution to preserve limitation periods or other legal rights. The automatic revocation of settlement offers has a chilling effect on contractors seeking to enforce their rights. Neither does it reflect a good faith intention to resolve disputes collaboratively.	MTO notes that settlements have always included the terminology of “null and void”, staying consistent with GC 3.14.12. MTO will retain current update.
<b>74</b>	ORBA	The proposed changes invoke settlement privilege, confers without privilege designations, and prohibits third-party disclosures for all negotiations, settlement offers, and communications arising from compensation requests and the dispute resolution process. This blanket curtailment is not only unfair and untenable, but it also creates ambiguity and uncertainty, impedes	MTO notes that this is not new terminology and will retain current update.

		full and transparent information sharing and negotiations, and puts the contractor and its project team in the difficult position of having to make legal assessments about what they can or cannot say as during negotiations and which documents may or may not be privileged.	
<b>75</b>	ORBA	Established legal principles already govern privileged communications. Introducing these concepts in a project contract risks contradictions with legal principles and uncertainties at the project level during negotiations to resolve disputes.	MTO notes that this is not new terminology and will retain current update.
<b>76</b>	ORBA	As explained at section (o) above, all documents exchanged in the dispute resolution process are contractual determinations or directions. Restricting their use burdens the contractor, curtails legal recourse, and foments unnecessary conflict early in the dispute resolution process.	MTO notes that this is not new terminology and will retain current update.
<b>77</b>	ORBA	ORBA recommends that the contractor be permitted to rely on and disclose all dispute resolution documents and information. This would not preclude the MTO from making without-prejudice settlement offers outside the contractual dispute resolution mechanism if it chooses.	MTO notes that this is not new terminology and will retain current update.

78	ORBA	The word “Contractor’s” should be changed to “Contractors”.	MTO agrees with the comment and will make the grammar correction.
79	ORBA	The proposed changes substitute mandatory language, through the use of the word “shall”, with respect to non-mandatory alternative dispute resolution steps. The proposed changes create a risk of disputes about whether alternative dispute resolution steps are mandatory or permissive. The original language was clearer.	MTO shall revert the wording in GC 3.15.04.01 to “may” and shall retain the current change in GC 3.15.04.02.
80	ORBA	ORBA recommends that the MTO retains the permissive language, through the use of the word “may” and avoiding the word “shall” in these provisions.	MTO shall revert the wording in GC 3.15.04.01 to “may” and shall retain the current change in GC 3.15.04.02.
81	ORBA	The proposed changes substitute a bonding requirement of 50% of the bid price, which was consistent with the Construction Act, with a requirement for bonding of at least 50%. Members have asked for clarity around the circumstances in which the added requirement would ever be necessary, given the minimum requirement in the Construction Act.	MTO will retain current GC update.
82	ORBA	ORBA recommends that MTO reviews the proposed changes and confirm if they are in fact necessary.	MTO will retain current GC update.

<p><b>83</b></p>	<p>ORBA</p>	<p>The proposed changes deem the approved baseline schedule to be the “as-bid” schedule. Members have identified that this designation is inappropriate because tenders typically do not include detailed scheduling comparable to the activity levels in baseline schedules. The baseline schedule is not “as-bid” and instead reflects changes to effect the contract administrator’s requirements for conformance. While members are receptive to the “as-bid” designation as it relates to activity durations, they think it more appropriate for the definition to refer to the non-exhaustive list of activities associated with the total cost of the project.</p>	<p>MTO has edited the definition as follows: “Baseline Schedule means the version of the initial Critical Path schedule that conforms to all of the requirements of the Contract Documents for the completion of the Work.”</p>
<p><b>84</b></p>	<p>ORBA</p>	<p>ORBA recommends that the MTO reconsiders the definition of baseline schedule.</p>	<p>MTO has edited the definition as follows: “Baseline Schedule means the version of the initial Critical Path schedule that conforms to all of the requirements of the Contract Documents for the completion of the Work.”</p>
<p><b>85</b></p>	<p>ORBA</p>	<p>Members have proposed that MTO provides a standard calendar indicating working days for each month at each zone, so that working</p>	<p>MTO will retain current GC update as contractors are able to consider all options.</p>

		days are streamlined and consistent across all projects.	
<b>86</b>	ORBA	ORBA suggests that MTO considers this potential change to the OPSS 100 and contract administration.	MTO will retain current GC update as contractors are able to consider all options.
<b>87</b>	ORBA	The proposed changes require contractors to account for temperature restrictions in their critical path schedules. There is no indication that the MTO will specify start or end times for these restrictions. Members have identified a concern with delays arising from subjectively selecting and including such restrictions, based in what the contractor considers reasonable. Members are concerned that contractors will be held accountable for delays arising from this exercise of judgement, absent any contractual guidance on restrictions.	MTO will remove “temperature restriction” from this Clause GC 7.01.07.02.06.
<b>88</b>	ORBA	ORBA recommends that MTO addresses the gaps in the proposed changes.	MTO will remove “temperature restriction” from this Clause GC 7.01.07.02.06.
<b>89</b>	ORBA	The proposed changes require that when the duration of an activity is dependent on weather conditions, the duration must include an appropriate allowance for inclement weather. Members have identified that most work is weather dependant, and the determination of allowances is	MTO will retain current GC update for “weather dependant” estimates.

		imprecise and inherently subjective. Weather patterns are unpredictable and the variability in conditions makes it challenging to establish a definitive duration. Applying a subjective allowance may inadvertently impact the accuracy and reliability of the schedule, leading to potential discrepancies in project timelines.	
<b>90</b>	ORBA	ORBA recommends that MTO addresses the gaps in the proposed changes.	MTO will retain current GC update for “weather dependant” estimates.
<b>91</b>	ORBA	The proposed changes require that the contractor’s schedules provide the MTO and contract administrator sufficient review time for drawings, mix designs, and other contract submissions. Members have identified that provisions should also specify the maximum time that MTO and the contract administrator will be allowed for review purposes, to permit clarity,	MTO will not be introducing Contractor Administrator’s review timelines as of this update and will review for future updates.
<b>92</b>	ORBA	ORBA recommends that MTO considers revisions to this provision to introduce clarity and consistency.	MTO will not be introducing Contractor Administrator’s review timelines as of this update and will review for future updates.
<b>93</b>	ORBA	The proposed changes grant the MTO the right to limit or increase the number of schedule activities. Granting the MTO this right undermines the contractor’s ability to	MTO will retain current GC update as this is not a new requirement.

		manage the job using its own preferred work breakdown structure, could disrupt logical sequencing, and may result in fragmented control of project logic. Given the level of granularity that the MTO requires and the contractor's accountability for means, methods, and schedules, members consider this proposed change to be inappropriate.	
<b>94</b>	ORBA	ORBA recommends that MTO reconsiders this proposed change.	MTO will retain current GC update as this is not a new requirement.
<b>95</b>	ORBA	The proposed schedule formatting includes a highly granular list of data fields that must be updated regularly. Many of these (for example, percent complete, float, predecessor/successor IDs) are already embedded in scheduling software outputs and should not require duplication or production in hard copy.	MTO will retain the current GC update however, a possible change may be considered when MTO acquires appropriate software.
<b>96</b>	ORBA	ORBA recommends that the MTO reassess the proposed changes to eliminate redundancy and unnecessary requirements.	MTO will retain the current GC update however, a possible change may be considered when MTO acquires appropriate software.
<b>97</b>	ORBA	The proposed changes require that for each activity in the project schedule, the contractor must show	After discussion with ORBA, ORBA agrees that Excel is the

		<p>the associated tender item number. Members have identified that this is a difficult process to complete without the digital quantity sheets that identify the work associated with each tender item.</p>	<p>preferred and expected format to be shared by MTO.</p>
<b>98</b>	ORBA	<p>ORBA recommends that that the MTO revises this provision to add the MTO's agreement to provide digital quantity sheets to facilitate the requirements in OPSS 100.</p>	<p>After discussion with ORBA, ORBA agrees that Excel is the preferred and expected format to be shared by MTO.</p>
<b>99</b>	ORBA	<p>Members have identified two additional challenges with the proposed changes, namely:</p> <ul style="list-style-type: none"> <li>i. Lumpsum items. The provisions do not specify how a contractor should handle lumpsum items that involve a single tender price for several component activities. For instance, if a bridge deck involves 3 pours and 1 lumpsum price, would the contractor include 3 activities with a third of the lumpsum price for each activity?</li> <li>ii. Activities that have multiple items. The provisions do not specify how a contractor should handle an activity</li> </ul>	<p>MTO will make this adjustment to add the wording of "where appropriate" at the end of c) (iii) and c) (iv) in this Clause GC 7.01.07.03.05(c).</p>

		ID with numerous items. For example, intersection lighting or other electrical work may include 50 items. This many items become unwieldy in a schedule.	
<b>100</b>	ORBA	ORBA recommends that MTO considers additional guidance to contractors in the provisions.	MTO will make this adjustment to add the wording of “where appropriate” at the end of c) (iii) and c) (iv) in this Clause GC 7.01.07.03.05(c).
<b>101</b>	ORBA	The proposed changes require submission of a critical path schedule within 7 business days of contract award. This timeline is tight, especially for contracts valued at over \$10M or involving numerous activities.	MTO will retain current GC update to maintain efficiency
<b>102</b>	ORBA	ORBA recommends that the MTO reassess the timelines in this provision, to accommodate a range of project complexities.	MTO will retain current GC update to maintain efficiency
<b>103</b>	ORBA	The proposed changes do not specify the timeframe for the contract administrator to notify the contractor that a schedule is noncompliant.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>104</b>	ORBA	The absence of timelines is an issue because GC 7.01.07.04.05 imposes a strict deadline to deliver a baseline schedule within 30 business days	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.

		after submitting the initial critical path schedule.	
<b>105</b>	ORBA	Further, the undefined number of resubmission cycles in GC 7.01.07.04.03(c) could introduce schedule review delays that put the contractor in default under GC 7.01.07.04.05.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>106</b>	ORBA	ORBA recommends that the provision imposes a duty on the contract administrator to notify the contractor of any noncompliance within a specified timeline—one which avoids project delays.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>107</b>	ORBA	With respect to GC 7.01.07.04.03(c), MTO should consider allowing only one, or a defined number of revision cycles and require that all comments are addressed in a single, consolidated response. This approach will streamline the review process, reduce overall review time, and ensure that the schedule acceptance process is more efficient.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>108</b>	ORBA	The proposed change does not specify a response timeline for the contract administrator, to ensure signoff on the baseline schedule and issuance of the permission to start work in enough time. A timeline is important because under GC 7.01.07.04.05, the	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.

		contractor is in default if “for any reason” it cannot provide a baseline schedule. Under GC 7.01.07.04.06, the contractor is solely responsible for providing a conforming baseline schedule.	
<b>109</b>	ORBA	Members note that the above provisions are very harsh for an administrative process, considering that disputes may arise with respect to what constitutes a conforming schedule, the timeliness of responses from the contract administrator, and the wide discretion that the provisions accord to a contract administrator.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>110</b>	ORBA	This section provides no recourse for the contractor in the event of the contract administrator’s or MTO’s untimeliness. For instance, what is the contractor’s recourse if the MTO has no contract administrator in place in the first 30 days?	MTO will not introduce any CA review timelines for this round of updates and will review for future updates. MTO will be responsible for no contract administrator.
<b>111</b>	ORBA	ORBA recommends that MTO implements specific review timelines.	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>112</b>	ORBA	The proposed changes require the contractor to submit five colour hard copies of each monthly update on 11"x17" paper, in addition to PDF and native software formats. The	MTO will retain current GC update as MTO staff still require paper submissions to be used in the field.

		requirement for multiple paper copies is excessive, outdated, and not environmentally conscious.	
<b>113</b>	ORBA	ORBA recommends that the MTO reconsiders these requirements, which add unnecessary administrative burden and cost.	MTO will retain current GC update as MTO staff still require paper submissions to be used in the field.
<b>114</b>	ORBA	The proposed changes require the contractor to submit a final critical path schedule reflecting the actual progress of the work from start to finish. This requirement is onerous, in part because it requires detailed tracking of granular information to produce this schedule.	MTO will retain current GC update as this is just another progress Critical Path update at the end of the contract.
<b>115</b>	ORBA	ORBA recommends that the MTO reconsiders these requirements, which create significant and unnecessary administrative burden and cost.	MTO will retain current GC update as this is just another progress Critical Path update at the end of the contract.
<b>116</b>	ORBA	The proposed changes delete the following from GC 7.01.08.02(a) and (b), as situations that are expressly the subject of a contractor's request for information: <ul style="list-style-type: none"> <li>i. a) A situation that is different than represented in the Contract Documents;</li> <li>ii. b) A situation where the Contractor requires additional information</li> </ul>	MTO will retain current GC update as the bullets are redundant as they are stated in the form.

117	ORBA	ORBA recommends that MTO reinstates the above provisions for clarity and to avoid ambiguity.	MTO will retain current GC update as the bullets are redundant as they are stated in the form.
118	ORBA	The proposed changes gatekeep Sunday work and are inconsistent with the government’s mandate and commitment to expedite projects and “Keep Ontario Moving”.	MTO will consider for future updates.
(119, 120)	ORBA	ORBA recommends that the MTO considers a more permissive approach to Sunday work, to better align with government policy and the requirements for time-sensitive projects.	MTO will consider for future updates.
121	ORBA	Members have identified that even after the challenges that the COVID-19 pandemic created, and despite the many proposed changes to GC 3.07 – Delays, there is inadequate language to address force majeure conditions.	MTO has reviewed the comment and determined that no changes are necessary for this round of updates.
122	ORBA	OPSS 100 should include language to address changes in law, circumstances beyond any party’s reasonable control, and similar events. For example, with MTO projects in Northern Ontario, where the risk of wildfires increases each year and jeopardizes property and employee safety, there are no provisions that adequately address these environmental risks.	MTO has reviewed the comment and determined that no changes are necessary for this round of updates.

<b>123</b>	ORBA	ORBA reminds MTO that these proposed changes have not addressed the risks arising from excessive inflation because of tariffs and other political, social, environmental, and economic conditions.	MTO will retain current GC update. Contractors may address these issues through CRs.
<b>124</b>	ORBA	Consistent with ORBA's recent submission of proposed contract language to MTO, MTO should consider implementing provisions to address excessive inflation after the close of tender.	MTO will retain current GC update. Contractors may address these issues through CRs.
<b>125</b>	ORBA	ORBA appreciates the opportunity to comment on the proposed changes. Our membership has been very engaged and invested significant time and resources to carefully consider the impact of the changes	Thank you.
<b>126</b>	ORBA	Our members are concerned that the proposed changes represent a significant and inequitable shifting of risks towards contractors and represent a departure from industry standards of fairness and transparency. The changes may deter qualified bidders and artificially inflate bids—ultimately impacting cost, schedules, and project delivery.	Thank you.
<b>(127,128,129)</b>	ORBA	ORBA members have significant business operations in Ontario, employ large numbers of Ontarians, contract with numerous	Thank you.

		subcontractors and suppliers, and as such, form an invaluable component of the provincial and Canadian economy. It is to all stakeholders' advantage to have fair and efficient contract documents.	
<b>130</b>	ORBA	Please do not hesitate to contact ORBA with any questions or concerns. We look forward to MTO extending opportunities for our further engagement in the revision process to help maintain balance, clarity, coherence, and confidence in OPSS 100.	Thank you.

Number	Organization	Comment	Response
<b>1</b>	<b>Miller</b>	In this latest version of the GC's, we see 79 instances where MTO is proposing to change the word "shall" to "will". This is not a universal change, as there are 823 instances where shall is used in the current version of the GC's. The change is calculated and biased, as it applies only in situations where the responsibilities or obligations lie with MTO and never in cases where they lie with the Contractor. This proposed change would erode the responsibilities, duties, and obligations of MTO and their Contract Administrator (CA) to deliver on items that they are	MTO will revert the language to "shall" as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

		contractually bound to do so. The intent behind MTO's proposed change is unclear, but what is clear is that it invites disputes and creates ambiguity in interpretation.	
<b>2</b>	<b>Miller</b>	A contract may be considered unbalanced when the Owner's obligations are expressed using permissive language (implying discretionary or voluntary actions) such as "will" while the Contractor's duties are defined by mandatory terms (implying mandatory obligations) such as "shall." This discrepancy results in an uneven allocation of responsibilities and risks, disproportionately favoring the Owner and undermining the fairness which is essential to sound contractual agreements	MTO will revert the language to "shall" as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>3</b>	<b>Miller</b>	In legal contracts, both "shall" and "will" are used to denote future actions, but they carry different implications regarding the degree of obligation. "Shall" is typically employed to impose a mandatory, legally binding obligation, it conveys a clear requirement that must be fulfilled. In contrast, "will" may indicate a future action or intent, but is generally perceived as less imperative and may not carry the same enforceable weight. In the	MTO will revert the language to "shall" as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

		<p>context of contracts, "shall" is often used to create a strong, legally enforceable obligation. It implies a command or requirement that the subject of the sentence is obligated to fulfill. Although 'will' can indicate future events, its use in contracts tends to be more ambiguous, as it may suggest intent or anticipation rather than imposing a clear, binding obligation.</p>	
<b>4</b>	<b>Miller</b>	<p>MTO proposes replacing “shall” with “will” in relation to fundamental obligations, including making determinations on matters in dispute, investigating changes, issuing instructions and Change Orders, and making payments. Each of these actions by MTO are essential to the fair and proper administration of the contract and must do these actions to ensure the timely and proper performance of the Work.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
<b>5</b>	<b>Miller</b>	<p>Accordingly, to preserve the integrity and enforceability of the contract, the current use of 'shall' should be retained, and the 79 proposed instances use of “will” should be reverted back to “shall”.</p> <p>Alternatively, consideration could be given to including a provision under GC 1.0 – Definitions, clarifying that</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>

		<p>'will' and 'shall' are to be interpreted synonymously when referring to the Contractor, the Contract Administrator, or the Owner, as follows:</p> <p>'Wherever the terms “will” or “shall” appear in the Contract in reference to the Contractor, the Contract Administrator, or the Owner, they shall be construed as synonymous, and interpreted to mean “Contractor shall,” “Contract Administrator shall,” or “Owner shall,” as applicable.'</p>	
6	Miller	<p>It is critical that MTO adopt one of the two options as outlined above to correct this issue which the current draft of the GC introduces.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
7	Miller	<p>Critical Path – This definition fails to identify that the critical path changes as the Work progresses and changes occur on the contract. As currently written, it gives the impression that this critical path is fixed. This critical path changes as Work progresses and the schedule is updated monthly. The definition should be amended to reflect this fact. A standard definition of the critical path is <b>the longest continuous sequence of dependent activities, commencing from the schedule’s progress date</b></p>	<p>After review, MTO will adopt new definition, as shown below:  “Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work.”</p>

		<p><b>or data date and extending to the project’s final completion activity, which governs the total contract duration.</b> This definition reflects that the critical path is adynamic, time-sensitive analysis that represents the current status of the schedule as of the progress or data date.</p>	
<p><b>8</b></p>	<p><b>Miller</b></p>	<p>GC 2.01.02 introduces a commercially absurd concept into this document. MTO cannot transfer all risk in this manner into the document and have a fair and balanced contract.</p> <p>The inclusion of “Any interpretations of data or opinions expressed in any reports are excluded from the contract documents” is unfair and unreasonable. The entire viability of the design and construction of the Work is predicated on this data and opinions. As the Owner and designer of most of the work (bid-build models), MTO cannot contractually transfer this risk onto the Contractor by stating that these documents that underpin the design do not form part of the contract. Accordingly, this language must be revised. The professionals who are retained by MTO, and not the Contractor, owe a duty of care exclusively to MTO. Consequently, the Contractor is required and must rely on</p>	<p>MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>

		interpretations of data or opinions expressed in the reports or documents issued by these professionals.	
<b>9</b>	<b>Miller</b>	This proposed change is wholly inconsistent with established industry practice and contradicts the accepted definition of “Contract Drawings or Contract Plans”, which refer to documents issued by the Owner for the execution of the Work and may include, without limitation, foundation investigation reports. These documents form part of the Contract Documents, and changes to them may justifiably lead to Changes in the Work and entitlement to a Change Order. If MTO’s intention is to negate this principle, then such a move would represent a fundamental, and fundamentally inequitable, reallocation of risk within MTO contracts.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>10</b>	<b>Miller</b>	It is unreasonable, unfair and unrealistic for MTO to attempt to make Contractors effectively liable for, or insurers of, professional services performed by others retained solely by the MTO.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>11</b>	<b>Miller</b>	GC 3.07.02 e) ii. – In Northern Ontario weather stations are far apart, and it will be problematic to use multiple locations to complete the missing data set and	MTO will remove clauses e)(iii) and e)(iv).

		<p>meet the proposed requirements in iii. below.</p> <p>iii. – This section cannot be added to the document. For many MTO projects in Northern Ontario, the nearest weather station is more than 75 km from the location of the Work. On these projects abnormal weather could occur, and it is not reasonable to prohibit these contracts from eligibility for an extension of time because MTO’s project is more than 75 km from the nearest weather station. If this weather station cannot be used what is MTO’s alternative plan?</p> <p>iv. The Contractor should automatically be allowed to proceed using an incomplete set of records where a complete set is not available, and should not require the approval of the Contract Administrator as there is no other viable option.</p>	
<p><b>12</b></p>	<p><b>Miller</b></p>	<p>GC 3.07.05 d) &amp; e) Should remain as written, there is no reason for the deletion of these two paragraphs</p>	<p>MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>

<p><b>13</b></p>	<p><b>Miller</b></p>	<p>GC 3.07.06 c) &amp; d) Again in fairness to the Contractor, the events are compensable, and these paragraphs should not be deleted.</p>	<p>MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
<p><b>14</b></p>	<p><b>Miller</b></p>	<p>GC 3.10.01 – MTO has changed the estimate from “the costs” to “all costs” – this should say “all costs known at the time”. This is usually an emerging issue and it’s impossible to estimate and or know all costs with any accuracy. The full extent of the cost and schedule impacts are often not immediately apparent and may only become clear when the said work progresses further or is completed. An omission to implement progressive assessments may result in the Contractor being unfairly prejudiced and may give rise to disputes concerning the extent to which cost, or schedule impacts were reasonably foreseeable at the time of the estimate. Such an approach could undermine the equitable administration of the contract and increase the potential for claims.</p>	<p>MTO agrees to add the word “known” before “all costs”.</p>
<p><b>15</b></p>	<p><b>Miller</b></p>	<p>GC 3.14.12 – This clause stipulates that any settlement amount offered in a Compensation Request (CR) shall become null and void and shall not be considered an</p>	<p>MTO confirms that no changes in intent have been made from the original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023. Language has been</p>

		undisputed amount. This provision is punitive in nature and appears to operate as a coercive mechanism by which the Owner may compel the Contractor to accept a reduced settlement under the pressure of the financial and administrative burdens imposed by an onerous and protracted dispute resolution process. Such an approach undermines principles of fairness and equitable contract administration practices.	refined solely to align with the updated GC format.
<b>16</b>	<b>Miller</b>	It is submitted that any amount offered by the Owner in a CR should be treated as an undisputed sum, with any additional entitlement arising from subsequent determinations or findings is added to that amount, rather than replacing or voiding it.	MTO confirms that no changes in intent have been made from the original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023. Language has been refined solely to align with the updated GC format.
<b>17</b>	<b>Miller</b>	GC 3.14.13 – A Compensation Request decision is a mandatory decision to be made by the CA on behalf of the MTO. It is not discretionary, nor is it made without prejudice, as both entitlement and quantum are integral components of the decision required under the contract. The CA and MTO are contractually obligated to render a reasoned decision on both elements.	MTO will be removing Clause GC 3.14.13.

		<p>Such decisions, made as part of the CR decision, constitute an administrative record and are not subject to settlement privilege. Decisions issued in response to Compensation Requests do not constitute offers to settle, rather, they are formal determinations, and such decisions are materially relevant to the matter in dispute and as administrative acts carried out under the terms of the contract are properly disclosable in any subsequent legal or arbitral proceeding. Should the MTO or CA, following a good faith determination, offer a compromise settlement on entitlement, quantum, or both, such offers may appropriately be treated as without prejudice and protected by settlement privilege. However, this protection does not extend to the CR decision itself, which is a formal decision of record made in the course of the contract administration process.</p>	
<p><b>18</b></p>	<p><b>Miller</b></p>	<p>The MTO's proposed drafting of this provision would in effect render the CR decision void of legal or procedural significance, thereby undermining the contractual process and prolonging the resolution of disputes. Rather than promoting early and efficient resolution, the proposed language would defer the</p>	<p>MTO will be removing Clause GC 3.14.13.</p>

		determination of all matters, regardless of merit, to later stages such as arbitration or litigation. This approach is counterproductive, as it keeps all issues artificially open and unresolved, fostering uncertainty and adversarial escalation.	
<b>19</b>	<b>Miller</b>	It must also be emphasized that unreasonable CR decisions, or unreasonable rejections thereof, expose the party acting unreasonably to potential adverse cost and procedural consequences in any subsequent dispute resolution process. This accountability serves as a critical incentive for fair, timely, and good faith decision-making.	MTO will be removing Clause GC 3.14.13.
<b>20</b>	<b>Miller</b>	Prolonging decisions, or strategically delaying resolution, serves only to shift the financial and operational burden onto the Contractor, who must continue performing the Work while absorbing unreimbursed costs. Such conduct amounts to procedural gamesmanship and should be expressly discouraged by the contract's provisions, in the interest of good faith, transparency, and efficient project delivery.	MTO will be removing Clause GC 3.14.13.
<b>21</b>	<b>Miller</b>	GC 3.15 – In the current GC version, Contractors have 90 days from Contract Completion	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023

		<p>to adjudicate, this is easy to track and not ever in dispute. Now, in the amended version, this simply states the Construction Act will be followed which allows 90 days from the point in time where the value of the work is 1% of the contract value plus \$5000. This is going to be very confusing and highly subjective, ODACC is already gun shy about jurisdiction after some judicial review loss so this will very much complicate this process. The revision to the adjudication timeframe from three months following Contract Completion as defined in the current MTO General Conditions to Contract Completion as defined under the Construction Act introduces ambiguity where there was previously clarity. This change renders the availability of adjudication uncertain and potentially subject to dispute. To preserve procedural certainty and consistency with the contract framework, MTO should revert to the original wording, which ties the adjudication period to the definition of Contract Completion set out in the General Conditions which in signing the contract both MTO and the Contractor are mutually consenting to.</p>	<p>language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<p><b>22</b></p>	<p><b>Miller</b></p>	<p>GC 3.15.01.03 – See GC 3.14.13 above, CR negotiations and back and</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General</p>

		<p>forth at the site level is not without prejudice and must form part of any legal discussion or dispute resolution process. This language MTO has introduced here is both unfair and untenable. This must be amended in fairness to the Contractor.</p>	<p>Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>23</b>	<b>Miller</b>	<p>GC 7.01.07.02.05 - MTO must provide a standard calendar indicating working days for each month at each area of the Province, so that it can be streamlined and consistently applied across all projects and used by all Contractors, so everyone is working off the same information. Failure to do so will introduce confusion, subjectivity and debate during the contract acceptance process.</p>	<p>MTO will retain current GC update as contractors are able to consider all options.</p>
<b>24</b>	<b>Miller</b>	<p>GC 7.01.07.02.06 - Temperature restrictions do not have a specific date associated with them. How do we pick a date for surface asphalt for example? If we choose a reasonable date and it is below temperature allowances prior to that date, is the MTO responsible for the delay? Within this GC, the proposed amendment also states that when the duration of an activity is dependent on weather conditions, the</p>	<p>MTO will remove “temperature restriction” from this Clause GC 7.01.07.02.06. MTO will retain current GC update for “weather dependant” estimates.</p>

		<p>duration must include an appropriate allowance for inclement weather. However, it is important to note that most of the work is weather dependant and the determination of such an allowance is inherently subjective and cannot be precisely quantified. Weather patterns are unpredictable, and the variability in conditions makes it challenging to establish a definitive duration. Applying a subjective allowance may inadvertently impact the accuracy and reliability of the schedule, leading to potential discrepancies in project timelines. Also, within this section, it states that sufficient review time of documents for the CA/Owner is to be included in the CPS. As written, the Contractor is left to guess at what sufficient time is, and if they guess incorrectly it could result in the schedule not being approved. Accordingly, there needs to be a maximum time dictated in the GC for the CA/Owner to review these submissions, so the timeline is consistent when creating these schedules and there is no guesswork or subjectivity involved.</p>	
<p><b>25</b></p>	<p><b>Miller</b></p>	<p>GC 7.01.07.03.05 c iii. Associated tender item numbers; and iv.</p>	<p>After discussion with ORBA, ORBA agrees that Excel is the preferred</p>

		Associated tender item quantities - To show this information on the schedule/build the schedule, it would be very helpful if Contractors were provided digital Q sheets at the tender stage by MTO to quantify the work in each stage.	and expected format to be shared by MTO.
<b>26</b>	<b>Miller</b>	In this section, how should we handle a Lump Sum items? For example, a bridge deck may be 3 pours and 1 LS, do Contractors need to put 1/3 LS on each activity? Clarity should be given to define this and the process to avoid ambiguity and debate at the project level.	MTO will make this adjustment to add the wording of “where appropriate” at the end of c) (iii) and c) (iv) in this Clause GC 7.01.07.03.05(c).
<b>27</b>	<b>Miller</b>	What is the solution if an activity ID includes multiple items? For example, electrical work, we include 50 items into "intersection lighting".	MTO will make this adjustment to add the wording of “where appropriate” at the end of c) (iii) and c) (iv) in this Clause GC 7.01.07.03.05(c).
<b>28</b>	<b>Miller</b>	GC 7.01.07.04.01 – This suggested 7-day timeline works for small projects. On larger projects which are over \$5 million or have many activities to complete, this timeline is not long enough. This section does not specify the timeframe the CA has to notify the Contractor that the schedule is not conforming, a timeline is required here to ensure that we have a set and balanced process.	MTO will retain current GC update to maintain efficiency.

<p><b>29</b></p>	<p><b>Miller</b></p>	<p>GC 7.01.07.04.03 – This section does not specify the timelines which is an issue as section 0.5 below has a strict deadline of 30 Business days for a Contractor to produce a Baseline Schedule from the initial Critical path schedule submission. This section .03 requires timelines to ensure we have a defined process in place.</p>	<p>MTO will not introduce any CA review timelines for this round of updates and will review for future updates.</p>
<p><b>30</b></p>	<p><b>Miller</b></p>	<p>GC 7.01.07.04.03 c – With the open-ended resubmission wording, this should be amended with a plan for only one revision cycle within the schedule, with the expectation that all comments are addressed in a single, consolidated response. This approach would help streamline the process, reduce overall review time, and enhance efficiency of achieving acceptance.</p>	<p>MTO will not introduce any CA review timelines for this round of updates and will review for future updates.</p>
<p><b>31</b></p>	<p><b>Miller</b></p>	<p>GC 7.01.07.04.04 &amp; GC 7.01.07.04.05 – This section .04 does not specify the timeframe the CA has to respond by. A timeline is required to ensure we have a fair defined process. What happens if the MTO doesn't have a CA in the first 30 days (which has occurred in the past)? Section .05 states that “for any reason”, which would include the CA missing their timeline and going over the 30 business days in their review of the revised schedule submissions and resubmissions. In addition, the revised definition of the “Baseline Schedule”</p>	<p>MTO will not introduce any CA review timelines for this round of updates and will review for future updates.</p>

		<p>now renders its acceptance contingent solely upon the subjective determination of the Contract Administrator as to whether the schedule “conforms” to the contract requirements. This confers an excessive degree of discretionary authority upon the Owner’s representative, without objective criteria or procedural safeguards. As a result, the Contractor is exposed to the risk of arbitrary or prolonged approval processes, with no clear mechanism for recourse or resolution. Such an imbalance undermines the principles of fairness, transparency, and good faith that are fundamental to effective contract administration.</p> <p>The proposed provision stipulates that, should the Contractor fail to submit a schedule that the Contract Administrator unilaterally deems to be in conformance with the contract requirements within 30 business days, the Contractor shall be deemed in default of the contract. This represents an excessively punitive consequence for what is, in substance, an administrative obligation. It is particularly unreasonable given the potential for legitimate disagreement regarding</p>	
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		what constitutes “conformance.” The absence of objective standards in this context creates a risk of arbitrary enforcement and undermines the principles of proportionality, due process, and equitable contract administration	
<b>32</b>	<b>Miller</b>	GC 7.15.01 – Where the Government of Ontario’s slogan is “Keep Ontario Moving” and MTO wants projects expedited, why are they continuing to gate keep Sunday operations?	MTO will consider for future updates.
<b>33</b>	<b>Miller</b>	GC 8.02.04.07.01 – MTO has changed a “may” to a “shall” as it is to their benefit which increases a Contractors mandatory requirements. This is a continuation of the discussion topic at the beginning of this submission.	MTO will retain the language change to “shall”.

Number	Organization	Comment	Response
<b>1</b>	<b>Dufferin</b>	First and foremost, we write to express our concern with how the changes to the MTO General Conditions of Contract are being undertaken, as many of the proposed substantive changes were not discussed with the Ontario Road Builders Association (“ORBA”), MTO’s key stakeholder. Unlike the consultative process with stakeholders that was undertaken by the Ontario government with respect to the	Thank you for your review.

		<p>changes to the Construction Act and currently the proposed changes to the Rules of Civil Procedure, these proposed changes have been issued without meaningful consultation with stakeholders. We trust once comments are received by stakeholders, including those from ORBA, that the Ministry of Transportation, will set up discussions, in person, to discuss and address the comments received and concerns expressed.</p>	
<p><b>2</b></p>	<p><b>Dufferin</b></p>	<p>Similar to the CCDC contracts, the MTO General Conditions of Contract should support a fair risk allocation between the MTO and contractors. The proposed revision to GC 2.01.02, which was not circulated to ORBA, does not align with a fair risk allocation or standard form contracts such as the CCDC contracts. The original language which did not warrant interpretations of data or opinions in “subsurface” reports, was to align with the format of geotechnical reports which have separate sections for borehole data, on which the Contractor is entitled to rely, and interpretations and opinions, which the Contractor is not entitled to rely. This differentiation for subsurface reports has long been understood and accepted by geotechnical consultants, drillers, and others working in</p>	<p>MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>

		subsurface condition, as the reports contain a clear separated section with borehole data.	
<b>3</b>	<b>Dufferin</b>	The proposed revision to GC 2.01.02, which now extends this 'exclusion to reliance' to all other reports included in the Contract Documents is neither applicable or appropriate.	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>4</b>	<b>Dufferin</b>	First, ESA reports, the Foundation Investigation Report, hydrogeological reports, environmental reports, and other reports commissioned (and paid for) by the MTO to allow for a better understanding of the work, competitive pricing, and prompt commencement of the work following tender close do not follow the format of geotechnical reports, with the distinct separation of data and opinions. As such, this proposed broad form language would conceivably render all of these reports unreliable	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.
<b>5</b>	<b>Dufferin</b>	Second, the MTO spends money to obtain and commission these reports, specifically to clarify scope, which subsequently increases competition and cost savings to the MTO. By excluding reliance on these Contract Documents to Contractors, the MTO simply spends money without	MTO will revert back to the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.

		<p>achieving any benefit – what is then the point of the report? Further, providing a report on which the contractor cannot rely is inherently unfair – either the report will be used to show that the Contractor should have anticipated the conditions or used to show that the Contractor should not have relied upon it. If the MTO has concerns about reliance on particular reports, this should be addressed on a project specific basis, rather than as a blanket exclusion in the MTO General Conditions of Contract.</p>	
<p><b>6</b></p>	<p><b>Dufferin</b></p>	<p>Further, even after the COVID-19 pandemic, notably missing from the proposed changes, of which there are many in GC 3.07 Delay, is language to address a change in the law or a force majeure event. We remind the MTO of the challenges that the construction industry was faced with during COVID-19, and the significant efforts that were undertaken to keep construction projects progressing. At a minimum, similar to other standard industry contracts, there should be clarification for the Owner and the Contractor as to:</p> <ul style="list-style-type: none"> <li>• a change in law and</li> </ul>	<p>MTO has reviewed the comment and determined that no changes are necessary for this round of updates.</p>

		<ul style="list-style-type: none"> <li>• an event or circumstance outside the contractor's reasonable control.</li> </ul> <p>For example, with MTO projects in Northern Ontario where the risk of wildfires increase each year, threatening not only damage to property but employee safety, there is no provision that addresses this circumstance.</p>	
<b>7</b>	<b>Dufferin</b>	<p>Unlike vertical construction, where work can proceed during the winter by prioritizing the closure of the building or structure before winter commences, road infrastructure has a limited construction season. Road building also has numerous operational constraints to address environmental issues and maintaining traffic access. Weather and temperature constraints further impact progression of the work. As such, as soon as the operating season commences, the Contractor must be able to commence work as soon as possible and receive timely information from the Contract Administrator.</p>	MTO will review timelines for future updates of the GCs.
<b>8</b>	<b>Dufferin</b>	<p>Notably absent from the proposed changes are changes to assist with the foregoing. Despite the shortened</p>	MTO will review timelines for future updates of the GCs.

		operating season for road infrastructure, the Contract Administrator has no prescribed time within which they need to respond to matters and are only required to respond to matters “within a reasonable time”. This does not support “Building Highways Faster”.	
<b>9</b>	<b>Dufferin</b>	The more expedited means for the Contractor to obtain more timely information is in response to submissions, such as Working Drawings, product data, and samples according to the Contract Documents [Reference GC 3.01.05], which section requires the Contract Administrator to respond, “not longer than 5 Business Days”. However, the changes now proposed to exclude: “proposals for corrective actions and proposals for preventative measures” from this prescribed time period. We question why the MTO does not believe proposals for corrective actions or preventative measures require any time constraint as these proposals have direct impact on the Contractor’s ability to progress the work and mitigate ineffective measures.	MTO will not make further changes to GC 3.01.05 at this time however, will review for future updates. MTO will review if CAIS requirements can be reinforced.
<b>10</b>	<b>Dufferin</b>	If the Contractor seeks information or clarification from the Contract Administrator with	MTO will retain current GC update as the bullets are redundant as they are stated in the form.

		<p>respect to the work, the Contractor may use an Information Request, which the Contract Administrator is required to respond to within 20 days of receipt. However, the wholesale deletion of GC 7.01.08.02 and the mere insertion of the word “ambiguity” in GC 7.01.08.01 now suggest that a Contractor seeking information regarding:</p> <ul style="list-style-type: none"> <li>• A situation that is different than represented in the Contract Documents</li> <li>• A situation where the Contractor requires additional information may no longer be the subject of an Information Request.</li> </ul>	
<b>11</b>	<b>Dufferin</b>	<p>Information from the Contract Administrator is vital to progress the Work and this change, which was not discussed with ORBA, further frustrates the informational delay, which is already more generally pronounced on MTO projects. We request the insertion in GC 7.01.08.01 reference to the above bullets to avoid any misinterpretation in this regard.</p>	<p>MTO will review timelines for future updates of the GCs.</p>
<b>12</b>	<b>Dufferin</b>	<p>Delays by Contract Administrators in issuing timely requests for information are the subject matter of a number of delay claims and slow progression of</p>	<p>MTO will review timelines for future updates of the GCs.</p>

		<p>the work. This has been raised by ORBA with the MTO on numerous occasions. As such, we further respectfully request the MTO:</p> <ul style="list-style-type: none"> <li>• review what responses need to be expedited to avoid delaying the work;</li> <li>• amend the Contract to support this expedited response (a form of response table with information/instruction requests and prescribed response times would assist)</li> <li>• contractually bind their Contract Administrators to these prescribed deadlines.</li> </ul>	
<p><b>13</b></p>	<p><b>Dufferin</b></p>	<p>Contrary to the MTO's continued assertion and the proposed changes to further reinforce this assertion [Reference GC 3.14.13] Decisions to Compensation Requests are not offers to settle, they are decisions, akin to determinations, instructions or other directions made in respect to the Contract upon which the Contractor is entitled to rely, which are relevant to the matter in dispute, and are properly disclosable in any subsequent legal proceeding. They provide a documented and disclosable basis for the MTO's decision, which allows the</p>	<p>MTO will be removing Clause GC 3.14.13.</p>

		<p>Contractor to understand the issue in dispute and to make an informed decision as to how to respond and proceed. They simplify subsequent proceedings to only the relevant issues and documents and allow an Adjudicator or other decision-maker to similarly adjudicate a more simplified cost-effective process. The continued assertion by the MTO that the Decisions are “without prejudice” and subject to some type of privilege (of what type is unknown) undermines and frustrates an open and transparent dispute resolution process and is prejudicial to the Contractor.</p>	
<b>14</b>	<b>Dufferin</b>	<p>Another proposed change is to the availability of adjudication with only reference being to the Construction Act. This proposed change was not discussed with ORBA and we do not support this change.</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>15</b>	<b>Dufferin</b>	<p>First, the change from adjudication being available for 3 months after Contract Completion to as prescribed by the Construction Act [Reference GC 3.15.03.03] creates unnecessary</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023</p>

		<p>uncertainty and does not take into account how the MTO dispute resolution process is intended to progress, with a lengthy claim resolution process culminating in access to adjudication. As claims progress slowly as required by the Contract (and beneficially allow time for negotiation and amicable resolution), claims will now run up against this limitation.</p>	<p>language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>16</b>	<b>Dufferin</b>	<p>Second, the administration of MTO contracts with Contract Completion being a clearly understood and defined term, provides certainty to all parties (including those lower in the construction pyramid), with a clear ‘bright line’ for calculating the expiry of the adjudication period. General reference to the Construction Act creates unnecessary uncertainty for the MTO, the Contractor and all other claimants.</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i></p>
<b>17</b>	<b>Dufferin</b>	<p>Finally, the nature of a construction project is such that disputes may arise in and around its completion. Even if all disputes which arose during the course of the project have been resolved, issues may arise in and around Contract Completion over deficiencies, the actual</p>	<p>MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows:  <i>“Further to Section 13.5 of the Construction Act the expiry of the</i></p>

		date of Contract Completion and the assessment of liquidated damages. It does not make sense from a timeliness or cost efficiency standpoint for all parties to require such claims to proceed by way of ordinary litigation/arbitration.	<i>Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>18</b>	<b>Dufferin</b>	The original decision by the MTO to extend the availability of adjudication to 3 months after Contract Completion was a smart informed decision - one that recognized the realities of the project and the cost efficiencies available to all parties of adjudication over litigation. We respectfully request the MTO to revert to the original wording regarding the availability of adjudication.	MTO will revert back to original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 language with minor edit from 3 months to 90 Days as follows: <i>“Further to Section 13.5 of the Construction Act the expiry of the Adjudication period shall be 90 Days after Contract Completion.”</i>
<b>19</b>	<b>Dufferin</b>	The proposed changes introduce excessive obligations on the part of the Contractor as it relates to scheduling. Of concern is that the same detailed requirements apply regardless of project complexity or size, creating an unnecessary burden on smaller projects. The strict requirements to use only Primavera or MS Project (even for small projects) and to provide five hard copies of each schedule submission seem excessive and inconsistent with sustainability goals. On the other hand, on larger complex projects, where setting up a detailed schedule is an	MTO will retain the current GC update however, a possible change may be considered when MTO acquires appropriate software.

		obvious necessity and a heavy lift, the requirement to submit the schedule within 7 business days is extremely tight and is not reflective of the effort needed.	
<b>20</b>	<b>Dufferin</b>	Most troubling however, and similar to our previous comment regarding the need for timely review, no clear timeline for the Contract Administrator's review or approval of schedules is provided [Reference 7.01.07.04.02 and 7.01.07.04.03], despite the fact that the Contractor is in default of the Contract if it cannot produce a Baseline Schedule within 30 Business Days [Reference GC 7.01.07.04.05].	MTO will not introduce any CA review timelines for this round of updates and will review for future updates.
<b>21</b>	<b>Dufferin</b>	Other proposed provisions further create clarification issues in addition to imposing unnecessary obligations, for example: <ul style="list-style-type: none"> <li>• The definition of "Critical Path" path omits industry-standard float-based considerations (e.g., zero total float), which may cause disagreements with respect to interim milestones with liquidated damages.</li> <li>• The revised language now requires explicit weather allowances for each activity's duration, which suggests some type of quantitative analysis,</li> </ul>	After review, MTO will adopt new definition, as shown below: "Critical Path means the sequence of Controlling Operations whose cumulative duration determines the earliest possible completion of the Work."

		<p>whereas previously it more reasonably required only consideration for normal weather [Reference GC 7.01.07.02.06].</p> <ul style="list-style-type: none"> <li>• The revised language seems to imply that all activities must be resource-loaded, including tender item numbers and quantities, not just major quantities, which is an unnecessary burden for all projects, particularly for smaller ones.</li> </ul>	
<b>22</b>	<b>Dufferin</b>	<p>We welcome the MTO's desire to incorporate more schedule driven analysis into the project administration as it supports fact driven decision-making, however it needs to be flexible and reflect the size and complexity of the project. As such, we would suggest that the scheduling requirements be significantly pared back in the 'default' MTO General Conditions of Contract and that instead, a Special Provision be developed for incorporation into higher complexity projects. This would also assist in the 'roll-out' of these responsibilities, as there is significant variation in scheduling knowledge and training needed.</p>	<p>MTO will not introduce any CA review timelines for this round of updates and will review for future updates.</p>

**Comments received by email:**

Number	Organization	Comment	Response
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<p><b>1</b></p>	<p><b>CLOC</b></p>	<p>I know we previously discussed the use of will/shall. I believe we should only use "shall" for both MTO and the Contractor. While "shall" may imply a stronger obligation than "will", both terms have the same legal effect. For instance, if it says the CA "will" vs the CA "shall", the outcome will remain the same if the CA fails to follow through with their obligation. The only term that will change the outcome of a legal obligation is "may". As such, please revert the decision to use both will and shall and please use shall throughout the agreement for both parties.</p>	<p>MTO will revert the language to “shall” as from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023.</p>
<p><b>2</b></p>	<p><b>CLOC</b></p>	<p>GC 3.14.01 - it is unclear what a "perceived change" is. MTO should attempt to make the language in the GCs as clear as possible. Also, the GCs should be drafted in a way to avoid court by avoiding ambiguity. While it should be drafted for MTO's purpose, it should be clear. Please consider revising this to be clearer.</p>	<p>MTO will revert the original language from OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 and remove “perceived”.</p>
<p><b>3</b></p>	<p><b>CLOC</b></p>	<p>3.14.01 D - consider revising to: "Other compensation matters not expressly excluded."</p>	<p>MTO will make the change to add the wording “not expressly excluded”.</p>
<p><b>4</b></p>	<p><b>CLOC</b></p>	<p>3.14.05 - What does "proceed" with the work mean. Consider revising to: "Notwithstanding that the Compensation Request is not</p>	<p>MTO will edit and delete the text after ‘shall proceed with the Work,’ including ‘Furthermore....’.</p>

		resolved; the Contractor shall proceed with the Work in compliance with its contractual obligations under the Contract. MTO does not waive any right to enforce the Contractor's obligation under this Contract."	
<b>5</b>	<b>CLOC</b>	3.14.06 - it is unclear what "ought to be become aware" means. Consider revising to "ought to have been aware". What is missing here is a standard. For instance, by what standard should they have become aware? Consider revising to: "When a Contractor becomes aware, or ought to have been aware by reasonable diligence, that a Compensation Request may be required [.]"	MTO will make the change to add 'ought to be aware.'
<b>6</b>	<b>CLOC</b>	3.14.08 - consider including a number of days to which the extension can go on until (i.e. an extension up to a maximum of X days)	MTO will retain current update in the GC.
<b>7</b>	<b>CLOC</b>	3.14.09 (and throughout Contract) - Day is defined as a calendar day. However, the definition may need some more clarity. For instance, consider defining Day as "a day in a Calendar Month including Saturday, Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada - applicable to the Province of Ontario." If this change is made be sure to	MTO notes that Day and Business Days are already defined and there have been no prior issues.

		confirm how it may impact the definition of business day (if at all).	
8	<b>CLOC</b>	3.14.10 - consider revising to: "The Contractor assumes all risks resulting from failing to or choosing not to provide additional information requested by the Contract Administrator for the Compensation Request. Failure by the Contractor to provide additional information may impact the Decision being rendered in response to the Compensation Request."	MTO will retain the current GC update and change the word 'accepts' to 'assumes.'
9	<b>CLOC</b>	3.14.13 - consider revising to: "Any settlement offer referred to in the Decision are without prejudice and are subject to settlement privilege."	MTO agreed to make the changes.
10	<b>CLOC</b>	3.14.14 - Missing "upon" after agreed and instead of "subsequently" consider using "consequently."	MTO agreed to make the changes.
11	<b>CLOC</b>	3.15.01 - Add "shall" before mutually seek. (i.e., "[.] they shall mutually seek to resolve the dispute in a timely manner [.]")	MTO agreed to make the changes.
12	<b>CLOC</b>	3.15.01.02 - Add "in writing" after "rejected by the other party" (i.e., "[.]when the offer is rejected by the other party in writing or [.]")	MTO agreed to make the changes.
13	<b>CLOC</b>	3.15.01.03 - consider shortening to "All communications relating to the Compensation Request are without prejudice, confidential and subject to	MTO will retain the current GC update as shortening is changing the meaning.

		settlement privilege, and shall not be disclosed unless required by law."	
<b>14</b>	<b>CLOC</b>	3.15.01.04 - Similar to the comment above, it is unclear what "proceed" means. Consider adding "the Contractor shall proceed with the Work in compliance with its contractual obligations under the Contract. MTO does not waive any right to enforce the Contractor's obligation under this Contract."	MTO will retain the current GC update.
<b>15</b>	<b>CLOC</b>	3.15.02.11 - Consider revising to: "The Contractor's failure to provide any notices as required shall constitute a waiver of any Claim and the loss of compensation to the Contractor in respect of such Claim. Notwithstanding any waiver of a Claim, the Owner retains, in its sole discretion, the ability to provide the Contractor with an opportunity for an explanation for the Contractor's failure to provide a notice, which the owner may or may not accept. This provision shall not be construed to apply to any other Claim in this Contract."	MTO will make no changes from the original OPSS.PROV 100 – MTO General Conditions of Contract – April 2023 and will keep the current language.
<b>16</b>	<b>CLOC</b>	3.15.04.02 - It is advised that MTO include a time limit for how long MTO has to response to the proposed ADR method and indicate that MTO will provide a written response to accept or reject the proposed method of ADR. Generally, the language should	MTO will not introduce any timelines for this update.

		be clear to avoid interpretation issues and ambiguity.	
<b>17</b>	<b>CLOC</b>	When all revisions are made to the GCs, please send me [Arjun] a copy so I may work with William. Having CLOC's perspective is extremely useful for MTO since they interpret the GCs throughout various MTO litigation files. Their litigation perspective is valuable.	MTO will share a copy.

Number	Organization	Comment	Response
<b>1</b>	<b>MTO (QA)</b>	<p>Edit CAGC 7.08.06 (d):</p> <p>d) Materials with a combined payment factor where one or more attributes are less than 1.000, “rejectable”, or not within the upper and lower range, are to be considered deficient (i.e.: for a lot of asphalt, if the individual payment factor for “Air Voids” was 0.9834, “Compaction” was 0.9912, “4.75mm Sieve” was “rejectable” and the overall payment factor was 0.9751, this lot of HMA would be considered deficient. A non-conformance</p>	MTO will edit CAGC 7.08.06(d).

		<p>report would be required for this lot noting the payment factor less than 1.000, Compaction, Air Voids and the 4.75mm sieve Gradation). Occurrences are counted for each attribute.</p> <p>We would administer based on the gradation being rejectable (not the individual sieve), I just put the 4.75mm sieve as an example, but I see in the highlighted section that it could infer that each sieve would be treated individually.</p>	
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Number	Organization	Comment	Response
1	<b>MTO (Structures)</b>	<p>There is a major conflict in the GCs with respect to responsibility for construction staging and sequencing, which becomes critically important with respect to structures.</p> <p>GC 7.01.03 Control and Responsibility reads as follows:</p>	MTO will consider updating in future GC.

		<p>.01 The Contractor shall have complete control of the Work and shall effectively direct, supervise, and undertake quality control activities for the work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work.</p> <p>This reads as if it permits the contractor to make changes to sequencing/ staging at will, but that is not acceptable for structural work, especially rehabilitation work that includes critical sequencing of operations laid out in the contract drawings. This shouldn't rely on an order of precedence to be made clear.</p> <p>The GCs actually do refer to changing the staging as a design change elsewhere. Refer to below:</p> <p>Design Change means an alteration to a specified physical feature of a product or to the construction staging requirements that does not adversely affect the performance of the facility, and may include the use of an Alternative Type of Material that</p>	
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		<p>changes the physical dimensions of a product.</p> <p>GC 3.11.03.05 Proposals for Method Changes goes on to say:</p> <p>When the Contractor proposes to change the construction staging scheme identified in the Contract Documents, and where these changes are deemed by the Contract Administrator to be a significant departure from the Contract Documents, the Contractor shall submit four copies of a traffic management plan that....</p> <p>I think the problem arises in the common understanding of the language staging being related to shifting traffic around and not how it is commonly used for bridges related to sequencing the work. “Staging” and “sequencing” are used somewhat interchangeably for structures, however it might be better understand that sequence means the strict order of operations of work (I.e. Removal asphalt, jack bridge, etc) and construction staging is generally more universally understood to mean the global project staging. It needs to be made clear in the GCs that when</p>	
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		<p>staging or a sequence for structural construction is specified in the contract documents, it is part of the contract and shall be followed, otherwise the change process needs to be followed as described. We are also working on notes in the Structural Manual to make it clear that operations that can be carried out at anytime (e.g slope paving repairs) shall be specified as such in the contract drawings.</p>	
<p><b>2</b></p>	<p><b>MTO (Structures)</b></p>	<p>GC 3.11.03.05 Proposals for Method Changes goes on to say:</p> <p>When the Contractor proposes to change the <b>construction staging scheme</b> identified in the Contract Documents, and where these changes are deemed by the Contract Administrator to be a significant departure from the Contract Documents, the Contractor shall submit four copies of a traffic management plan that....</p> <p>I think the problem arises in the common understanding of the language staging being related to shifting traffic around and not how it is commonly used for bridges related to sequencing the work. “Staging” and “sequencing” are used somewhat</p>	<p>MTO will consider updating in future GC.</p>

		interchangeably for structures, however it might be better understand that sequence means the strict order of operations of work (ie. Removal asphalt, jack bridge, etc) and construction staging is generally more universally understood to mean the global project staging. It needs to be made clear in the GCs that when staging or a sequence for structural construction is specified in the contract documents, it is part of the contract and shall be followed, otherwise the change process needs to be followed as described. We are also working on notes in the Structural Manual to make it clear that operations that can be carried out at anytime (e.g slope paving repairs) shall be specified as such in the contract drawings.	
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Number	Organization	Comment	Response
1	<b>MTO (CMO)</b>	For GC 1.07 Definitions – Written Notice of Lien, amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.
2	<b>MTO (CMO)</b>	For GC 3.15.02.01 Adjudication – amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.

3	<b>MTO (CMO)</b>	For GC 3.15.02.04 Adjudication - amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.
4	<b>MTO (CMO)</b>	For GC 4.10.03 Termination of the Contract - amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.
5	<b>MTO (CMO)</b>	For GC 8.02.04.01 Progress Payment Certificate – amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.
6	<b>MTO (CMO)</b>	For GC 8.02.04.06 Substantial Performance Payment and Annual Statutory Holdback Release Payment – amendment of NSSP CMO0008 changes need to be made	MTO will adjust GC to reflect NSSP CMO0008.
7	<b>MTO (CMO)</b>	For GC 8.02.04.11 Owner’s Set-Off – amendment of NSSP CMO0008 changes need to be made.	MTO will adjust GC to reflect NSSP CMO0008.