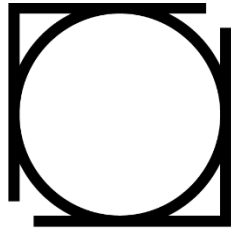


OAA-OGCA Take-Over Procedures

FOR USE ON PROJECTS UNDER THE *CONSTRUCTION ACT*, R.S.O. 1990, c.C.30



Ontario Association
of Architects



OGCA
WE BUILD ONTARIO

RECOMMENDED PROCEDURES CONCERNING
SUBSTANTIAL PERFORMANCE, READY-FOR-TAKEOVER,
AND COMPLETION TAKE-OVER OF CONSTRUCTION PROJECTS

OAA-OGCA Document 100-2026

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RECOMMENDED PROCEDURES CONCERNING SUBSTANTIAL PERFORMANCE, READY-FOR-TAKEOVER, AND COMPLETION OF CONSTRUCTION PROJECTS

Short Title: This Document may be referred to as "OAA-OGCA TAKE-OVER PROCEDURES (CA)" or "Document 100-2026"

Application

This document covers procedures for projects governed by the current version of the *Construction Act*. Depending on the circumstances, an earlier version of the legislation (including the former *Construction Lien Act*), may apply. Refer to the transition provisions in the *Construction Act* to determine which legislation and which version applies to the project. Parties should seek legal advice if they are uncertain about the applicable legislative regime.

Introduction

The purpose of this document is to recommend standard procedures to facilitate the closing stages of a construction *contract* and the take-over of the project by the Owner from the Contractor.

These procedures have been prepared jointly by the Ontario Association of Architects and the Ontario General Contractors Association (the "Associations"), have been reviewed by legal counsel, and subsequently approved by the Associations' governing bodies. This document is intended as an educational guideline for all the stakeholders in the project including the Owner, Consultants, Contractors and Subcontractors. The Associations recommend these procedures be used by their respective members and Owners/Clients.

The Guide to Project Close-out Procedures was created in 2010 to be used with the 2007 version of Document 100. It was not updated to reflect the requirements of the *Construction Act* when Document 100 was updated in 2018. The OAA and OGCA decided not to update it for the 2025 version of Document 100. The Guide is no longer available and should be considered obsolete. However, two of the timelines from the Guide were deemed helpful and have been included herein as Appendices.

The *Construction Act* was updated effective January 1, 2026, which necessitated updates to Document 100, resulting in this 2026 version.

The Associations also recommend that these procedures be coordinated with and form a part of the construction *contract* documents from the outset by reference to Document 100-2026.

Where a *contract* is in progress which does not provide such procedures, the Associations recommend that the construction *contract* be amended by agreement between the contracting parties to include these procedures to facilitate the orderly take-over of the project in the interests of all stakeholders.

General Notes

The procedures outlined herein have been updated to reflect the *Construction Act* as in force on January 1, 2026, (hereinafter, the "C.A.")¹. The procedures apply to construction *contracts* governed by the current version of the C.A. Refer to the Application section above regarding the transition provisions and determination of the applicable legislative regime. These procedures are therefore primarily applicable to Ontario projects where the C.A. applies, but they may be adapted for use on projects which fall outside these bounds.

The concept of "Ready-for-Takeover" as pioneered in CCDC 2-2020 was included herein for the first time in 2025. Ready-for-Takeover is being added to other CCDC documents as they are updated.

In most cases, the architect is the Consultant identified in the CCDC contracts, and in most cases, the Consultant is also the *payment certifier*, but the *payment certifier* may also be a third party. Where the contractual responsibilities differ from this most common arrangement, the application of this document will need to be suitably modified.

¹ All references are to the Construction Act, R.S.O. 1990, c C.30 and the Regulations thereunder as amended as of the date of publication.

Definitions

Except for Owner/Client, Consultant, Contractor, Ready-for-Takeover, Subcontractor, Trade Contractor, and Work which are defined in the *contract* as appropriate, and “ready for use”, all other terms and concepts used in this document that are defined in the C.A. are italicized for convenience.

Note: The concept of substantial performance in the C.A. is referred to in CCDC contracts as “Substantial Performance of the Work”.

Construction Trade News Website

The definition of the term “*construction trade news website*” appears in Section 1 of O. Reg. 304/18 to the C.A., which reads as follows:

“construction trade news website” means any of the following websites,

- (a) The Daily Commercial News.
- (b) Link2Build.
- (c) Ontario Construction News.”

Contract

The definition of the term “*contract*” appears in Section 1(1) of the C.A., which reads as follows:

“contract” means the contract between the owner and the contractor, and includes any amendment to that contract; (“contract”)

Note: A contractor is anyone who enters into a contract with an owner to provide services or materials to an improvement. This includes consultants, not just construction contractors.

Contract Price

The definition of the term “*price*” appears in Section 1(1) of the C.A., which reads as follows:

“price” means,

- (a) the contract or subcontract price,
 - (i) agreed on between the parties, or
 - (ii) if no specific price has been agreed to between them, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract, except as otherwise provided by the regulations and
- (b) any direct costs incurred as a result of an extension of the duration of the supply of services or materials to the improvement for which the contractor or subcontractor, as the case may be, is not responsible; (“prix”)

Note: While the January 1, 2026, amendments to the C.A. introduce the qualifier “except as otherwise provided by the regulations” to the definition of “price”, no corresponding regulatory provisions have been enacted yet to modify or elaborate on this definition. In practice, the statutory definition of “price”, which presumes an identifiable contract or subcontract price, does not readily align with contract delivery models such as construction management, cost plus, or integrated project delivery arrangements, where no initial fixed price is established.

Stakeholders should monitor future regulatory updates, as any changes to this definition are likely to be implemented through the regulations rather than through further statutory amendment to the C.A.

Payment Certifier

The definition of the term “*payment certifier*” appears in Section 1(1) of the C.A., which reads as follows:

““payment certifier” means an architect, engineer or any other person upon whose certificate payments are made under a contract or subcontract; (“personne qui autorise le paiement”).”

For convenience, since it is a new term, the definition of Ready-for-Takeover follows:

Ready-for-Takeover

The definition of the term “Ready-for-Takeover” appears in the DEFINITIONS section of the CCDC 2-2020 contract, which reads as follows:

““Ready-for-Takeover” shall have been attained when the conditions set out in paragraph 12.1.1 of GC 12.1 – READY-FOR-TAKEOVER have been met, as verified by the Consultant pursuant to paragraph 12.1.4.2 of GC 12.1 – READY-FOR-TAKEOVER.”

Note: Users should review the construction *contract* for the *project* to confirm the applicable definition, including any supplementary conditions.

Ready for Use

The term “ready for use” appears in Section 2(1) of the C.A. as part of the concept of substantial performance but is not itself explicitly defined.

Ready for use is a concept used in determining whether substantial performance has been reached. Its meaning depends on what is being constructed under the contract in question. It may be the entire project under a general contract or only one trade’s contract work under a construction management arrangement. Ready for use for the purposes intended is normally when it is ready for the owner to occupy and fit out.

In the case of a hospital, for instance, ready for use is not when it is ready for patients to move in or clinical procedures to begin, rather, it is when it is ready for the hospital to occupy and make ready for them to initiate their fit out and training, etc. If it is the whole project, then the test is usually met once the new space is ready for occupancy. If it is only a trade contract, then the test is generally whether the trade’s work is functional (e.g. mechanical) or ready for the next trade to start or continue their work.

If the contract is for a shell only, then ready for use is typically when the shell contract is close enough to completion that the tenant’s contractor can start the tenant fit-out, whether or not the fit-out actually starts.

Significant Statutory Requirements

- a) The concept of "basic holdback" is set out in Section 22(1) of the C.A. which reads as follows:
 - “(1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback in respect of the supplied services or materials have expired or been satisfied, discharged or otherwise provided for under this Act.”
- b) The concept of "substantial performance" and “substantially performed” is set out in Section 2(1) of the C.A. which reads as follows:
 - “(1) For the purposes of this Act, a contract is substantially performed,
 - (a) when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended; and

- (b) when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than,
 - (i) 3 per cent of the first \$1,000,000 of the contract price,
 - (ii) 2 per cent of the next \$1,000,000 of the contract price, and
 - (iii) 1 per cent of the balance of the contract price."
- c) Attention is drawn to Section 2(2) of the C.A. which reads as follows:
 - "(2) For the purposes of this Act, where the improvement or a substantial part thereof is ready for use or is being used for the purposes intended and the owner and the contractor agree not to complete the improvement expeditiously, the price of the services or materials remaining to be supplied and required to complete the improvement shall be deducted from the contract price in determining substantial performance."
- d) The concept of "separate holdback for finishing work" is set out in Section 22(2) of the C.A. which reads as follows:
 - "(2) Where the contract has been certified or declared to be substantially performed but services or materials remain to be supplied to complete the contract, the payer upon the contract, or a subcontract, under which a lien may arise shall retain, from the date certified or declared to be the date of substantial performance of the contract, a separate holdback equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the contract or subcontract, until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act."
- e) The concept of "completed" is set out in Section 2(3) of the C.A. which reads as follows:
 - "(3) For the purposes of this Act, a contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion, correction of a known defect or last supply is not more than the lesser of,
 - (a) 1 per cent of the contract price; and
 - (b) \$5,000."

Although the term does not appear in the C.A. this concept is commonly referred to as "deemed completion".
- f) Multiple improvements under a *contract* are considered in Section 2 of the C.A. which reads as follows:
 - "(5) For the purposes of this Act, if more than one improvement is to be made under a contract and each of the improvements is to lands that are not contiguous, then, if the contract so provides, each improvement is deemed to be under a separate contract."
- g) Amendments to the C.A. effective January 1, 2026, make annual release of statutory holdback mandatory for all *contracts* (subject to the C.A., including any preserved or perfected liens) and include transition provisions addressing the application of these requirements to certain existing *contracts*. This document does not address these transition provisions in detail and users should refer to the C.A. and the Application section of this document to determine the applicable legislative regime. Where annual release of statutory holdback occurs under a contract, the parties should note that immediately following each instance of such annual release, the amount of the statutory holdback against which liens can be claimed is reduced accordingly. For clarity, the annual release of statutory holdback does not, in itself, extinguish lien rights in respect of services or materials supplied prior to the release (subject to the time limits and other requirements under the C.A.)
- h) Amendments to the C.A. effective January 1, 2026, revoked Section 27.1 which allowed the withholding of some or all of a statutory holdback release upon publication of a Notice of Non-Payment of Holdback. Under the current C.A., a payer is required to release all the applicable statutory holdback once the applicable lien expiry period has expired, without any set off, subject to the C.A. Parties should be aware that Section 30 of the C.A. addresses the treatment of statutory holdback in circumstances involving

termination or abandonment. Users should review Section 30 carefully and seek legal advice where such circumstances arise.

- i) For clarity, the statutory obligation to release statutory holdback arises upon the expiry of the applicable lien period in accordance with the C.A. and is not contingent upon the issuance of an invoice, application for release of statutory holdback, or certificate.

STAGE 1 CONTRACT SUBMISSIONS

- 1.1 Submit all documentation required under the *contract*.

SUBSTANTIAL PERFORMANCE

STAGE 2 CONTRACTOR'S INSPECTION FOR SUBSTANTIAL PERFORMANCE

- 2.1 When the Contractor is of the opinion that the requirements of substantial performance as defined in Section 2(1) the C.A. and as set out above are met, the Contractor shall give written notice of this to the Owner and *payment certifier* prior to the anticipated date that it believes substantial performance will be met, or as otherwise provided in the contract. In the application for substantial performance, the Contractor (or a Trade Contractor in the case of a trade contract) shall include the following steps:

Step 1: A statement explaining why a substantial part of the work is ready for use or is being used for the purposes intended.

Step 2: An itemized breakdown of the current contract value adjusted as outlined, based on the definition of substantial performance as defined in Section 2(1)(b) and 2(2) of C.A.

Step 3: A detailed list of any deferred work (being services or materials agreed not to be completed expeditiously such as, for example, seasonal work, recent or incomplete changes, or other agreed deferrals).

Step 4: A detailed list of any incomplete work and/or deficiencies.

It should be noted that one of the tests for substantial performance may be based on the cost required to complete the work, rather than the latest certificate for payment, as determination of substantial performance may not coincide with the payment cycle. The financial calculations in Section 2(1)(b) of the C.A. shall be adjusted according to the Step 3. Additionally, the incomplete work and/or deficiencies outlined in Step 4 should be compared to the calculated amount from Step 2. If the remaining work is less than the calculated amount from Step 2, and a substantial part of the work is "ready for use" or is being used for the purposes intended, then the tests for substantial performance have been met.

- 2.3 The inspection team shall be comprised of:

- (a) the Contractor and/or the Contractor's representative(s);
- (b) the prime mechanical and electrical Subcontractors and/or their representative(s); and
- (c) any other Subcontractors and/or Subcontractors' representative(s) whose participation may be required by the Contractor in order to fully determine the Work to be completed.

- 2.4 Upon completion of this inspection a list of all uncompleted and unsatisfactory work which is identified during the inspection shall be prepared by the Contractor and shall be issued to all members of the inspection team as well as the Consultant and *payment certifier*.

- 2.5 Contractors may elect not to go through Stages 2 and 3 for substantial performance certification and publication of same, and may apply for *contract* completion as defined in the C.A. and as set out above. They shall proceed to Stage 6 provided the requirements under Stage 3.2(b) have been satisfied; and in this case there shall be only one lien expiry period and, consequently, only one certification for statutory

holdback release (as there will be no *separate holdback for finishing work*). Where no certificate of substantial performance is obtained and published, certification for the purpose of the release of the *basic holdback* shall occur upon the conclusion of the 60 day lien expiry period, barring any liens, which commences on the day the *contract* is deemed completed by the *payment certifier* (or Owner and Contractor jointly). This section applies in circumstances where the *contract* has not been abandoned or terminated earlier.

STAGE 3 CONTRACTOR'S APPLICATION FOR A CERTIFICATE OF SUBSTANTIAL PERFORMANCE

- 3.1 When the Contractor has carried out the steps in Stage 2 and has determined that the requirements for substantial performance of the *contract* have been met, the Contractor may, subject to the requirements of the *contract*, then make a written application to the *payment certifier* for a certificate of substantial performance. If there is no *payment certifier*, at the request of the Contractor, the Owner and the Contractor shall make the determination jointly and shall both sign the certificate of substantial performance.
- 3.2 This application shall include:
- (a) A statement to the Owner through the *payment certifier* to the effect that:
 - (i) the *contract* is substantially performed, and
 - (ii) the phase of the performance of the balance of the *contract* is in process and completion is scheduled for the day of, 20..... Where the balance of the *contract*, or a part or parts thereof, cannot be performed forthwith, as has been agreed by the Owner and the Contractor, the Contractor's statement shall contain a completion date for each phase of the balance of the *contract*.
 - (b) The submission of all:
 - (i) documentation required under the *contract*, and
 - (ii) all maintenance materials required under the *contract*, including an acknowledgement form to be signed by the Owner listing the materials provided.
 - (c) A statement of outstanding work for completion, with the cost values of:
 - (i) work to be completed including correction of unsatisfactory work;
 - (ii) outstanding items referred to in Stage 3.2(b); and
 - (iii) work which the Owner and the Contractor agree in writing is to be deferred to a later date.
 - (d) An application for release of statutory holdback showing the amount of *basic holdback* monies due for release and payment following the end of the lien expiry period under the C.A. after the issuance and publication of the certificate of substantial performance.
 - (e) A CCDC 9A 'Statutory Declaration' and Workplace Safety & Insurance Board (WSIB) Certificate of Clearance are required before the payment covering the release of *basic holdback* can be released.
- 3.3 After submission of this application:
- (a) Where there is a *payment certifier*, within 10 calendar days, or as stipulated otherwise in the *contract* documents, of the receipt of the Contractor's completed application for a certificate of substantial performance, the *payment certifier* shall carry out a review and assessment of the work, to determine whether the *contract* has been substantially performed. The Owner may take part in the review but the determination as to whether the *contract* has been substantially performed is to be made by the *payment certifier*. Where there is no *payment certifier*, subject to the provisions of the *contract*, the Owner and Contractor shall jointly make the determination.

- (b) Within 7 calendar days or as stipulated otherwise in the *contract* documents, of the *payment certifier's* review and assessment, the *payment certifier* shall notify the Contractor of its determination as to whether or not the *contract* has been substantially performed. In the event the *payment certifier* determines that the *contract* has not been substantially performed, the notice shall also provide the Contractor with a detailed explanation as to why such determination has been made.
 - (c) In the event that the Contractor's application for a certificate of substantial performance is not accepted by the *payment certifier*, the Contractor shall complete the work necessary to achieve substantial performance of the *contract* as previously defined and the Contractor shall submit a subsequent application for a certificate of substantial performance thereafter.
- 3.4 The Contractor's application for a certificate of substantial performance and the Contractor's application for the release of *basic holdback* shall be separate from but may coincide with the applications for regular monthly progress payments and the latter shall continue to be made in the ordinary course throughout the duration of the *contract*.

STAGE 4 CERTIFICATE OF SUBSTANTIAL PERFORMANCE

- 4.1 If the *payment certifier* determines that the *contract* has been substantially performed, the *payment certifier* (or where there is no *payment certifier*, the Owner and Contractor jointly) shall certify the substantial performance of the *contract* by preparing and signing a certificate in Form 9 prescribed by the C.A., a copy of which may be found in Appendix A hereto. The *payment certifier* or the Owner and Contractor jointly, as the case may be, shall set out in the certificate the date on which the *contract* was substantially performed. The *payment certifier* shall give a copy of the certificate to the Owner and to the Contractor within 7 days of signing it.
- 4.2 The Contractor shall publish a copy of the certificate of substantial performance once in one of the *construction trade news websites* prescribed in O. Reg. 304/18 and shall provide the *payment certifier* with proof of the date of publication. The day following the date of publication shall be the date of commencement of the 60-day lien expiry period prior to release of the *basic holdback* monies.
- 4.3 The Contractor's and Contractor's Subcontractors' forces shall continue to work towards Ready-for-Takeover (where applicable) and completion during and after the 60-day period mentioned in Stage 4.2.

(NOTE: See Appendix A hereto for sample of the prescribed form of the certificate of substantial performance.)

STAGE 5 CERTIFICATE FOR RELEASE OF BASIC HOLDBACK MONIES

- 5.1 The *payment certifier* shall prepare the certificate for release of the *basic holdback* monies and promptly upon receipt of the application for release of statutory holdback and the documentation as listed in Stages 4.2 and 3.2(d) above, required for release of these monies, issue the certificate to the Owner, with a copy to the Contractor. The certificate shall be dated for payment one day after the date on which the 60-day lien expiry period concludes.
- 5.2 Upon issuing the certificate for release of the *basic holdback* monies, the *payment certifier* shall advise the Owner to verify that no liens have been preserved as at the end of the 60-day lien expiry period.
- 5.3 The *payment certifier* shall simultaneously notify the Owner that, provided no liens exist, release of *basic holdback* shall be due and payable within 14 days after the conclusion of the 60-day lien expiry period.
- 5.4 The *payment certifier's* certificate for the release of the *basic holdback* monies shall be in the amount shown in the Contractor's application, as approved by the *payment certifier*, for the certificate of substantial performance.

- 5.5 Before the expiry of the 60-day lien expiry period, the *payment certifier* shall advise the Owner and the Contractor to review all forms of insurance to ensure adequate coverage for all parties. However, release the statutory holdback arises by operation of statute and is not contingent upon review of insurance coverage.
- 5.6 The release of any monies which are due and payable after the release of the *basic holdback* shall occur in accordance with the terms of the *contract* and the provisions of the C.A. As provided in some contracts, the Owner may be asked by the Contractor to place the *basic holdback* in a separate bank account in the joint names of the Owner and the Contractor 10 days prior to the expiry of the 60-day period unless previously placed in a separate trust account.
- 5.7 As of January 1, 2026, owners must release statutory holdback each year after the contract anniversary, provided there are no outstanding liens that prevent payment. The key features of this new annual release of holdback regime are as follows:
- (i) Not later than 14 days after each contract anniversary, the owner must publish a notice of annual release of holdback, in the prescribed form, stating the amount to be paid and the intended payment date.
 - (ii) Between 60 and 74 days after publishing that notice, the owner must pay the contractor all accrued statutory holdback for services or materials supplied by the contractor during the year immediately before the anniversary, unless a preserved or perfected lien in respect of the contract remains in place. After receiving that payment, the contractor must pay accrued statutory holdback to its subcontractors within 14 days, unless a preserved or perfected lien in respect of the subcontract remains in place.
 - (iii) Subcontractors have the same 14-day obligation to pay their sub-subcontractors, with necessary modifications. If payment is not made because of a preserved lien, the payer must release the statutory holdback not later than 14 days after the lien is discharged, vacated, satisfied, or declared expired.

Note: The obligation to release statutory holdback under the C.A. arises by operation of the statute and is not conditional on the submission of an invoice, application for release of holdback, or the issuance of a certificate. The procedures in this Stage 5 are included as recommended best practice to assist parties in administering the holdback release process and may be adopted contractually for administrative purposes.

STAGE 6 DETERMINATION OF READY-FOR-TAKEOVER

- 6.1 The provisions of this stage shall apply if the *contract* contemplates Ready-for-Takeover, such as is the case in the CCDC 2-2020 or if Ready-for-Takeover has been added to the *contract* through supplementary conditions.
- 6.2 The prerequisites for attaining Ready-for-Takeover are as defined in the *contract*.
- 6.3 When the Contractor considers that the prerequisites have been met and the Work is Ready-for-Takeover, the Contractor shall deliver to the Consultant and to the Owner for review a comprehensive list of items to be completed or corrected, together with a written application for determination of Ready-for-Takeover.
- 6.4 After receipt of the written application for determination of Ready-for-Takeover, the Consultant will review the Work to verify the validity of the application and shall promptly, and in any event, no later than 10 calendar days after receipt of the Contractor's list and application:
- .1 advise the Contractor in writing that the Work is not Ready-for-Takeover and give reasons why, or
 - .2 confirm the date of Ready-for-Takeover in writing to each of the Owner and the Contractor.
- 6.5 Immediately following the confirmation of the date of Ready-for-Takeover, the Contractor, in consultation with the Consultant, shall establish a reasonable date for finishing the Work.

- 6.6 The Contractor's warranty period under the *contract* is typically one year from the date when Ready-for-Takeover has been attained or as stipulated otherwise in the *contract* documents.

STAGE 7 DEEMED COMPLETION OF THE CONTRACT

- 7.1 (a) When the Contractor is satisfied that the *contract* is *completed* as defined in Section 2(3) of the C.A., and after making an inspection, the Contractor shall forward the inspection report and make a written request to the *payment certifier* for a review and assessment of the Work. The *payment certifier* shall, in turn, notify the Owner of the Contractor's request. The Contractor's request shall include a statement as to the amount of statutory holdback monies payable in accordance with the C.A., and not previously released in accordance with the C.A., for:

- I. the *separate holdback for finishing work* due for release and payment upon expiry of the 60-day period from the date the *contract* is deemed *completed* – where *basic holdback* has already been released, or
- II. the full amount of the retained statutory *holdback* for the Work due for release and payment upon expiry of the 60-day period from the date the *contract* is deemed *completed*.

This review and assessment by the *payment certifier* shall be carried out within 10 calendar days of the Contractor's request, or as stipulated otherwise in the *contract* documents, and shall constitute the review and assessment which is a precondition to the issuance of the statement of deemed completion and issuance of the certificate for payment for the Work performed to the date of the deemed completion.

- (b) The Contractor shall submit to the Consultant for review and approval the balance of the documents required under Stage 1.
- (c) With respect to the Contractor's application for release of statutory holdback, there are two likely scenarios:
 - I. Where substantial performance has been certified, the Contractor shall submit to the *payment certifier* an application for release of the statutory holdback that has not already been released in accordance with the C.A.
 - II. Where substantial performance has not been certified, the Contractor shall submit to the *payment certifier* an application for the release of the full amount of the unreleased statutory holdback.
- (d) As an administrative best practice, and without limiting any statutory payment obligations under the C.A., the Contractor shall submit with the application for release of statutory holdback a Workplace Safety & Insurance Board (WSIB) Certificate of Clearance and a CCDC 9A 'Statutory Declaration' declaring that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Contractor in the performance of the work have been paid up to and including the latest progress payment received (except for (1) holdback monies properly retained, (2) payments deferred by agreement, or (3) payment withheld by reason of legitimate dispute which has been identified to the party or parties from whom payment has been withheld).

- 7.2 The final review of the Work for the purpose of issuing a statement of deemed completion shall be conducted by:

- (a) the *payment certifier* and such Consultants as they may require;
- (b) the Contractor, and any Subcontractors deemed necessary by the Contractor; and
- (c) the Owner, at their option.

- 7.3 Within 7 calendar days of the review and assessment, or as stipulated otherwise in the *contract* documents, the *payment certifier* shall notify the Contractor of approval of the Contractor's application by issuance of a statement of deemed completion which will establish the date of deemed completion. In the

event that the *payment certifier* does not determine the *contract* to be deemed complete, the *payment certifier* shall so notify the Contractor in writing within 7 calendar days of the review, or as stipulated otherwise in the *contract* documents, and shall provide to the Contractor in writing the reasons for such determination.

- 7.4 If, as a result of the review and assessment of the Work, it is determined there is still incomplete Work or there are deficiencies in the Work performed by the Contractor or its Subcontractors, the Consultant shall provide to the Contractor a list of such incomplete Work or deficiencies.
- (a) In the event that the Contractor's application for a statement of deemed completion is accepted, such list shall constitute the final deficiency list for the purpose of acceptance of the Work under the *contract*. If the Contractor's application for a statement of deemed completion is not accepted, the *payment certifier* may issue a final list of deficiencies upon subsequently accepting a further application for a statement of deemed completion.
 - (b) If the correction of such deficiencies or completion of remaining Work is valued as the lesser of 1 per cent of the contract price or \$5,000, then the *contract* shall be deemed completed as defined in Section 2(3) of the C.A. The 60-day lien expiry period shall then commence. The release of this statutory holdback does not absolve the Contractor from correcting the deficiencies.
- 7.5 Incomplete Work and deficiencies shall be corrected by a date mutually agreed upon between the Consultant and the Contractor, unless a specific date is otherwise required by the *contract*. Upon rectification of the deficiencies, a further review and assessment by the Consultant shall be called for by the Contractor and such review and assessment shall take place within 7 calendar days from the date of the Contractor's request.

(NOTE: See Appendix B hereto for sample form of a Statement of Contract Deemed Completed)

STAGE 8A CERTIFICATE FOR RELEASE OF MONIES FOR FINISHING HOLDBACK

- 8.1 Upon receipt of documentation under 7.1 above, and issuance of the *payment certifier's* statement of deemed completion, the *payment certifier* shall prepare the certificate for release of the monies retained as a *separate holdback for finishing work*. This certificate shall be dated one day after the expiry of the 60-day period which commences on the day following the date the *contract* is deemed to have been *completed*.
- 8.2 Upon issuing the certificate for release of monies retained as a *separate holdback for finishing work*, the *payment certifier* shall advise the Owner to verify that no liens have been preserved as at the end of the 60-day lien expiry period.
- 8.3 The *payment certifier* shall simultaneously notify the Owner that, provided no liens have been preserved, release of the monies for the *separate holdback for finishing work* is due and shall be payable one day after termination of the 60-day lien expiry period.
- 8.4 The *payment certifier's* certificate for release of the monies retained as a *separate holdback for finishing work* shall be in the amount requested in the Contractor's application for a statement of deemed completion, as approved by the *payment certifier*.

STAGE 8B CERTIFICATE FOR RELEASE OF MONIES FOR HOLDBACK

- 8.1 Upon receipt of documentation under 7.1 above, and issuance of the *payment certifier's* statement of deemed completion, the *payment certifier* shall prepare the certificate for release of the monies retained as statutory *holdback* for the Work and which have not otherwise already been released in accordance with the C.A. This certificate shall be dated one day after the expiry of the 60-day lien expiry period which commences on the day following the date the *contract* is deemed to have been *completed*.

- 8.2 Upon issuing the certificate for release of monies retained as statutory *holdback* for the Work, the *payment certifier* shall advise the Owner to verify that no liens have been preserved as at the end of the 60-day period lien expiry.
- 8.3 The *payment certifier* shall simultaneously notify the Owner that, provided no liens have been preserved, release of the monies for the *holdback* for the Work is due and shall be payable no later than 14 days after termination of the 60-day lien expiry period.
- 8.4 The *payment certifier's* certificate for release of the monies retained as holdback for the Work shall be in the amount requested in the Contractor's application for a statement of deemed completion, as approved by the *payment certifier*.

STAGE 9 FINAL PAYMENT CERTIFICATE

- 9.1 At the completion of Stage 7, when the Consultant and *payment certifier* are satisfied that all deficiencies and uncompleted work, as established under Stage 7.4, have been corrected, and upon receipt of the Contractor's proper invoice for final payment, in accordance with the C.A. and the *contract*, the *payment certifier* shall issue to the Owner, with a copy to the Contractor, a final certificate for payment for the remaining monies due to the Contractor under the *contract*.
- 9.2 Final payment shall be made to the Contractor as stipulated in the certificate, no later than five days after its issuance or as provided in the *contract*.

STAGE 10 WARRANTY PERIOD(S)

- 10.1 The warranty period(s) for the *contract* shall commence on the date noted in the Consultant's statement that Ready-for-Takeover was attained, on the date of substantial performance (i.e. not necessarily the date of publication of the certificate) where Ready-for-Takeover is not part of the *contract*, or as stipulated otherwise in the *contract* documents.
- 10.2 In the event that neither the date of Ready-for-Takeover nor substantial performance were determined and the *contract* documents do not stipulate otherwise, the warranty period(s) shall commence on the date of deemed completion or occupancy, whichever is earlier.
- (a) In the event the *contract* contemplates phased (or partial) occupancy, then, subject to the terms of the *contract*, the following shall apply. Phased (or partial) occupancy shall be deemed to occur when a discrete or stand-alone portion of the building is complete and can be occupied or used for its intended purpose. Any such phased (or partial) occupancy shall be considered as "occupancy" for the purposes of defining the commencement of the warranty period(s) for the area and the systems that support the portion of the building being occupied.

Note: The concepts of early occupancy, phased occupancy, and partial occupancy may significantly affect expectations of when warranty periods start for products and systems which are not wholly contained within the occupied portions. There is no single solution which can be pointed to as a best practice in all cases. This is something that should be discussed with the Owner and addressed explicitly in the tender and *contract* documents so that all parties have the same understanding of what is expected. Doing so will go a long way to avoiding disputes at project closeout.

- 10.3 The Owner shall give prompt notice in writing to the Contractor and Consultant of any defects (as defined by the *contract*) noted during the Contractor's warranty period. This is typically a one-year duration and should not be confused with separate extended warranties issued by manufacturers, suppliers, installers and others.
- 10.4 Prior to the completion of the Contractor's warranty period, the Consultant, and such other Consultants as the Consultant may require, will carry out a review of the Work for any defects or deficiencies including those that have been observed by the Owner during the warranty period and will notify the Contractor in writing of those items requiring attention by the Contractor to complete the terms of the *contract*.

APPENDIX A – Form 9 - Certificate of Substantial Performance of the Contract under Section 32 of the Act

NOTE: Form 9 is prescribed by the Regulation 303/18: Forms under the C.A. The version which follows is included for convenience only. For actual use, the latest form should be downloaded from the Ontario government website.

FORM 9

CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE CONTRACT UNDER SECTION 32 OF THE ACT

Construction Act

Regional Municipality of The Universe

(County/District/Regional Municipality/Town/City in which premises are situated)

91 Thorold Road, Universe, Ontario L2X 3X4

(street address and city, town, etc., or, if there is no street address, the location of the premises)

This is to certify that the contract for the following improvement:

Addition and Alterations to offices of Alpha Owner

(short description of the improvement)

To the above premises was substantially performed on

July 04, 2025

(date substantially performed)

Date of certificate signed:

July 06, 2025

Charlie Architect Inc.

(payment certifier, where there is one)

(owner and contractor, where there is no payment certifier)

Name of owner

Alpha Owner (1985) Inc.

Address for service

91 Thorold Road, Universe, Ontario L2X 3X4

Name of contractor

Bravo Contractor (1987) Ltd.

Address for service

39 Facer Street, Universe, Ontario L2X 7X8

Name of payment certifier (where applicable)

Charlie Architect Inc.

Address

46 Long Road, Universe, Ontario L2X 7X8

(Use A or B whichever is appropriate)

A. Identification of premises for preservation of liens:

Part of Lots 7, 8, Reg'd Plan 96, Former TWP of Stamford, now City of Universe PIN 10053-0194 (LT)

(a legal description of the premises, including all property identifier numbers and addresses for the premises)

B. Office to which claim for lien and affidavit must be given to preserve lien:

(If the lien does not attach to premises, the name and address of the person or body to whom the claim for lien must be given)

APPENDIX B – Statement of Deemed Completion of a Contract

NOTE User to complete info shown in RED. Change font colour to Black. DELETE THIS NOTE.
Date

Owner's Company Name
Street Address
Suite number
City, Province or State
Postal Code
Country

Attn: **Owner or Owner's Agent**
Re: **Statement of Deemed Completion of a Contract**
For the Purposes of the Construction Act
Project Description
Project Location
Proj No: nn.nnnnn.nn

Building Permit No: XXXXXXXX

Dear **Owner or Owner's Agent**,

Based on our general review of the project, in our opinion, to the best of our knowledge, information and belief, the construction contract for the above referenced project has been deemed complete pursuant to the provisions under Section 2(3) of the Construction Act, R.S.O. 1990 (the "*Construction Act*").

The date of deemed completion of the contract was determined to be **yyyy mm dd**.

[Select Option A: Where Substantial Performance has been certified and basic holdback was released:]

Accordingly, the *Construction Act* provides that outstanding lien holdback monies may be released to the contractor on the day following the conclusion of the sixty (60) day period next following the date the contract was "deemed completed", provided the conditions for release of holdback under the *Construction Act* have been satisfied.

[or Option B: Where Substantial Performance has NOT been certified:]

Accordingly, the *Construction Act* provides that outstanding lien holdback monies may be released to the contractor no later than 14 days after the conclusion of the sixty (60) day period next following the date the contract was "deemed completed", provided no liens exist relative to this contract.

A Certificate for Release of Holdback and accompanying documentation is being prepared for the outstanding lien holdback monies.

We trust that the above is understood. Should you have any questions with regard to the above or have any information that would alter our determination please contact the undersigned.

Yours Truly,

Architectural Practice Name
per:

Your Name
Working Title
Officer Status

cc: **Contractor's Rep, Contractor's Company Name**

APPENDIX C – Statement of Determination of Ready-for-Takeover

NOTE User to complete info shown in RED. Change font colour to Black. DELETE THIS NOTE.
Date

Owner's Company Name
Street Address
Suite number
City, Province or State
Postal Code
Country

Attn: Owner or Owner's Agent
Re: **Statement of Determination of Ready-for-Takeover**
Project Description
Project Location
Proj No: nn.nnnnn.nn

Building Permit No: XXXXXXXX

Dear Owner or Owner's Agent,

Based on our general review of the project, in our opinion, to the best of our knowledge, information and belief, the above referenced project has been determined to be Ready-for-Takeover pursuant to the provisions of the construction contract.

The date of Ready-for-Takeover was determined to be yyyy mm dd.

Accordingly, the construction contract provides that [Insert here anything triggered by achievement of this milestone such as establishing a reasonable date for the completion of the Work.]

We trust that the above is understood. Should you have any questions with regard to the above or have any information that would alter our determination please contact the undersigned.

Yours Truly,

Architectural Practice Name
per:

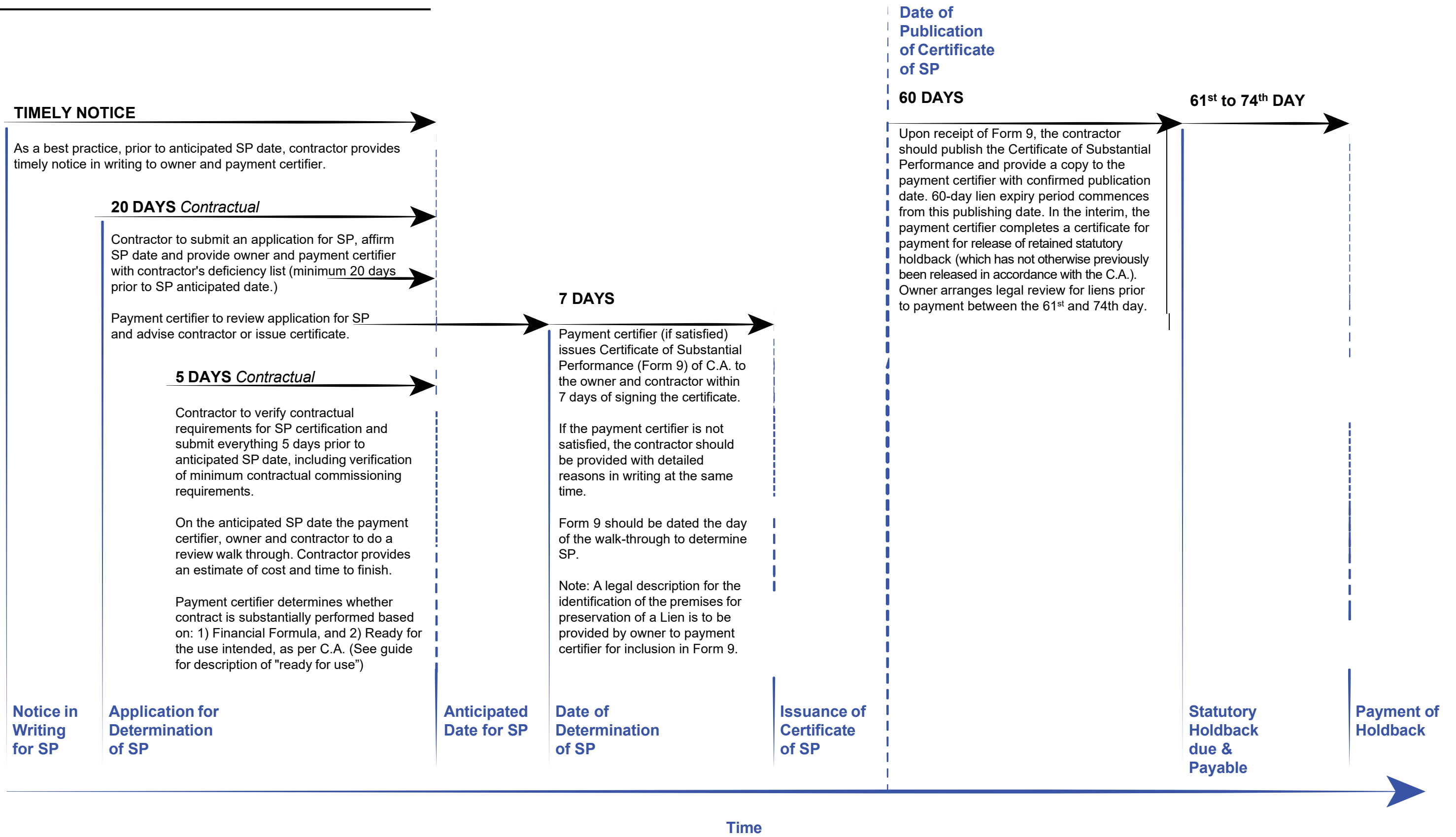
Your Name
Working Title
Officer Status

cc: Contractor's Rep, Contractor's Company Name

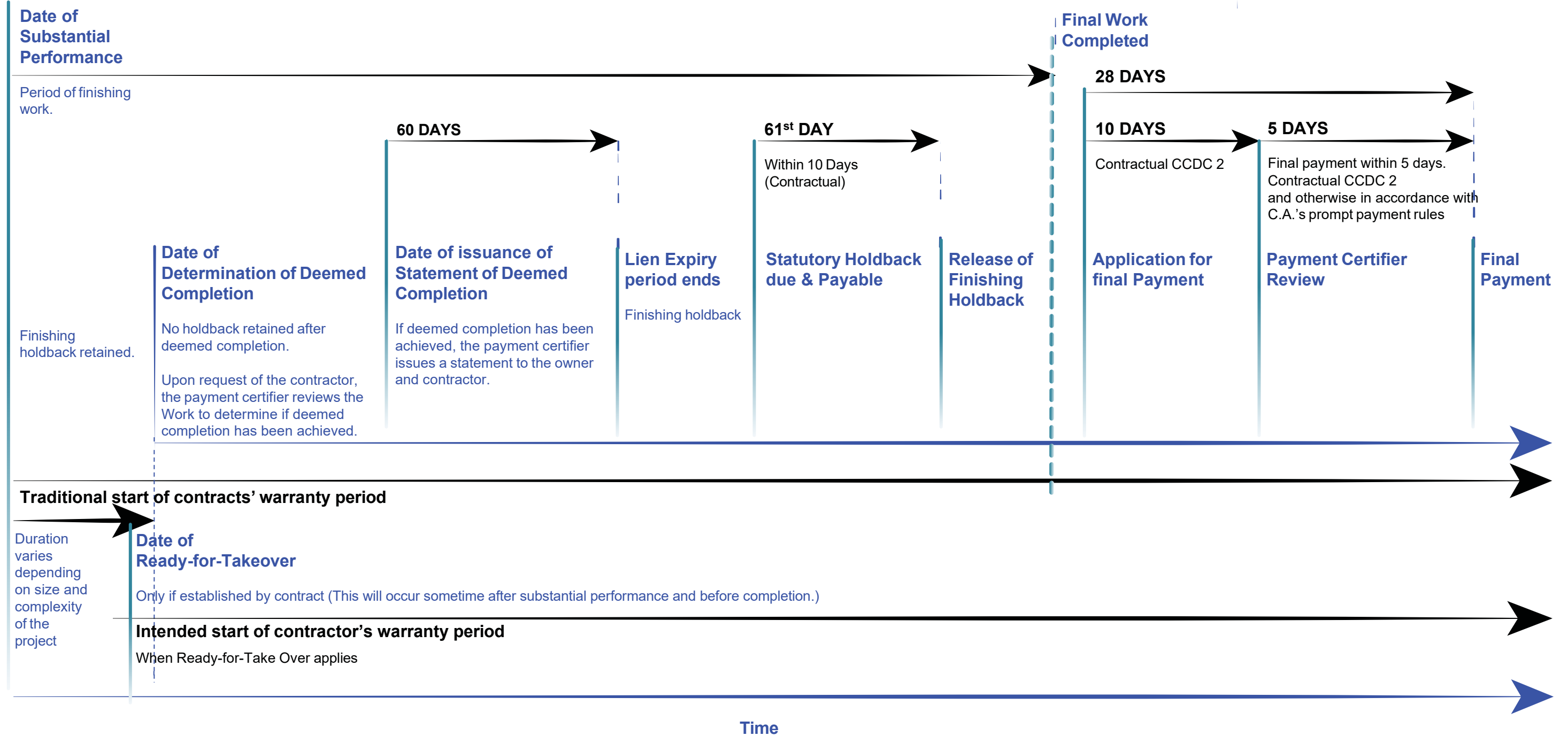
APPENDIX D – Take-over Timelines

This appendix consists of two pages. One is a “Time Chart for Date of Substantial Performance of the Contract”. The other is a “Time Chart for Date of Deemed Completion of the Contract (post substantial performance)”.

Both have been adapted from the OAA-OGCA publication “A Guide to Project Closeout Procedures” which was published in November 2010 and which since then has been withdrawn.



SP= Substantial Performance



All certificates for payment from the date of substantial performance to the date of deemed completion will have the mandatory 10% statutory holdback retained as the "finishing holdback".

When payment certifier determines the contract is deemed complete in accordance with the requirements of the C.A., a statement of deemed completion may be issued. The date that the contract achieves deemed completion is the start of the 60-day lien expiry period (No publication required).

The Owner shall make payment of the statutory holdback for finishing work where all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the C.A.

Work continues beyond date of deemed completion to final completion (no statutory holdback retained)

Contractor submits final application for payment.

If the payment certifier determines the contract is complete, they issue a final certificate for payment.

Owner pays final application for payment.