**[DATE]**

**[CONTRACTOR]**

Dear **[FILL IN NAME]**

Re: Delay Claim arising out of Covid-19 Pandemic – **[PUT IN REFERENCE TO SPECIFIC PROJECT]**

Further to our correspondence of [**date of correspondence acknowledging claim**], I have now had an opportunity to consider your claim. Based on the information provided, the current restrictions placed on the Construction Industry in Nova Scotia and considering the relevant clauses in your contract, the parties will have to wait until the date of substantial completion to determine if, in fact, the circumstances constitute a *force majeure* event.

While we recognize the Covid-19 Pandemic is an unusual event and one which arose which is outside the control of either party, the existence of the Pandemic in and of itself is insufficient to meet the requirements for a delay under your contract. You must provide evidence which provides a direct link between the restrictions arising out of Covid-19 and your *inability* to carry out the work under your contract.

The relevant clauses in your contract are Clause 32 and 33 which state:

**32.0 FORCE MAJEURE.** None of the parties shall be considered responsible for delays in the execution of the work, or for not carrying them out, when this is due to circumstances that are beyond their control and without the fault of the party excused. The party affected by a case of force majeure shall report it to the other party in writing, as soon as possible and never later than three (3) days, from the moment it gains knowledge of it, mentioning the cause, its estimated duration and the consequences for the contracted work, attaching the documents that serve as evidence of it. Compliance with the obligations affected by the force majeure events shall be suspended for the duration of the said events and the parties shall not be liable for the consequences arising from them. After cessation of the force majeure event, the parties shall agree upon which measures are required to, as far as possible, recover the time lost, taking all measures within their reach so that the execution of all the Contract’s obligations is re-established on the best conditions and with the least delay possible, after the cause has ceased. Notwithstanding this, if the force majeure event was to be prolonged for a period over three months, any of the parties is entitled to terminate the Contract.

The following cannot be invoked by the Contractor as force majeure causes:

1) Meteorological conditions or events that could reasonably have been predicted by the Contractor

2) Any shortage of manpower or materials

3) Any delay or failure in obtaining the materials

4) Any non-compliance or delay of any sub-contractor

5) Strikes, except for cases of general strikes in the sector, or lock outs.

**33.0 EXTENSION OF TIME.** The Department may consider an extension to the completion date of the Contract, on the following basis:

* Federal or Provincial Laws passed subsequent to the date of the Contract adversely affecting progress.

….

Failure by the Contractor, in the opinion of the Engineer, to prosecute The Work continuously and in the most diligent and efficient manner possible, using every means and alternative methods available to complete The Work, will be cause for denial of any such time extension.

In order to qualify as a *force majeure* event, you must provide evidence that the work under your contract cannot be completed through project reorganization or rescheduling. You must also provide evidence of why it was not possible to continue the work and meet the substantial completion date through social distancing.

The underlying principle of a *force majeure* clause is that neither party to the agreement should be held to perform their obligations under the agreement, *to the extent that their ability to perform their obligations has been prevented* by certain extreme circumstances outside the party’s control.

The contract in question is for **[FILL IN DETAILS].**

The evidence you provided in support of your claim was [**FILL IN DETAILS**]

[**OPTION 1 – WAIT AND SEE – next 2 paragraphs**]The current restrictions arising out of Covid-19 do not prevent you from completing the work within the terms of the contract. It is possible to complete the work through project management. As the project has not yet reached substantial completion, we will have to wait to see if you are able to complete the project within the specified timelines. As you know, you are required to mitigate any delay by using commercially reasonable means to manage your Project and the work while also abiding by the Health Protective Orders in place. We have every reason to believe you will be able to reach substantial completion as scheduled for this project.

Thank you for bringing your concerns to our attention. Should the restrictions on the construction industry change, you can resubmit your request and we will reconsider your claim.

**[OPTION 2 – APPROVED – next 3 paragraphs]** We have reviewed your request, and the evidence provided in support of your claim, and agree you have established the necessary link between the Covid-19 Pandemic restrictions and your inability to complete the Work. As the current restrictions arose out of a global pandemic which is out of the control of either party, and you are unable to complete the project because of the restrictions, we agree you are entitled to a delay as contemplated under Clause 32.

We are prepared to put this contract on hold until the current restrictions are over, and you can return to work. As this delay arises from a *force majeure* event, neither party is to be held responsible for the delay. In other words, no liquidated damages will be applied, and no compensation will be payable for the period the contract is on hold. **[Alternatively, you may want to change the wording to provide an extension for whatever period of time you feel is justified. But still confirming no compensation.** ]

Thank you for bringing this matter to our attention. Once the restrictions have been lifted and you are able to return to work, we ask that you do so at your earliest possible opportunity.

Best regards,

[NORMAL SIGNATURE LINE]