

## SUPPLEMENTARY CONDITIONS

The Standard Construction Document for Stipulated Price Contract, CCDC2-2020 English version, consisting of the Agreement between Owner and Contractor, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 13 inclusive, is hereby made part of these Contract Documents, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary General Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

### AGREEMENT BETWEEN OWNER AND CONTRACTOR

#### ARTICLE A-3 – CONTRACT DOCUMENTS

- 3.1 Include in the list of *Contract Documents* in paragraph 3.1:
- Supplementary Conditions
  - Performance Bond
  - Labour & Material Bond
  - All other documents, attachments and addenda pertaining to the procurement process for which these supplementary conditions form a part.

#### ARTICLE A-5 – PAYMENT

- 5.1 Delete the first sentence in Article 5.1, and substitute the following:

Subject to the *Contractor* performing its obligations under the *Contract Documents*, and in accordance with the *Payment Legislation* and statutory regulations respecting holdback percentages, the *Owner* shall:

- 5.1.1 In the second line of subparagraph 5.1.1, replace “*Consultant*” with “*Payment Certifier*”.

- 5.2.1 Delete paragraph 5.2.1 in its entirety and replace with the following:

Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or Court, or under a determination in an adjudication conducted pursuant to the Part II.1 of the *Act*, interest on such amounts shall also become due and payable until payment is made at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act*.

- 5.2.2 Delete paragraph 5.2.2 in its entirety.

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

6.5 Delete paragraph 6.5 in its entirety, and replace with the following:

Contact information for a party may be changed by *Notice in Writing* to the other party setting out the new contact information in accordance with this Article.

## ARTICLE A-9 – CONFIDENTIALITY

Add new Article A-9 – Confidentiality:

9.1 The *Contractor* agrees to ensure that it shall, both during and following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and personal information, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or personal information, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*.

## ARTICLE A-10 – CONFLICT OF INTEREST

Add new Article A-10 – Conflict of Interest:

10.1 The *Contractor*, all of the *Subcontractors* and *Suppliers*, and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-10, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

10.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.

10.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time, until after completion of the *Work* under the *Contract*.

10.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and

*Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest. The *Contractor* further acknowledges that it will be impossible to properly assess damages arising from such a breach and agrees that the appropriate remedy is to bar any claims for amounts to which the offending agreement pertains. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor* or *Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor* has been found liable for those claims.

- 10.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT, a breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

## DEFINITIONS

Amend the following definitions as follows:

### ***Shop Drawings***

Delete the definition of *Shop Drawings* in its entirety and replace with the following:

*Shop Drawings* are drawings, diagrams illustrations, schedules, performance charts, brochures, *Product* data, samples, models, mock-ups, and anything else produced or provided by the *Contractor* to illustrate details of portions of the *Work* in advance of the *Work* being performed.

### ***Working Day***

In the second line of the definition for *Working Day*, after the words "construction industry", add the words "or by the *Owner*".

Add the following new definitions:

**Act**

*Act* means the Ontario *Construction Act*, RSO 1990, c C.30, as amended.

**Baseline Construction Schedule**

*Baseline Construction Schedule* means the *Construction Schedule* prepared by the *Contractor* and accepted by the *Owner* and the *Consultant* in accordance with GC 3.4 – CONSTRUCTION SCHEDULE.

**Confidential Information**

*Confidential Information* means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* shall not include information that:

- 1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
- 2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- 3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- 4) is independently developed by the *Contractor* without use of any *Confidential Information*.

**Construction Schedule**

*Construction Schedule* means the schedule for the performance of the *Work*, including the *Baseline Construction Schedule* any amendments to the *Baseline Construction Schedule* made pursuant to the *Contract Documents*.

**Deficiency Reserve**

*Deficiency Reserve* has the meaning attributed to it in paragraphs 2.4.1 and 5.3.2.

## **Force Majeure**

*Force Majeure* means any circumstance, occurrence, event, or cause, beyond the reasonable control of the party seeking relief from its obligations under the *Contract*, other than bankruptcy or insolvency or economic hardship, which prevents the performance by a party of any of its obligations under the *Contract*, provided that the event of *Force Majeure* was not caused by the party's default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by the party. *Force Majeure* includes, but is not limited to, labour disputes, fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or directives of any government or other public authority, acts of a public enemy, terrorism, war, riot, sabotage, abnormally adverse weather, blockage, embargo, lightning, earthquake, or other acts of God, and epidemic or pandemic outbreaks.

## **OHSA**

*OHSA* means the *Occupational Health and Safety Act (Ontario)*.

## **Payment Certifier**

The *Payment Certifier* is the person or entity identified as such by the *Owner*, and is responsible for the issuance of certificates for payment.

## **Proper Invoice**

*Proper Invoice* means an invoice submitted by the *Contractor* to the *Owner*, and copied to the *Consultant*, and includes:

- .1 the invoice number,
- .2 the *Contractor's* name and address,
- .3 the date on which the *Proper Invoice* is submitted to the *Consultant* and the period during which the services or materials for which payment is being applied for were supplied,
- .4 information identifying the *Contract*,
- .5 a description, including quantity where appropriate, of the services or materials that were supplied during the payment period,
- .6 the amount payable for the services or materials that were supplied during the payment period, with a clear identification of the portions of the amount that are holdbacks, and HST,

- .7 the payment terms,
- .8 the name, title, telephone number and mailing address of the person to whom payment is to be sent,
- .9 the *Contractor's* HST number,
- .10 invoices and time sheets from all subtrades whose work is included in the *Proper Invoice*, where such work was performed under a *Change Order* or *Change Directive* and was performed on a time and material basis,
- .11 backup documentation to support any cash allowances included in the *Proper Invoice* pursuant to GC 4.1 – CASH ALLOWANCES,
- .12 the schedule of values approved in accordance with paragraphs 5.2.4, 5.2.5 and 5.2.6, indicating:
  - (i) the percentage of work completed,
  - (ii) an updated list of change orders, showing the percentage of work completed under each change order, and
  - (iii) an updated cash allowance list, showing the percentage of work completed in respect of each cash allowance,
- .13 for the second and subsequent applications for payment, a Statutory Declaration on an original CCDC Document 9A-2001, attesting to the truth of the statements made therein, in accordance with paragraph 5.2.7,
- .14 a Workplace Safety & Insurance Board Clearance Certificate, and
- .15 an updated *Construction Schedule* that shows revisions to the baseline *Construction Schedule* referred to in paragraph 3.4.1.

### **Total Performance of the Work**

*Total Performance of the Work* shall be achieved when all *Work* remaining to be performed in accordance with the *Contract Documents* following *Substantial Performance of the Work*, including rectification of all deficiencies, has been completed as certified by the *Consultant*.

### **Warranty Period**

*Warranty Period* has the meaning set out in paragraph 12.3.1.

## GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

### GC 1.1 CONTRACT DOCUMENTS

1.1.3 At the end of GC 1.1.3, add the words, “and as required by GC 2.5 – DOCUMENT REVIEW”.

1.1.4 At the beginning of paragraph 1.1.4, insert the words “Subject to the *Contractor’s* obligations pursuant to GC 2.5 – DOCUMENT REVIEW”.

### GC 1.3 RIGHTS AND REMEDIES

1.3.2 At the beginning of paragraph 1.3.2, insert the words:

“Except with respect to the notice requirements set out in paragraphs 6.5.4 and 6.6.1,”

### GC 1.5 TIME IS OF THE ESSENCE OF THE CONTRACT

Add new GC 1.5 – TIME IS OF THE ESSENCE OF THE CONTRACT as follows:

1.5.1 All time limits stated in the *Contract Documents* are of the essence of the *Contract*.

### GC 2.2 ROLE OF THE CONSULTANT

2.2.4 Delete paragraph 2.2.4 in its entirety.

2.2.6 Delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER”.

2.2.17 At the end of paragraph 2.2.17, add the following:

Prior to forwarding the warranties and related documents to the *Owner*, the *Consultant* shall ensure that the documents comply with the requirements of the *Contract Documents*. This review shall not relieve the *Contractor* of any of its obligations pursuant to the *Contract Documents*.

### GC 2.3 REVIEW AND INSPECTION OF THE WORK

2.3.2 In the second line of paragraph 2.3.2, add the words “and the *Owner*” after the word “*Consultant*”.

At the end of paragraph 2.3.2, add the words “and the *Owner* shall have access to the *Work* for the purpose of reviewing the inspections, tests and approvals, and any results thereof.”

Add new paragraph 2.3.8 as follows:

- 2.3.8 The *Contractor* shall attend all site meetings related to the *Work* and any meetings requested by the *Owner*, when reasonably called upon to do so, to discuss the *Construction Schedule* and the progress of the *Work*. Attendance at such meetings shall be included in the *Contract Price*.

**GC 2.4 DEFECTIVE WORK**

- 2.4.1 Add the following to the end of paragraph 2.4.1:

The correction of defective work that has been rejected by the *Consultant* shall be at the *Contractor's* expense. In addition to the amounts described in paragraph 5.3.2, the *Owner* may withhold from any amounts payable by the *Owner* an amount sufficient to secure the correction of deficiencies. The amount retained shall be based on the *Consultant's* reasonable estimate of the cost of correcting deficient *Work*, and shall be added to the *Deficiency Reserve* described in paragraph 5.3.2.

Add new paragraphs 2.4.4, 2.4.5 and 2.4.6:

- 2.4.4 The *Contractor* shall rectify, at its own expense, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
- 2.4.5 The *Contractor* shall prioritize the correction of any defective work, which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner* or adversely affects the progress of the *Work*.
- 2.4.6 Neither acceptance of the *Work* by the *Owner* or the *Consultant*, nor any failure by the *Owner* or the *Consultant* to identify, observe or warn of defective *Work* or any deficiency in the *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost.

**GC 2.5 DOCUMENT REVIEW**

Add new GC 2.5 – DOCUMENT REVIEW as follows:

- 2.5.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.10. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The



*Contractor* shall not be liable for damage or costs resulting from errors, inconsistencies, or omissions in the *Contract Documents* which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

2.5.2 If, at any time, the *Contractor* finds errors, inconsistencies, or omissions in the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* shall immediately notify the *Consultant*, and request instructions, a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require. Neither the *Owner* nor the *Consultant* will be responsible for the consequences of any action of the *Contractor* based on oral instructions.

2.5.3 The *Contractor* shall bring to the *Consultant's* attention any errors, inconsistencies or omissions in the *Drawings* and *Specifications* which do not allow completion of all or a portion of the *Work*, prior to the commencement of the *Work*, or during the *Work*, as the case may be. Before doing so, however, the *Contractor* shall carry out a thorough review of the *Contract Documents* to make sure that the matter in question is not dealt with. If the *Contractor* does not carry out such a review, such inconsistency or omission shall not form the basis for a claim for delay.

2.5.4 Notwithstanding the foregoing, lack of reference on the *Drawings* or in the *Specifications* to labour and *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work* shall not constitute an error, inconsistency, discrepancy or omission.

### **GC 3.1 CONTROL OF THE WORK**

Add a new paragraphs 3.1.3 and 3.1.4 as follows:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected *Work*.

3.1.4 Notwithstanding the provisions of paragraphs 3.1.1 and 3.1.2, the *Owner* shall have access to the site at all times to review all aspects of construction. Such

access shall in no circumstances affect the obligations of the *Contractor* to fulfill its contractual obligations.

### **GC 3.2 CONSTRUCTION BY THE OWNER OR OTHER CONTRACTORS**

3.2.2.1 Delete paragraph 3.2.2.1 in its entirety.

3.2.2.2 Delete paragraph 3.2.2.2 in its entirety.

3.2.3 Add new subparagraph 3.2.3.5 as follows:

- .5 assume overall responsibility for compliance with all aspects of the health and safety legislation applicable to the *Place of the Work*, for the *Owner's* own forces and for *Other Contractors*, including all of the responsibilities of the "Constructor" as that term is defined in *OHSA*.

Add new paragraph 3.2.7 as follows:

3.27 Prior to the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule, consistent with the *Baseline Construction Schedule*, indicating the timing that *Products* that are specified to be purchased by the *Owner* and installed by the *Contractor* must arrive at the *Place of the Work* to avoid delaying the progress of the *Work*.

### **GC 3.3 TEMPORARY WORK**

3.3.2 In the second line of paragraph 3.3.2, after the words "where required by law", insert ", by the *Consultant*".

### **GC 3.4 CONSTRUCTION SCHEDULE**

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

The *Contractor* shall:

- .1 within seven (7) days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a *Construction Schedule* that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. Once accepted by the *Owner* and the *Consultant*, the *Construction Schedule* submitted by the *Contractor* shall become the *Baseline Construction Schedule*. The *Baseline Construction Schedule* and any updated *Construction*

*Schedule* provided in accordance with this *Contract* shall include a provision for contingency time to reflect normally adverse weather conditions appropriate to the season;

- .2 employ construction scheduling software that permits the progress of the *Work* to be monitored in relation to the critical path established in the *Construction Schedule*. The *Contractor* shall provide the *Baseline Construction Schedule* and any successor or revised *Construction Schedules* in both electronic format and hard copy;
- .3 provide the expertise and resources, including manpower and equipment, as are necessary to maintain progress under the *Baseline Construction Schedule* or any successor or revised *Construction Schedule* accepted by the *Owner*;
- .4 monitor the progress of the *Work* on a weekly basis relative to the *Baseline Construction Schedule*, or any successor or revised *Construction Schedule* accepted by the *Owner*, update the *Construction Schedule* on a monthly basis, at a minimum, or as required by the *Consultant*, and provide the *Consultant* and the *Owner* with written notice of any variation from the *Baseline Construction Schedule* any successor or revised *Construction Schedule* accepted by the *Owner*; and
- .5 if, after applying the expertise and resources required under subparagraph 3.4.1.3, the *Contractor* forms the opinion that the variation or slippage in the *Construction Schedule* reported pursuant to subparagraph 3.5.1.4 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 - CHANGES IN THE WORK.

Add new paragraph 3.4.2 as follows:

- 3.4.2 If, at any time, it appears to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.4, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the *Construction Schedule* or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the *Construction Schedule*. If the *Contractor* intends to apply for a

change in the *Contract Price* in relation to a *Construction Schedule* recovery plan, then the *Contractor* shall proceed in accordance with GC 6.5 - DELAYS.

### **GC 3.5 SUPERVISION**

- 3.5.1 Add to the end of paragraph 3.5.1, “and upon the *Contractor* obtaining the *Owner’s* written consent to the proposed representative, which consent may be unreasonably withheld.”

Add new paragraph 3.5.3:

- 3.5.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative, where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the *Owner’s* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint a replacement acceptable to the *Owner*, as evidenced by the *Owner’s* written consent.

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

- 3.6.2 In the first line of paragraph 3.6.2, delete the words “if requested by the *Owner*”.

At the end of paragraph 3.6.2, add the following:

The *Contractor* agrees not to change *Subcontractors* without prior written consent of the *Owner*, which approval will not be unreasonably withheld.

- 3.6.3 In the first line of paragraph 3.6.3, delete the words “the *Owner* has signed the *Contract*”, and replace with the words “commencement of the *Work*”.

- 3.6.6 In the first line of paragraph 3.6.6, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

Add new paragraphs 3.6.7, 3.6.8 and 3.6.9 as follows:

- 3.6.7 Neither the *Owner* nor the *Consultant* shall incur any liability to the *Contractor* or any *Subcontractor* or *Supplier* for specifying any *Product* or a particular subcontractor(s) or supplier(s) for any aspect of the *Work*.

- 3.6.8 The *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, on the date upon which each such liability becomes due, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

3.6.9 The *Consultant* or the *Owner*, acting reasonably, and in its sole discretion, may from time to time require the *Contractor* to remove from the *Project* any personnel, including project managers, superintendents or *Subcontractors*. Such persons shall be replaced by the *Contractor* in a timely fashion to the satisfaction of the *Consultant* or the *Owner*, as the case may be, at no cost to the *Owner*.

**GC 3.7 LABOUR AND PRODUCTS**

3.7.1 In the first line of paragraph 3.7.1, after the word “employees”, add the words “..., agents, *Subcontractors* and *Suppliers*”.

Add new paragraphs 3.7.4, 3.7.5, 3.7.6, 3.7.7, 3.7.8, 3.7.9, 3.7.10 and 3.7.11 as follows:

3.7.4 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*.

3.7.5 Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* until such time as they are actually incorporated into the *Work*.

3.7.6 Upon receipt of *Notice in Writing* from the *Consultant*, the *Contractor* shall dismiss from the *Place of the Work* tradesmen and labourers whose *Work* is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable.

3.7.7 The *Contractor* shall not employ any persons for the *Work* whose labour affiliation or lack thereof is incompatible with other labour employed in connection with the *Work*. Any costs arising from labour disputes, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers*, shall be the sole expense of the *Contractor*.

3.7.8 The *Contractor* shall cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other labour disputes. In the event that there is a labour dispute that interferes with the progress of the *Work*, the *Contractor* shall ensure that the *Place of the Work* and the *Work* are left in a safe, secure condition, as required by authorities having jurisdiction at the *Place of the Work*, and in accordance with the *Contract Documents*.

- 3.7.9 The *Contractor* is responsible for the safe on-site storage and protection of all *Products*, whether supplied by the *Contractor*, the *Owner* or *Other Contractors*, and shall be responsible for guarding against damage or contamination to the *Products*. The *Owner* shall provide the *Contractor* with all material provided by the manufacturer of *Owner* supplied *Products*, regarding storage and handling of the *Products*.
- 3.7.10 *Products* which are referred to in the *Drawings* and *Specifications* by their proprietary names or by catalogue number shall be supplied as specified. Where more than one option is specified in respect of a *Product*, the *Contractor* may select any of the specified *Products*. No substitute for the *Products* specified will be permitted without the prior written consent of the *Consultant*.
- 3.7.11 The *Contractor* shall use and install all *Products* in strict accordance with the manufacturer's instructions.

### **GC 3.8 SHOP DRAWINGS**

- 3.8.3.1 In the second line of paragraph 3.8.3.1, delete the words “or will do so”.
- 3.8.7 In the second line of paragraph 3.8.7, after the words “with reasonable promptness” insert “,and in any event, within 10 *Working Days*,”.

Add new paragraph 3.8.8 as follows:

- 3.8.8 Where the *Contractor* provides the *Owner* with a sample in respect of a *Product*, the samples shall be returned to the *Contractor*, and maintained at the *Place of the Work*. *Products* installed into the *Work* must match approved samples. Any *Products* which do not match approved samples, whether incorporated in the *Work* or not, shall be removed and replaced at the *Contractor's* expense.

### **GC 3.9 USE OF THE WORK**

Add new GC 3.9 – USE OF THE WORK as follows:

- 3.9.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation do not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time*. Such entry or occupation shall neither be considered as acceptance of the *Work*, nor in any way relieve the *Contractor* from its responsibility to complete the *Contract*.

### **GC 3.10 CONTRACTOR STANDARD OF CARE**

Add a new GC 3.10 – CONTRACTOR STANDARD OF CARE as follows:

- 3.10.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill, and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that the performance of the *Contractor's* obligations, duties, and responsibilities shall be judged against this standard. The *Contractor* shall exercise the same standard of care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.
- 3.10.2 The *Contractor* further represents, covenants and warrants to the *Owner*, acknowledging that the *Owner* is relying thereon, that:
- .1 the personnel it assigns to the *Project* are appropriately experienced;
  - .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation;
  - .3 it has a qualified team of *Subcontractors* and *Suppliers* with a proven record of performing large projects on time; and
  - .4 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

#### **GC 4.1 CASH ALLOWANCES**

Add new paragraph 4.1.8 as follows:

- 4.1.8 The *Owner* reserves the right to call, or to require the *Contractor* to call, for competitive bids for portions of the *Work* which are to be paid for from cash allowances. When directed by the *Owner* or *Consultant*, the *Contractor* shall enter into subcontracts with successful bidders for such portions of the *Work*, and shall assume full responsibility for supervision, scheduling, guarantees and payment for these *Subcontractors*.

#### **GC 4.2 CONTINGENCY ALLOWANCE**

Delete GC 4.2 – CONTINGENCY ALLOWANCE in its entirety.

#### **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

- 5.1.1 Delete paragraph 5.1.1 in its entirety.

5.1.2 Delete paragraph 5.1.2 in its entirety.

**GC 5.2 APPLICATIONS FOR PAYMENT**

5.2.1 In the first line of paragraph 5.2.1, after the words “shall be submitted monthly”, add “by the *Contractor*”.

In the second line of paragraph 5.2.1, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

At the end of paragraph 5.2.1, add “and shall be in the form of a *Proper Invoice*”.

5.2.2 Delete the words “day of the month or an alternative day of the month agreed in writing by the parties” and substitute with “Monday of the month”.

5.2.3 In the second line of paragraph 5.2.3, delete the words “delivered to the *Place of the Work*” and replace with “fully incorporated into the *Work*”.

5.2.4 In the first line of paragraph 5.2.4, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

5.2.5 In the second line of paragraph 5.2.5, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

5.2.6 In the first line of paragraph 5.2.6, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

5.2.8 Delete paragraph 5.2.8 in its entirety and replace with the following:

The *Contractor* may apply for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, only with the express written consent of the *Owner*, which consent may be withheld in the *Owner’s* sole discretion.

**GC 5.3 PAYMENT**

5.3.1 In the first line of paragraph 5.3.1, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

5.3.1.1 Delete subparagraph 5.3.1.1 in its entirety and replace with the following:

The *Payment Certifier* will issue to the *Owner* and copy to the *Contractor*, no later than 7 calendar days after receipt of the application for payment, a certificate of payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* certifies a different amount, or rejects the application or part thereof, the *Owner*



shall, by no later than the 14<sup>th</sup> day following the *Owner's* receipt of the application for payment, issue *Notice in Writing* to the *Contractor* giving reasons for the revision or rejection, such written notice to be in compliance with the *Payment Legislation*.

- 5.3.1.2 In the second line of paragraph 5.3.1.2, delete the word "*Consultant*" and replace with "*Payment Certifier*".

Add new paragraph 5.3.2 as follows:

- 5.3.2 In addition to the holdback stipulated under the *Act*, the *Owner* shall retain a holdback of 1% on each application for payment as a *Deficiency Reserve* (in addition to any amounts retained under section 2.4.1). The *Deficiency Reserve* shall be released to the *Contractor* upon *Total Performance of the Work*. The *Owner* will not consider an early or partial release of the *Deficiency Reserve*. If *Total Performance of the Work* is not achieved by the date established under paragraph 12.1.5, the *Owner* shall have the right to complete any outstanding *Work*, and deduct the cost of doing so, together with an appropriate administration fee, from the *Deficiency Reserve*. Any remaining *Deficiency Reserve* shall be paid to the *Contractor*. In the event that the cost to complete outstanding *Work* plus the *Owner's* administration fee exceeds the amount of the *Deficiency Reserve*, the *Owner* shall be entitled to invoice the *Contractor* for the excess.

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

- 5.4.2 Delete paragraph 5.4.2 in its entirety.
- 5.4.3 In the second line of paragraph 5.4.3, delete the words "no later than 10 *Working Days*", and replace with the words "on the first calendar day".
- 5.4.4 Delete paragraph 5.4.4 in its entirety and replace with the following:

No later than the 20<sup>th</sup> day following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:

- .1 submit an application for payment of the holdback amount,
- .2 submit a CCDC 9A 'Statutory Declaration' which states that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work*, and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute,

.3 submit a statement that the *Contractor* has not received any written notices of a lien, and

.4 submit a Workplace Safety & Insurance Board clearance certificate.

5.4.5 In the first line of paragraph 5.4.5, delete the word "*Consultant*" and replace with "*Payment Certifier*".

Add new paragraphs 5.4.7, 5.4.8, 5.4.9 and 5.4.10 as follows:

5.4.7 In the event that the *Owner* intends to pay the *Contractor* an amount that is less than that set out in the *Contractor's* application for payment of the holdback, the *Owner* shall, no later than 20 calendar days before the expiration of the holdback period stipulated in the *Act*, publish a notice in the form prescribed in the *Act*, specifying the amount of the holdback that the *Owner* refuses to pay and notify the *Contractor* of the publication of the notice.

5.4.8 Within seven (7) days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Act*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the certificate and charge the *Contractor* with the costs so incurred.

5.4.9 Prior to submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all guarantees, warranties, certificates, shop drawings, completed as-built drawings, inspection certificates, and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental and utility authorities having jurisdiction in the *Place of the Work*.

5.4.10 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.9, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, and except as described herein, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. Any documents or materials not delivered in accordance with paragraph 5.4.9 shall be delivered as provided in GC 5.5 - FINAL PAYMENT.

## **GC 5.5 FINAL PAYMENT**

5.5.1 At the end of paragraph 5.5.1, add the following:

, which shall be in the form of a *Proper Invoice*. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.9. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered, and the *Owner* may withhold payment in respect of any documents that have not been delivered in an amount determined by the *Consultant*.

5.5.2 In the first line of paragraph 5.5.2, delete "10" and replace with "7".

Delete all instances of the word "*Consultant*" and replace with "*Payment Certifier*".

5.5.3 In the first line of paragraph 5.5.3, delete the word "*Consultant*" and replace with "*Payment Certifier*".

At the end of paragraph 5.5.3, add the following:

Following the *Contractor's* receipt of such notice from the *Owner*, the *Contractor* shall revise and resubmit the final application for payment. The final application for payment shall be re-dated as of the new submission date.

5.5.4 In the second line of paragraph 5.5.4, delete the words, "5 calendar days after the issuance of", and substitute the words "28 days after receipt of".

## **GC 5.6 DEFERRED WORK**

5.6.1 Delete both instances of the word "*Consultant*" and replace with "*Payment Certifier*".

## **GC 5.8 CONSTRUCTION LIENS**

Add a new GC 5.8 – CONSTRUCTION LIENS as follows:

5.8.1 In the event that a claim for lien is preserved against the *Project* premises by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:

- .1 within ten (10) days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and
- .2 in the case of written notices of lien, ensure that such notices are withdrawn in writing or vacated.

- 5.8.2 In the event that the *Contractor* fails to comply with the requirements of paragraph 5.8.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor*, and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the associated costs and expenses.

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

- 6.1.2 Add the following to the end of paragraph 6.1.2:

This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Contract Price* or *Contract Time* shall be barred unless there has been strict compliance with PART 6 - CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.

Add new paragraph 6.1.3 as follows:

- 6.1.3 The *Contractor* shall be responsible for obtaining the best possible value in relation to *Work* performed under a *Change Order* or *Change Directive*. The *Consultant* shall have no role in negotiating any pricing directly with any *Subcontractor* or *Supplier*.

**GC 6.2 CHANGE ORDER**

Add new paragraphs 6.2.3 and 6.2.4 as follows:

- 6.2.3 Where the proposed change in the *Work* consists of an addition to the *Work*, the adjustment to the *Contract Price* shall be based on a lump sum amount, unless the *Owner* agrees to a different method of adjustment.
- 6.2.4 Where the proposed change in the *Work* consists of a deletion to the *Work*, the *Owner* and the *Contractor* shall agree to a lump sum reduction in the *Contract Price*. In such case, the *Contractor* shall have no claim against the *Owner* for any loss of profit in relation to the deletion from the scope of the *Work*.

**GC 6.3 CHANGE DIRECTIVE**

6.3.6 Delete paragraph 6.3.6 in its entirety and replace with the following:

The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined in one of the following manners:

- .1 by estimate and agreement between the *Owner* and the *Contractor* of a lump sump price;
- .2 on the basis of unit prices set out in the *Contract Documents* or subsequently agreed upon; or
- .3 on the basis of the cost of the *Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7, in addition to a markup for profit and overhead as set out in paragraph 6.3.14.

6.3.7 In the first line of paragraph 6.3.7, delete the words "the *Change Directive*" and replace with "a *Change Directive*, where the adjustment is to be determined in accordance with subparagraph 6.3.6.3,".

6.3.7.13 Delete subparagraph 6.3.7.13 in its entirety and replace with the following:

- .13 cost of safety measures and requirements;

6.3.7.17 Delete subparagraph 6.3.7.17 in its entirety.

6.3.7.18 Delete subparagraph 6.3.7.18 in its entirety.

Add new paragraph 6.3.14 as follows:

6.3.14 Where the adjustment in the *Contract Price* attributable to a *Change Directive* is to be determined in accordance with subparagraph 6.3.6.3, the *Contractor* shall be entitled to a markup for profit and overhead, calculated as follows:

- .1 ten percent (10%) on *Work* performed by the *Contractor's* own forces;
- .2 five percent (5%) on *Work* performed by *Subcontractors*; and
- .3 five percent (5%) on *Products*.

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

Add new paragraph 6.4.5 as follows:

6.4.5 The *Contractor* confirms that, prior to bidding the Project, it has carefully investigated the *Place of the Work* and applied to that investigation the degree

of care and skill described in GC 3.10 – CONTRACTOR STANDARD OF CARE. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of its bid.

## **GC 6.5 DELAYS**

6.5.1 At the end of paragraph 6.5.1, delete the words “incurred by the *Contractor* as a result of such delay”, and replace with the words “directly flowing from the delay, but excluding any consequential, indirect or special damages”.

6.5.2 At the end of paragraph 6.5.2, delete the words “incurred by the *Contractor* as a result of such delay” and replace with the words “directly flowing from the delay, but excluding any consequential, indirect or special damages.”

6.5.3 Delete paragraph 6.5.3 in its entirety and replace with the following:

If the *Contractor* is delayed in the performance of the *Work* by a *Force Majeure* event, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays.

Add new paragraphs 6.5.6 and 6.5.7 as follows:

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor’s* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay.

6.5.7 The *Owner* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* in circumstances where the *Owner* determines that there is an imminent risk to the safety of persons or property at the *Place of the Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the site. The *Contractor* shall not be entitled to an extension of the *Contract Time* or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contract Time* or the reimbursement of the *Contractor’s* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

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

6.6.5 In the second line of paragraph 6.6.5, after the words “receipt of the claim by the *Consultant*,” add the words “as required by paragraph 6.6.3”.

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

7.1.4.1 In the second line of subparagraph 7.1.4.1, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

7.1.5.3 In the first line of subparagraph 7.1.5.3, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

At the end of subparagraph 7.1.5.3, delete the words "however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference”.

Add new paragraphs 7.1.7 and 7.1.8 as follows:

7.1.7 In the event of a *Force Majeure* event lasting a minimum of thirty (30) days, the *Owner* may, by giving the *Contractor Notice in Writing* prior to the end of the *Force Majeure* event, terminate the *Contract*.

7.1.8 In the case of a termination of the *Contract* under GC 7.1 – OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination.

**GC 7.2 CONTRACTOR’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT**

7.2.2 Delete paragraph 7.2.2 in its entirety.

7.2.3.1 Delete subparagraph 7.2.3.1 in its entirety.

7.2.3.2 Delete the word “*Consultant*” and replace with “*Payment Certifier*”.

7.2.3.3 In the first line of subparagraph 7.2.3.3, delete the word “*Consultant*” and replace with “*Payment Certifier*”.

7.2.3.4 In the first line of subparagraph 7.2.3.4, after the word “*Consultant*”, delete the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".

7.2.4 Add the following to the end of paragraph 7.2.4:

If the default cannot be corrected within 5 *Working Days*, the *Owner* shall be deemed to have cured the default if it:

- .1 commences correction of the default within the specified time;
- .2 provides the *Contractor* with an acceptable schedule for such correction; and
- .3 completes the correction in accordance with such schedule.

7.2.5 Delete paragraph 7.2.5 in its entirety and substitute the following:

If the *Contractor* terminates the *Contract* in accordance with GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall be entitled to be paid for that portion of the *Work* performed to the date of termination, as determined by the *Payment Certifier*. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any recovery for any special, indirect or consequential losses, including loss of profit.

Add new paragraph 7.2.6 as follows:

7.2.6 If the *Contractor* stops the *Work* or terminates the *Contract* as provided for in paragraphs 7.2.1 or 7.2.4 above, the *Contractor* shall ensure that the site and the *Work* are left in a safe, secure condition as required by authorities having jurisdiction at the *Place of the Work* and the *Contract Documents*.

## **GC 8.2 ADJUDICATION**

Add new paragraphs 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 as follows:

8.2.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

8.2.3 In the event of any dispute arising between the *Owner* and the *Contractor* as to their respective rights and obligations under the *Contract*, which is not resolved in the first instance by the *Consultant*, if applicable, either party may give the other party *Notice in Writing* of such dispute. The *Notice in Writing* of dispute shall be made within fourteen (14) calendar days of the dispute arising. The *Owner* and the *Contractor* shall meet, along with any other parties involved in the *Project* that either party believes will contribute to a resolution of the dispute, including the *Consultant* and any *Subcontractor* or *Supplier*, to attempt



to resolve the dispute. If the dispute cannot be resolved within fourteen (14) calendar days of the *Notice in Writing*, then the *Owner* or the *Contractor* may elevate the dispute for resolution by adjudication pursuant to Part II.1 of the *Act*.

8.2.4 Unless adjudication is required by the *Act*, the *Notice in Writing* required under paragraph 8.2.3 is a condition precedent to either party referring a matter to adjudication under Part II.1 of the *Act*.

8.2.5 Subject to the provisions of the *Act*, the *Contractor* shall complete the *Work*, in accordance with the directions of the *Consultant*, notwithstanding any dispute, claim, arbitration, adjudication, or any legal action initiated by either or both of the parties.

8.2.6 Neither party may refer any dispute to adjudication in accordance with Part II.1 of the *Act* after the *Contract* has been completed.

### **GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION**

Delete GC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION in its entirety.

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

9.1.1.1 At the end of subparagraph 9.1.1.1, add the words “, which the *Contractor* could not have discovered applying the standard of care described in GC 3.10 – CONTRACTOR STANDARD OF CARE.”

9.1.2 At the end of paragraph 9.1.2, add the words “applying the standard of care set out in GC 3.10 – CONTRACTOR STANDARD OF CARE.”

9.1.3 At the end of paragraph 9.1.3, add the words “to the satisfaction of the *Owner*.”

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

9.2.6 In the second line of paragraph 9.2.6, after the words “or anyone for whom the *Contractor* is responsible,” add the following:

or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements), were dealt with or altered by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,

9.2.8 In the second line of paragraph 9.2.8, after the words “or anyone for whom the *Contractor* is responsible,” add the following:

or that toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with or altered by the *Contractor*, or anyone for whom the *Contractor* is responsible, in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,

**GC 9.3 ARTIFACTS AND FOSSILS**

9.3.2 In the second line of paragraph 9.3.2, after the word “*Consultant*”, add the words “and the *Owner*”.

**GC 9.4 CONSTRUCTION SAFETY**

9.4.1 Delete paragraph 9.4.1 in its entirety and substitute the following:

The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations, and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

Add new paragraphs 9.4.6, 9.4.7 and 9.4.8 as follows:

9.4.6 Within seven (7) days of receipt of *Notice in Writing* to do so and prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current Workplace Safety & Insurance Board Clearance Certificate, as required by paragraph 10.4.1;
- .2 certificates of insurance as required by paragraph 11.1.2;
- .3 documentation setting out the *Contractor’s* in-house safety programs; and
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as “constructor” under the OHSA.

9.4.7 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and

against the consequences of any and all safety infractions committed by the *Contractor* and any *Subcontractors* under the OHSA, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

- 9.4.8 The *Owner* shall include in its contracts with *Other Contractors* and in its instructions to its own forces the requirement that the *Other Contractors* or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters.

**GC 10.1 TAXES AND DUTIES**

- 10.1.2 At the end of paragraph 10.1.2, add the following:

If requested by the *Owner*, the *Contractor* shall provide a detailed breakdown showing the costs incurred due to a change in taxes or duties. The *Contractor* shall not be entitled to any additional amounts in relation to profit or overhead arising from a change in taxes and duties.

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

- 10.2.3 At the end of paragraph 10.2.3, add the following:

The *Contractor* shall notify the “Chief Building Official” or the registered code agency where applicable, of the readiness, substantial completion and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario Building Code.

- 10.2.5 At the beginning of paragraph 10.2.5, add the words, “Subject to GC 2.5 – DOCUMENT REVIEW,”

- 10.2.6 At the end of the paragraph 10.2.6, add the following:

In the event the *Owner* suffers loss or damage as a result of the *Contractor’s* failure to comply with paragraph 10.2.5, and notwithstanding any limitations described in paragraph 13.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions, suits or proceedings resulting from such failure by the *Contractor*.

Add new paragraph 10.2.8 as follows:

- 10.2.8 The *Contractor* shall obtain all certificates of inspection and occupancy that may be required by authorities having jurisdiction over the *Work* and shall deliver such certificates to the *Consultant* upon completion of the *Work*.

**GC 10.4 WORKERS' COMPENSATION**

- 10.4.1 Delete paragraph 10.4.1 and replace with the following:

Within seven (7) days of receipt of *Notice in Writing* to do so, and prior to commencing the *Work*, and with each application for payment thereafter, including the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work*, and again with the *Contractor's* application for final payment, the *Contractor* shall provide a current WSIB Clearance Certificate.

**GC 11.1 INSURANCE**

Delete GC 11.1 in its entirety, and replace with the following:

- 11.1.1 Without restricting the generality of GC 13.1 - INDEMNIFICATION, the Contractor shall obtain, maintain, and pay for the following insurance coverages, which shall be taken out with insurance companies licenced to transact business in the Province of Ontario, and possessing a Best's Financial Strength Rating of at least A-:

- .1 Commercial general Liability (CGL) insurance in the name of the *Contractor*, which shall include, as an Additional Insured, the *Owner* and the *Consultant*, and which shall have a policy limit of not less than \$5,000,000.00 inclusive per occurrence for bodily and personal injury, death, and damage to property including loss of use thereof. Should this policy contain a General Aggregate, the minimum acceptable General Aggregate shall be \$5,000,000.00. The CGL insurance will include Cross Liability and Severability of Interest Clauses, Products and Completed Operations coverage (24 months), *Owner's* and *Contractor's* Protective and a Standard Non-Owned Automobile endorsement including standard contractual liability coverage.
- .2 In the alternative to the CGL policy described in paragraph 11.1.1, the *Owner* will accept limits of \$2,000,000.00 inclusive per occurrence in primary CGL insurance and \$3,000,000 in Excess Liability or Umbrella Liability insurance with aggregates for each policy to provide the minimum coverages and limits as noted above.

- .3 Automobile liability Insurance in respect of licensed vehicles, which shall have a limit of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property. Coverage shall be in form of a Standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or leased or operated by or on behalf of the *Contractor*.
- .4 *Contractor's* equipment insurance coverage written on an "all risk" basis, insuring the full amount of the *Contractor's* equipment, including owned, non-owned and mobile equipment, used by the *Contractor* for the performance of the *Work*, which shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*.
- .5 "Broad form" property insurance, which shall have a limit of not less than the sum of 1.1 times the *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified be by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000.00. The *Contractor* and the *Owner* shall be Named Insureds on the policy. This policy shall be maintained from the commencement of the *Work* until *Substantial Performance of the Work*.
- .6 The policies shall provide that, in the event of a loss or damage, payment shall be made to the *Owner* and the *Contractor*, as their respective interests may appear. The *Contractor* shall act on behalf of the *Owner* and itself for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights or obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Owner* may decide in accordance with PART 6 – CHANGES IN THE WORK.
- .7 The *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract* in respect of *Work* performed prior to the date of the occurrence of the loss or damage, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised to the extent paid by the insurer, such amount to be paid as the restoration of the *Work* proceeds and in accordance with the requirements of PART 5 – PAYMENT.

- 11.1.2 The insurance policies listed in paragraph 11.1.1 shall be in a form satisfactory to the *Owner's* Insurance and Risk Manager, and shall be maintained continuously from the commencement of the *Work* until *Total Performance of the Work*, unless otherwise indicated above. The policies shall be endorsed to provide the *Owner* with not less than 30 Days written notice in advance of cancellation, change or amendment which restricts coverage such that the requirements in the *Contract* are no longer met.
- 11.1.3 The *Contractor* shall provide the *Owner* with proof of the required insurance, by submitting an original Certificate of Insurance on the *Owner's* standard "Certificate of Insurance" form, upon execution and delivery of the *Contract*, prior to commencement of the *Work*, and thereafter upon request by the *Owner*.
- 11.1.4 If the *Contractor* fails to provide or maintain insurance as required in accordance with the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence thereof to the *Contractor* and *Consultant*. The cost thereof shall be payable by the *Contractor* to the *Owner*, and the *Owner* may deduct the cost from any amounts which are due or may become due to the *Contractor*.
- 11.1.15 The *Contractor* shall be responsible for payment of all deductibles under the insurance policies required by the *Contract*.

**GC 11.2 CONTRACT SECURITY**

Insert new GC 11.2 – CONTRACT SECURITY as follows:

- 11.2.1 The *Contractor* shall, prior to the execution of the *Contract* and within seven (7) days of receiving *Notice in Writing* to so do, furnish a Performance Bond covering 100% of the *Contract Price* and a Labour and Material Payment Bond covering 50% of the *Contract Price*, each of which shall:
- .1 be of an insurer licensed under the Insurance Act to write surety and fidelity Insurance,
  - .2 extend protection to *Subcontractors* and persons supplying labour or materials to the improvement, and
  - .3 be in the form specified in the bid documents.
- 11.2.2 The cost of the bonds described in paragraph 11.2.1 shall be included in the *Contract Price*.

- 11.2.2 The Performance Bond shall be applicable to all of the *Contractor's* obligations under the *Contract*, including its obligations pursuant to GC 12.3 - WARRANTY. The *Contractor* shall maintain the Performance Bond in good standing and keep it in force and effect until the *Contractor* has fulfilled all of its obligations under the *Contract* and the *Contract Documents*, including its obligations pursuant to GC 12.3 - WARRANTY.
- 11.2.3 The *Contractor* represents and warrants that it has provided its Surety with a copy of the *Contract* prior to the issuance of the bond referred to in paragraph 11.2.1.
- 11.2.4 The *Contractor* shall provide written notice to the Surety for the Performance Bond, with a copy to the *Owner*, of any *Change Orders* to the *Contract*. Where a *Change Order* increases the *Contract Price*, the *Contractor* shall require that the amount of the bond be increased so that at all times the bond covers 50% of the *Contract Price*. The *Contractor* shall provide to the *Owner* upon *Substantial Performance of the Work* a rider indicating any increase in the penal amount of the Performance Bond as a result of such *Change Orders*.

**GC 12.1 READY-FOR-TAKEOVER**

- 12.1.1 In the first line of paragraph 12.1.1, delete the words "limited to the following".
- 12.1.1.2 Delete subparagraph 12.1.1.2 in its entirety, and replace with the following:
- .2 issuance of an occupancy permit by authorities having jurisdiction;
- 12.1.1.4 In the first line of subparagraph 12.1.1.4, delete the words "reasonably necessary", and replace with "as required by the *Owner*".
- 12.1.1.7 At the end of subparagraph 12.1.1.7, delete the words "if required by the *Contract Documents*".
- 12.1.1.8 Delete the words "is schedule by the *Contractor* acting reasonably", and replace with "has been completed to the satisfaction of the *Owner*."
- 12.1.2 Delete paragraph 12.1.2 in its entirety.
- 12.1.4 In the second line of paragraph 12.1.4, delete "10" and replace with "20".
- 12.1.5 In the second line of paragraph 12.1.5, delete the words "finishing the *Work*", and replace with "achieving *Total Performance of the Work*".

**GC 12.2 EARLY OCCUPANCY BY THE OWNER**

- 12.2.3.3 Delete subparagraph 12.2.3.3 in its entirety.

12.2.4 In the third line of paragraph 12.2.4, delete the word “achieve” and replace with “have achieved”.

**GC 12.3 WARRANTY**

12.3.1 In the first line of paragraph 12.3.1, delete the words “one year” and replace with “two years”.

12.3.3 In the second line of paragraph 12.3.3, delete the words "one year warranty period" and replace with “*Warranty Period*”.

12.3.4 Delete paragraph 12.3.4 in its entirety and replace with the following:

The *Contractor* shall, during and throughout the performance of the *Work* and the *Warranty Period*, maintain and repair the *Work*, at its own cost and expense, and shall promptly and immediately correct, repair or replace any defects or deficiencies in the *Work* having regard to any one or more of materials, *Products* or workmanship, including any and all damages or injury to the *Work*, which occurs during construction or the *Warranty Period*, which are discovered or identified prior to and during the *Warranty Period*, all in accordance with the Specifications, and other applicable terms and conditions of the *Contract Documents*, and to the complete satisfaction of the *Consultant* and the *Owner*. The *Contractor’s* obligation to correct deficient work shall include the cost of any investigations, tests, repairs, replacement and the making good of any resulting damage. Such work shall be executed at such times as are convenient to the *Owner*, which may entail overtime work on the part of the *Contractor*, the costs of which shall be borne by the *Contractor*.

12.3.6 In the first line of paragraph 12.3.6, delete the words “one year warranty period as described in paragraph 12.3.1” and replace with “*Warranty Period*”.

Add new paragraphs 12.3.7, 12.3.8, 12.3.9, 12.3.10 and 12.3.11 as follows:

12.3.7 The *Contractor* shall correct all damage to the *Work*, and to the *Property*, goods or equipment of the *Owner* or any other third party, that is caused or contributed to by the *Contractor’s* defects, deficiencies or corrections of same.

12.3.8 The *Contractor* shall provide fully and properly completed and signed copies of all warranties and guarantees required by the *Contract Documents*, containing:

- .1 the proper name of the *Owner*;
- .2 the proper name and address of the *Project*;



- .3 the date the warranty commences, which shall be the date that *Ready-for-Takeover* is achieved, unless otherwise agreed by the *Consultant* in writing;
- .4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and
- .5 the signature and seal of the company issuing the warranty.

The *Contractor* shall ensure that all warranties and guarantees required by the *Contract Documents* are issued in favour of the *Owner*.

12.3.9 In the event that the *Contractor* fails to maintain and repair the *Work* in accordance with paragraph 12.3.4, the *Owner* may, at its option, repair or replace any defects or deficiencies in the *Work* and deduct the cost of doing so from any amounts owed to the *Contractor*, or if no amounts are owing from the *Owner* to the *Contractor*, charge the *Contractor* for the cost of such repairs.

12.3.10 Any *Product* which requires servicing beyond what would ordinarily be considered a typical service schedule for such *Product* shall be considered to be defective and shall require correction by the *Contractor* prior to and during the *Warranty Period*.

12.3.11 *Work* that is corrected by the *Contractor* during the *Warranty Period*, shall be warranted for a further two years from the date of correction, and the *Contractor's* obligations under this GC 12.3 – WARRANTY shall continue to govern that portion of the *Work* until the expiration of two years from the correction of the defect or deficiency.

## **GC 13.2 WAIVER OF CLAIMS**

13.2.1 In the third line of paragraph 13.2.1, after the word “limitation”, add the words “claims for delay pursuant to GC 6.5 - DELAYS, claims for an increase in the *Contract Price*, pursuant to GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE and”.

13.2.3 Delete paragraph 13.2.3 in its entirety.

13.2.4 Delete paragraph 13.2.4 in its entirety.

13.2.5 Delete paragraph 13.2.5 in its entirety.

13.2.9 In the first line of paragraph 13.2.9, delete the words “or 13.2.3”.

In the second and fourth and fourth lines of paragraph 13.2.9, delete the words “the party making a the claim” and replace with “the *Contractor*”.

