

## STIPULATED PRICE CONTRACT (CCDC 2) SUPPLEMENTARY CONDITIONS TO CCDC 2 – 2020

For Projects under \$1,000,000: Toronto Metropolitan University (revised September 2022)

The Standard Construction Document CCDC 2 2020 for a Stipulated Price Contract, English version, consisting of the Agreement Between Owner and Contractor, Definitions and General Conditions of the Stipulated Price Contract, Parts 1 to 13 inclusive, governing same is hereby made part of these Contract Documents, with the following amendments, additions and modifications:

Other than these Supplementary Conditions, the Contract remains in full force and effect. Notwithstanding General Condition 1.1.5 where there is anything in the Contract, which is inconsistent with these Supplementary Conditions, the provisions of these Supplementary Conditions shall govern. Throughout the Contract Documents, reference to the Agreement, Definitions or General Conditions or a paragraph of the Agreement, Definitions or General Conditions shall be references to such provisions as they are amended by these Supplementary Conditions.

### AGREEMENT BETWEEN OWNER AND CONTRACTOR

#### ARTICLE A-5 – PAYMENT

5.1.4 **Add** new paragraph 5.1.4 as follows:

“5.1.4 The Contractor shall request payment for Work using a proper invoice (a **“Proper Invoice”**) according to the meaning set out in the *Construction Act*, R.S.O. 1990, c. C. 30 (the **“Construction Act”**), and, for the purposes of this Contract, a Proper Invoice will include the following information and documents:

1. the Contractor’s name and address;
2. the date of the proper invoice and the period during which the Work was performed;
3. information identifying the authority, whether in the Contract or otherwise, under which the Work that was performed including reference to the applicable purchase order number;
4. a description, including quantity where appropriate, of the Work that was performed;
5. the amount payable for the Work that was performed, and the payment terms;
6. for claims against any cash allowances, information identifying the authority under which the Work was supplied, a description, including quantity, where appropriate, of the Work that was supplied, and the amount payable for that Work;
7. the name title, telephone number and mailing address of the person to whom payment is to be sent;
8. a certificate, issued by the agency providing workers’ compensation insurance to the Contractor, verifying that coverage is in force at the time of making the application for payment and that coverage will remain in force for at least 60 days thereafter;

9. a declaration by the Contractor verifying that the performance of the Work is in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety;
10. the value for each Division of the Work and aggregated as a percentage of the Contract Price, including a list of all approved Change Order and the amounts of each Change Order issued to the date of the proper invoice;
11. a declaration signed by the Contractor identifying any and all known unresolved claims to the date of the proper invoice; and
12. such evidence as the Owner and/or the Consultant may reasonably require to establish the value and delivery of the Work that was performed and Products delivered as set out in the proper invoice.”

5.1.5 **Add** new paragraph 5.1.5 as follows:

“5.1.5 A Proper Invoice may be revised by the Contractor after the Contractor has given it to the Owner, if:

- .1 The Owner agrees in advance to the revision;
- .2 The date of the Proper Invoice is not changed; and
- .3 The Proper Invoice continues to meet the requirements referred to in the definition of “Proper Invoice” in paragraph 5.1.4 of this Contract.”

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

6.6 **Add** new paragraph 6.6 as follows:

“6.6 In addition to the addresses, requirements and timelines set out in paragraphs 6.1 to 6.5, the following applies:

- .1 for the purposes of Part I.1 the *Construction Act* (Prompt Payment) and Part 5 – PAYMENT,
  - (i) applications for payment and Proper Invoices will be considered given or delivered by the Contractor to the Owner when they are received by the Owner and such receipt can be verified; and
  - (ii) notices of non-payment will be considered to have been given or delivered by the Owner to the Contractor when they have been sent by the Owner and such sending can be verified, and
- .2 for the purposes of Part II.1 of the *Construction Act* (Adjudication), any notices, communications or delivery of documents to be given under the *Construction Act* will:
  - (i) in the case of the Owner, also be given by the Contractor to the individuals and at the locations indicated in the Owner’s Notice in Writing indicating same delivered to the Contractor prior to the commencement of the Work; and

- (ii) in the case of the Contractor, also be given by the Owner to the individuals and at the locations indicated in the Contractor's Notice in Writing indicating same prior to the commencement of the Work.”

## DEFINITIONS

**Add** new definitions as follows:

### **Mandated Closure**

Mandated Closure means a stop work order, shut down or closure required by a court or other public authority. In the event of a disagreement between the Parties about the interpretation of a Mandated Closure, the Owner's interpretation shall govern.

### **Permitted Direct Costs**

Permitted Direct Costs means Contractor's direct costs incurred related to safely shutting down, and subsequently reopening, the Project Work site, such as (i) making electrical, plumbing, HVAC, and life safety building systems safe and, to the extent necessary for operation of the facility, operational; (ii) securing the perimeter of the Work site to prevent entry; (iii) site monitoring; (iv) storing purchased materials and equipment ordered prior to, but delivered after, the Mandated Closure; and (v) if the Work site is a new building and Contractor is paying for heating, heating costs necessary to protect the structure. For clarity, Permitted Direct Costs shall not include Contractor's costs incurred during the shut down, such as without limitation paying Contractor's employees or other workers.

### **Shut Down Period**

Shut Down Period means (i) any statutory holiday days, (ii) any closure days resulting from a Mandated Closure, and (iii) the annual school year break occurring during December and January for a period of not more than 15 consecutive business days.

## GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

### **GC 1.1 CONTRACT DOCUMENTS**

1.1.5 **Delete** paragraph 1.1.5 and **replace** it with the following:

“1.1.5 If there is a conflict with the Contract Documents:

- .1 the order of priority of documents from highest to lowest, shall be
- the Agreement between the Owner and the Contractor,
  - the Definitions,
  - the Supplementary Conditions,
  - the General Conditions,
  - the Statement of Work issued by the Owner setting out the Work to be completed under the Contract,
  - Division 1 of the Specifications,
  - technical Specifications,
  - material and finishing schedules,

- the Drawings,
  - the master services agreement entered into by the Owner and the Contractor (if applicable),
  - any purchase order(s) issued by the Owner.
- .2 Drawings of larger scale shall govern over those of smaller scale of the same date.
- .3 dimensions shown on Drawings shall govern over dimensions scaled from Drawings.
- .4 amended or later dated documents shall govern over earlier documents of the same type.
- .5 noted materials and annotations shall govern graphic indications.”

1.1.10 **Delete** paragraph 1.1.10 and **replace** it with the following:

“1.1.10 Contracts, Drawings, specifications, models, documents and copies thereof furnished by the Contractor or the Owner are and shall remain the property of the Owner, with the exception of the signed contract set belonging to the Contractor. Such documents and models are to be used by the Contractor only with respect to the Work and are not to be used on any other work. Such documents and models are not to be copied or revised in any manner without the written authorization of the Owner.”

1.1.12 **Add** new paragraph 1.1.12 as follows:

“1.1.12 All products, materials and equipment shall be in compliance with, but not limited to, the *OHSA*.”

1.1.13 **Add** new paragraph 1.1.13 as follows:

“1.1.13 The Contractor shall familiarize themselves with Toronto Metropolitan University’s Health and Safety Manual for Contractors and the Facilities Management & Development Contractor Manual – Conduct and Procedural Requirements Manual and shall conduct themselves and the Work in accordance with all the requirements therein, and all policies and procedures incorporated by reference. The Owner shall have the right to terminate the Contract should the Contractor fail to consistently comply with these requirements, policies, and procedures.”

1.1.14 **Add** as a new paragraph 1.1.14 the following:

“1.1.14 Throughout the Contract Documents reference to the “General Conditions of the Contract” shall imply the inclusion of these “Supplementary Conditions.”

## **GC 2.2 ROLE OF THE CONSULTANT**

2.2.2 **Add** the following to paragraph 2.2.2: “The Contractor shall not be entitled to rely on such inspections as a limitation of its obligations under the Contract Documents.”

## **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

2.3.2 In paragraph 2.3.2, **replace** “reasonable notification” with “(48) hours’ notice.”

2.3.8 **Add** new paragraph 2.3.8 as follows:

“2.3.8 The undertaking of periodic site review by the Consultant or Owner and their employees and agents shall not be construed as supervision of actual construction, nor make them responsible for providing a safe place for work.”

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

3.1.3 **Add** new paragraph 3.1.3 as follows:

“3.1.3 All work, means, methods, techniques and procedures shall be performed in strict compliance with the *Occupational Health and Safety Act*, R.S.O., 1990 Chapter 01, as amended and Ontario Regulation 213/91, as amended and other applicable legislation as it relates to health and safety of work site, personnel, occupants, and public (the “**OHS**A”).”

### **GC 3.5 SUPERVISION**

3.5.3 **Add** new paragraph 3.5.3 as follows:

“3.5.3 The Owner shall have the right to immediately terminate the Contract should the Contractor fail to comply with the *OHS*A or any other legislative requirements related to health and safety.”

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

3.6.7 **Add** new paragraph 3.6.7 as follows:

“3.6.7 The Contractor shall be fully responsible to ensure that all Subcontractors and Suppliers are familiar with and perform all activities and supply products in accordance with, but not limited to, the *OHS*A. The Owner reserves the right to terminate the Contract should either Contractor or Subcontractor fails to comply with any regulation, practice or procedure as determined by current health and safety legislation. The Contractor shall not be eligible for any claims resulting from non-compliance of Subcontractors and Suppliers.”

### **GC 3.7 LABOUR AND PRODUCTS**

3.7 **Add** new paragraphs 3.7.4, 3.7.5, and 3.7.6 as follows:

“3.7.4 Products provided shall be new, unless the Contract Documents stipulate otherwise or the Owner or the Consultant directs that a particular product which is not new be utilized.”

3.7.5 Tradesmen and labourers whose work is unsatisfactory to the Consultant or who are considered by the Consultant to be unskilled or otherwise objectionable shall be excluded from the Work upon notice from the Consultant.”

3.7.6 The Contractor shall ensure all site personnel have familiarized themselves with their company’s Safety Policy and Toronto Metropolitan University’s Contractor’s Construction Manual.”

### **GC 3.8 SHOP DRAWINGS**

3.8.1 **Delete** paragraph 3.8.1 in its entirety and **replace** with the following:

“3.8.1 The Contractor shall provide Shop Drawings as described in the Contract Documents and as the Consultant may reasonably request. Without limiting the foregoing, Shop Drawings include all designs, Drawings and Specifications which the Contractor is to provide in accordance with the Contract.”

## **GC 5.2 APPLICATIONS FOR PAYMENT**

5.2.1-2 **Add** the following to the end of paragraphs 5.2.1 and 5.2.2: “, subject to paragraph 5.2.9.”

5.2.9-11 **Add** new paragraphs 5.2.9 to 5.2.11 as follows:

“5.2.9 Contractor acknowledges that Owner is shut down during the Shut Down Period. Contractor agrees that, notwithstanding paragraphs 5.2.1, 5.2.2 and 5.5.1, the Contractor will not submit its applications for payment and invoices:

- (i) during any Shut Down Period; and
- (ii) at any time when the 14th day or the 28th day after such submission would be on the day before the commencement of, or a day that is during, a Shut Down Period.

5.2.10 An application for payment or invoice that is received by the Owner when not permitted in accordance with paragraph 5.2.9 will be deemed to have been submitted on the first Working Day after the end of any such Shut Down Period.

5.2.11 The Contractor may request that the Owner accept an application for payment earlier than the time for submitting such application for payment under GC 5.2 if the time for submitting in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT or GC 5.5 – FINAL PAYMENT, as applicable, would not be permitted in accordance with paragraph 5.2.11.”

## **GC 5.3. PAYMENT**

5.3.1.3 **Delete** paragraph 5.3.1.3 and **replace** it with the following:

“.3 Subject to paragraph 5.2.9, the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement – PAYMENT not later than 28 days after receiving from the Contractor an application for progress payment containing all of the information and documentation required by the *Construction Act* and this Contract for a Proper Invoice, except if the Owner refuses to pay due to a Proper Invoice dispute and has given the Contractor notice of non-payment within 14 days after receiving the Proper Invoice from the Contractor.”

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

5.4.4 In paragraph 5.4.4, **add** to the end of the sentence “, which application shall contain all of the information and documents required by the *Construction Act* and this Contract for a Proper Invoice and include all final reports and certificates, to the extent applicable,”.

5.4.7-8 **Add** new paragraphs 5.4.7 and 5.4.8:

“5.4.7 Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Consultant all:

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 final testing and balancing reports;

- .5 distribution system diagrams;
- .6 spare parts;
- .7 a complete manual for the operation and recommended maintenance of all systems, equipment, materials and finishes, etc. for use by the Owner;
- .8 samples;
- .9 reports and correspondence from authorities having jurisdiction in the Place of the Work;
- .10 Shop Drawings;
- .11 inspection certificates;
- .12 a complete set of Drawings describing the as-built condition of all aspects of the Work;

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. The Consultant shall not be required to certify Substantial Performance of the Work if the submittals referred to in this paragraph 5.4.7 are not provided by the Contractor.

- 5.4.8 The Contractor shall submit full and complete digital record or as-built Drawings to the Consultant within 35 calendar days of the issuance of the certificate of Substantial Performance of the Work and the Owner shall be at liberty to withhold, from amounts otherwise payable to the Contractor, an amount not to exceed 1 percent of the Contract Price as security for the obligation of the Contractor to deliver such digital record or as-built Drawings.”

#### **GC 5.5 FINAL PAYMENT**

- 5.5.1 In paragraph 5.5.1, **add** to the end of the sentence “, which application shall contain all of the information and documents required by the *Construction Act* and this Contract for a Proper Invoice and include all final reports and certificates, to the extent applicable.”.
- 5.5.4 **Add** the following to the end of paragraph 5.5.4: “, subject to paragraph 5.2.9.”

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

- 6.4.1 In paragraph 6.4.1, **delete** “and in no event later than 5 Working Days after first observance of the conditions” and **replace** with “. The conditions are not to be disturbed until such time that all parties have the opportunity to observe the conditions within (3) days of verbal notification”.
- 6.4.3 **Delete** paragraph 6.4.3 in its entirety and **replace** it with the following:
- “6.4.3 If the Consultant makes a finding pursuant to paragraph 6.4.2 that no change in the Contract Price or the Contract Time is justified, the Consultant shall promptly inform in writing the reasons for this finding to the Owner and the Contractor.”

#### **GC 6.5 DELAYS**

- 6.5.1 **Delete** paragraph 6.5.1 and replace it with the following:

“6.5.1 If the Contractor is delayed in the performance of the Work by a proven act or omission of the Owner or the Consultant contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as the Consultant determines, and the Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay. In the event of a dispute as to the amount of such costs such dispute shall be resolved in accordance with PART 8 DISPUTE RESOLUTION of the General Conditions.”

6.5.2 **Delete** paragraph 6.5.2 and replace it with the following:

“6.5.2 If the Contractor is delayed in the performance of the Work by a Mandated Closure, and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend. In the event of such a delay and extension, the Contractor shall be entitled to be paid for all Work performed to the date of such Mandated Closure. In no event shall the Contractor be entitled to claim costs incurred arising from such Mandated Closure, other than the Permitted Direct Costs.”

6.5.3 In paragraph 6.5.3:

(i) **add** at the end of .4 “For certainty, this paragraph 6.5.3.4 does not apply to a Mandated Closure, which shall be governed by Section 6.5.2. An event shall not be considered beyond the Contractor’s control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that acts beyond the Contractor’s control shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services;” and

(ii) **delete** “in consultation with the Contractor” in the first sentence of .4.

6.5.4 In paragraph 6.5.4, **delete** “10” and **replace** it with “5”.

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

7.1.1 In paragraph 7.1.1, **add** “or a proposal” after the word “assignment”.

7.1.2 In paragraph 7.1.2, **add** “including failure of the Contractor to pay its Subcontractors, Suppliers or workmen on a timely basis,” after the word “degree”.

7.1.4.2 In paragraph 7.1.4.2 after “or terminate the Contract” **add** the words “and deduct the cost to correct the default.”

7.1.5 In paragraph 7.1.5 after “If the *Owner* terminates the *Contractor’s* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4” **add** “and 7.1.7.1 and 7.1.7.2”.

7.1.5.3 To paragraph 7.1.5.3, **add** “and all other costs incurred by the Owner as a result of such termination” and add, after the second instance of “Work” the words “including expenses,” after the word “WARRANTY”

7.1.7 **Add** new paragraphs 7.1.7, 7.1.8, 7.1.9, 7.1.10, 7.1.11 and 7.1.12 as follows:

“7.1.7 If the Contractor and/or its Subcontractors fail to comply with:

.1 the Owner’s policies and procedures (<https://www.torontomu.ca/policies/>), and all processes and requirements identified in Toronto Metropolitan University’s Health and



Safety Manual for Contractors and the Facilities Management & Development Contractor Manual -Conduct and Procedural Requirements Manual; and

.2 the *OHSA* or any other legislative requirements related to health and safety; then

the Owner shall have the right to immediately terminate the Contract. In the event the Owner terminates the Contract in accordance with GC 7.1.7.1 or GC 7.1.7.2, the Owner's remedies are set out in 7.1.4 and 7.1.5.

- 7.1.8 The Owner may suspend the provision of some or all of the Work under this Contract at any time in response to a Mandated Closure, on written notice to the Contractor. In such event, the Contractor shall be entitled to be paid for all Work performed to the date of suspension. In no event shall the Contractor be entitled to claim costs incurred arising from such suspension, other than the Permitted Direct Costs.
- 7.1.9 In the case of either a termination of the Contract or a suspension of the Work, the Contractor shall use its best commercial efforts to mitigate the financial consequences to the Owner arising out of the termination or suspension, as the case may be.
- 7.1.10 Upon the resumption of the Work following a suspension of the Work, the Contractor will endeavour to minimize the delay and financial consequences arising out of the suspension.
- 7.1.11 The Contractor's obligations under the Contract as to quality, correction, and warranty of the Work performed by the Contractor up to the time of termination or suspension shall continue after such termination of the Contract or suspension of the Work.
- 7.1.12 Upon the termination of the Contract, the Owner may publish a notice of termination in the form and manner prescribed in the *Construction Act*. For greater certainty, the termination will be effective in accordance with the provisions of this GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT whether or not a notice of termination is published."

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

7.2.2 **Add** at the end of paragraph 7.2.2 the following: ", provided that the Contractor shall not be entitled to terminate the Agreement if Owner seeks to excuse itself from its obligations under the Agreement as a result of a Mandated Closure."

7.2.5 **Add** at the end of paragraph 7.2.5 the following: "Notwithstanding the foregoing, in the event of a Mandated Closure, the only costs incurred arising therefrom that Contractor shall be entitled to claim are fees for Work performed up to the date of such Mandated Closure and Permitted Direct Costs."

7.2.6 - .8 **Add** new paragraphs 7.2.6, 7.2.7, and 7.2.8 as follows:

"7.2.6 This GC 7.2 – CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT shall not apply in the case of withholding of certificates and/or payments because of the Contractor's failure to pay all claims promptly or because of the registration or notice of liens against the Owner's property, until such claims and liens are discharged.

7.2.7 If the Contractor stops the Work or terminates the Contract as provided in this GC 7.2 – CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT, it shall ensure the Place of the Work is left in a secure and safe condition as required by all authorities having jurisdiction and the Contract Documents."

- 7.2.8 Upon the termination of the Contract, the Owner may publish a notice of termination in the form and manner prescribed in the *Construction Act*. For greater certainty, the termination will be effective in accordance with the provisions of this GC 7.2 – CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT whether or not a notice of termination is published.”

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

- 8.1.1 In paragraph 8.1.1, in the second line after the words “is called for”, **add** the words “excluding any default of the Contractor as determined pursuant to the provisions of GC 7.1.1 or GC 7.1.2 herein”.

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

- 8.3.9 **Add** a new paragraph 8.3.9 as follows:

“8.3.9 Notwithstanding anything else in this Contract, in the event of a dispute relating to payment arising prior to the completion of the Work, the parties may adjudicate such dispute in accordance with the *Construction Act*. The parties acknowledge and agree that the adjudication of a payment dispute in accordance with the *Construction Act* will not pause, withdraw, discontinue, or prejudice any mediation, arbitration, or court proceeding that relates to the same matter and that was commenced prior to the delivery of a notice of adjudication under the *Construction Act*, unless the parties otherwise agree in writing.”

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

- 9.1.1.1 **Delete** subparagraph 9.1.1.1 **replace** it with the following:

“.1 errors or omissions in the Contract Documents, except those prepared or to be prepared by the Contractor;”

- 9.1.2 **Add** the following to 9.1.2: “In the event the Contractor fails to make good identified damage of work or property adjacent to the Place of the Work the Owner shall have the right to make good with alternate forces and charge it back against the outstanding Contract amount.”

### **GC 9.4 CONSTRUCTION SAFETY**

- 9.4.6 Add a new paragraph 9.4.6 as follows:**

9.4.6 The Contractor shall maintain at the Place of the Work one copy of their company's construction safety policy and procedure and the Owner's Health and Safety Manual for Contractors and the Facilities Management & Development Contractor Manual -Conduct and Procedural Requirements Manual. These items are to be maintained in good order and in an area easily accessible by all site personnel, Consultant and Owner.”

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

- 10.2.4 **Add** the following to paragraph 10.2.4:

“.1 The Contractor shall be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the Work.”

- 10.2.5 **Delete** the first sentence and **add** the following to paragraph 10.2.5:

“10.2.5 The Contractor shall be responsible for and shall correct at its expense any of the Work which is not in compliance with the applicable laws, ordinances, rules, regulations or codes relating to the Work, and shall bear costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations or codes.”

## **GC 11.1 INSURANCE**

**[Note to ALL CCDC Supplemental Conditions templates users: If this project involves a significant degree of risk, unusual risks, or mission-critical property – some examples might include use of an aircraft to drop equipment or materials on a rooftop, or work on a major system such as a boiler system or other major building system – be sure to discuss those risks ahead of time with the University’s Insurance lead as additional coverages including e.g. all risk builders risk property insurance or specialty policies may be required]**

11.1 **Delete** the entirety of GC 11.1 and **replace** with the following:

“11.1 Without restricting the generality of **[GC 13 – INDEMNIFICATION]**, and without limiting, diminishing, or otherwise affecting the liability of the Contractor to the Owner under or in relation to any other provisions of the Contract, the Contractor shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 – INSURANCE. Unless otherwise stipulated in this Section, the duration of each insurance policy shall be from the date of commencement of the Work until the expiration of the warranty periods set out in the Contract Documents. Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the Owner with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

- .1 Commercial General Liability Insurance against claims for bodily injury (including death), personal injury and broad form property damage (including loss of use) and including products and completed operations liability and blanket contractual liability for an amount of not less than five million dollars (\$5,000,000.00) per occurrence. Such insurance shall include the following clauses and/or endorsements;
  - Pay on behalf of
  - Deductible
  - Primary and non-contributory
  - Cross liability and severability of interests or Separation of insureds; and
  - an endorsement naming the Owner, its governors, trustees, officers and employees as an Additional Insured.
- .2 Standard automobile insurance for all vehicles owned, licensed or leased by the Supplier and non-owned automobile insurance, where required, for an amount of not less than two million dollars (\$2,000,000.00), per occurrence for each type of coverage. Where the non-owned automobile insurance coverage is provided within a general liability policy, a separate policy is not required;
- .3 Professional liability insurance for an amount of not less than two million dollars (\$2,000,000.00) per occurrence, if applicable to the type of Work performed under this Agreement. This insurance policy is required to be maintained until Ready-for-Takeover and for a period of twenty-four (24) months after the completion of the Work;
- .4 “All risk” property insurance covering the Contractor and Subcontractors’ owned, rented or leased tools, machinery, equipment and property used for the performance of the Work, including equipment breakdown coverage;

- .5 Provide, maintain and pay for Workplace Safety and Insurance Board of Ontario (WSIB) coverage, or alternatively, provide proof of continuous Employers Liability Insurance coverage, equivalent to WSIB coverage in the amount of not less than two million dollars (\$2,000,000.00). Prior to commencing the Work, again with application for payment of the holdback amount following Substantial Performance of the Work and again with application for final payment, Contractor shall at all times during performance of the Work comply with all requirements of the Workplace Safety and Insurance Act and regulations, and provide evidence of compliance with such legislation and regulations at the Place of the Work, including payments due thereunder, by submitting its WSIB account number together with a letter from the appropriate WSIB department (indicating that there are no outstanding fees, fines, claims or debts to the Contractor's WSIB account); and
- .6 Such other types of insurance as would be carried by a prudent person or as the Owner may from time to time require, having regard for the nature of the Work and its location. Owner reserves the right to increase coverage requirements in the event of material cost overruns or increases in risks associated with the Work.

Each such policy shall in a form acceptable to the Owner. To the extent available, each such policy shall include a waiver of subrogation rights against the Owner and Consultant, and an endorsement to the policy stating that such policy is primary.

The Contractor shall be responsible for payment of all deductibles and Self Insured Retentions (SIRs) contained in any insurance policies required herein, except where a deductible amount may be excluded from the Contractor's responsibility by an express term of the Contract. Any self-insured retentions must; not exceed \$25,000; be declared on the Certificate of Insurance; and be approved by, the Owner's Risk & Insurance Officer or his/her designee. At the option of the Owner's Risk & Insurance Officer or his/her designee, either:

- 1) The insurer shall reduce or eliminate such self-insured retention; or
- 2) The Contractor shall provide a financial guarantee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the Owner be responsible for the payment of any self-insured retentions.

If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Owner shall have the right, but without obligation, to provide and maintain such insurance and provide evidence of same to the Contractor. The Contractor shall pay the costs thereof to the Owner on demand, or the Owner may deduct the amount that is due or may become due to the Contractor.

All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.

The Contractor will cause each of its Subcontractors to purchase and maintain insurance of the types and in the amounts specified above."

## **GC 11.2 CONTRACT SECURITY**

11.2 **Delete** GC 11.2 in its entirety and **replace** with the following:

"11.2.1 Provided that the Contract Price is greater than \$500,000 or if otherwise required in the Contract Documents or the procurement documents for this Project, the Contractor, prior to commencement of the Work, shall provide to the Owner the following:

- .1 labour and material payment bond in an amount equal to not less than 50% of the Contract Price; and
- .2 a performance bond in an amount equal to not less than 50% of the Contract Price.

The Contractor shall pay the premium for such bonds unless otherwise specified.

11.2.2 Such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the Place of the Work and shall be acceptable to the Owner. The bonds shall contain a multiple obligee rider or endorsement in favour of the Owner and any other parties designated by the Owner. The bonds shall be for a term expiring no earlier than twelve (12) months after the date that Ready-for-Takeover is required to be attained pursuant to paragraph 1.3 of Article A-1 of the Agreement and shall be maintained in good standing until such date. In the event of any adjustment in the Contract Price in connection with any Change Order or Change Directive, the Contractor shall arrange for supplemental or replacement bonds to be provided to the Owner in accordance with paragraph 11.2.1 and this 11.2.2 to reflect the adjusted Contract Price or price of any contract with a Subcontractor as the case may be. The form of all bonds shall be in accordance with form of performance bond and form of labour and material payment bond prescribed in the Regulations to the *Construction Act*.”

### **GC 13.1 INDEMNIFICATION**

13.1.2.2 In paragraph 13.1.2.2 **delete** “\$20 million” and **replace** with “\$3 million”.

13.1.7 **Add** a new paragraph 13.1.7 as follows:

“13.1.7 The obligations of the Contractor pursuant to this GC 13.1 – INDEMNIFICATION expressly survive the termination of the Contract except if the Contract is terminated due to the default of the Owner.”

### **PART 14–OTHER CONDITIONS**

14 **Add** new Part 14 OTHER PROVISIONS as follows:

#### **“PART 14 OTHER PROVISIONS**

##### **GC 14.1 OWNERSHIP OF MATERIALS**

14.1.1 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. All Work and Products delivered to the Place of the Work by the Contractor shall be 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.

##### **GC 14.2 CONSTRUCTION LIENS**

14.2.1 In the event that a claim for lien is registered against the Project by a Subcontractor, Sub-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 10 calendar 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.

- 14.2.2 In the event that the Contractor fails to comply with the requirements of paragraph 14.2.1, the Owner may fulfil those requirements without Notice in Writing to the Contractor and the Contractor shall reimburse the Owner on demand for all costs and associated expenses incurred by the Owner, 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 the Contractor fails to pay such reimbursement the Owner shall have the right, if it so elects, and without prejudice to any other rights or remedies, to set off and deduct all such costs and expenses from any amount owing to the Contractor.
- 14.2.3 Notwithstanding any other provision in the Contract, the Consultant shall not be obligated to issue a certificate and the Owner shall not be obligated to make payment to the Contractor if, at the time such certificate or payment was otherwise due:
- .1 a claim for lien has been registered against the Project lands or otherwise preserved or perfected under the *Construction Act*, or
  - .2 if the Owner or mortgagee of the Project lands has received written notice of a lien; or
  - .3 the Owner or Consultant reasonably believe that any party has purported to retain title to Products or materials in respect of which an application for payment has been made.
- 14.2.4 Without limiting the foregoing, the Contractor shall, if requested by the Owner, defend, indemnify and save the Owner harmless from the amount of all such claims and the costs of defending any and all actions commenced against the Owner pursuant to the construction/builder's lien legislation in force at the Place of the Work, including the legal costs of the Owner, unless the lien was a direct result of a breach of the Contract by the Owner or the non-payment by the Owner of a valid charge or claim under the Contract.
- 14.2.5 GC 14.2 – CONSTRUCTION LIENS does not apply to construction/builder's liens claimed by the Contractor.

#### **GC14.3 ACCELERATION OF THE WORK**

- 14.3.1 If, in the opinion of the Consultant, the Contractor is failing to perform the Work in accordance with any agreed schedule, or is otherwise in danger of failing to complete the Work in accordance with the time requirements of the Contract Documents, in either case after giving effect to extensions of time in accordance with GC 6.5 – DELAYS, then the Contractor shall, upon written notice from the Consultant, use its best efforts to accelerate the Work in order to catch up and keep abreast of the agreed schedule.

#### **GC14.4 PROJECT TIMELINE**

- 14.4.1 Attached to and forming part of this Agreement is the Project Plan for this Project, setting out an [xx week/xx month – REVISE AS APPROPRIATE FOR SPECIFIC PROJECT] plan ("**Project Timeline**") from Project start to Project completion. Due to COVID-19-related restrictions, the Parties acknowledge that Owner cannot confirm Project start date with certainty. Owner will keep the Contractor informed as the ability to ramp up projects becomes clearer.
- 14.4.2 The Parties agree that, subject only to agreed-upon changes in the scope of Work, the fees set out in the Agreement shall apply for this Project, regardless of when the Project actually commences.
- 14.4.3 Provided Owner provides the Contractor with seven (7) calendar days notice of planned Project commencement, the Contractor shall make all commercially reasonable efforts to meet Owner's Project start date set out in such notice. The Contractor agrees that it shall be responsible to meet

Owner's required Project Timeline, regardless of when the Project start date is, at no extra cost to Owner. If Owner requests the Contractor to complete the Project in a shorter time than the Project Timeline, the Parties shall meet to discuss within five (5) days of such request. Contractor shall advise Owner at such meeting (a) whether it is feasible to compress the Project Timeline, and (b) what the cost implications if any would be to do so. If the Parties agree to move forward on that basis, the Parties shall document their agreement as a Change to the Work, in accordance with the terms of the Agreement. The Contractor agrees to endeavor to minimize increased costs to the Owner where possible in connection with such Change.

- 14.4.3 For avoidance of doubt, the Parties agree that the Contractor shall not invoice Owner pursuant to this Agreement until after the Project start date set forth in the Owner notice delivered pursuant to paragraph 14.4.3. Invoices shall be delivered monthly thereafter, in accordance with **ARTICLE A-5 PAYMENT** and **GC 5.2 APPLICATIONS FOR PAYMENT**.”

## **PART 15 COMPLIANCE WITH POLICIES**

**Add** new Part 15 COMPLIANCE WITH POLICIES as follows

### **GC 15 COMPLIANCE WITH POLICIES**

- 15.1 In the performance of the Work under the Contract, the Contractor shall comply with all Owner policies. The University's policies can be accessed online at: <https://www.torontomu.ca/policies/>.
- 15.2 The Contractor shall comply with Owner's Face Mask Policy and COVID-19 Vaccination Policy, and any other policy, guideline, process, or protocol introduced by the Owner in response to the COVID-19 pandemic (collectively "University COVID-19 Policies and Procedures"), at its own cost. The Contractor shall remain solely liable and shall indemnify and hold harmless the Owner and its governors, officers, employees, agents and legal representatives from any claims, damages, losses, costs, and expenses (including legal fees) that arise out of, or are attributable to its failure, or failure by those for whom it is responsible in law, to comply with University COVID-19 Policies and Procedures.
- 15.3 The Contractor shall ensure that their personnel, or any other person for whom it is responsible in law, who attend Owner's premises pursuant to this Contract, comply with University COVID-19 Policies and Procedures prior to entry. This obligation includes but is not limited to (1) being fully vaccinated in accordance with Owner's COVID-19 Vaccination Policy, unless an exemption contemplated thereunder has been granted; (2) wearing a mask at all times while indoors; and (3) completing a daily health screening using the RyersonSafe App.
- 15.4 Owner reserves the right to audit all records maintained by the Contractor to verify compliance with University COVID-19 Policies and Procedures.

END OF SUPPLEMENTARY CONDITIONS