

**Supplementary Provisions**  
**("Supplementary Provisions")**

for

**CCDC 2 Stipulated Price**  
**Contract 2020**

**(the "CCDC")**

In relation to the Contract  
Documents for

**ITT 2025-38 General Contractor Services for Site Improvements at ÉSC Sainte-Trinité, Oakville**

**1.0 Interpretation and Incorporation By Reference**

These Supplementary Provisions shall form an integral part of the Contract Documents and, in the event of any conflict or inconsistency with any other terms in the Contract Documents, these Supplementary Provisions shall take precedence over any other terms in the Contract Documents. For greater certainty, these provisions:

- 1) are drafted in general terms for use with the CCDC document and are intended to amend and override any contrary provisions in the CCDC documents (notwithstanding the absence of express reference to all of the contradictory provisions that are overridden by these provisions) and, for greater certainty, these general provisions shall override and render void any and all general or specific contrary provisions in the CCDC document;
- 2) refer to the Owner throughout and are intended to preserve the Owner's ability to delegate any of its rights under these provisions to the Owner's Consultant;
- 3) unless otherwise defined herein, when using upper case terms, use those defined terms based on the same meaning as defined in the CCDC; and,
- 4) when using lower case terms that are also defined in the CCDC, they are intended in their broader plain language meaning rather than their narrower express meaning as defined in the CCDC.

**2.0 Performance Warranty**

The Contractor hereby represents, warrants and covenants to the Owner:

- 1) that in performing its services and obligations under the Contract, the Contractor shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent Contractor providing similar services for similar projects throughout the Project and that all of the Contractor's contractual obligations, duties and responsibilities shall be interpreted in accordance with this standard;

- 2) that the Contract shall be performed fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations providing the standard of care, skill and diligence that would normally be provided by experienced persons providing similar services for similar contracts and that the same standard of care, skill and diligence will be exercised in respect of any Products, personnel and procedures recommended for use;
- 3) that the Contract shall be performed free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title;
- 4) that the Contract shall be performed in accordance with the Contract's terms, industry standards and requirements of law including all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities having jurisdiction over the Place of the Work and the Contract that now or at any time hereafter may be applicable to the Place of the Work and the Contract;
- 5) that 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 practices required by the OHSA, including, but not limited to those of the "constructor", and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work, even when separate contracts are awarded for other parts of the Project or when Work is performed by Owner's own forces, and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and that it will comply with, and ensure that any Subcontractors or Suppliers comply with, all applicable occupational health and safety laws regulations and guidelines in relation to the performance of the Contract and provide the Owner with evidence of said compliance upon request by the Owner. Without limiting the foregoing, the Contractor shall be solely responsible for construction safety in respect of the Consultant, Subcontractors and Suppliers, the Owner's own forces, Other Contractors, and all persons attending the Place of the Work during the course of the Project;
- 6) that the Contractor shall review the Contract Documents and if after reviewing or at any time the Contractor discovers any errors, inconsistencies, or omissions in the Contract, any of the Contract Documents, or at the Place of the Work, or if it has any doubt as to the meaning or intent of any part thereof, the Contractor will immediately notify the Consultant and the Owner and request written instructions or explanations and will not rely on oral instructions. Further, the Contractor will be responsible for damage that results from any such errors that could reasonably have been discovered while exercising the care, skill and diligence required under this Contract;
- 7) that prior to the commencement of the Work, the Contractor shall submit to the Owner:
  - .1 a current WSIB clearance certificate;
  - .2 copies of the Contractor's insurance policies having application to the Project or certificates of insurance, at the option of the Owner;

- .3 documentation setting out the Contractor's in-house safety programs (if requested by the Owner);
  - .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the Occupier's Health and Safety Act ("OHSA"); and
  - . 5 copies of any documentation or notices to be filed or delivered to the authorities having jurisdiction for the regulation of occupational health and safety at the Place of the Work;
- 8) Products provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, provincial and municipal building codes, fire safety standards, and all governmental authorities and regulatory agencies having jurisdiction at the Place of the Work, unless otherwise specified. Products which are not specified shall be of a quality consistent with those specified and their use acceptable to the Consultant. Products brought on to the Place of the Work by the Contractor shall be deemed to be the property of the Owner, but the Owner shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said Products shall be at the sole risk of the Contractor. Workmanship shall be, in every respect, first class and the Work shall be performed in accordance with the best modern industry practice. The Contractor shall not provide substitutions for specified Products without the express written consent of the Owner;
- 9) that the Contractor's performance of the Contract shall not infringe or induce the infringement of any third-party intellectual property rights and furthermore that the Products provided in the performance of the Contract will not be subject to any conditional sales contracts or to any security rights claimed or obtained by any third-party which may subject any of the Products to seizure, removal or third-party claims and that any Products in existence at the site at the time of execution of the contract or any Products delivered to the site throughout the Contract Time shall remain the property of the Owner;
- 10) that the Contractor, Subcontractors and Suppliers and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers, shall avoid any conflict of interest in relation to its obligations under the Contract (and for greater certainty, conflict of interest includes, but is not limited to, any situation or circumstance where, in relation to the performance of the Contract, the Contractor's other commitments, relationships or financial interests: (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations). The determination of whether a conflict of interest exists or existed shall be at the sole discretion of the Owner;
- 11) that 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;
- 12) that 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;

- 13) that the Contractor shall be solely responsible for the proper management of all Excess Soil at the Place of the Work and for performance of the Work in compliance with the rules, regulations and practices required by the Excess Soil Regulation until such time as Ready-for-Takeover is achieved. Without restricting the generality of the previous sentence, the Contractor's responsibility hereunder includes the designation, transportation, tracking, temporary and/or final placement, record keeping, and reporting of all Excess Soil in connection with the Work all in compliance with the Excess Soil Regulation. The Contractor shall indemnify and save harmless the Owner, their agents, officers, directors, administrators, employees, consultants, successors and assigns from and against the consequences of any and all health and safety infractions committed directly by the Contractor, or those for whom it is responsible at law, under the Excess Soil Regulation, or any environmental protection legislation, including the payment of legal fees and disbursements on a substantial indemnity basis. Such indemnity shall apply to the extent to which the Owner is not covered by insurance. Excess Soil means "excess soil" as that term is defined under section 3 of the Excess Soil Regulation, and Excess Soil Regulation means O. Reg. 406/19: On-Site and Excess Soil Management to the Environmental Protection Act, R.S.O. 1990, c. E.19.;
- 14) that it is familiar with its prompt payment and trust obligations under the Construction Act and will take all required steps and measures to ensure that it complies with the applicable prompt payment and trust provisions under the Construction Act including, without limitation, section 8.1 of the Construction Act; and,
- 15) that there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the Contractor to perform the Contract and should there be a change that does have a material effect on the financial ability of the Contractor to perform the Contract, the Contractor will provide the Owner with Notice in Writing as to this change.

### 3.0 Additional Performance Provisions

Notwithstanding any other Contract Terms:

- 1) **Replacements by Contractor:** The Contractor agrees that to the extent that specific Subcontractors, Suppliers or individuals are named in any of the Contract Documents for the performance of certain parts of the Contract, the Contractor will not replace or substitute any of the named Subcontractors, Suppliers or individuals without the prior written approval of the Owner, and it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the originally named Subcontractor, Supplier or individual, and that any replacements will perform without requiring payment greater than the amounts initially established under the Contract.
- 2) **Replacements by Owner:** The Owner may, at any time during the Contract, require the replacement of any appointed Contractor representative or Subcontractor or Supplier where the grounds for the request involve conduct which jeopardizes the safety and security of the Place of Work, the proper and timely performance of the Contract, or the operation of the Project in any way. Immediately upon receipt of the request, the Contractor shall appoint, with no additional

charges, an acceptable replacement.

- 3) **Assignment of Contracts:** The Owner may assign to the Contractor, and the Contractor agrees, upon prior review and acting reasonably, to accept for the Project any contract procured by the Owner that has been pre-tendered or pre-negotiated by the Owner.
- 4) **Health and Safety:** Prior to the commencement of performance, the Contractor shall submit to the Owner for approval documentation setting out the Contractor's in-house safety programs and a copy of the notice of project filed with the applicable government body naming the Contractor as "constructor" under the applicable occupational health and safety legislation. The Contractor shall legally dispose forthwith of any debris and surplus material accumulated at the Place of Work, and where requested, the Contractor shall provide to the Owner a true copy of the original approval certificate from a waste management system and a true copy of the original approval certificate from the place of disposal for all debris and surplus material disposed of by the Contractor under the Contract.
- 5) **Duty to Perform Notwithstanding Dispute:** Subject to any matters involving immediate health and safety concerns, the Contractor must continue to perform the Contract notwithstanding any disputes that may arise under the Contract. The Contractor shall avoid, to the greatest extent possible, any disruption to the timely completion of the Contract. For greater certainty, this provision shall override and nullify any other right of the Contractor to suspend the performance of Work in the Contract, except for the above-mentioned matters involving immediate health and safety concerns. Any outstanding disputes shall be resolved by the parties in accordance with the post-construction dispute resolution procedures established under the Contract.
- 6) **Cost of Contractor Delay:** If the Contractor is delayed in the performance of the Contract by an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly, or by any cause within the Contractor's control, the Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as the result of such delay, including, but not limited to, the cost of all additional services required by the Owner.
- 7) **Scheduling:** Prior to the execution of the Contract the Contractor must submit to the Owner for review and acceptance a construction schedule indicating the critical path, including all major milestones, for the Project and demonstrating that the Work will be performed in conformance with the Contract Time and the Contract Documents. Once accepted the construction schedule will form the baseline construction schedule, however no changes to this schedule will be deemed to authorize any extension to the Contract Time, which may only be changed in conformance with the CCDC requirements. All requests by the Contractor for a revision to the Construction Schedule that include an extension to the Contract Time must be approved by the Owner through an executed Change Order.

If, at any time, it should appear 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 GC 3.4.1.3, the Contractor shall, either at the request of the Owner or the Consultant, or following giving notice pursuant to GC 3.4.1.3, take appropriate steps to cause the actual progress of the Work to conform to the schedule or

minimize the resulting delay. Within 5 calendar days of the request by the Owner or the Consultant or the notice being given pursuant to GC 3.4.1.3, the Contractor shall produce and present to the Owner and the Consultant a plan demonstrating how the Contractor will recover the performance of the Work to align with the currently approved Construction Schedule.

- 8) **Time of the Essence:** It is agreed that one of the reasons the Contractor was selected by the Owner for this Contract is the Contractor's representation and covenant that it will attain Substantial Performance, Occupancy (if applicable), and Ready-for-Takeover within the Contract Time stated in Article A-1 of this Contract.

The Contractor acknowledges and agrees that it is responsible to marshal its resources and those of its Subcontractors and Suppliers in a manner which will permit timely attainment of Substantial Performance, Occupancy (if applicable), and Ready-for-Takeover. The Contractor agrees that time is of the essence of this Contract.

#### **4.0 Payment, Hold Back, Warranty and Audit**

Notwithstanding any other contract terms:

- 1) **Payment by Owner:** Upon receipt of an application for payment that satisfies the requirement of a Proper Invoice, based on the Consultant's observations and evaluation of the Contractor's application for payment, the Consultant will determine the amounts owing to the Contractor under the Contract and will issue certificates for payment as provided in Article A-5 - PAYMENT, GC 5.3 - PAYMENT, GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK, and GC 5.5 - FINAL PAYMENT. If the Consultant determines that the amount payable to the Contractor differs from the amount stated in a Proper Invoice, the Consultant shall notify the Owner as provided in GC 5.3.1.1 and prepare a draft of the applicable Notice of Non-Payment for the amount in dispute. The Owner shall, subject to the Contractor's compliance with the Contract, pay the Contractor for the Work performed in the amounts established under the Contract. The Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement – PAYMENT no later than 20 calendar days after the date the complete certificate of payment is issued by the Consultant, unless, within 7 calendar days of the receipt of the certificate for payment issued by the Consultant it provides notice to the Contractor in the prescribed form that it refuses to pay all or a portion of the amount requested in the application for payment. Where the Owner has delivered a Notice of Non-Payment, the Owner and the Contractor shall first engage in good faith negotiations to resolve the dispute. If within 5 calendar days following the issuance of a Notice of Non-Payment, despite good faith efforts by both parties and the assistance of the Consultant, the Owner and the Contractor cannot resolve the dispute, either party may commence an Interim Adjudication in accordance with the procedures set out in the Construction Act. Any portion of the Proper Invoice which is not the subject of the Notice of Non-Payment shall be payable within the time period set out in this paragraph. Notice of Non-Payment means a notice of non-payment of holdback (Form 6) or a notice of non-payment (Form 1.1) under the Construction Act (Ontario), as applicable to the circumstances.

Provided that the Owner complies with its obligations under the Construction Act (Ontario), and subject to any interim determination of an adjudicator in accordance with any Interim Adjudication, and where applicable, a final determination made in accordance with the dispute resolution processes prescribed by this Contract, the Owner shall be entitled to claim in a Notice of Non-Payment a right to deduct from or, set off against, any payment of the Contract Price:

- .1 any amount expended by the Owner in exercising the Owner's rights under this

- Contract to perform any of the Contractor's obligations that the Contractor has failed to perform;
- .2 any damages, costs or expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Owner as a result of the failure of the Contractor to perform any of its obligations under the Contract;
  - .3 any other amount owing from the Contractor to the Owner under this Contract.

- 2) **Progress Payments:** Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties. The amount claimed shall be for the value, proportionate to the amount of the Contract, or work performed and Products delivered and incorporated into the Work at that date. No amount claimed shall include products delivered and incorporated into the Work, unless the products are free and clear of all security interests, liens and other claims of third parties.

Each application for payment, except the first, shall include a statutory declaration, in the current CCDC 9A form, up to the date of the application for payment. Each application for payment (including the first holdback upon Substantial Performance, and final payments), shall also include:

- .1 A certificate, issued by an agency or firm 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 sixty (60) days thereafter.
- .2 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.
- .3 A pre-approved schedule of values, supplied by the Contractor, for Divisions 1 through 14 of the Work, aggregating the total amount of the Contract Price.
- .4 A separate pre-approved schedule of values, supplied by each Subcontractor, aggregating the total amount of the Contract Price.
- .5 A Proper Invoice, and invoices to support all claims against the cash allowance.
- .6 An acceptable construction schedule pursuant to GC 3.4.

The Contractor shall submit, with each application for progress payment after the first, a statutory declaration in the prescribed form, confirming that payments in connection with performance of the Contract have been made to the end of the period immediately preceding that covered by the current progress payment application.

A Proper Invoice shall include the following:

- 1. Contractor invoices;
- 2. The period in which services were supplied;
- 3. How the Work was authorized;
- 4. Description of services or materials supplied;
- 5. The amount payable;
- 6. The contact information of the payment administrator;
- 7. Any other prescribed information required by applicable lien legislation.

- 3) **Contract Price:** The Contract Price shall remain fixed for the duration of the Contract Time, subject only to adjustments as provided for in the Contract Documents. For certainty, and without limiting

the general application of the preceding sentence, the Contractor assumes all risks in connection with cost increases for overhead, Products, Labour, and Construction Equipment prescribed by the Contract Documents for the performance of the Work, and the Contractor assumes all responsibility for liabilities and additional costs that may arise as a result of the Contractor's inclusion of any Product, Construction Equipment, Supplier, or Subcontractor in its calculation of the Contract Price.

**Change Order:** Where work is added to the Contract, the Contractor shall only be entitled to an increase in the Contract Price by the cost of performing said work, including all applicable tax but excluding Value Added Tax, plus the following Contractor overhead and profit cost calculations, which for greater certainty are deemed to include site and head office overhead costs as well as any insurance and bonding costs: (a) 5% overhead and 5% profit markup for Contractor on its own work and (b) 5% overhead and 5% profit markup for Contractor on Subcontractor's work. No extension to the Contract Time shall be granted for changes in the Work unless the Contractor can clearly demonstrate that such changes significantly alter the overall construction schedule submitted at the commencement of the Work. Extensions of Contract Time and all associated costs, if approved, shall be included in the relevant Change Order. When a change in the Work is proposed or required, the Contractor shall within 10 calendar days submit to the Consultant for review a claim for a change in Contract Price and/or Contract Time. Should 10 calendar days be insufficient to prepare the submission, the Contractor shall within 5 calendar days, advise the Consultant in writing of the proposed date of submission of the claim. Claims submitted after the dates prescribed herein will not be considered.

- 4) **Hold Back and Set Off:** The Owner may hold back payment or set off against payment if, in the opinion of the Owner acting reasonably, the Contractor has failed to comply with any requirements of the Contract, for greater certainty including but not limited to: defective or incomplete portions of the Work not rectified, evidence of Contractor's failure to make payments to Subcontractors or Suppliers, and failure to attain the Contract Time.
- 5) **Performance Hold Back:** In addition to the statutory holdbacks required for third party lien claims, the Owner may hold back up to 5% of all amounts payable under the Contract until the Contractor has performed all of its obligations under the Contract and satisfied all of the conditions for final completion of the Contract. In addition to other remedies available at law, the Owner may set off against this holdback amount as compensation: a) for any costs incurred as a consequence to the Contractor's failure to meet the agreed upon schedule, b) any costs incurred in addressing any lien claims and c) any other damages arising out of the Contractor's breaches of contractual commitments.
- 6) **Invoice:** Contractor shall not invoice the Owner until they have received written confirmation from the Owner of completion of all necessary testing and commissioning for all of the portion of the Work falling under the relevant invoice. If the Contractor fails to provide all documentation as required by subsection 4.0 2) above, the Contractor or Owner shall be entitled to return the application for payment to the Contractor for completion. The 5 day review period by the Consultant and 20 day payment period by the Owner will commence upon receipt of a complete application for progress payment.
- 7) **Cash Allowances:** Where the actual cost of the Work under any cash allowance exceeds the

amount of that cash allowance, any other cash allowances not fully expended shall be reallocated to cover the shortfall, with no additional amount added to the Contract Price for profit or overhead. Only in the event that all cash allowances are fully expended shall the Contractor be compensated for the excess incurred, including profit and overhead on the excess amount. If the total of all cash allowances is not fully expended that amount will be deducted from the Contract Price. The Owner may call or require the Contractor to call for competitive bids for any Work funded by the cash allowances. Cash allowances cover the net cost to the Contractor of services, Products, Construction Equipment, freight, unloading, handling, storage, installation, provincial sales tax, and other authorized expenses incurred in performing any Work stipulated under the cash allowances but does not include any Value Added Taxes payable by the Owner and the Contractor.

- 8) **Taxes and Duties:** Unless otherwise stated, the Contractor shall pay all applicable taxes, including excise taxes, incurred by or on the Contractor's behalf with respect to the Contract. The Owner shall be entitled to all available refunds or rebates of all taxes and custom duties applicable to the Contract, and the Contractor shall cooperate with the Owner in ascertaining the amount of such tax and if necessary claim on its own behalf and transfer to the Owner or facilitate such available refund or rebate.
- 9) **Withholding Tax:** The Owner shall withhold any applicable withholding tax from amounts due and owing to the Contractor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.
- 10) **Interest on Payment:** There shall be no interest charged by the Contractor for any late payments.
- 11) **Substantial Performance Application:** When the Contractor considers that Substantial Performance of the Work has been achieved, the Contractor request that the Consultant prepare and submit to the Contractor and the Owner a comprehensive deficiency list of items to be completed or corrected, including any incomplete Close-Out Documentation, as further described below. The Contractor shall then apply for a review by the Consultant and the Owner to establish Substantial Performance of the Work. Failure by the Consultant to include an item on the list does not alter the responsibility of the Contractor to complete the Contract. Prior to submitting its written application for Substantial Performance of the Work, the Contractor shall submit to the Owner all guarantees, warranties, certificates, testing and balancing reports, distribution system diagrams, as built Drawings and Specifications, spare parts, maintenance manuals, samples, existing reports and correspondence from authorities having jurisdiction in the Place of Work, and other materials or documentation required to be submitted under the Contract, together with written proof acceptable to the Owner that the Contract has been substantially performed in conformance with the requirements of applicable municipal, governmental and utility authorities.

Upon the request of the Contractor for confirmation of Substantial Performance, the Consultant will review the Work to verify the validity of the application and shall promptly, and in any event, no later than 30 calendar days after delivery to the Contractor of the complete deficiency list and application:

.1 prepare a final deficiency list incorporating all items to be completed or corrected, including any incomplete or unsubmitted Close-Out Documentation. Each item shall have an indicated value for correction or completion and the determination of the total value of such items shall be determined pursuant to paragraph 18) below. The final deficiency list complete with values is to be included with the Consultant's draft verification and shall be reviewed with the Owner prior to the Consultant rendering a determination ;

.2 the Consultant shall then advise the Contractor in writing that the Work or the designated portion of the Work is not substantially performed and give reasons why, or the Consultant shall state the date of Substantial Performance of the Work in a certificate and issue a copy of that certificate to each the Owner and the Contractor. The Contractor shall complete the Work within thirty (30) calendar days, or such lesser amount of days as agreed upon by the parties, of the date certified as the date of Substantial Performance of the Work.

- 12) **Outstanding Work:** Prior to the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Owner, shall establish reasonable dates for finishing any outstanding Work and correcting deficiencies, and shall submit a statement confirming that no written notices of lien have been received by the Contractor. The Contractor shall perform the cutting and remedial work required to make the affected parts of the Work come together properly. Such cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.
- 13) **Publication of Notice:** Within seven (7) calendar days of receiving a signed copy of the certificate of Substantial Performance of the Work, the Contractor shall publish a copy of the certificate in a statutorily recognized construction trade publication and shall provide the Owner with the name of the publication and date of publication. 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.
- 14) **Final Completion Declarations and Certifications:** As a precondition of achieving final completion of the Work and receiving any funds withheld by the Owner, the Contractor shall submit a written request for release of holdback, including a declaration that no written notices of lien have been received by it, along with the Contractor's statutory declaration of progress payment distribution, any documents or Drawings required by the Owner and the Contractor's occupational health and safety clearance certificate.
- 15) **Warranty Period:** The one-year warranty period under the Contract shall begin to run upon the Owner's express written approval of final completion of the Contract, rather than at the confirmation of Substantial Performance of the Work. There shall be no deemed acceptance through the passage of time. The warranty period with regards to any item corrected will commence from the date the defect is corrected and the remedial work is accepted by the Consultant. One month prior to the end of the one year warranty period, the Owner may conduct a warranty period inspection.
- 16) **Future Audit:** For seven (7) years after the final completion of the Contract or any date of termination of the Contract, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract; and (b) that the Contract was performed in

accordance with the Contract terms and requirements of law. During the term of the Contract, and for seven (7) years after the term, the Contractor shall permit and assist the Owner in conducting audits of the operations of the Contractor to verify (a) and (b) above. The Owner shall provide the Contractor with at least ten (10) Working Days prior notice of its requirement for such audit. The Contractor's obligations under this paragraph shall survive any termination or expiry of the Contract.

- 17) **Arbitration/Mediation/Interim Adjudication:** Any dispute that arises may be resolved through alternative dispute resolution. A mediator may be appointed in order to resolve the dispute, except that such mediator will only be appointed if both the Owner and the Contractor agree. The dispute may be finally resolved by binding arbitration under the Rules for Arbitration CCDC 40 provided both the Owner and the Contractor agree to such binding arbitration. Prior to delivering a notice of Adjudication in a form prescribed by the Construction Act, the parties agree to first address all disputes by attending at least one meeting with the Owner's representative, the Consultant's representative, and the Contractor's representative, prior to commencing an Adjudication. The parties agree that such steps will be taken to resolve any disputes in a timely and cost effective manner. If a resolution to the dispute(s) is not made at such a meeting, any party who plans to commence an Adjudication shall provide the other party with 5 Working Days' Notice in Writing of its intention to issue a notice of Adjudication.

Notwithstanding the foregoing, either the Contractor or the Owner may submit the following disputes to construction dispute interim adjudication ("Interim Adjudication") as defined in Part II.1 of the Construction Act (Ontario) (the "Act"):

1. The valuation of services or materials provided under the Contract.
2. Payment under the Contract, including in respect of a Change Order, whether approved or not, or a Contemplated Change Order.
3. Disputes that are the subject of a notice of refusal to pay or non-payment under Part 5 hereof and/or Part I.1. (Prompt Payment) of the Act.
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off) of the Act.
5. Payment of a holdback under section 26.1 (payment of holdback on annual basis) or 26.2 (payment of holdback on phased basis) of the Act.
6. Non-payment of holdback by the Board under section 27.1 of the Act.
7. Any other matter that the parties to the Interim Adjudication agree to in writing, or that may be prescribed by the Act.

An Interim Adjudication shall be conducted in accordance with the Act, the Regulations, and the following requirements:

1. If the Owner or the Contractor (the "Initiating Party") wish to refer a dispute to Interim Adjudication, it shall give to the other party (the "Responding Party"), the Consultant, and any other party required by the Act, written notice thereof, including the following:

2. the names and addresses of the parties;
3. the nature and a brief description of the dispute, including details respecting how and when it arose;
4. the nature of the redress sought; and
5. the name of a proposed adjudicator to conduct the Interim Adjudication.
6. The Responding Party who receives from the Initiating Party notice of the referral of a dispute to Interim Adjudication, shall respond in writing in accordance with the Act. The Responding Party shall either confirm that the proposed adjudicator is acceptable or propose an alternative adjudicator. If the parties cannot agree to a proposed adjudicator within five (5) days of the delivery of the initial notice of the referral of the dispute to Interim Adjudication, then the parties shall ask the Authority under the Act to appoint one.
7. The adjudicator agreed upon by the parties (the “**Adjudicator**”) shall have the following powers:
  - a. Issuing directions respecting the conduct of the Interim Adjudication.
  - b. Taking the initiative in ascertaining the relevant facts and law.
  - c. Drawing inferences based on the conduct of the parties to Interim Adjudication.
  - d. Conducting an on-site inspection of the Project.
  - e. Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, as is reasonably necessary to enable him or her to determine better any matter of fact in question.
  - f. Making a determination in the adjudication.
  - g. Any other power that may be prescribed.

The Owner may modify or include any additional requirements that it considers necessary in the circumstances.

If the Adjudicator requests an extension of the deadline for the Adjudicator’s determination, the parties agree to grant the Adjudicator’s request, provided that the deadline is not extended by more than fourteen days.

The parties agree that a determination by an Adjudicator shall be final and binding on each party and no party to an Interim Adjudication shall attempt to arbitrate, or otherwise contest, the determination under the provisions of the Contract, or through any other process, except in accordance with the Act.

The parties acknowledge and agree that no Interim Adjudication, arbitration, action, suit or other proceeding may be brought by the Contractor against the Owner in respect of a claim for an increase to the Contract Price before the Consultant has issued its findings in respect of same. For greater clarity and without limiting the foregoing, the amount applied for in each Proper Invoice shall not

include any amounts pertaining to the Contractor's claim for an increase in Contract Price unless and until the Consultant has issued a written notice to the Contractor regarding the validity of such claim, as provided for in GC 6.6.5. However, nothing in this GC 8.2.8 shall prevent a Contractor from commencing an Adjudication where, pursuant to the Construction Act, the Contractor is required to give an undertaking to a Subcontractor to commence an Adjudication following delivery of a Notice of Non-Payment.

- 18) Notwithstanding any provisions contained in the Contract Documents concerning certification and release of monies to the Contractor, the Owner reserves the right to establish a deficiency holdback, at the time of the review for Substantial Performance of the Work, based on a 200% dollar value of the deficiencies listed by the Consultant.

In performing this calculation under the foregoing paragraph:

- .1 no individual deficiency will be valued at less than five hundred dollars (\$500.00); and
- .2 for any Close-Out Documentation not submitted in advance of or as part of the Contractor's application for Substantial Performance of the Work, an amount shall be retained by the Owner as part of the deficiency holdback that is equal to the estimated time and material costs to retain a third-party to re-create the applicable Close-Out Documentation, as determined by the Consultant, until such time as the applicable Close-Out Documentation is submitted and approved.

The deficiency holdback shall be due and payable to the Contractor on the 61st day following completion of all of the deficiencies listed by the Consultant, there being no claims for lien registered against the title to the Place of the Work issued in accordance with the Construction Act, and less any amounts disputed under an Owner's Notice of Non-Payment (Form 1.1).

Notwithstanding the foregoing, the Owner may agree with the Contractor that, in place of a deficiency holdback, the Owner shall retain the same amount calculated in accordance with the above requirements in this paragraph as a credit, and the Owner shall apply such credit to the completion of the deficiencies in place of the Contractor.

## 5.0 Confidentiality

Notwithstanding any other Contract terms, the Contractor shall maintain the confidentiality of all Owner confidential information provided to the Contractor by the Owner in any form, irrespective of whether that information is expressly identified as confidential at the time of disclosure, and any breach of confidentiality shall constitute a substantial failure of performance under the Contract. For greater certainty:

- 1) **Publicity:** Any publicity or publications related to the Contract shall be at the sole discretion of the Owner and the Contractor shall not make use of its association with the Owner without the prior written consent of the Owner. Without limiting the generality of this paragraph, the Contractor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Owner.

- 2) **Confidentiality:** The Contractor shall during and following the term of the Contract: (a) keep all Owner confidential information confidential and secure; (b) limit the disclosure of Owner confidential information to only those who have a need to know it for the purpose of performing the contract; (c) not directly or indirectly disclose, destroy, exploit or use any Owner confidential information (except for the purpose of performing the contract or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Owner and (ii) in respect of any confidential information about any third-party, the written consent of such third-party; (d) return the Owner confidential information to the Owner on demand; and (e) return all Owner confidential information to the Owner before the end of the term, with no copy or portion kept by the Contractor.
- 3) **No Copying:** The Contractor shall not copy any Owner confidential information, in whole or in part, unless copying is essential for the performance of the contract and on each copy made by the Contractor, the Contractor must reproduce all notices which appear on the original.
- 4) **Notice:** The Contractor shall notify the Owner promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Owner confidential information.
- 5) **Irreparable Harm:** The Contractor acknowledges that breach of any of these confidentiality provisions may cause irreparable harm to the Owner or to any third-party to whom the Owner owes a duty of confidence, and that the injury to the Owner or to any third-party may be difficult to calculate and inadequately compensable in damages. The Contractor agrees that the Owner is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of these confidentiality provisions.
- 6) **Protective Order:** If the Contractor or any of its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors or Suppliers become legally compelled to disclose any Owner confidential information, the Contractor will provide the Owner with prompt Notice in Writing to that effect in order to allow the Owner to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Owner and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Contractor will disclose only that portion of Owner confidential information which the Contractor is legally compelled to disclose, only to such person or persons to which the Contractor is legally compelled to disclose, and the Contractor shall provide notice to each such recipient (in co-operation with legal counsel for the Owner) that such Owner confidential information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the contract and, if possible, shall obtain each recipient's written agreement to receive and use such Owner confidential information subject to those terms and conditions.
- 7) **Access and Privacy Laws:** The Contractor and the Owner acknowledge and agree that public access laws apply to and govern all records (meaning any recorded information, including any personal information, in any form: (a) provided by the Owner to the Contractor, or provided by the Contractor to the Owner, for the purposes of the Contract; or (b) created by the Contractor in the performance of the Contract) and may require the disclosure of such records to third parties. Furthermore, the Contractor agrees: (i) to keep records secure; (ii) to provide records to the

Owner within seven (7) calendar days of being directed to do so by the Owner for any reason, including an access request or privacy issue; (iii) not to access any personal information unless the Owner determines, in its sole discretion, that access is permitted under applicable laws and is necessary in order to perform the Contract; (iv) not to directly or indirectly use, collect, disclose or destroy any personal information for any purposes that are not authorized by the Owner; (v) to ensure the security and integrity of personal information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases, and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (vi) to restrict access to personal information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors or suppliers who have a need to know it for the purpose of performing the contract; (vii) to implement other specific security measures that in the reasonable opinion of the Owner would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of personal information and records generally; and (viii) that any confidential information supplied to the Owner may be disclosed by the Owner where it is required or permitted to do so under public access laws, by an order of a court or tribunal, or pursuant to a legal proceeding; and this paragraph shall survive any termination or expiry of the Contract.

These confidentiality provisions shall survive any termination or expiry of the Contract.

## **6.0 Intellectual Property**

Notwithstanding any other Contract terms:

- 1) **No Logos:** The Contractor shall not use any insignia or logo of the Owner except where required to perform the Contract and only if it has received the prior written permission of the Owner to do so.
- 2) **Owner Intellectual Property:** The Contractor agrees that all intellectual property (meaning any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity; and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, including images and data) provided by the Owner to the Contractor shall remain the sole property of the Owner at all times.
- 3) **Licence to Contractor Intellectual Property:** The Owner is hereby granted a perpetual, irrevocable and royalty free license to use any and all work products in any form, including all Drawings and other documents, created or used before or during the performance of the Contract by the Contractor (or any third parties through the Contractor) for all purposes relating to the Contract and, for greater certainty, such licence shall survive the expiry or termination of the Contract. The Contractor shall provide any such work products to the Owner immediately on request and no later than final completion of the Contract, with any changes to the Drawings reflecting and the changes from the Drawings which may have occurred during construction including, but not limited to, the exact location of major building components that were shown generally on the Drawings made available for review with each application for a progress payment. The Contractor

shall not incorporate into its work products anything that would restrict the right of the Owner to modify, further develop or otherwise use those materials in any way that the Owner deems necessary, or that would prevent the Owner from entering into any contract with any contractor other than the Contractor for the modification, further development of or other use of those materials.

These intellectual property provisions shall survive the termination or expiry of the Contract.

## **7.0 Indemnity, Insurance, Security and Releases**

Notwithstanding any other Contract terms:

- 1) **No Owner Indemnities:** Any express or implied reference to the Owner providing any indemnity whether at the time of execution of the Contract or at any time during the Contract term, shall be void and of no legal effect.
- 2) **No Indirect Costs or Damages:** Any amounts payable by or otherwise by the Owner under the Contract shall be limited to the Contractor's direct costs only and the Owner shall not be responsible or liable for paying any indirect, special or consequential costs or damages.
- 3) **Contractor's Indemnity:** The Contractor hereby agrees to indemnify and hold harmless the Owner and the Owner's directors, officers, agents, employees and volunteers from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including, without limitation, for breaches of confidentiality or privacy or intellectual property rights or third party bodily injury (including death or any consequences of any and all safety infractions committed by the Contractor under the occupational health and safety legislation), personal injury and property damage, any and all safety infractions committed by the Contractor under OHS and any other occupational health and safety legislation, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, its Subcontractors or Suppliers or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract. The Contractor further agrees to indemnify and hold harmless the Owner and the Owner's directors, officers, agents, employees and volunteers for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the Owner, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract and no payment or partial payment, no issuance of a final certificate of payment, and no occupancy in whole or in part of the Work shall constitute a waiver or release of any of these indemnity provisions. For certainty, any partial or total use, or occupancy of the Work, by the Owner shall in no way be an acceptance of the Work, or a release of the Contractor from the Contractor's responsibility to complete the Work. This specifically overrides the terms and provisions of GC 12.2.3.
- 4) **Contractor Insurance:** In addition to any minimum insurance requirements prescribed under the CCDC, the Contractor hereby agrees to put in effect and maintain all insurance required under the Contract and to provide the Owner with evidence of said insurance upon request by the Owner.

Without limiting the generality of the foregoing, the Contractor shall provide, maintain, and pay for the insurance coverages specified below. Unless otherwise stipulated, 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 General Liability Insurance

General liability insurance shall be in the name of the Contractor, with the Owner and the Consultant named as Additional insureds, with limits of not less than \$10,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof, for itself and each of its employees, Subcontractors and/or agents. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of Ready-for-Takeover, as set out in the certificate of Ready-for-Takeover, on an ongoing basis for a period of 6 years following Ready-for-Takeover. Where the Contractor maintains a single, blanket policy, the Addition of the Owner and the Consultant is limited to liability arising out of the Project and all operations necessary or incidental thereto. The policy shall be endorsed to provide the Owner with not less than 30 days' notice, in writing, in advance of any cancellation and of change or amendment restricting coverage.

.2 Automobile Liability Insurance

Automobile liability insurance in respect of licensed vehicles shall limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death and damage to property, covering all licensed vehicles owned or leased by the Contractor, and endorsed to provide the Owner with not less than 30 days' notice, in writing, in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the Contractor shall provide the Owner with confirmation of automobile insurance coverage for all automobiles registered in the name of the Contractor.

.3 Aircraft and Watercraft Liability Insurance

Where determined necessary by the Contractor, acting reasonably, aircraft and watercraft liability insurance will be obtained. Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof and limits of not less than \$2,000,000.00 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner. The policies shall be endorsed to provide the Owner

with not less than 30 days' notice, in writing, in advance of cancellation, change or amendment restricting coverage.

#### .4 Property and Boiler and Machinery Insurance

(1) Builder's Risk property insurance shall be in the name of the Contractor with the Owner and the Consultant named as additional insureds. The policy shall insure against all risks of direct physical loss or damage to the property insured which shall include all property included in the Work, whether owned by the Contractor or the owner or owned by others, so long as the property forms part of the Work. The property insured also includes all materials and supplies necessary to complete the work, whether installed in the work temporarily or permanently, in storage on the project site, or in transit to the project site, as well as temporary buildings, scaffolding, falsework forms, hoardings, excavation, site preparation and similar work. The insurance shall be for not less than the sum of the amount of the contract price and the full value of products that are specified to be provided by the owner for incorporation into the work, if applicable, with the deductible of \$10,000.00 payable by the contractor. The insurance shall include the foregoing and, otherwise, shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement provided that the IBC Form 4042 shall include the latest Addition of the relevant CCDC endorsement form. The coverage shall be based on a completed value form and shall be maintained continuously until ten (10) days after the date of the final certificate of payment.

(2) Boiler and machinery insurance shall be in the name of the Contractor, with the Owner and the Consultant named as Additional insureds, for not less than the replacement value of the boilers, pressure vessels and other insurable objects forming part of the Work. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form" and shall be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment.

(3) The policies shall allow for partial or total use or occupancy of the Work.

(4) The policies shall provide that, in the case 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 for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of the Contract Time, relative to the extent of the loss or damage, as determined by the Owner, in its sole discretion.

(5) The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT. In addition, the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work.

## .5 Contractors' Equipment Insurance

"All risks" contractors' equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, excluding boiler insurance, shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner. The policies shall be endorsed to provide the Owner with not less than 30 days' notice, in writing, in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the Contractor for self-insurance of his equipment, the Owner agrees to waive the equipment insurance requirement.

The Contractor shall be responsible for deductible amounts under the policies.

Where the full insurable value of the Work is substantially less than the Contract Price, the Owner may reduce the amount of insurance required to waive the course of construction insurance requirement.

If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Owner shall have the right 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.

- 5) **Security:** The Contractor shall, prior to commencement of the Work or within the specified time, provide to the Owner any Contract security specified in the Contract Documents. Without limiting the generality of the foregoing, the Contractor shall provide a Performance Bond in the amount of at least 50% of the total of the Contract Price plus the Value Added Taxes and a Labour and Material Payment Bond in the amount of at least 50% of the total of the Contract Price plus Value Added Taxes, which extends its protection to any Subcontractors supplying labour and materials to the Work, and guaranteeing the faithful performance of the Contract.

With respect to the foregoing bonds, and if the Contract Documents require any other surety bonds to be provided, such bonds shall be in the form prescribed by the Construction Act, be issued by an insurer licensed under the Insurance Act to write surety and fidelity insurance, which has been approved by the Owner, authorized to transact a business of suretyship in the province or territory of the Place of the Work and shall be maintained in good standing until the fulfillment of the Contract, including all warranty and maintenance periods set out in the Contract Documents. It is the intention of the parties that the performance bond shall be applicable to all of the Contractor's obligations in the Contract Document and, wherever a performance bond is provided with language which conflicts with this intention, it shall be deemed to be amended to comply. The Contractor represents and warrants to the Owner that it has provided its surety with a copy of the Contract Documents prior to the issuance of such bonds. Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the Owner for and against costs and expenses (including legal and Consultant services and court costs) arising out of or as a consequence of any default of the Contractor under this Contract. The premiums for bonds

required by the Contract Documents shall be included in the Contract Price.

- 6) **No Owner Waivers or Releases:** Any express or implied reference to the Owner providing the Contractor with any waivers or releases under the Contract are void and of no legal effect. For greater certainty, the only limitations applicable to the Owner's right to enforce any terms or make any claims of any kind against the Contractor under this Contract shall be the statutory limitation periods applicable to this Contract by general application of law. Any and all other contractual waiver, releases or limitation periods in favour of the Contractor under this Contract are void and of no legal effect.

## **8.0 Termination and Debarment**

Notwithstanding any other Contract terms:

- 1) **Immediate Termination of Contract:** The Owner may immediately terminate the Contract upon giving notice to the Contractor where: (a) the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency; (b) the Contractor breaches any of the confidentiality provisions under the Contract; (c) the Contractor breaches the conflict of interest provisions under the Contract; (d) the Contractor, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the Owner; (e) the Contractor undergoes a change in control which adversely affects the Contractor's ability to satisfy some or all of its obligations under the Contract; (f) the Contractor subcontracts for the provision of part or all of the Contract or assigns the Contract without first obtaining the written approval of the Owner; or (g) the Contractor's acts or omissions constitute a substantial failure of performance; and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

In addition to its right to terminate the Contract set out herein, the Owner may terminate this Contract at any time for any other reason and without cause upon giving the Contractor fifteen (15) Working Days Notice in Writing to that effect. In such event, the Contractor shall be entitled to be paid for all Work performed including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the termination of the Contract, but in no event shall the Contractor be entitled to be compensated for any loss of profit on unperformed portions of the Work, or indirect, special, or consequential damages incurred.

- 2) **Contractor's Obligations on Termination:** On termination of the Contract, the Contractor shall, in addition to its other obligations under the Contract and at law: (a) provide the Owner with a report detailing: (i) the current state of the provision of the Work by the Contractor at the date of termination; and (ii) any other information requested by the Owner pertaining to the provision of the Work and performance of the Contract; (b) execute such documentation as may be required by the Owner to give effect to the termination of the Contract; and (c) comply with any other instructions provided by the Owner, including but not limited to instructions for facilitating the transfer of its obligations to another person. This paragraph shall survive any termination of the Contract.

- 3) **Contractor's Payment Upon Termination:** On termination of the Contract, including for greater certainty any termination by the Contractor, the Owner shall only be responsible for the payment of the Work provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Contractor of its warranties and other responsibilities relating to the Work performed or money paid. In addition to its other rights of hold back or set off, the Owner may hold back payment or set off against any payments owed if the Contractor fails to comply with its obligations on termination or until costs or damages resulting from any default by the Contractor are satisfied. 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.
- 4) **Contractor Debarment:** In addition to any other rights or remedies, the Owner may prohibit the Contractor from participating in the Owner's future procurement processes based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following: (a) breaches of contractual obligations in relation to a past contract with the Owner; (b) illegal or unethical conduct including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion or unethical conduct, including lobbying in relation to a tendering process in an attempt to influence the tendering process or the selection of the successful bidder(s), any other inappropriate communications, offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of the Owner, deceitfulness, submitting bids containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or may be seen to compromise the Owner's procurement processes; (c) the refusal to honour submitted pricing or other commitments; or (d) any conduct, situation or circumstance determined by Owner, in its sole and absolute discretion, to have constituted a conflict of interest.
- 5) **Termination and Debarment in Addition to Other Rights:** The express rights of termination and debarment in the Contract are in addition to and shall in no way limit any rights or remedies of the Owner under the Contract, at law or in equity.
- 6) **Suspension:** The Owner may suspend Work under this Contract at any time for any reason and without cause upon giving the Contractor Notice in Writing to that effect. In such event, the Contractor shall be entitled to be paid for all Work performed to the date of suspension and be compensated for all actual costs incurred arising from the suspension, including reasonable profit, for loss sustained upon Products and Construction Equipment, and such other damages as the Contractor may have sustained as a result of the suspension of the Work, but in no event shall the Contractor be entitled to be compensated for any indirect, special, or consequential damages incurred. In the event that the suspension continues for more than forty-five (45) calendar days, the Contract shall be deemed to be terminated and the provisions of Section 8.0 1) above shall apply.

## 9.0 Other Provisions

- 1) **Contract Documents:** The Consultant on behalf of the Owner will provide to the Contractor without charge, three (3) copies of the Contract documents, exclusive of those required by jurisdictional authorities and the executed Contract documents. Additional copies can be

purchased by the Contractor.

- 2) **Toxic Substances:** In addition to any requirements under the Contract the Contractor, or anyone for whom the Contractor is responsible for, will not bring any toxic or hazardous substances to the Place of Work except as required in order to perform the Work under the Contract. All such toxic and hazardous substances will be the responsibility of the Contractor and as such will be handled and disposed of by the Contractor in accordance with all laws and regulations applicable at the Place of Work. For greater certainty, this includes any toxic or hazardous materials already at the Place of Work (which were then harmless, stored, contained or otherwise dealt with in accordance with legal and regulatory requirements by the Owner) that were handled or dealt with in any way by the Contractor or anyone for whom the Contractor is responsible.
- 3) **Deficiencies:** The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the Work of other Contractors, or adjacent property, without first receiving written instructions as to the course of action to be taken by the Owner. Where, however there is danger to life or public safety the Contractor shall take emergency action as it deems necessary to remove the danger. In addition, where the Owner identifies a deficiency that prevents maintaining security, or where basic systems essential to the ongoing business of the Owner cannot be maintained operational, Contractor will provide emergency rectification within 8 hours of a request being made by the Owner during business hours.
- 4) **Clean Up:** The Contractor shall maintain the Work in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, other contractors or their employees. The Contractor shall remove accumulated waste and debris at least once a week as a minimum or as required by the nature of the Work.

Before applying for Substantial Performance of the Work, the Contractor shall remove waste products and debris, other than that resulting from the work of the Owner, other contractors or their employees, and shall leave the Place of the Work clean and suitable for use or occupancy by the Owner. The Contractor shall remove products, tools, materials, Construction Equipment, and Temporary Work not required for the performance of the remaining work.

As a condition precedent to submitting its application for final payment, the Contractor shall remove any remaining products, tools, materials, Construction Equipment, Temporary Work, and waste products and debris, other than those resulting from the work of the Owner, other contractors or their employees.

The Contractor shall clean up garbage during and after construction and maintain the Place of the Work in a neat and orderly condition on a daily basis. Prior to leaving the Place of the Work and following completion of the Work, the Contractor shall make good all damage to the building and its components caused by the performance of the Work or by any Subcontractor or Supplier. The Contractor shall leave the Place of the Work in a clean and finished state; remove all Construction Equipment and materials; remove all paint, stains, labels, dirt, etc. from the Place of the Work; and touch up all damaged

painted areas (if applicable). The Contractor shall be responsible for restoring those areas of the Place of the Work, impacted by the Work, to their original condition.”

Without limitation to or waiver of the Owner’s other rights and remedies, the Owner shall have the right to back charge to the Contractor the cost of damage to the site caused by transportation in and out of the Place of the Work by the Contractor, Subcontractors or Suppliers, if not repaired before final payment.

The Contractor shall dispose of debris at a location and in a manner acceptable to the Owner (and to the authorities having jurisdiction at the Place of the Work and at the disposal area) and the Contractor shall cover containers with tarpaulins.

- 5) **Daily Reports/Daily Logs:** The Contractor shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the Contractor, Subcontractors, Suppliers and any other forces on site and also record the general nature of Project activities (“Personnel and Weather Log”). Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force. The Contractor shall provide a copy of the Personnel and Weather Log to the Owner with each monthly application for progress payment. The Contractor shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the project, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared.

**6) Criminal Background Checks**

The Contractor covenants and agrees that it will not engage any architect or other employee, agent or Subcontractor who may come into direct contact with students on a regular basis, or who may have access to student information to provide services hereunder, where such Contractor or other employee has been charged with or convicted of an offence, the nature of which may be construed as jeopardizing the safety and well-being of the students of the Owner. For the purposes of this Agreement, the Owner shall determine in its sole and unfettered discretion whether a Contractor, or a Subcontractor or other employee of the Contractor may come into direct contact with students on a regular basis, or who may have access to student information, and whether or not any such offence is of a nature which may be construed as jeopardizing the safety and well-being of students.

The Contractor covenants and agrees to retain on file at its head office a criminal background check covering convictions, charges and occurrences under the Criminal Code, the Controlled Drugs and Substances Act, and any other convictions, charges and occurrences which would be revealed by the long version Vulnerable Persons search of the automated Criminal Records Retrieval System maintained by the Royal Canadian Mounted Police (“RCMP”) at the Canadian Police Information Centre (“Criminal Background Check”), together with an Offence Declaration in an Owner approved form for the Contractor, and every other employee, agent or Subcontractor of the Contractor who may come into direct contact with students on a regular basis, or who may have access to student information prior to the occurrence of such possible direct contact or prior to having access to student information and on or before September 1st each year thereafter with respect to Offence Declarations.

The Contractor agrees to indemnify and save harmless the Owner from all claims, liabilities,

expenses and penalties to which it may be subjected on account of the Contractor contravening or engaging another employee, agent or Subcontractor in contravention of this Section 6), or the Contractor's failure to retain a Criminal Background Check or an Offence Declaration on file, as aforesaid. This indemnity shall survive the expiration or sooner termination of this Contract. In addition to and notwithstanding anything else herein contained, if the Contractor contravenes or engages another employee, agent or Subcontractor in contravention of this Section 6), or fails to retain a Criminal Background Check and an Offence Declaration for any other employee, agent or Subcontractor of the Contractor who may come into direct contact with students on a regular basis, or who may otherwise have access to student information prior to the occurrence of such possible direct contact, or prior to having access to student information and on or before September 1st each year thereafter with respect to Offence Declarations, then the Owner will have the right to immediately terminate this Contract without prejudice to any other rights which it may have in the Contract, in law or in equity.

The Owner shall be entitled, on forty-eight (48) hours prior written notice, to attend at the head office of the Contractor for the purposes of reviewing the Criminal Background Checks and Offence Declarations. The parties acknowledge and agree that it is contemplated that the Owner may attend to such reviews at least twice per annum during the term of this Contract.

In the event that either the Criminal Background Check or an Offence Declaration reveals a charge or criminal conviction which is not acceptable to the Owner in the circumstances and in its sole and unfettered discretion, then the Owner will have the right to request that the Contractor prohibit the subject of the Criminal Background Check or Offence Declaration from providing services to the Owner hereunder. Upon such request, the Contractor will forthwith effect such removal, without prejudice to any other rights which the Owner may have in the Contract, in law or in equity.

7) **Construction Liens:** In the event a construction lien arising from the performance of the Work is registered or preserved against the Project lands by a Subcontractor or a Supplier, or a written notice of a lien is given or a construction lien action is commenced against the Owner by a Subcontractor or a Supplier, then the Contractor shall, at its own expense:

.1 within 10 calendar days of registration of the construction lien, vacate or discharge the lien from title to the premises (i.e. the Place of the Work). If the lien is merely vacated, the Contractor shall, if requested, undertake the Owner's defence of any subsequent action commenced in respect of the lien, at the Contractor's sole expense;

.2 within 10 calendar days of receiving notice of a written notice of a lien, post security with the Ontario Superior Court of Justice so that the written notice of a lien no longer binds the parties upon whom it was served; and

.3 satisfy all judgments and pay all costs arising from such construction liens and actions and fully indemnify the Owner against all costs and expenses arising from same, including legal costs on a full indemnity basis.

In the event that the Contractor fails or refuses to comply with its obligations pursuant to this section, the Owner shall, at its option, be entitled to take all steps necessary to

address any such construction liens including, without limitation and in addition to the Owner's rights under the Contract, the posting of security with the Ontario Superior Court of Justice to vacate the claim for lien from title to the Project lands, and in so doing will be entitled to a full indemnity from the Contractor for all legal fees, security, disbursements and other costs incurred and will be entitled to deduct same from amounts otherwise owing to the Contractor.

In the event that any Subcontractor or Supplier registers any claim for lien with respect to all or part of the Place of Work, the Owner shall have the right to withhold, in addition to the statutory holdback, the full amount of said claim for lien plus either: (a) \$250,000 if the claim for lien is in excess of \$1,000,000 or (b) 25% of the value of the claim for lien and to bring a motion to vacate the registration of said claim for lien and any associated certificate of action in respect of that lien, in accordance with Section 44 of the Construction Act, by paying into court as security the amount withheld.

**Conseil Scolaire Catholique MonAvenir**

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the Owner.

**Company Name**

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the Contractor.