DURHAM CATHOLIC
DISTRICT SCHOOL BOARD
Learning and Living in Faith

Request for Tender

T27-01
St. Luke the Evangelist Catholic Elementary School
Eight (8) Classroom Addition

Appendix B
Supplementary Conditions (SC) to Stipulated Price Contract CCDC 2-2020

[Updated June 26, 2025]

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Appendix B – Supplementary Conditions (SC) to Stipulated Price Contract CCDC 2-2020

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, together with the changes with the new *Construction Act* is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications:

ARTICLE A-1 – THE WORK

A-1.3 Amend Article A-1.3 by deleting all of the words after *"Contract Documents"* and replace them with the following"

"attain

.1 Substantial Performance of the Work by the **30** Day of **November** in the year **2027**.

.2 Ready-for-Takeover by the **10** Day of **December** in the year **2027.**

ARTICLE A-3 – CONTRACT DOCUMENTS

A-3.1 Add the following documents to the list of *Contract Documents* in Article A-3.1:

- Durham Catholic District School Board's Supplementary Conditions & Amendments to Standard Construction Document CCDC2-2020 Stipulated Price Subcontract
- *Drawings*
- *Specifications*
- Performance Bond (Form 32 -Performance Bond under Section 85.1 of the *Act*)
- Labour and Material Payment Bond (Form 31 – Labour and Material Payment Bond under Section 85.1 of the *Act*)

ARTICLE A-4 – CONTRACT PRICE

A-4.4 Delete Article A-4.4 and replace it with the following:

"4.4 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*."

ARTICLE A-5 – PAYMENT

Delete Article A- 5.1 in its entirety including all subparagraphs and replace it with the following:

"5.1 Subject to the provisions of the *Contract Documents* and the *Construction Act*, the *Owner* shall:

.1 make progress payments to the *Contractor* on account of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payments,

.2 upon *Substantial Performance of the Work* as certified by the *Consultant*, and on the 61st day after the publication of the certificate of *Substantial Performance of the Work*, in accordance with the *Construction Act*, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* the unpaid balance of the holdback, together with such *Value Added Taxes* as may be applicable to such payment, less any amount stated in the *Owner's Notice of Non-Payment*.

.3 after *Ready-for-Takeover* has been achieved in accordance with the *Contract Documents* and the *Work* is complete, there being no claims for lien registered against the title to the *Place of the Work* and no written notices of lien delivered to the *Owner*, pay the *Contractor* any unpaid balance of the *Contract Price* in accordance with GC 5.5 – FINAL PAYMENT, together with such *Value Added Taxes* as may be applicable to such payment."

Delete subparagraph 5.2.1 in its entirety and replace it with the following:

".1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest shall also become due and payable on such unpaid amounts at the prejudgment interest rate prescribed by the *Courts of Justice Act* (Ontario), as it may change from time to time."

ARTICLE A-9 – CONFLICT OF INTEREST

A-9 Add new ARTICLE A-9 CONFLICT OF INTEREST as follows:

"**ARTICLE A-9 CONFLICT OF INTEREST**

9.1 The *Contractor*, *Subcontractors* and *Suppliers* and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

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

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

9.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor or Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors and Suppliers*. Consistent with this fundamental term of the *Contract*, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor or Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in

respect of a disputed claim by the *Subcontractor or Supplier* against the *Contractor*, where the payment to the *Subcontractor or Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor or Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor or Supplier* and the *Contractor* has been found liable for those claims.

9.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT, a breach of this Article A-9 by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity."

ARTICLE A-10 TIME OF THE ESSENCE

Article A-10 Add the following new Article A-10 as follows:

"ARTICLE A-10 TIME OF THE ESSENCE

10.1 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*.

10.2 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*."

DEFINITIONS

Consultant	Amend the definition of "Consultant" by adding the following to the end of the definition: "For the purposes of the *Contract*, the terms "*Consultant"*, "*Architect*" and "*Engineer*" shall be considered synonymous."
Payment Legislation/Construction Act	Delete the Definition of *Payment Legislation* and replace it with "Construction Act" as follows: "**Construction Act** *Construction Act* means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, including all regulations passed under it that are enforceable as of the date of execution of this *Contract*. For certainty, the first procurement process for the *Project* (*i.e*., the "improvement" as that term is defined in the *Construction Act*) was commenced on or after October 1, 2019."
Ready-for-Takeover	Amend the Definition of *Ready-for-Takeover* by deleting all the words after "as verified" and replacing them with "and approved by the *Owner*."
Adjudication	Add the following definition: "**Adjudication** *Adjudication* means construction dispute interim adjudication as defined under the *Construction Act*."
Close-Out Documentation	Add the following new definition: "**Close-Out Documentation** *Close-Out Documentation* has the meaning given to it under GC 5.4.2."
Confidential Information	Add the following definition: "**Confidential Information** *Confidential Information* means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-

lists) which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* shall not include information that:

.1 is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;

.2 the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;

.3 the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or

.4 is independently developed by the *Contractor* without use of any *Confidential Information*."

Construction Schedule

Add the following definition:

"**Construction Schedule**
Construction Schedule means the schedule for the performance of the *Work* provided by the *Contractor*, and approved by the *Owner*, pursuant to GC 3.4.1, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*."

Construction Schedule Update

Add the following definition:

"**Construction Schedule Update**

Construction Schedule Update means an update to the *Construction Schedule* by the *Contractor* using Microsoft Project (or other approved scheduling software) that accurately depicts the progress of the *Work* relative to the critical path established in the *Construction Schedule* approved in GC 3.5.1 (or any approved successor *Construction Schedule*), aligns with the currently approved date for *Substantial Performance of the Work*, shows up-to-date projected major activity sequences and durations, and shows any changes or delays in anticipated completion dates of major activities in the *Work* relative to the last

Construction Schedule Update, and includes the following minimum deliverables:

(a) a record version of the updated *Construction Schedule* in .pdf format;

(b) an editable copy of the updated original digital file of the *Construction Schedule* (*e.g.*, .mpp format files for Microsoft Project)."

Direct Costs

Add the following definition:

"**Direct Costs**

Direct Costs are the reasonable costs of performing the contract or subcontract including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that would not have been incurred, but do not include indirect damages suffered, such as loss of profit, productivity or opportunity, or any head office overhead costs."

EFT

Add the following definition:

"**EFT**

EFT has the definition given to it under GC 5.3.2."

Excess Soil

Add the following definition:

"**Excess Soil**
Excess Soil means "excess soil" as that term is defined under section 3 of the *Excess Soil Regulation*."

Excess Soil Regulation

Add the following Definition:

"**Excess Soil Regulation**
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."

Final Pre-Invoice Submission Meeting

Add the following definition:

"**Final Pre-Invoice Submission Meeting**
Final Pre-Invoice Submission Meeting has the meaning given to it in GC 5.5.1."

Force Majeure	Add the following definition: "**Force Majeure** *Force Majeure* means any cause, unknown beyond either party's control, other than financial difficulties, bankruptcy or insolvency, which prevents the performance by a party, or both, of any of their respective obligations under the *Contract* and the event of *Force Majeure* did not arise from a party's default and could not be avoided or mitigated by the exercise of reasonable effort or foresight. *Force Majeure* includes *Labour Disputes*; fire; unusual delay by common carriers or unavoidable casualties; delays in obtaining third-party licences, permits, agreements, or approvals (excluding approvals of any *Subcontractors* or *Suppliers* of any tier); civil disturbance; emergency acts, orders, legislation, regulations or directives of any government or other public authority; acts of a public enemy; war; riot; sabotage; blockage; embargo; lightning; earthquake; adverse weather conditions but only if substantially beyond the weather norms of the *Place of the* Work; acts of God; or declared epidemic or pandemic outbreak or other public health emergency (*e.g*. SARS, COVID-19)."
Install	Add the following definition: "**Install** *Install* means install and connect. *Install* has this meaning whether or not the first letter is capitalized."
Labour Dispute	Add the following definition: "**Labour Dispute** *Labour Dispute* means any lawful or unlawful labour problems, work stoppage, labour disruption, strike, job action, slow down, lock-outs, picketing, refusal to work or continue to work, refusal to supply materials, cessation or work or other labour controversy which does, or might, affect the *Work*."
Notice of Non-Payment	Add the following definition: "**Notice of Non-Payment**

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 *Act*, as applicable to the circumstances."

OHSA

Add the following definition:

"**OHSA**

OHSA means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, including all regulations thereto."

Overhead

Add the following definition:

"**Overhead**

Overhead means all site and head office operations and facilities, all site and head office administration and supervision; all duties and taxes for permits and licenses required by the authorities having jurisdiction at the *Place of the Work*; all requirements of Division 1, including but not limited to submittals, warranty, quality control, calculations, testing and inspections; meals and accommodations; and, tools, expendables and clean-up costs."

Payment Period

Add the following definition:

"**Payment Period**

Payment Period has the definition given to it under GC 5.2.1."

Pre-Invoice Submission Meeting

Add the following definition:

"**Pre-Invoice Submission Meeting**

Pre-Invoice Submission Meeting has the definition given to it under GC 5.2.1."

Proper Invoice

Add the following definition:

"**Proper Invoice**

Proper Invoice means a "proper invoice" as that term is defined in Section 6.1 of the *Act*, including the minimum requirements set out in Appendix "1" of the Supplementary Conditions."

Proper Invoice Submission Date

Add the following definition:

"**Proper Invoice Submission Date**

	Proper Invoice Submission Date has the definition given to it under GC 5.2.2.1."
Request for Information (RFI)	Add the following definition: "**Request for Information (RFI)** *Request for Information* or *RFI* means written documentation sent by the *Contractor* to the *Owner* or to the *Owner's* representative or the *Consultant* requesting written clarification(s) and/or interpretation(s) of the *Drawings* and/or *Specifications*, *Contract* requirements and/or other pertinent information required to complete the *Work* of the *Contract* without applying for a change or changes to the *Work*."
Restricted Period	Add the following definition: "**Restricted Period** *Restricted Period* means the (inclusive) period of time between December 1 to January 8 and August 15 to September 15 of any given year throughout the duration of the *Contract*."

Where a General Condition or paragraph of the General Conditions of the *Contract* is deleted by these amendments, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, unless stated otherwise herein, and the numbering of the deleted item will be retained, unused.

GC 1.1 CONTRACT DOCUMENTS

1.1.3 Delete GC 1.1.3 in its entirety and replace it with the following:

"1.1.3 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in GC 3.13.1. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. Provided it has exercised the degree of care and skill described in this GC 1.1.3, the *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of the required standard of care."

1.1.4 Delete GC 1.1.4 in its entirety and replace it with the following:

"1.1.4 Except for the obligation to complete the review prescribed in GC 1.1.3, and report the results as set out in this GC 1.1.4, the

Contractor is not responsible for errors, omissions or inconsistencies in the *Contract Documents*. If there are errors, omissions or inconsistencies discovered by or made known to the *Contractor* as part of its review under GC 1.1.3 or at any time during the performance of the *Work*, the *Contractor* shall immediately notify the *Consultant*, and request instructions, a *Supplemental Instruction*, *Change Order*, or *Change Directive*, as the case may require, and shall not proceed with the *Work* affected until the *Contractor* has received corrected or additional information from the *Consultant*. The *Contracto*r shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered through the exercise of care and skill described in GC 3.13."

1.1.5.1 Delete GC 1.1.5.1 and replace with the following:

".1 the order of priority of documents, from highest to lowest, shall be:

.1 Supplementary Conditions;

.2 the Agreement between the Owner and the Contractor;

.3 the Definitions;

.4 the General Conditions;

.5 Division 01 of the *Specifications*

.6 technical *Specifications;*

.7 material and finishing schedules; and

.8 the *Drawings*.

1.1.5.5 Delete GC 1.1.5.5 and replace with the following:

".5 Noted materials and annotations on the *Drawings* shall govern over the graphic representation of the *Drawings.*"

1.1.5.6 to 1.1.5.8 Add the following new GC 1.1.5.6 to 1.1.5.8 as follows:

".6 Finishes in the room finish schedules shall govern over those shown on the *Drawings.*

.7 It is understood that the integrity and installation of the systems designed by the *Consultant,* or its sub-*Consultants* are to remain with each of the applicable drawing disciplines.

.8 Should reference standards and *Specifications* conflict with each other or if certain requirements of the *Specifications* conflict with

other requirements of the *Specifications*, the more stringent requirements shall govern."

1.1.9 Add the following to the end of GC 1.1.9:

"The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Owner* or the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions. The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangements and sizes of fixtures, equipment, outlets and other elements. The *Contractor* shall obtain more accurate information about the locations, arrangements and sizes from study and coordination of the *Drawings,* including *Shop Drawings* and shall become familiar with conditions and spaces affecting those matters before proceeding with the *Work.* Where site conditions require reasonable minor changes where the change requires only the additional labour four (4) hours or less, the *Contractor* shall make such changes at no additional cost to the *Owner.* Similarly, where known conditions or existing conditions interfere with new installation and require relocation, the *Contractor* shall include such relocation in the *Work.* The *Contractor* shall arrange and install fixtures and equipment in such a way as to conserve as much headroom and space as possible. The schedules are those portions of the *Contract Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables and/or lists."

1.1.12 Add new paragraphs 1.1.12 and 1.1.13 as follows:

"1.1.12 The *Consultant*, on behalf of the *Owner* shall provide the *Contractor* without charge, one (1) copy of the *Contract Documents*, exclusive of those required by jurisdictional authorities and the executed *Contract Documents, and* two (2) additional copies are provided for contract execution. Additional copies can be purchased by the *Contractor* at the *Consultant's* cost of reproduction, handling and sales tax.

1.1.13 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, contemplated *Change Orders*, *Change Orders*, *Change Directives*, cash allowance disbursement authorizations, reviewed *Shop Drawings*, submittals, reports and records of meeting at the *Place of the Work*, in good order and available to the *Owner* and *Consultant*."

GC 1.3 RIGHTS AND REMEDIES

1.3.2 In paragraph 1.3.2 delete the word “No” from the beginning of the paragraph and replace it with the words:

“Except with respect to the requirements set out in paragraphs 6.4.1, 6.5.4, 6.6.1 and 8.3.2, no…”

GC 1.5 EXAMINATION OF DOCUMENTS AND SITE

1.5 Add new GC 1.5 – EXAMINATION OF DOCUMENTS AND SITE as follows:

“**GC 1.5 EXAMINATION OF DOCUMENTS AND SITE**

1.5.1 The *Contractor* declares and represents that in tendering for the *Work*, and in entering into a Contract with the *Owner* for the performance of the *Work*, it has investigated for itself the character of the *Work t*o be done, based on information generally available from a visit to the *Place of the Work* and to the standard set out under GC 3.14.1 and further represents and warrants and acknowledges that it considered and took into account in the *Contract Price* all reasonably known impacts and restrictions arising from the COVID-19 pandemic, including without limitation corresponding legislative changes that may impact performance of the *Project*, various weather conditions that may affect the *Work*, the availability of supplies and labour or other conditions or risks that the *Contractor* knew about or reasonably ought to have known about prior to the date of the *Contract.* The *Contractor* has assumed and does hereby assume all risk of known conditions now existing or arising in the course of the *Work* which might or could make the Work, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the *Contract* signed.

1.5.2 The *Contractor* also declares that prior to commencement of the *Work*, where in tendering for the *Work* and in entering into this *Contract*, the *Contractor* relied upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the Work, the Contractor shall review to the standard specified in GC 3.14.1, the accuracy of the information furnished by the *Owner*. If a condition is materially different than what is stated in the information furnished by the *Owner*, the *Contractor* shall, no later than five (5) *Working Days* after the first observation of such condition(s), deliver to the *Owner* and to the *Consultant* a *Notice in Writing* specifying the materially different condition and the *Contractor*

shall not proceed with the affected part of the Work until receiving written direction from the *Owner* or the *Consultant*. Where the *Contractor* fails to provide prompt *Notice in Writing* in accordance with this GC 1.5.2, the *Contractor* expressly waives and releases the *Owner* from all claims with respect to the said information with respect to the *Work*.

GC 2.2 ROLE OF THE CONSULTANT

2.2.5 Delete paragraph 2.2.4 and replace it with the following:

"2.2.4 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 5.3.1.2 and prepare a draft of the applicable *Notice of Non-Payment* for the amount in dispute."

2.2.6 In the first sentence of paragraph 2.2.6, delete the words "Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER".

2.2.12 At paragraph 2.2.12, insert the following at end of that paragraph:

"If, in the opinion of the *Contractor*, the *Supplemental Instruction* involves an adjustment in the *Contract Price* or in the *Contract Time*, it shall, within ten (10) *Working Days* of receipt of a *Supplemental Instruction*, provide the *Consultant* with a notice in writing to that effect. Failure to provide written notification within the time stipulated in this paragraph 2.2.12 shall be deemed an acceptance of the *Supplemental Instruction* by the *Contractor*, without any adjustment in the *Contract Price* or *Contract Time*."

GC 2.3 REVIEW AND INSPECTION OF THE WORK

2.3.2 Amend paragraph 2.3.2 by adding the words "and *Owner*" after the words "*Consultant*" in the second and third lines.

2.3.3 Delete paragraph 2.3.3 in its entirety and replace it with the following:

"2.3.3 The *Contractor* shall furnish promptly an electronic copy to the *Consultant* and to the *Owner* of all certificates and inspection reports relating to the *Work*."

2.3.4 In paragraph 2.3.4 add the word "review" after the word "inspections" in the first and second lines of paragraph 2.3.4.

2.3.5 In paragraph 2.3.5 in the first line after the word "*Consultant*", add "or the *Owner*".

2.3.8 Add a new paragraph 2.3.8 as follows:

"2.3.8 The *Consultant* will conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction means, methods, techniques, sequences and procedures, nor in connection with construction safety at the *Place of Work*, responsibility for which belongs exclusively to the *Contractor*."

GC 2.4 DEFECTIVE WORK

2.4.1 Amend GC 2.4.1 by inserting ", the *Owner* and/or its agent" in the first sentence following "rejected by the *Consultant*".

2.4.1.1 to 2.4.1.2 Add new paragraphs 2.4.1.1 and 2.4.1.2 as follows:

"2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Consultant* and to the *Owner through the Consultant* all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.

2.4.1.2 The *Contractor* shall prioritize the correction of any defective work, which, in the sole discretion of the *Owner through the Consultant*, adversely affects the day to day operations of the *Owner* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*."

2.4.2 Delete paragraph 2.4.2 in its entirety and replace it with the following:

"2.4.2 The *Contractor* shall promptly pay the *Owner* for costs incurred by the *Owner*, the *Owner's* own forces or the *Owner's* other contractors, for work destroyed or damaged or any alterations necessitated by the *Contractor's* removal, replacement or re-execution of defective work."

2.44 Add new paragraph 2.4.4 as follows:

"2.4.4 Neither acceptance of the *Work* by the *Consultant* or the *Owner*, nor any failure by the *Consultant* or the *Owner* to identify, observe or warn of defective *Work* or any deficiency in the *Work* shall relieve the *Contractor* from the sole responsibility for rectifying such defect or deficiency at the *Contractor's* sole cost, even where such failure to identify, observe or warn is negligent."

GC 3.1 CONTROL OF THE WORK

3.1.2 Amend paragraph 3.1.2 by inserting the words "Construction Schedule" after the word "sequences".

3.1.3 & 3.1.4 Add new paragraphs 3.1.3 and 3.1.4 as follows:

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

3.1.4 Notwithstanding the provisions of paragraphs 3.1.1 and 3.1.2, the *Owner* shall have access to the site at all times to monitor all aspects of construction. Such access shall in no circumstances affect the obligations of the *Contractor* to fulfill its contractual obligations."

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.2.2.1 Delete subparagraph 3.2.2.1 and replace it with "[Intentionally left blank]".

3.2.3.2 Delete subparagraph 3.2.3.2 and replace it with the following:

".2 co-ordinate and schedule the activities and work of other contractors and the *Owner's* own forces."

3.2.3.4 Delete the period at the end of subparagraph 3.2.3.4 and replace it with a semi-colon.

3.2.3.5 Add new subparagraph 3.2.3.5 as follows:

".5 Subject to GC 9.4 CONSTRUCTION SAFETY, for the *Owner's* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in force at the *Place of the Work*, including all of the responsibilities of the "constructor", pursuant to the *OHSA*."

GC 3.3 TEMPORARY WORK

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

GC 3.4 CONSTRUCTION SCHEDULE

3.4.1 Delete GC 3.4.1 in its entirety and replace it with the following:

"3.4.1 The *Contractor* shall:

1 within five (5) business days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and approval, a construction schedule in the format indicated below that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents.* Such schedule is to include a delivery schedule for *Products* whose delivery is critical to the schedule for the *Work* or are required by the *Contract* to be included in a *Products* delivery schedule. The *Contractor* shall employ construction scheduling software, being the latest version of "Microsoft Project", that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide such schedule and any successor or revised schedules in both original digital file format (*e.g.,* .mpp format for Microsoft Project), portable data file (PDF) format, and hard copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline "**Construction Schedule**";

.2 provide the expertise and resources, such resources including manpower and equipment, as are necessary on a best efforts basis to maintain progress under the accepted baseline *Construction Schedule* or revised construction schedule accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, which includes without limitation, the *Contractor*'s use of all possible and, if necessary, extraordinary measures, to bring the progress of the *Work* into

compliance with the *Construction Schedule*, such as (i) increasing the presence of its own forces at the *Place of the Work*; (ii) directing any *Subcontractors* or *Suppliers* to increase their labour forces and equipment; (iii) working overtime and extra shifts; and (iv) providing any additional supervision and coordination of the *Project*, all at the *Contractor's* own cost and expense save and except where GC 6.5.1, 6.5.2, or 6.5.3 apply; and,

.3 monitor the progress of the *Work* on a weekly basis relative to the baseline *Construction Schedule*, or any revised *Construction Schedule* accepted by the *Owner* pursuant to GC 3.4 CONSTRUCTION SCHEDULE, deliver a *Construction Schedule Update* to the *Consultant* and *Owner* with each application for payment, at a minimum, or as may be reasonably required by the *Consultant* and advise the *Consultant* and the *Owner* weekly in writing of any variation from the baseline or slippage in the schedule; and,

.4 if after applying the expertise and resources required under paragraph 3.4.1.2, the *Contractor* forms the opinion that the slippage in schedule reported in paragraph 3.4.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice provided under paragraph 3.4.1.3, indicate to the *Consultant* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 —CHANGES IN THE WORK; and,

.5 ensure that the *Contract Price* shall include all costs required to phase or stage the *Work, or as may be required to obtain partial occupancies if the Contractor does not meet the required completion date*."

3.4.2 Add new GC 3.4.2 and GC 3.4.3 as follows:

"3.4.2 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 business 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*.

3.4.3 The *Contractor* shall not amend the *Construction Schedule* without the prior written consent of the *Owner*. Any revisions to the *Construction Schedule*

approved by the *Owner* shall not be deemed to be an extension of the *Contract Time*. 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*."

GC 3.5 SUPERVISION

3.5.1 Delete GC 3.5.1 and replace it with the following:

"3.5.1 The *Contractor* shall employ a competent full-time superintendent, acceptable to the *Owner* and *Consultant*, who shall be in full time attendance at the *Place of the Work* while the *Work* is being performed. The superintendent shall not be changed by the *Contractor* without valid reason which shall be provided in writing and shall not be changed without prior consultation with and agreement by the Owner and the *Consultant*. The *Contractor* shall replace the superintendent within 7 *Working Days* of the *Owner's* written notification, if the superintendent's performance is not acceptable to the *Owner*. The *Contractor* shall provide the *Owner* and the *Consultant* with the names, addresses and telephone numbers of the superintendent referred to in this GC 3.5.1 and other responsible persons who may be contacted for emergency and other reasons during non-working hours. ."

3.5.2 Delete GC 3.5.2 and replace it with the following:

"3.5.2 The superintendent, and any project manager appointed by the *Contractor*, shall represent the *Contractor* at the *Place of the Work* and shall have full authority to act on written instructions given by the *Consultant* and/or the *Owner*. Instructions given to the superintendent or the project manager shall be deemed to have been given to the *Contractor* and both the superintendent and any project manager shall have full authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to the *Contract*."

3.5.3 to 3.5.6 Add new GC 3.5.3, 3.5.4, 3.5.5 and 3.5.6 as follows:

"3.5.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s). Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement, which is approved by the *Owner*.

3.5.4 The supervisory staff assigned to the *Project* shall also be fully competent to implement efficiently all requirements for scheduling, coordination, field engineering, reviews, inspections and submittals

defined in the *Specifications,* and have a minimum 5 years documented "Superintendent/Project Management" experience.

3.5.5 The *Consultant and Owner* shall reserve the right to review the record of experience and credentials of supervisory staff assigned to the *Project* prior to commencement of the *Work*.

3.5.6 A superintendent assigned to the *Work* shall be "Gold Seal Certified", in good standing, as per the Canadian Construction Association; or a superintendent that can demonstrate the requisite experience and success related to the *Project* to the sole satisfaction of the *Owner*."

GC 3.6 SUBCONTRACTORS AND SUPPLIERS

3.6.1.1 In paragraph 3.6.1.1 add to the end of the second line the words "including any warranties and service agreements which extend beyond the term of the *Contract*."

3.6.1.2 In subparagraph 3.6.1.2 after the words "the *Contract Documents*" add the words "including any required surety bonding".

3.6.2 Delete paragraph 3.6.2. in its entirety and replace it with the following:

"3.6.2 The substitution of any *Subcontractor* and/or *Suppliers* after submission of the *Contractor's* bid will not be accepted unless a valid reason is given in writing to and approved by the *Owner*, whose approval may be arbitrarily withheld. The reason for substitution must be provided to the *Owner* and to the original *Subcontractor* and/or *Supplier* and the *Subcontractor* and/or *Supplier* shall be given the opportunity to reply to the *Contractor* and *Owner.* The *Contractor* shall be fully aware of the capability of each *Subcontractor* and/or *Supplier* included in its bid, including but not limited to technical ability, financial stability and ability to maintain the proposed construction schedule."

3.6.7, 3.6.8, 3.6.9 & 3.6.10 Add new paragraphs 3.6.7, 3.6.8, 3.6.9, and 3.6.10 as follows:

"3.6.7 The *Contractor* represents and warrants that it has confirmed the availability of its *Subcontractors* for the *Project* and, in particular, for the performance of their respective portions of the *Work* to ensure completion of the *Project* within the *Contract Price* and the *Contract Time*.

3.6.8 The *Consultant* or the *Owner*, acting reasonably, may from time to time require the *Contractor* to remove from the *Project* any personnel of the *Contractor*, including project managers, superintendents or *Subcontractors*. Such persons shall be replaced by the *Contractor* in

a timely fashion to the satisfaction of the *Consultant* or the *Owner*, as the case may be, at no cost to the *Owner*.

3.6.9 Where provided in the *Contract*, the *Owner* may assign to the *Contractor*, and the *Contractor* agrees to accept, any contract procured by the *Owner* for *Work* or services required on the *Project* that has been pre-tendered or pre-negotiated by the *Owner*, and upon such assignment, the *Owner* shall have no further liability to any party for such contract. Fees shall be subject to the change order process as stipulated in section 6.2 of the supplementals.

3.6.10 The *Contractor* covenants that each subcontract or supply contract which the *Contractor* enters into for the purpose of performing the *Work* shall expressly provide for the assignment thereof to the *Owner* (at the option of the *Owner*) and the assumption by the *Owner* of the obligations of the *Contractor* thereunder, upon the termination of the *Contract* and upon written notice by the *Owner* to the other parties to such subcontracts or supply contracts, without the imposition of further terms or conditions; provided, however, that until the *Owner* has given such notice, nothing herein contained shall be deemed to create any contractual or other liability upon the *Owner* for the performance of obligations under such subcontracts or supply contracts and the *Contractor* shall be fully responsible for all of its obligations and liabilities (if any) under such subcontracts and supply contracts."

GC 3.7 LABOUR AND PRODUCTS

3.7.1 Amend paragraph 3.7.1 by adding the words, "…, agents, *Subcontractors* and *Suppliers*…" after the word "employees" in the first line.

3.7.2 Delete paragraph 3.7.2 and substitute with the following:

"3.7.2 *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."

3.7.4 to 3.7.8 Add new paragraphs 3.7.4, 3.7.5, 3.7.6, 3.7.7, and 3.7.8 as follows:

"3.7.4 Upon receipt of a *Notice in Writing* from the *Owner,* the *Contractor* shall immediately remove from the *Place of the Work*, tradesmen and labourers or anyone whose conduct jeopardizes the safety of the *Owner's* operations or who are considered by the *Owner* or the *Consultant* to be unskilled or otherwise objectionable. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

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3.7.5 The *Contractor* shall cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other *Labour Disputes*. Any costs arising from labour disputes shall be at the sole expense of the *Contractor.*

3.7.6 The cost for overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, such as pouring or finishing of concrete or similar work, or *Work* that the *Contractor* elects to perform at overtime rates without the *Owner* requesting it, shall not be chargeable to the *Owner*.

3.7.7 All manufactured *Products* which are identified by their proprietary names or by part or catalogue number in the *Specifications* shall be used by the *Contractor.* No substitutes for such specified *Products* shall be used without the written approval of the *Owner* and the *Consultant*. Substitutes will only be considered by the *Consultant* when submitted in sufficient time to permit proper review and investigation. When requesting approval for the use of substitutes, the *Contractor* shall include in its submission any proposed change in the *Contract Price*. The *Contractor* shall use all proprietary *Products* in strict accordance with the manufacturer's directions. Where there is a choice of proprietary *Products* specified for one use, the *Contractor* may select any one of the *Products* so specified for this use.

3.7.8 Materials, appliances, equipment and other *Products* are sometimes specified by reference to brand names, proprietary names, trademarks or symbols. In such cases, the name of a manufacturer, distributor, *Supplier* or dealer is sometimes given to assist the *Contractor* to find a source *Supplier*. This shall not relieve the *Contractor* from its responsibility from finding its own source of supply even if the source names no longer supply the *Product* specified. If the *Contractor* is

unable to obtain the specified *Product*, the *Contractor* shall supply a substitute product equal to or better than the specified *Product,* as approved by the *Consultant* with no extra compensation. Should the *Contractor* be unable to obtain a substitute *Product* equal to or superior to the specified *Product* and the *Owner* accepts a different Product, the *Contract Price* shall be adjusted accordingly, as approved by the *Consultant*."

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."

3.8.3 Delete paragraph 3.8.3 and replace it with the following:

"3.8.3 The *Contractor* shall prepare a *Shop Drawings* schedule acceptable to the *Owner* and the *Consultant* prior to the first application for payment. A draft of the proposed *Shop Drawings* schedule shall be submitted by the *Contractor* to the *Consultant* and the *Owner* for approval. The draft *Shop Drawings* schedule shall clearly indicate the phasing of *Shop Drawings* submissions. The *Contractor* shall periodically re-submit the *Shop Drawings* schedule to correspond to changes in the *Construction Schedule*."

3.8.5 Delete paragraph 3.8.5 in its entirety and substitute the following:

"3.8.5 At the time of providing *Shop Drawings*, the *Contractor* shall advise the *Consultant* in writing of any deviations in *Shop Drawings* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance of such deviation expressly in writing. Where manufacturers' literature is submitted in lieu of scaled drawings, it shall be clearly marked in ink, to indicate the specific items for which review is requested."

3.8.8 to 3.8.12 Add new paragraphs 3.8.8, 3.8.9, 3.8.10, 3.8.11, and 3.8.12 as follows:

"3.8.8 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.

3.8.9 Except where the parties have agreed to a different *Shop Drawings* schedule pursuant to paragraph 3.10.3, the *Contractor* shall comply with the requirements for *Shop Drawings* submissions stated in the *Specifications*.

3.8.10 The *Contractor* shall not use the term “by others” on *Shop Drawings* or other submittals. The related trade, *Subcontractor* or *Supplier* shall be stated.

3.8.11 Certain *Specifications* sections require the *Shop Drawings* to bear the seal and signature of a professional engineer. Such professional engineer must be registered in the jurisdiction of the *Place of the Work* and shall have expertise in the area of practice reflected in the *Shop Drawings*.

3.8.12 The *Consultant* will review and return *Shop Drawings* and submittals in accordance with the schedule agreed upon in paragraph 3.10.3, The *Contractor* shall allow the *Consultant* a minimum of 15 Business *Days* to review *Shop Drawings* from the date of receipt. If resubmission of *Shop Drawings* is required, a further 15 Business *Day* period is required for the *Consultant’s* review.”

GC 3.9 USE OF THE WORK

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

“**GC 3.9 USE OF THE WORK**

3.9.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, by the direction of the *Owner* or the *Consultant*, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

3.9.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

3.9.3 The *Owner* shall have the right to enter or occupy the *Place of the Work* in whole or in part for the purpose of placing fittings and equipment, or for other use before *Substantial Performance of the Work*, if, in the opinion of the *Consultant*, such entry and occupation does not prevent or substantially interfere with the *Contractor* in the performance of the *Contract* within the *Contract Time.* Such entry or occupation shall neither be considered as acceptance of the *Work* or in any way relieves the *Contractor* from its responsibility to complete the *Contract*.”

GC 3.10 CUTTING AND REMEDIAL WORK

GC 3.10 Add new GC 3.10 – CUTTING AND REMEDIAL WORK as follows:

"**GC 3.10 CUTTING AND REMEDIAL WORK**

3.10.1 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*.

3.10.2 The *Contractor* shall coordinate the *Work* to ensure all cutting and remedial work required is kept to a minimum.

3.10.3 Unless specifically stated otherwise in the *Specifications*, the *Contractor* shall do all cutting and making good necessary for the proper installation and performance of the *Work.*

3.10.4 To avoid unnecessary cutting, the *Contractor* shall lay out its work and advise the *Subcontractors,* when necessary, where to leave holes for installation of pipes and other work."

GC 3.11 CLEAN UP

3.11.1, 3.11.2, 3.11.3, 3.11.4, 3.11.5 & 3.11.6 Add new paragraphs 3.11.1, 3.11.2, 3.11.3, 3.11.4, 3.11.5, and 3.11.6 as follows:

"3.11.1 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*.

3.11.2 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.

3.11.3 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.

3.11.4 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."

3.11.5 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.

3.11.6 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."

GC 3.12 EXCESS SOIL MANAGEMENT

GC 3.12 Add new GC 3.12 – EXCESS SOIL MANAGEMENT as follows:

"**GC 3.12 EXCESS SOIL MANAGEMENT**

3.12.1 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 under this GC 3.12 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.

3.12.3 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."

GC 3.13 CONTRACTOR STANDARD OF CARE

3.13 Add a new GC 3.13 – CONTRACTOR STANDARD OF CARE as follows:

"**GC 3.13 CONTRACTOR STANDARD OF CARE**

"3.13.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract,* the performance of the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care, skill and diligence in respect of any *Products*, personnel or procedures which it may recommend to the *Owner* or employ on the *Project*.

3.13.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

.1 the personnel it assigns to the *Project* are appropriately experienced;

.2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and

.3 there are no pending, threatened or anticipated claims, liabilities or contingent liabilities that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*."

GC 4.1 CASH ALLOWANCES

4.1.3 In GC 4.1.3 delete the words “through the *Consultant*” and replace them with “in writing.”

4.1.4 Delete GC 4.1.4 in its entirety and replace it with the following:

“4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, by the *Consultant* at the *Owner*’s direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Contract Price* for overhead and profit. Only where the actual cost of the *Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Contractor* be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the *Contract Documents.*”

4.1.7 Delete GC 4.1.7 in its entirety and replace it with the following:

“4.1.7 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order* without any adjustment for the *Contractor's* overhead and profit on such amount.”

4.1.8 Add new GC 4.1.8 and 4.1.9 as follows:
and
4.1.9 “4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* to be paid for from cash allowances.

4.1.9 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.”*

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

5.1 Delete GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER and all paragraphs thereunder, including any reference to GC 5.1 throughout the *Contract*.

GC 5.2 APPLICATIONS FOR PAYMENT

5.2.1 Delete GC 5.2.1 and replace it with the following:

"5.2.1 Upon execution of the *Contract*, and in any event prior to the *Contractor* submitting its first application for payment, the *Owner* shall issue a purchase order to the *Contractor* for the performance of the *Contract*. The number indicated on such purchase order must be clearly identifiable on all applications for payment. Applications for payment shall be dated the last day of each month or an alternative day of each month agreed to in writing by the parties, with each month representing one payment period under the *Contract* (each a "**Payment Period**"). Within 3 calendar days of the end of each *Payment Period*, the *Contractor* will submit a draft application for payment to the *Owner* and the *Consultant*. Upon receipt of the draft application for payment, and within 7 calendar days, a representative of each of the *Contractor*, *Owner*, and the *Consultant* shall attend a meeting to discuss and review the work completed during the *Payment Period*, including quantities, if applicable (the "**Pre-Invoice Submission Meeting**"). In the event that the scheduled date for the *Pre-Invoice Submission Meeting* is not a *Working Day*, the *Pre-Invoice Submission Meeting* shall occur on the next *Working Day*. The *Contractor* shall bring with it to the *Pre-Invoice Submission Meeting* the following:

.1 a copy of the draft application for payment;

.2 any documents the *Contractor* is required to bring to the *Pre-Invoice Submission Meeting* as stipulated in the *Contract Documents* or as reasonably requested by the *Owner*; and

.3 any other documents reasonably requested, in advance, by the *Owner* or the *Consultant*."

5.2.2 Delete GC 5.2.2 in its entirety and replace it with the following:

"5.2.2 Applications for payment shall be given in accordance with the following requirements:

.1 Within 5 calendar days following the *Pre-Invoice Submission Meeting*, the *Contractor* shall deliver its application for payment to the *Owner* and to the *Consultant* for *Work* performed during the

Payment Period ("**Proper Invoice Submission Date**") subject to the following:

.1 if the fifth calendar day following the *Pre-Invoice Submission Meeting*, to which an invoice relates falls on a day that is not a *Working Day*, the *Proper Invoice Submission Date* shall be deemed to fall on the next *Working Day*.

.2 The application for payment must be delivered to the *Owner* and to the *Consultant* in the same manner as a *Notice in Writing* during the hours of 9:00 am to 4:00pm (EST) on the *Proper Invoice Submission Date*. Delivery to the *Owner* shall be to the following email address:

accountspayable@dcdsb.ca

.3 If an application for payment is received after 4:00 p.m. (EST) on the applicable *Proper Invoice Submission Date*, the application for payment will not be considered or reviewed by the *Owner* and *Consultant* until the next *Proper Invoice Submission Date.* Notwithstanding the foregoing, the *Owner* in its sole and absolute discretion may elect to accept an application for payment submitted after 4:00 p.m. on the applicable *Proper Invoice Submission Date*; however, such acceptance shall not be construed as a waiver of any of its rights or waive or release the *Contracto*r's obligations to strictly comply with the requirements prescribed in this subparagraph 5.2.2.3.

.4 No applications for payment shall be accepted by the *Owner* prior to the *Proper Invoice Submission Date*.

.5 All applications for payment shall include all of the requirements for a *Proper Invoice* prescribed by the *Construction Act* and this *Contract* and be dated the last day of the applicable *Payment Period*;"

5.2.3 Delete GC 5.2.3 and replace it with the following:

"5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered and incorporated into the *Work* as of the last date of the applicable *Payment Period*. Materials may also be deemed to be supplied to an improvement, for payment purposes, when, in the *Owner's* opinion, they are placed and properly secured on the land on which the improvement is made, or placed upon land designated by the *Owner* or agent of the *Owner*, but placing the materials on the land so

designated does not, of itself, make that land subject to a lien. 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. No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interests, liens, and other claims of third parties."

5.2.4 After the word "*Consultant*" in GC 5.2.4 add the words "and the *Owner*"

5.2.5 After the word "*Consultant*" in GC 5.2.5 add the words "or the *Owner*".

5.2.6 In GC 5.2.6, delete the word "*Consultant*" and replace it with "*Owner*".

5.2.9 Add new 5.2.9 as follows:

"5.2.9 The *Contractor* shall prepare and maintain current as-built drawings which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built drawings shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* shall recommend to the *Owner* that the *Owner* retain a reasonable amount for the value of the as-built drawings not presented for review."

GC 5.3 PAYMENT

5.3.1 Delete GC 5.3.1 in its entirety, including all subparagraphs thereunder, and replace it with the following:

"5.3.1 After receipt by the *Owner* and the *Consultant* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PAYMENT:

.1 the *Consultant* will either:

(a) issue to the *Owner* with a copy to the *Contractor*, a progress payment certificate in the amount applied for by the *Contractor* in the *Proper Invoice*, or

(b) issue to the *Owner*, with a copy to the *Contractor*, a certificate for payment for an amount determined by the *Consultant* to be properly due to the *Contractor* after applying any credits, withheld amounts, or other set-offs which the *Consultant* has determined that the *Owner* is entitled to notwithstanding any

notice of dispute or disagreement that the *Contractor* may have served, along with the *Consultant's* reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor*, which finding the *Owner* may accept or amend prior to the *Owner* issuing a *Notice of Non-Payment*, if any, in accordance with GC 5.3.2;

.2 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 PAYMENT,

(a) in the amount stated in the certificate for payment, or

(b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.3.3,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day."

5.3.2 to 5.3.7

Add new paragraphs 5.3.2, 5.3.3, 5.3.4, 5.3.4, 5.3.5, 5.3.6, and 5.3.7 as follows:

5.3.2 All payments to the *Contractor* shall be processed using electronic funds transfer ("**EFT**") and deposited directly to the *Contractor's* bank account unless agreed to otherwise by the *Contractor* and the *Owner* in writing. Prior to the *Contractor* submitting its first application for payment, the *Owner* and the *Contractor* shall exchange such information as is necessary to facilitate *EFT* payments.

5.3.3 In the event that the application for payment delivered by the *Contractor* pursuant to GC 5.2 - APPLICATIONS FOR PAYMENT does not include the requirements for a *Proper Invoice* or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment* (Form 1.1).

5.3.4 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 *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 GC 5.3.1.2.

5.3.5 Provided that the *Owner* complies with its obligations under the *Construction Act*, and subject to any interim determination of an adjudicator in accordance with any *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*.

5.3.6 The amounts disputed and described under the *Notice of Non-Payment* shall be held by the *Owner* until all disputed amounts of the *Proper Invoice* have been resolved pursuant to PART 8 – DISPUTE RESOLUTION.

5.3.7 The *Contractor* represents, warrants, and covenants to the *Owner* 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*. Evidence of the *Contractor's* compliance under this GC 5.3.7, including evidence demonstrating that all *EFTs* by the *Owner* to the *Contractor* are kept in a bank account in the *Contractor's* name will be made available to the *Owner* within 5 *Working Days* following receipt by the *Contractor* of a *Notice in Writing* making such request."

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK- AND PAYMENT OF HOLDBACK

GC 5.4 Delete GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK in its entirety and replace it with the following:

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

5.4.1 When the *Contractor* considers that *Substantial Performance of the Work* has been achieved, the *Contractor* shall prepare and submit to the *Consultant* and the *Owner* a comprehensive deficiency list of items to be completed or corrected, including any incomplete *Close-Out Documentation*, and apply for a review by the *Consultant* and the *Owner* to establish *Substantial Performance of the Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.

5.4.2 Prior to, or as part of its written application for *Substantial Performance of the Work* the *Contractor* shall submit to the *Consultant* submit to the *Consultant* all closeout documentation required by the *Contract Documents*, including but not limited to, warranties, manuals, guarantees, as-built drawings and all other relevant literature from suppliers and manufacturers including, but not limited to, where applicable (the "**Close-Out Documentation**"):

.1 equipment, maintenance, and operations manuals;
.2 equipment specifications, data sheets and brochures, parts lists and assembly drawings, performance curves and other related data;
.3 line drawings, value charts and control sheets sequences with description of the sequence of operations;
.4 warranty documents;
.5 guarantees;
.6 certificates;
.7 service and maintenance reports;
.8 *Specifications*;
.9 *Shop Drawings*;
.10 coordination drawings;
.11 testing and balancing results and reports;
.12 *Commissioning* and quality assurance documentation;
.13 distribution system diagrams;
.14 spare parts;
.15 samples;
.16 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;

.17 inspection certificates;
.18 red-lined record drawings from the construction trailer in two copies and
.19 other materials or documentation required to be submitted under the *Contract.*

5.4.3 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 receipt of the *Contractor's* 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 GC 5.8 – DEFICIENCY HOLDBACK. 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 in accordance with GC 5.4.3.2

.2 having completed the requirements set out in GC 5.4.3.1,

(a) the *Consultant* shall advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or

(b) 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.*

5.4.4 Following the issuance of the certificate of *Substantial Performance of the Work* referenced in subparagraph 5.4.3.2(b):

.1 The Contractor shall publish, in a construction trade newspaper in the area of the location of the Work, a copy of the certificate of S*ubstantial Performance of the Work* referred to in GC 5.4.2.2(b) within seven (7) calendar days of receiving a copy of the certificate signed by the *Consultant*, and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and the *Owner*. If the Contractor fails to publish such notice, the Owner shall be at liberty to publish said certificate and back-charge the Contractor its reasonable costs for doing so;

.2 The *Contractor* shall complete the *Work* within forty (40) calendar days of the date certified as the date of *Substantial Performance of the Work*;

.3 Notwithstanding any other provisions of the *Contract,* no payments will be processed between *Substantial Performance of the Work* and *Ready-for-Takeover*;

.4 The *Owner* reserves the right to contract out any or all unfinished *Work* if it has not been completed within forty (40) days of *Substantial Performance of the Work* using, without limitation, the funds retained in accordance with GC 5.8 - DEFICIENCY HOLDBACK, without prejudice to any other right or remedy and without affecting the warranty period. The cost to the *Owner* of completing the *Work* including *Owner* and *Consultant* wages and materials shall be deducted from the *Contract Price.*

5.4.5 After publication of the certificate of the *Substantial Performance of the Work*, and provided that the *Contractor* has completed performance of the *Work* within the 40 calendar days following certification of *Substantial Performance of the Work*, the *Contractor* may submit an application for payment of the outstanding *Construction Act* holdback amount, which application for payment shall:

.1 include all of the requirements listed in EXHIBIT “1” - PROJECT SPECIFIC REQUIREMENTS FOR A PROPER INVOICE, as applicable to the application for payment of the holdback amount; and

.2 include a statement that the *Contractor* has not received any written notices of lien or any claims for liens from any *Subcontractor* or *Supplier.*

5.4.6 The *Construction Act* holdback amount shall become due and payable the day immediately following the expiration of the holdback period prescribed by the *Construction Act* (in most cases being the 61st calendar day following the publication of the certificate of *Substantial Performance of the Work* referred to in GC 5.4.4.1), subject to the occurrence of any of the following:

.1 the preservation of a lien in respect of the *Project* that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*;

.2 receipt by the *Owner* of a written notice of lien that has not been satisfied, discharged or otherwise provided for in accordance with the *Construction Act*; or

.3 prior to the expiry of 40 calendar days following the publication of

the certificate of *Substantial Performance of the Work,* the *Owner* publishes a *Notice of Non-Payment* of holdback in accordance with the *Construction Act* (Form 6)*,* setting out the amount of holdback that will not be paid, which may include non-payment to secure the correction of deficiencies and/or the completion of the *Work*.

5.4.7 Notwithstanding the *Owner's* obligation to make payment of the holdback amount in accordance with GC 5.4.6, the processing of such payment remains subject to the *Owner's* internal *EFT* timing limitations. The *Owner* covenants, and the *Contractor* agrees, that payment of the holdback shall be made by *EFT* at the first opportunity during the *Owner's* normal processing of *EFTs* upon the holdback becoming due in accordance with GC 5.4.6..

GC 5.5 FINAL PAYMENT

GC 5.5 Delete GC 5.5 in its entirety, including all subparagraphs thereunder and replace it with the following:

"5.5.1 When *Ready-for-Takeover* has been achieved in accordance with GC 12.1 – READY-FOR-TAKEOVER and the *Contractor* considers the *Work* is complete, and after the *Contractor*, the *Owner*, and the *Consultant* have attended a *Pre-Invoice Submission Meeting* analogous to the requirement in GC 5.2.1 (the "***Final Pre-Invoice Submission Meeting***"), the *Contractor* may submit an application for final payment to the *Owner* and to the *Consultant*, which application for payment shall:

.1 include all of the requirements set out in GC 5.2.2, including without limitation those requirements listed in APPENDIX "1" - PROJECT SPECIFIC REQUIREMENTS FOR A PROPER INVOICE that are specific to an application for final payment; and

.2 if applicable, (a) a certificate from the *Consultant* or written confirmation from the *Owner* that the deficiencies or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2 have been fully rectified as of the date of the *Contractor's* application for final payment, and/or (b) written confirmation, signed by the *Owner* and the *Contractor,* that the *Contract Price* has been reduced by a specified amount in exchange for the *Owner* releasing the *Contractor* of its obligation to rectify the certain outstanding deficiencies and/or incomplete *Work* waived by the *Owner* pursuant to GC 12.1.2, as detailed in such written confirmation.

5.5.2 No later than 5 calendar days prior to the *Final Pre-Invoice Submission Meeting*, the *Contractor* will, if not already provided, submit to the *Consultant* all *Close-Out Documentation*.

5.5.3 Delivery of all *Close-Out Documentation* is a requirement for the *Proper Invoice* for final payment.

5.5.4 After receipt by the *Owner* and the *Consultant* of an application for payment submitted by the *Contractor* that is a *Proper Invoice* and by no later than 10 calendar days after the receipt of the *Proper Invoice*:

.1 the *Consultant* will either:

(a) issue to the *Owner* with a copy to the *Contractor*, a progress payment certificate in the amount applied for by the *Contractor* in the *Proper Invoice*, or

(b) deliver a finding to the *Owner* with reasons why an amount other than what is claimed in the *Proper Invoice* is properly due to the *Contractor*, which finding the *Owner* may accept or amend prior to issuing a *Notice of Non-Payment* (Form 1.1), if any, in accordance with GC 5.5.2;

.2 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 PAYMENT,

(a) in the amount stated in the certificate for payment, or

(b) in the amount stated in the certificate for payment less such amount stated in the *Owner's Notice of Non-Payment* issued pursuant to GC 5.5.5,

on the 28th calendar day after receipt of a *Proper Invoice*, unless such 28th calendar day lands on a day that is other than a *Working Day*, in which case payment shall be made on the next *Working Day* after such 28th day.

5.5.5 In the event that the application for final payment delivered by the *Contractor* does not include the requirements of GC 5.5.1 (including the requirements for a *Proper Invoice*) and GC 5.5.2 or where the *Owner* disputes the amount claimed as payable in the *Proper Invoice*, then the *Owner* shall within 14 calendar days of receipt of the application for payment, issue a *Notice of Non-Payment*. Where the *Owner* has delivered a *Notice of Non-Payment*, as specified under this GC 5.5.5, 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 with the assistance of the *Consultant*, the *Owner* and the *Contractor* cannot resolve the dispute, either party may commence an *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 GC 5.5.4.2.

5.5.6 Subject to the provisions of the *Construction Act* and any other rights conferred on the *Owner* at law or under this *Contrac*t to withhold payment or backcharge or set-off against payment, the *Owner* shall pay the amount payable under a *Proper Invoice* for final payment in accordance with the *Construction Act*.

5.5.7 When the *Consultant* issues certificate of completion in accordance with GC 5.5.4.1, the *Consultant* shall also issue a certificate for release of any holdback for finishing work amount. In accordance with the *Construction Act,* the *Owner* may retain any amounts which are required by law to satisfy any liens against the *Work*, in respect of any third party claims made to the *Owner* in respect of the *Contract* or the *Work*, and in respect of any claims the *Owner* may have against the *Contractor*. Subject to the foregoing, the *Owner* shall release the holdback in accordance with the *Construction Act.*"

GC 5.6 DEFERRED WORK

5.6.1 Delete paragraph 5.6.1 and replace with the following:

"5.6.1 If because of conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, subject to its requirement to issue a *Notice of Non-Payment* under the *Construction Act*, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work. The remaining work shall be valued as deficient work as defined in GC 5.8.1."

GC 5.8 DEFICIENCY HOLDBACK

5.8.1 Add new GC 5.8 – DEFICIENCY HOLDBACK as follows:

"**GC 5.8 DEFICIENCY HOLDBACK**

5.8.1 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 of 1%, at the

time of contract start, based on a 200%-dollar value of the deficiencies listed by the *Consultant*. The Owner shall use the Deficiency Retention to cover the costs of correcting defects,
deficiencies or non-compliant items of Work which appear prior to and during the warranty period.

5.8.2 In performing the calculation under GC 5.8.1,

.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.

5.8.3 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)."

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

6.1.2 Add the following to the end of GC 6.1.2:

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

6.1.3 to 6.1.8 Add new paragraphs 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7 and 6.1.8 as follows:

"6.1.3 The *Contractor* agrees that changes resulting from construction coordination, including but not limited to, site surface conditions, site coordination, and *Subcontractor and Supplier* coordination are included in the *Contract Price* and the *Contractor* shall be precluded

from making any claim for a change in the *Contract Price* as a result of such changes.

6.1.4 Labour costs shall be actual, prevailing rates at the *Place of the Work* paid to workers, plus statutory charges on labour including WSIB, unemployment insurance, Canada pension, vacation pay, hospitalization and medical insurance. The *Contractor* shall provide these rates, when requested by the *Consultant*, for review and/or agreement.

6.1.5 Quotations for changes to the *Work* shall only include *Direct Costs* and be accompanied by itemized breakdowns together with detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers,* submitted in a format acceptable to the *Consultant* and shall include any *Direct Costs* associated with extensions in *Contract Time.*

6.1.6 When both additions and deletions covering related *Work* or substitutions are involved in a change to the *Work*, payment, including *Overhead* and profit, shall be calculated on the basis of the net difference, if any, with respect to that change in the *Work*.

6.1.7 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 critical path events, as approved by Owner and Consultant, in 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.*

6.1.8 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."

GC 6.2 CHANGE ORDER

6.2.1 In paragraph 6.2.1 after the last sentence in the paragraph add the following:

"The adjustment in the *Contract Time* and the *Contract Price* shall include an adjustment, if any, for delay or for the impact that the change in the *Work* has on the *Work* of the *Contractor*, and once such adjustment is made, the

Contractor shall be precluded from making any further claims for delay or impact with respect to the change in the *Work.*"

6.2.3 to 6.2.5 Add new paragraphs 6.2.3, 6.2.4, and 6.2.5 as follows:

"6.2.3 The value of a change shall be determined in one or more of the following methods as directed by the Owner:

.1 by estimate and acceptance of a lump sum. The lump sum shall include overhead, profit and other reasonable charges of the Contractor and shall be the total cost to the Owner, or

.2 by unit prices established in the Contract or subsequently agreed upon. Unit prices shall include all costs related to materials, labour, equipment, delivery and handling, statutory charges, overhead and profit, other related charges, and inclusive of all applicable duties (excluding HST), measured in place prior to excavation, or compacted/complete in place, and shall be the total cost to the Owner. Adjustment to the Contract Price shall be based on a net quantity difference from the original quantity; or

.3 by actual credits and cost to the Owner. The cost to the Owner shall be the actual cost plus the following percentage fee for overhead and profit after all credits included in the change have been deducted:

a) on Work performed by the Contractor's own forces, the Contractor may charge a maximum 10% mark-up as a combined percentage fee for overhead and profit;
b) on Work performed by Subcontractors:
    i. the Subcontractors may charge a maximum 10% mark-up as a combined percentage fee for overhead and profit; and
    ii. the Contractor may charge a maximum 5% mark-up as a combined percentage fee for overhead and profit on the aggregate of the Work performed by all Subcontractors (excluding the Subcontractor percentage fee mark-up).

6.2.4 The percentage fee markups referred to in paragraph 6.2.3.3 are intended to cover all profit, general expenses and overhead costs incurred by the Contractor in relation to the change including, but not limited to, head office and head office personnel costs, estimating, supervision, coordination, administration, general cleanup, small tools, As-Built Drawings, warranty, insurance and job safety costs.

6.2.5 The *Owner* and the *Consultant* will not be responsible for delays to the *Work* resulting from late, incomplete or inadequately broken-down valuations submitted by the *Contractor.*"

GC 6.3 CHANGE DIRECTIVE

6.3.6.1 Amend paragraph 6.3.6.1 by deleting the final period and adding the following:

Change directives will be subject to the same mark-ups as noted in section 6.2.3 above.

Note: "If a change in the Work results in a net decrease in the Contract Price, the amount of the credit shall be the net cost, without deduction for Overhead or profit."

6.3.6.2 Delete paragraph 6.3.6.2 and replace it with the following:

".2 If a change in the *Work* results in a net decrease in the *Contract Price*, the amount of the credit shall be the net cost, without deduction for *Overhead* or profit."

6.3.7.1(4) Delete GC 6.3.7.1(4).

6.3.7.7 Amend GC 6.3.7.7 by deleting the words "described in paragraph 6.3.7.1" and replacing them with "approved by the *Owner* in writing and in advance of any such expenses being incurred;"

6.3.7.9 Amend GC 6.3.7.9 by adding the following to the end of the paragraph: "…when specifically requested by the *Owner* or as directed by the *Consultant*;".

6.3.7.10 Amend GC 6.3.7.10 by adding the following to the end of the paragraph: ", provided that such amounts are not caused by negligent acts, omissions, or default of the *Contractor* or *Subcontractor*;".

6.3.7.13 Delete GC 6.3.7.13.

6.3.7.15 Delete GC 6.3.7.15.

6.3.7.17 Delete GC 6.3.7.17 in its entirety including all subparagraphs.

6.3.11 Delete GC 6.3.11 and replace it with the following:

"6.3.11 The value of the *Work* performed as a result of a *Change Directive* shall not be eligible to be included in progress payments until the amount, including the method for determining the amount, of such *Change Directive* has been determined."

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.1 Delete paragraph 6.4.1 in its entirety and replace with the following:

"6.4.1.1 Prior to the submission of the bid on which the Contract was awarded, the Contractor confirms that it carefully investigated the Place of the Work insofar as the Place of Work was available for investigation and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1

6.4.1.2 No claim by the *Contractor* will be considered by the *Owner* or the *Consultant* in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence undertaken prior to the execution of the *Contract*.

6.4.2 Amend paragraph 6.4.2 by adding a new first sentence as follows:

"Having regard to paragraph 6.4.1, if the *Contractor* believes that the conditions of the *Place of the Work* differ materially from those reasonably anticipated, differ materially from those indicated in the *Contract Documents* or were concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.1, it shall provide the *Owner* and the *Consultant* with *Notice in Writing* no later than five (5) *Working Days* after the first observation of such conditions."

-and-

amend the existing second sentence of paragraph 6.4.2 in the second line, following the word "materially" by adding the words "or were concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.1,".

6.4.3 Delete paragraph 6.4.3 in its entirety and substitute 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 report in writing the reasons for this finding to the *Owner* and the *Contractor*."

6.4.5 Add new paragraph 6.4.5 as follows:

"6.4.5 No claims for additional compensation or for an extension of *Contract Time* shall be allowed if the *Contractor* fails to give *Notice in Writing* to the *Owner* or *Consultant,* as required by paragraph 6.4.2."

GC 6.5 DELAYS

6.5.1 In paragraph 6.5.1 delete the words after the word "for" in the fourth line and replace them with the words "…reasonable *Direct Costs* directly flowing from the delay, but excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity or loss of productivity)."

6.5.2 Delete GC 6.5.2 in its entirety and replace it with the following:

"6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was issued on account of a direct breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes by the *Owner*, *Other Contractor(s)*, or the *Consultant*, and relating to the *Work* or the *Place of the Work*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may determine. The *Contractor* shall be reimbursed by the *Owner* for reasonable *Direct Costs* directly flowing from the delay, but excluding any consequential, indirect or special damages (including, without limitation, loss of profits, loss of opportunity or loss of productivity)."

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

"6.5.3 If either party is delayed in the performance of their obligations under this *Contract* by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Owner* and the *Contractor* shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the parties agree to a shorter extension. Neither party shall be entitled to payment for costs incurred by such delays. Upon reaching agreement on the extension of the *Contract Time* attributable to the *Force Majeure* event, the *Owner* and the *Contractor* shall execute a *Change Order* indicating the length of the extension to the *Contract Time* and confirming that there are no costs payable by the either party for the extension of *Contract Time*. However, if at the time an event of *Force Majeure* arises a party is in default of its obligations under the *Contract* and has received a notice of default pursuant to PART 7 – DEFAULT NOTICE, this paragraph 6.5.3 shall not excuse a party from its obligation to cure the default(s). For greater certainty, the defaulting party, to the extent possible, must continue to address and cure the default notwithstanding an event of *Force Majeure*."

6.5.4 Delete paragraph 6.5.4 in its entirety and replace it with the following:

"6.5.4 No extension or compensation shall be made for delay or impact on the *Work* unless notice in writing of a claim is given to the *Consultant* not later than ten (10) *Working Days* after the commencement of the delays or impact on the *Work*, provided however, that, in the case of a continuing cause of delay or impact on the *Work*, only one notice of claim shall be necessary."

6.5.6 to 6.5.8 Add new paragraphs 6.5.6, 6.5.7 and 6.5.8 as follows:

"6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor,* or by any cause within the *Contractor's* control, then (i) firstly, at its expense, the *Contractor* shall accelerate the work and/or provide overtime work to recover time lost by a delay arising under this paragraph 6.5.6, and (ii) secondly, where it is not possible for the *Contractor* to recover the time lost by implementing acceleration measures and/or overtime work, the *Contract Time* may be extended for such reasonable time as the *Owner* may decide in consultation with the *Consultant* and the *Contractor*. 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, Owner's staff costs, the cost of all additional services required by the *Owner* from the *Consultant* or any sub-consultants, project managers, or others employed or engaged by the *Owner*, and in particular, the costs of the *Consultant's* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein, as the same may be extended through the provision of these General Conditions, and any later or actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

6.5.7 Without limiting the obligations of the *Contractor* described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS or GC 9.4 – CONSTRUCTION SAFETY, the *Owner* or *Consultant* may, by *Notice in Writing*, direct the *Contractor* to stop the *Work* where the *Owner* or *Consultant* determines that there is an imminent risk to the safety of persons or property at the *Place of the Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the site. The *Contractor* shall not be entitled to an extension of the *Contract Time* or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the *Contact Time* or the reimbursement of the *Contractor's* costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.8 No claim for delay shall be made by the *Contractor* and the *Contract Time* shall not be extended due to climatic conditions or arising from the *Contractor's* efforts to maintain the *Construction Schedule*."

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

7.1.2 In GC 7.1.2, delete the words "and if the *Consultant* has given a written statement to the *Owner* and *Contractor* which provides the detail of such neglect to perform the *Work* properly or such failure to comply with the requirements of the *Contract* to a substantial degree".

7.1.3.4 Add a new subparagraph 7.1.3.4 as follows:

".4 an "acceptable schedule" as referred to in subparagraph 7.1.3.2. means a schedule approved by the *Consultant* and the *Owner* wherein the default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the work of other contractors, and in no event shall it be deemed to give a right to extend the *Contract Time*."

7.1.4.1 Delete subparagraph 7.1.4.1 and replace it with the following:

".1 correct such default and deduct the cost, including *Owner's* expenses, thereof from any payment then or thereafter due the *Contractor*."

7.1.4.2 Delete subparagraph 7.1.4.2 and replace it with the following:

".2 by providing *Notice in Writing* to the *Contractor*, terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*, and publish a notice of termination (Form 8) in accordance with the *Act*."

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

7.1.6 to 7.1.10 Delete GC 7.1.6 and replace it with new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9 and 7.1.10 as follows:

"7.1.6 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.

7.1.7 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 thirty (30) calendar days, the *Contract* shall be deemed to be terminated and the provisions of paragraph 7.1.6 shall apply.

7.1.8 In the case of either a termination of the *Contract* or a suspension of the *Work* under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall use its best commercial efforts to mitigate the financial consequences to the *Owner* arising out of the termination or suspension, as the case may be.

7.1.9 Upon the resumption of the *Work* following a suspension under GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT or GC 7.2 - CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* will endeavour to minimize the delay and financial consequences arising out of the suspension.

7.1.10 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*.”

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

7.2.2 Delete paragraph 7.2.2 and replace it with the following:

"7.2.2 If the *Work* is suspended or otherwise delayed for a period of 40 consecutive *Working Days* or more under a stop work order issued by a court or other public authority on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes directly by the *Owner*, the *Owner's* other contractor(s), or the *Consultant*, and relating to the *Work* or the *Place of the Work*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* Notice in *Writing* to that effect."

7.2.3.1 Delete subparagraph 7.2.3.1 in its entirety.

7.2.3.2 Delete subparagraph 7.2.3.2 in its entirety.

7.2.3.4 In subparagraph 7.2.3.4, delete the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".

7.2.5 Delete paragraph 7.2.5 and replace it with the following:

"7.2.5 If the default cannot be corrected within the 5 *Working Days* specified in paragraph 7.2.4, the *Owner* shall be deemed to have cured the default if it:

.1 commences correction of the default within the specified time;

.2 provides the *Contractor* with an acceptable schedule for such correction; and,

.3 completes the correction in accordance with such schedule."

7.2.6 to 7.2.9 Add new paragraphs 7.2.6, 7.2.7, 7.2.8 and 7.2.9 as follows:

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

7.2.7 The *Contractor* shall not be entitled to give notice of the *Owner's* default or terminate the *Contract* in the event the *Owner* withholds certificates or payment or both in accordance with the *Contract* because of:

.1 the *Contractor's* failure to pay all legitimate claims promptly, or

.2 the failure of the *Contractor* to discharge construction liens which are registered against the title to the *Place of the Work.*

7.2.8 The *Contractor's* obligations under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Contractor* up to the effective date of termination shall continue in force and shall survive termination of this *Contract* by the *Contractor*.

7.2.9 If the *Contractor* suspends the *Work* or terminates the *Contract* as provided for in GC 7.2 – CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall ensure the site and the *Work* are left in a safe, secure condition as required by authorities having jurisdiction at the *Place of the Work* and the *Contract Documents*."

GC 8.1 AUTHORITY OF THE CONSULTANT

8.1.3 Delete paragraph 8.1.3 in its entirety and substitute as follows:

"8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instruction as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by doing so neither party will jeopardize any claim the party may have."

GC 8.2 ADJUDICATION

8.2.2 to 8.2.7 Add new GC 8.2.2, 8.2.3, 8.2.4, 8.2.5, 8.2.6, and 8.2.7 as follows:

"8.2.2 Save and except where the *Contractor* has given an undertaking, in accordance with the *Act*, to refer a dispute to *Adjudication*, prior to delivering a notice of *Adjudication* in a form prescribed by the *Act*, the parties agree to first address all disputes with at least one in-person meeting with the *Owner's* representative, the *Consultant's* representative, and the *Contractor's* representative. The parties agree that such steps will be taken to resolve any disputes in a timely and cost-effective manner.

8.2.3 Notwithstanding any other provisions in PART 8 DISPUTE RESOLUTION, the parties shall engage in *Adjudication* proceedings as required by, and in accordance with, the *Construction Act*.

8.2.4 The following procedures shall apply to any *Adjudication* the parties engage in under the *Construction Act*:

.1 any hearings shall be held at a venue within the jurisdiction of the *Place of the Work* or such other venue as the parties may agree and which is acceptable to the adjudicator;

.2 the *Adjudication* shall be conducted in English;

.3 each party may be represented by counsel throughout an *Adjudication*;

.4 there shall not be any oral communications with respect to issues in dispute that are the subject of an *Adjudication* between a party and the adjudicator unless it is made in the presence of both parties or their legal representatives; and

.5 a copy of all written communications between the adjudicator and a party shall be given to the other party at the same time.

8.2.5 Any documents or information disclosed by the parties during an *Adjudication* are confidential and the parties shall not use such documents or information for any purpose other than the *Adjudication* in which they are disclosed and shall not disclose such documents and information to any third party, unless otherwise required by law, save and except the for the adjudicator.

8.2.6 If the *Contractor* fails to comply with any of the notice requirements set out in the *Contract*, including the time limits set out in any of the following:

.1 GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS;
.2 GC 6.5 – DELAYS;
.3 GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE;
.4 PART 8 DISPUTE RESOLUTION
.5 GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES
.6 GC 9.3 – ARTIFACTS AND FOSSILS; or
.7 GC 9.5 - MOULD

in respect of any claim or dispute, the *Contractor* shall have no entitlement whatsoever (including to an increase in the *Contract Price*, or an extension of *Contract Time*) in the context of an *Adjudication* under the *Construction Act* and waives the right to make any such claims or disputes in an *Adjudication*. This GC 8.2.6 shall

operate conclusively as an estoppel and bar in the event such claims or disputes are brought in an *Adjudication* and the *Owner* may rely on this GC 8.2.6 as a complete defence to any such claims or disputes.

8.2.7 The parties hereby acknowledge and agree,

.1 that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the *Owner* to withhold, deduct or retain from monies otherwise owed to the *Contractor* under the *Contract* may be referred to, and included as part of, *Adjudications* under the *Construction Act*;

.2 that disputes related to the termination or abandonment of the *Contract*, as well as any disputes that arise or are advanced following the termination or abandonment of the *Contract*, shall not be referred to *Adjudication* under the *Construction Act*;

.3 that notice(s) of *Adjudication,* with respect to any dispute or claim relating to the *Project,* shall not be given, and no *Adjudication* shall be commenced following *Contract* completion, *Contract* abandonment, or termination of the *Contract*;

.4 that any *Adjudication* between the *Contractor* and a *Subcontractor* or a supplier that relates to an *Adjudication* between the *Owner* and the *Contractor* shall be joined together to be adjudicated by a single adjudicator, provided that the adjudicator agrees to do so, and the *Contractor* shall include a provision in each of its contracts that contain an equivalent obligation to this GC 8.2.7.4; and

.5 that, other than where the *Contractor* is obliged to commence an *Adjudication* pursuant to an undertaking under the *Construction Act,* neither the *Owner* nor the *Contractor* shall commence an *Adjudication* during the *Restricted Period*.

8.2.8 The parties acknowledge and agree that no *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* as set out in GC 6.6, before the *Consultant* has issued its findings in respect of same, pursuant to GC 6.6.5. 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 *Adjudicatio*n 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*."

GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

8.3.1 Amend paragraph 8.3.1 by changing part of the second line from "shall appoint a *Project Mediator*" to "may appoint a *Project Mediator,* except that such an appointment shall only be made if both the *Owner* and the *Contractor* agree."

8.3.4 Amend paragraph 8.3.4 by changing part of the second line from "the parties shall request the *Project Mediator"* to "and subject to paragraph 8.3.1 the parties may request the *Project Mediator".*

8.3.6 to 8.3.9 Delete paragraphs 8.3.6, 8.3.7 and 8.3.8 in their entirety and replace them with the following new GCs 8.3.6, 8.3.7, 8.3.8, and 8.3.9:

"8.3.6 The dispute may be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, provided that both the *Contractor* and the *Owner* agree. If the *Contractor* and the *Owner* agree to resolve the dispute by arbitration, the arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

8.3.7 Prior to delivering a notice of *Adjudication* in a form prescribed by the *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*.

8.3.8 Other than where the *Contractor* is obliged to commence an *Adjudication* pursuant to an undertaking under the *Construction Act*, neither the *Owner* nor the *Contractor* shall commence an *Adjudication* during the *Restricted Period*.

8.3.9 Where either party has delivered a notice of *Adjudication* in a form prescribed by the *Act*, the procedures and rules set out under the *Construction Act* and the regulations thereto shall govern the *Adjudication*."

GC 9.1 PROTECTION OF WORK AND PROPERTY

9.1.1 .1 Delete subparagraph 9.1.1.1 in its entirety and substitute the following:

".1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;"

9.1.2 Delete paragraph 9.1.2 in its entirety and substitute as follows:

"9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground or hidden utilities and structures indicated in or inferable from the *Contract Documents*, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.14.1."

9.1.5 Add new paragraph 9.1.5 as follows:

"9.1.5 With respect to any damage to which paragraphs 9.1.3 or 9.1.4 apply, the *Contractor* shall neither undertake to repair or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge that the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. Where, however, there is danger to life, the environment, or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger."

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

9.2.1 Amend GC 9.2.1 by inserting the following to the end of the paragraph:

"For the purposes of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, *Excess Soil* shall not be considered a 'toxic and hazardous substance'."

9.2.5 .5 Add a new subparagraph 9.2.5.5 as follows:

".5 in addition to the steps described in subparagraph 9.2.5.3, take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering toxic or hazardous substances or materials."

9.2.6 Amend GC 9.2.6 by adding the following words after the word “responsible” in the second line:

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

9.2.8 Amend GC 9.2.8 by adding the following words after the word “responsible” in the second line:

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

9.2.10 Add new paragraph 9.2.10 as follows:

“9.2.10 The *Contractor*, *Subcontractors* and *Suppliers* shall not bring on to the *Place of the Work* any toxic or hazardous substances and materials except as required in order to perform the *Work*. If such toxic or hazardous substances or materials are required, storage in quantities sufficient to allow work to proceed to the end of any current work week only shall be permitted. All such toxic and hazardous materials and substances shall be handled and disposed of only in accordance with all laws and regulations that are applicable at the *Place of the Work*.”

GC 9.4 CONSTRUCTION SAFETY

9.4.1 Delete GC 9.4.1 in its entirety and replace it with the following:

“9.4.1 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 *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*. The *Contractor*’s health and safety program documentation shall be made available for review by the *Owner* or

Consultant immediately upon request. 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*."

9.4.2 Amend GC 9.4.2 by adding the following words after "and the *Contractor*": ", *Subcontractors* and *Suppliers*".

9.4.3 Amend GC 9.4.3 by adding the following words after "and the *Contractor*": ", *Subcontractors* and *Suppliers*".

9.4.4 Delete GC 9.4.4 and replace it with the following:

"9.4.4 The *Owner* undertakes to include in its contracts with other contractors and in its instructions to its own forces the requirement that the other contractor or its own forces, as the case may be, comply with the policies and procedures of and the directions and instructions from the *Contractor* with respect to occupational health and safety and related matters."

9.4.5 Delete GC 9.4.5 in its entirety and replace it with the following:

"9.4.5 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;

.4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under the *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*;"

9.4.6 to 9.4.12 Add new GC 9.4.6, 9.4.7, 9.4.8, 9.4.9, 9.4.10, 9.4.11, and 9.4.12 as follows:

"9.4.6 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, trustees, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the

Contractor under *OHSA* and any other occupational health and safety legislation in force at the *Place of the Work* including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance.

9.4.7 If the *Owner* is of the reasonable opinion that the *Contractor* has not taken such precautions as are necessary to ensure compliance with the requirements of paragraph 9.4.1, the *Owner* may take any remedial measures which it deems necessary, including stopping the performance of all or any portion of the *Work,* and the *Owner* may use its employees, the *Contractor*, any *Subcontractor* or any other contractors to perform such remedial measures.

9.4.8 The *Contractor* shall file any notices or any similar document required pursuant to the *Contract* or the safety regulations in force at the *Place of the Work*. This duty of the *Contractor* will be considered to be included in the *Work* and no separate payment therefore will be made to the *Contractor*.

9.4.9 Unless otherwise provided in the *Contract Documents*, the *Contactor* shall develop, maintain and supervise for the duration of the *Work* a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, at a minimum, respond fully to the applicable safety regulations and general construction practices for the safety of persons or property, including, without limitation, any general safety rules and regulations of the *Owner* and any workers' compensation or occupational health and safety statutes or regulations in force at the *Place of the Work*.

9.4.10 The *Contractor* shall provide a copy of the safety program described in GC 9.4.9 hereof to the *Consultant* for delivery to the *Owner* prior to the commencement of the *Work*, and shall, ensure, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the *Project* complies with such program.

9.4.11 The *Contractor* shall arrange regular safety meetings, and shall supply and maintain, at its own expense, at its office or other well-known place at the job site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the authorities having jurisdiction at the *Place of the Work*, including, without limitation, articles necessary for administering first-aid to any person and an emergency procedure for the immediate removal of any inured person to a hospital or a doctor's care.

9.4.12 The *Contractor* shall promptly report in writing to the *Owner* and the *Consultant* all accidents of any sort arising out of or in connection with the performance of the *Work*, whether on or adjacent to the job site, giving full details and statement of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the *Contractor* to the *Owner* and the *Consultant* by telephone or messenger in addition to any reporting required under the applicable safety regulations.”.”

GC 10.1 TAXES AND DUTIES

10.1.2 Amend paragraph 10.1.2 by adding the following sentence to the end of the paragraph:

“For greater certainty, the *Contractor* shall not be entitled to any mark-up for overhead or profit on any increase in such taxes and duties and the *Owner* shall not be entitled to any credit relating to mark-up for overhead or profit on any decrease in such taxes. The *Contractor* shall provide a detailed breakdown of Additional taxes if requested by the *Owner* in a form satisfactory to the *Owner*.”

10.1.3 Add new paragraph 10.1.3 as follows:

“10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner*, assist with the application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.”

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

10.2.5 Amend paragraph 10.2.5 by adding the words “Subject to paragraph 3.4” at the beginning of the paragraph.

-and-

Add the following to the end of the second sentence:

"…and no further *Work* on the affected components of the *Contract* shall proceed until these directives have been obtained by the *Contractor* from the *Consultant*."

10.2.6 Amend paragraph 10.2.6 by adding the following sentence to the end of the paragraph:

"In the event the *Owner* suffers loss or damage as a result of the *Contractor's* failure to comply with paragraph 10.2.5 and notwithstanding any limitations described in paragraph 12.1.1, the *Contractor* agrees to indemnify and to hold harmless the *Owner* and the *Consultant* from and against any claims, demands, losses, costs, damages, actions suits or proceedings resulting from such failure by the *Contractor*."

10.2.7 Amend paragraph 10.2.7 by inserting the words "which changes were not, or could not have reasonably been known to the *Owner* or to the *Contractor*, as applicable, at the time of bid closing and which changes did not arise as a result of a public emergency or other *Force Majeure* event" to the second line, after the words "authorities having jurisdiction".

10.2.8 Add new paragraph 10.2.8 as follows:

"10.2.8 The *Contractor* shall furnish all certificates that are required or given by the appropriate governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of authorities having jurisdiction, including certificates of compliance for the *Owner's* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental authorities furnish such certificates."

GC 10.4 WORKERS' COMPENSATION

10.4.1 Delete paragraph 10.4.1 and replace with the following:

"10.4.1 Prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation in force at the *Place of the Work*, including payments due thereunder."

GC 11.1 INSURANCE

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

"**GC 11.1 INSURANCE**

11.1.1 Without restricting the generality of GC 12 – INDEMNIFICATION, the *Contractor* shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 – INSURANCE. 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 in accordance with the provisions of paragraph 11.1.3. Aircraft and watercraft liability insurance with respect to owned or non-owed 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*.

(6) In the case of loss or damage to the *Work* arising from the work of other contractors, or the *Owner's* own forces, the *Owner*, in accordance with the *Owner's* obligations under paragraph 3.2.2.4 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as provided in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT.

.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.

11.1.2 The *Contractor* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Contractor's* responsibility by the terms of GC 9.1 - PROTECTION OF WORK AND PROPERTY and GC 9.2 - DAMAGES AND MUTUAL RESPONSIBILITY.

11.1.3 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.

11.1.4 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*.

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

GC 11.2 CONTRACT SECURITY

GC 11.2 Add new GC 11.2 – CONTRACT SECURITY as follows:

"**GC 11.2 CONTRACT SECURITY**

11.2.1 The *Contractor* shall, prior to the execution of the *Contract*, furnish a performance bond and labour and material payment bond which meets the requirements under paragraph 11.2.2.

11.2.2 The performance bond and labour and material payment bond shall:

.1 be issued by a duly licensed surety company, which has been approved by the *Owner* and is permitted under the *Construction Act*,

.2 be issued by an insurer licensed under the *Insurance Act* (Ontario) and authorized to transact a business of suretyship in the Province of Ontario;

.3 shall be in the form prescribed by the *Construction Act*;

.4 have a coverage limit of at least 50 per cent of the *Contract Price*, or such other percentage of the *Contract Price* as stated in the *Contract Documents*;

.5 extends protection to *Subcontractors*, *Suppliers,* and any other persons supplying labour or materials to the *Project*; and

.6 shall be maintained in good standing until the fulfillment of the *Contract*, including all warranty and maintenance periods set out in the *Contract Documents.*.

11.2.3 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.

11.2.4 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*.

11.2.4 The *Contractor* shall be responsible for notifying the surety company of any changes made to the *Contract* during the course of construction.

11.2.5 The premiums for bonds required by the *Contract Documents* shall be included in the *Contract Price*.

11.2.6 Should the *Owner* require additional bonds by the *Contractor* or any of his *Subcontractors*, after the receipt of bids for the *Work*, the *Contract Price* shall be increased by all direct costs attributable to providing such bonds. The *Contractor* shall promptly provide the *Owner*, through the *Consultant*, with any such bonds that may be required."

GC 12.1 READY-FOR-TAKEOVER

12.1.1 Delete GC 12.1.1 in its entirety and replace it with the following:

"12.1.1 *Ready-for-Takeover* shall be achieved when all of the following has occurred, as verified and approved by the *Owner*:

.1 *Substantial Performance of the Work* has been achieved, as certified by the *Consultant*;

.2 a permit for occupancy free of any jurisdictional requirements of the *Place of the Work* has been obtained from the authorities having jurisdiction;

.3 the *Work* to be performed under the *Contract* has satisfied the requirements for deemed completion in accordance with Section 2(3) of the *Construction Act*,

.4 final cleaning and waste removal, as required by the *Contract Documents*;

.5 the *Contractor* has delivered to the *Consultant* and the *Owner* all inspection certificates from authorities having jurisdiction with respect to any component of the *Work* which has been completed;

.6 subject only to GC 12.1.2, the entire *Work* has been completed to the requirements of the *Contract Documents*, including completion of all items on the deficiency list prepared at the time of *Substantial Performance of the Work* and the *Work* is being used for its intended purpose, and is so certified by the *Consultant*;

.7 subject only to GC 12.1.2, the *Contractor* has submitted to the *Owner* and the *Consultant* in a collated and organized matter, all *Close-Out Documentation* and any other materials or documentation required by the *Contract Documents*;

.8 subject only to GC 12.1.2, all *Products*, systems and components of the *Project* have been commissioned and certified for operation and accepted by the *Owner* and *Consultant*, and

.9 subject only to GC 12.1.2, the Contractor has submitted to the Owner and the Consultant full and complete as-built drawings and

Specifications revised by the Contractor to reflect the as-built state of the Work, clearly showing changes to the Drawings and Specifications from the original Contract Documents, all of which have been approved by the Owner acting reasonably."

12.1.2 Delete GC 12.1.2 in its entirety and replace it with the following:

"12.1.2 The *Owner* may, in its sole, absolute, and unfettered discretion, waive compliance with a requirement, or a part thereof, for achieving *Ready-for-Takeover* set out in GC 12.1.1.6 to 12.1.1.9 (inclusive). Where the *Owner* exercises the discretion afforded under this GC 12.1.2, the *Contractor* shall be required to comply with GC 5.5.1.2 as part of its application for final payment and the *Owner* and the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for completing the *Work*."

12.1.3 Delete GC 12.1.3 in its entirety and replace it with the following:

"12.1.3 When the *Contractor* considers the *Work Ready-for-Takeover*, it shall submit a written application to the *Owner* and the *Consultant* for review."

12.1.4 In GC 12.1.4, delete the words "list and" from the second line.

12.1.5 Delete GC 12.1.5 in its entirety and replace it with the following:

"12.1.5 Following the confirmation of the date of *Ready-for-Takeover* by the *Consultant* and as confirmed by the *Owner*, the *Contractor* may submit a final application for payment in accordance with GC 5.5 – FINAL PAYMENT."

12.1.6 Delete GC 12.1.6 in its entirety.

GC 12.2 EARLY OCCUPANCY

GC 12.2 Delete GC 12.2 – EARLY OCCUPANCY BY THE OWNER in its entirety, including all subparagraphs thereunder and replace it with the following:

"12.2.1 The Owner reserves the right to take possession of and use for any intended purpose any portion or all of the undelivered portion of the Project even though the Work may not have reached Substantial Performance of the Work, provided that such taking possession and use will not unduly interfere, in any material way, with the progress of the Work. The taking of possession or use of any such portion of the Project shall not be deemed to be the Owner's acknowledgement or acceptance of the Work or Project nor shall it relieve the Contractor of any of its obligations under the Contract.

12.2.2 Whether the Project contemplates Work by way of renovations in buildings which will be in use or be occupied during the course of the

Work or where the Project involves Work that is adjacent to a structure which is in use or is occupied, the Contractor, without in any way limiting its responsibilities under this Contract, shall take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise and to avoid conditions likely to propagate mould or fungus of any kind and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures."

GC 12.3 WARRANTY

12.3.2 Delete from the first line of paragraph 12.3.2 the word "The" and replace it with the words "Subject to GC 1.1.3, the…"

12.3.7 to 12.3.12 Add new paragraphs 12.3.7 to 12.3.12 as follows:

"12.3.7 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond as security for the performance of the *Contractor's* obligations as set out in GC 12.3 WARRANTY.

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

.1 the proper name of the *Owner*;
.2 the proper name and address of the *Project*;
.3 the date the warranty commences, which shall be at the "*Ready-for-Takeover*" unless otherwise agreed upon by the *Consultant* in writing.
.4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and
.5 the signature and seal (if required by the governing law of the *Contract*) of the company issuing the warranty, countersigned by the *Contractor*.

12.3.9 Should any *Work* be repaired or replaced during the time period for which it is covered by the specified warranty, a new warranty shall be provided under the same conditions and for the same period as specified herein before. The new warranty shall commence at the completion of the repair or replacement.

12.3.10 The *Contractor* shall ensure that its *Subcontractors* are bound to the requirements of GC 12.3 – WARRANTY for the *Subcontractor's* portion of the *Work.*

12.3.11 The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor, Supplier* or other person in connection with the *Work* are obtained and available for the direct benefit of the *Owner.* In the alternative, the *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any *Subcontractor, Supplier* or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party, where required by law, or by the terms of that party's contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.12 The *Contractor* shall commence or correct any deficiency within 2 *Working Days* after receiving a *Notice in Writing* from the *Owner* or the *Consultant*, and shall complete the *Work* as expeditiously as possible, except in the case where the deficiency prevents maintaining security or where basic systems essential to the ongoing business of the *Owner* and/or its tenants cannot be maintained operational as designed. In those circumstances all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 8 hours of a request being made during the normal business hours of the *Contractor*, the *Owner* is authorized, notwithstanding GC 3.1, to carry out all necessary repairs or replacements at the *Contractor's* expense."

GC 13.1 INDEMNIFICATION

GC 13.1 Delete GC 13.1 – INDEMNIFICATION in its entirety and replace it with the following:

"13.1.1 The *Contractor* shall indemnify and hold harmless the *Owner*, its parent, subsidiaries and affiliates, their respective partners, trustees, officers, directors, agents and employees and the *Consultant* from and against any and all claims, liabilities, expenses, demands, losses, damages, actions, costs, suits, or proceedings (hereinafter called "claims"), whether in respect of claims suffered by the *Owner* or in respect of claims by third parties, that directly or indirectly arise out of, or are attributable to, the acts or omissions of the *Contractor*, its employees, agents, *Subcontractors*, *Suppliers* or any other persons for whom it is in law responsible (including, without limitation, claims that directly or indirectly arise out of, or are attributable to, loss of use or damage to the *Work*, the *Owner's*

property or equipment, the *Contractor's* property or equipment or equipment or property adjacent to the *Place of the Work* or death or injury to the *Contractor's* personnel).

13.1.2 The *Owner* shall indemnify and hold the *Contractor*, its agents and employees harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Contractor*'s performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

13.1.3 The provisions of GC 13.1 - INDEMNIFICATION shall survive the termination of the *Contract,* howsoever caused 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 the provisions of GC 13.1

13.1.4 Notwithstanding the provisions of GC1.1 - CONTRACT DOCUMENTS, GC 1.1.6, GC13.1 - INDEMNIFICATION shall govern over the provisions of GC 1.3.1 of GC1.3 – RIGHTS AND REMEDIES."

GC 13.2 WAIVER OF CLAIMS

13.2.1 In paragraph 13.2.1 in the third line after the word "limitation" add the words "claims for delay pursuant to GC 6.5 DELAYS"

-and-

add the words "(collectively "**Claims**")" after "*Ready-for-Takeover*" in the fourth line.

13.2.1.1 In subparagraph 13.2.1.1, in each instance change the word "claims" to "Claims" and change the word "claim" to "Claim".

13.2.1.2 In subparagraph 13.2.1.2 change the word "claims" to "Claims".

13.2.1.3 Delete subparagraph 13.2.1.3 in its entirety.

13.2.1.4 In paragraph 13.2.1.4 change the word "claims" to "Claims".

13.2.2.1 In paragraph 13.2.2.1 delete the words "in paragraphs 13.2.1.2 and 13.2.1.3" and replace them with "in paragraph 13.2.1.2"

-and-

change the word “claims” to “Claims” in both instances and change the word “claim” to “Claim”.

13.2.3 Delete paragraph 13.2.3 in its entirety.

13.2.4 Delete paragraph 13.2.4 in its entirety.

13.2.5 Delete paragraph 13.2.5 in its entirety.

13.2.6 In paragraph 13.2.6 change the word “claim” to “Claim” in all instances in the paragraph.

13.2.8 In paragraph 13.2.8 change “The party” to “The *Contractor*

-and-

change the word “claim” to “Claim” in all instances in the paragraph.

13.2.9 In paragraph 13.2.9 delete the words “under paragraphs 13.2.1 or 13.2.3” and replace them with “under paragraph 13.2.1”

-and-

change both instances of the words “the party” to “the *Contractor*”. Change the word “claim” to “Claim” in all instances in the paragraph.

OTHER PROVISIONS

14.1 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*.”

14.2 Add new GC 14.2 – CONSTRUCTION LIENS as follows:

“GC 14.2 LIENS

14.2.1 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, subject to the *Owner*'s requirement to issue a *Notice of Non-Payment* (Form 1.1) 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 by a *Subcontractor* or a *Supplier* that has not been vacated or discharged by the *Contractor* in accordance with the requirements of this *Contract*, or

.2 if the *Owner* or a mortgagee of the *Project* lands has received a written notice of a lien that has not been resolved by the *Contractor* through the posting of security or otherwise.

14.2.2 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.

14.2.3 In the event that the *Contractor* fails or refuses to comply with its obligations pursuant to paragraph 14.2.2, 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 paragraph 13.2.4, 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*.

14.2.4 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 *Act*, by paying into court as security the amount withheld.

14.2.5 Nothing in this GC 14.2 serves to preclude the *Contractor* from preserving and perfecting its lien in the event of non-payment by the *Owner*."

APPENDIX 1
to the Supplementary Conditions

Project-specific requirements for a "*Proper Invoice*"

To satisfy the requirements for a *Proper Invoice*, the following criteria, as may be applicable in each case, must be included with the *Contractor's* application for payment:

.1 the written bill or request for payment must be in writing;

.2 the *Contractor*'s name and current address;

.3 the *Contractor*'s HST registration number;

.4 the date the application for payment was prepared by the *Contractor*;

.5 the period of time in which the services or materials were supplied to the *Owner*;

.6 the purchase order number provided by the *Owner*;

.7 reference to the provisions of the *Contract* under which payment is being sought (e.g. GC 5.3 –PAYMENTS for progress payments, GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK GC 5.5 – FINAL PAYMENT for final payment, etc.);

.8 a description, including quantities where appropriate, of the services or materials, or a portion thereof, that were supplied and form the basis of the *Contractor's* request for payment;

.9 the amount the *Contractor* is requesting to be paid by the *Owner*, set out in a statement based on the schedule of values approved under GC 5.2.4, separating out any statutory or other holdbacks, set-offs and HST;

.10 a sworn Statutory Declaration in the form CCDC 9A-2018, only for second and subsequent progress payments;

.11 a current Workplace Safety Insurance Board clearance certificate;

.12 a pre-approved schedule of values, supplied by the *Contractor*, for Divisions 1 through 33 of the *Specifications* (or equivalent Construction Specifications Institute Masterformat) of the *Work*, aggregating the total amount of the *Contract Price*, including all supporting invoicing;

.13 a separate pre-approved schedule of values, supplied by each *Subcontractor*, for each of Division 20-28 of the *Specifications* (or equivalent Construction Specifications Institute Masterformat) of the *Work*, aggregating the total amount of the *Contract Price*, including all supporting invoicing;

.14 invoices and other supporting documentation for all claims against the cash allowance;

.15 a current, acceptable, and up to date *Construction Schedule Update*;

.16 if requested by the *Owner*, a current and valid certificate(s) of insurance as required under GC 11.1 – INSURANCE;

.17 the name, title, telephone number and mailing address of the person at the place of business of the *Contractor* to whom payment is to be directed;

.18 a current, up to date, and approved *Shop Drawing* log;

.19 in the case of the *Contractor's* application for final payment, in addition to the foregoing requirements (as applicable):

(a) any *Close-Out Documentation*, together with complete and final as-built drawings;

(b) the *Contractor's* written request for release of the deficiency holdback, including a statement that no written notices of lien have been received by it;

(c) the *Contractor's* written certification that there are no outstanding claims, pending claims or future claims from the *Contractor* or their *Subcontractors* or *Suppliers*; and

(d) sufficient evidence of the *Contractor's* compliance with GC 3.11.

END OF AMENDMENTS TO CCDC 2 - 2020