

**AMENDMENT TO AGREEMENT and  
SUPPLEMENTARY CONDITIONS  
To the CCDC-2 2008 Stipulated Price Contract**

All references in this contract to the *Owner* shall refer to the entity identified in the Agreement Between *Owner* and *Contractor*, but all rights, benefits, or entitlements reserved to the *Owner* under the terms of this contract shall equally accrue to and be jointly or severally enforceable by Her Majesty the Queen in Right of Ontario, and the *Owner*.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**ARTICLE A-3 – CONTRACT DOCUMENTS**

3.1 Include in the list of *Contract Documents* in paragraph 3.1:

- Supplementary Conditions
- *Fair Wage Program Labour Conditions* including the applicable Schedule of Fair Wage Rates
- Performance Bond
- Labour and Material Payment Bond
- Complete drawings and specifications as issued in the tender package
- the *Owner's* Accessible Customer Service Policy
- the *Owner's* Discrimination, Harassment and Sexual Violence Policies
- the *Owner's* Commitment to Health and Safety policy document

**ARTICLE A-5 – PAYMENT**

5.3.1 Delete paragraph 5.3.1 in its entirety and substitute new paragraph 5.3.1:

5.3 Interest

- .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 on such unpaid amounts shall also become due and payable from the date that is 30 calendar days after the date when the payment became due until payment at the rate established from time to time by the Minister of Finance (Ontario).

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

Add new Article A-9 – Conflict of Interest:

- 9.1 The *Contractor*, all of the *Subcontractors*, 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 includes 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* or the Ontario Public Service where to do so constitutes a breach by such employee or previous employee of the previous employer's conflict of interest policy, as it may be amended from time to time.
- 9.4 A breach of this Article by the *Contractor*, any of the *Subcontractors*, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity.

#### **ARTICLE A-10 – CONFIDENTIALITY**

Add new Article A-10 – Confidentiality:

- 10.1 The *Contractor* agrees to ensure that it shall, both during or following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and *Personal Information*, and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* or *Personal Information*, except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any *Subcontractor* or *Supplier* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with the *Subcontractor* or *Supplier*. The *Contractor* acknowledges that it will comply with all requirements of *PIPEDA*. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *FIPPA*. The *Contractor* further acknowledges that the *Owner* may be required to disclose any or all of the *Confidential Information* and *Personal Information* in the event that it is compelled to do so by law, through a request under *FIPPA*, or by the rules of any applicable regulatory authority.

## ARTICLE A-11 – TIME OF THE ESSENCE

Add new Article A-11 – Time of the Essence:

- 10.1 The *Contractor* acknowledges that it has been advised by the *Owner* that it is critical to the *Owner* that the *Work* is completed within the *Contract Time*. The *Contractor* agrees that time is of the essence in the performance of the *Contractor's* obligations under the *Contract*.

## DEFINITIONS

Amend the definition of Consultant to add:

“The *Consultant* has been appointed by the *Owner* to act for the *Owner* in a professional capacity in relation to the *Work*. The *Consultant* may, at the option of the *Owner*, be an employee of the *Owner*.”

Add the following definitions:

**a. AODA**

*AODA* means Ontario's Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11, as amended, and its regulations.

**b. As-Built Drawings**

*As-Built Drawings* means drawings prepared by the *Contractor* by marking on a copy of the *Drawings* the changes from the *Drawings* which occur during construction including, but are not limited to the exact location of major building components that were shown generally on the *Drawings*.

**2a. 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*.

**3a. Construction Act**

*Construction Act* means Ontario's Construction Act, R.S.O. 1990, c. C.30, as amended, and its regulations.

**10a. Fair Wage Program Labour Conditions**

*Fair Wage Program Labour Conditions* refers to the Ontario Fair Wage Program Labour Conditions and applicable Schedule of Fair Wage Rates included in the *Contract Documents*.

**10b. FIPPA**

*FIPPA* means Ontario's Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F31, as amended, and its regulations.

**10c. Intellectual Property**

*Intellectual Property* means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility modes and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration.

**10d. MFIPPA**

*MFIPPA* means Ontario's Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended, and its regulations.

**11a. OHSA**

*OHSA* means Ontario's Occupational Health and Safety Act, R.S.O. 1990, c. 0.1, as amended, and its regulations.

**12a. Personal Information**

*Personal Information* has the same definition as in subsection 2(1) of *FIPPA* and includes an individual's name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means, or otherwise and disclosed to the *Contractor*.

**12b. PIPEDA**

*PIPEDA* means Canada's Personal Information and Protection and Electronic Documents Act, S.C. 2000, c. 5, as amended, and its regulations.

**19a. Submittals**

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as:

- *Shop Drawings*, samples, models, or mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and
- as-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

**GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**

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

**GC 1.1 CONTRACT DOCUMENTS**

.1 Amend paragraph 1.1.7.1 by deleting the first four lines of that paragraph and replacing them with the following:

- .1 the order of priority of documents, from highest to lowest, shall be
- Supplementary Conditions
  - the Agreement between the *Owner* and the *Contractor*
  - the Definitions

.2 Add new sentence to the end of paragraph 1.1.6:

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 *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* or as between them and the *Contractor* with respect to such divisions.

.3 Add new subparagraph 1.1.7.5:

1.1.7.5 noted materials and annotations shall take precedence over graphic indications.

.4 Delete paragraph 1.1.8 in its entirety and substitute new paragraph 1.1.8:

1.1.8 The *Owner* shall provide the *Contractor*, without charge, 6 copies of the *Contract Documents*.

.5 Add new paragraph 1.1.9:

1.1.9 Subject to paragraph 1.1.9, the *Contractor* acknowledges and agrees that all *Intellectual Property* in or associated with the *Contract Documents*, or arising from the performance of the *Work*, and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded (including images and data) provided by the *Owner* to the *Contractor*, shall exclusively remain the sole property of the *Owner* at all times. The *Owner* hereby grants the *Contractor* a non-exclusive, royalty free license, including the right to grant sub-licenses, to use such *Intellectual Property* solely for performing its obligations set out in this *Contract* and in relation to the *Project*.

### **GC 1.3 RIGHTS AND REMEDIES**

.1 Delete the word "No" from the beginning of paragraph 1.3.2 and substitute the words:

"Except with respect to the notice requirements set out in paragraphs 6.4.1, 6.5.4, and 6.6.1, no ...".

### **GC 1.4 ASSIGNMENT**

.1 Delete paragraph 1.4.1 in its entirety and substitute new paragraph 1.4.1:

1.4.1 The *Owner* may assign the *Contract* or a portion thereof without the consent of the *Contractor*, where such assignment is to an entity undertaking the *Project* for the use of the Crown in Right of Ontario. The *Contractor* may not assign the *Contract* or a portion thereof without the consent of the *Owner*, and the granting of such consent shall be in the *Owner's* discretion, not to be unreasonably withheld.

### **GC 2.4 DEFECTIVE WORK**

.1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and

deficiencies throughout the *Work*, whether or not they are specifically identified by the *Owner* or the *Consultant*.

- 2.4.1.2 When applicable, the *Contractor* shall give priority to the correction of any defective work or deficiencies which the *Owner* determines adversely affect its day-to-day operations.

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

- .1 Add new paragraph 3.1.3:

- 3.1.3 Prior to commencing the *Work*, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for the proper completion 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 in the *Contract Documents*, the *Contractor* shall immediately notify the *Consultant* in writing and obtain *Supplemental Instructions* from the *Consultant* before proceeding with any part of the affected work.

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

- .1 Delete subparagraph 3.2.2.1 in its entirety
- .2 Delete subparagraph 3.2.2.2 in its entirety
- .3 Add new subparagraph 3.2.3.4:

- 3.2.3.4 Subject to General Condition 9.4 - CONSTRUCTION SAFETY, where paragraph 3.2.4 of General Condition 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS applies, for the *Owner's* own forces and for other contractors performing work identified in the *Contract Documents*, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work*, including all of the responsibilities of the constructor as that term is defined in the *OHSA*.

### **GC 3.4 DOCUMENT REVIEW**

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency, or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from 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. If the *Contractor* does discover any error, inconsistency, or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

.2 Add new paragraph 3.4.2:

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

## **GC 3.5 CONSTRUCTION SCHEDULE**

.1 Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

3.5.1 The *Contractor* shall,

.1 within 15 calendar days following the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. The schedule



shall contemplate and comply with the requirements set out in GC 3.16 CONTINUED FACILITY OPERATIONS AND HOURS OF WORK (including, without limitation, the need to perform *Work* on weekends). Unless otherwise agreed to in writing, in advance by the *Owner* and the *Contractor*, when required by the *Specifications* to employ construction scheduling software, the *Contractor* shall employ the software Microsoft Project in generating the construction schedule, which permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the construction schedule and any successor or revised schedules to the *Owner* in electronic format and paper copy. When required by the *Specifications* to employ construction scheduling software, the *Contractor* shall provide the construction schedule to the *Owner* in editable format, together with a record version in PDF format. 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 to maintain progress under the accepted baseline construction schedule or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE;
- .3 monitor the progress of the *Work* on a weekly basis relative to the baseline construction schedule, or any successor or revised schedule accepted by the *Owner* pursuant to General Condition 3.5 – CONSTRUCTION SCHEDULE, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and
- .4 if, after applying the expertise and resources required under subparagraph 3.5.1.2, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice, indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions - CHANGES IN THE WORK.

.2 Add new paragraph 3.5.2:

- 3.5.2 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 subparagraph 3.5.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, then the *Contractor* shall proceed in accordance with General Condition 6.5 – DELAYS.

**GC 3.6 SUPERVISION**

.1 Delete paragraph 3.6.1 in its entirety and substitute new paragraph 3.6.1:

- 3.6.1 The *Contractor* shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representatives shall not be changed except for valid reasons, and upon the *Contractor* obtaining the *Owner's* written consent, which consent will not be unreasonably withheld.

.2 Add new paragraph 3.6.3:

- 3.6.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s), where the grounds for the request involve conduct which jeopardizes the safety and security of the site or the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

**GC 3.8 LABOUR AND PRODUCTS**

.1 Delete paragraph 3.8.2 and replace with new paragraph 3.8.2:

- 3.8.2 Unless otherwise specified in the *Contract Documents*,

*Products* provided shall be new and as specified. The *Contractor* shall not provide substitutions for specified *Products* without the express written consent of the *Consultant* and the *Owner*.

- .2 Add new paragraph 3.8.4:

3.8.4 The *Contractor* shall comply with all requirements set out in the *Fair Wage Program Labour Conditions*. The hours of work, the rates of wages paid, and the working conditions shall be in accordance with the Labour Conditions and applicable Schedule of Fair Wage Rates, included therein, as amended from time to time.

- .3 Add new paragraph 3.8.5:

3.8.5 The *Contractor* shall provide for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) so as to avoid dangerous conditions or contamination to the *Products* or other persons or property, in locations satisfactory to the *Owner* and *Consultant*. The *Owner* shall provide all relevant information on *Products* to be supplied by the *Owner*.

### **GC 3.10 SHOP DRAWINGS**

- .1 Revise the heading, “GC 3.10 SHOP DRAWINGS” to read “GC 3.10 SHOP DRAWINGS AND SUBMITTALS”.

- .2 Add “and *Submittals*” after the words “*Shop Drawings*” in paragraphs 3.10.1; 3.10.2; 3.10.4; 3.10.7; 3.10.8; 3.10.9; 3.10.10; 3.10.11; and 3.10.12.

- .3 Add new paragraph 3.10.13 as follows:  
“3.10.13 Adjustments made on *Shop Drawings* by the *Consultant* are not intended to change the *Contract Price*. If any such adjustments may result in any change to the *Contract Price*, the *Contractor* shall so advise the *Consultant* prior to proceeding with the work and such change shall be dealt with in accordance with the provisions of Part 6 – CHANGES IN THE WORK.

### **GC 3.11 USE OF THE WORK**

- .1 Add new paragraph 3.11.3:

- 3.11.3 The *Contractor* shall abide by and enforce directives and policies regarding signs, advertisements, fires and smoking at the *Place of the Work* as directed by the *Owner*.

### **GC 3.13 CLEAN UP**

- .1 Add the following sentence to paragraph 3.13.1:

“The Owner reserves the right to clean areas of the *Work* not deemed acceptably clean, and to charge the *Contractor* for the cost of cleaning.”

Add new General Conditions 3.14, 3.1.5 and 3.16:

### **GC 3.14 PERFORMANCE BY CONTRACTOR**

- 3.14.1 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 judged against 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*.
- 3.14.2 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 that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

### **GC 3.15 RIGHT OF ENTRY**

- 3.15.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the reasonable opinion of the *Consultant* and *Contractor*, such entry or occupation does not prevent or substantially interfere with the *Contractor's* completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*.

### **GC 3.16 CONTINUED FACILITY OPERATIONS AND HOURS OF WORK**

- 3.16.1 The *Contractor* acknowledges that a testing and research facility is located at the *Place of the Work* and that the facility will continue to operate during the term of the *Contract*. The *Contractor* shall, in performing its obligations under the *Contract*, avoid causing disruption, damage or interruption to the ongoing operation of the testing and research facility located at the *Place of the Work*.
- 3.16.2 The parties acknowledge that one of the reasons why the *Contractor* was selected to perform the *Contract* was the *Contractor's* representations that it will perform the *Work* in accordance with the *Owner's* specific and particular scheduling requirements, as set out in the *Contract*. The *Contractor* acknowledges that it may be required to perform *Work* on weekends, at non-standard working hours and/or on an overtime basis in order to complete the *Work* in accordance with the *Owner's* specific and particular scheduling requirements, as set out in the *Contract*, and in order to accommodate the ongoing operation of the testing and research facility located at the *Place of the Work*.
- 3.16.3 The *Contractor* shall perform the *Work* from Mondays to Fridays between 7:30am and 4:00pm, unless otherwise directed by the *Owner* and, if the *Contractor* wishes to perform work outside of these hours (including performing *Work* on Saturdays or Sundays), it must obtain the prior consent of the *Owner*.
- 3.16.4 Provided the *Owner* gives the *Contractor* three (3) days' notice (by way of *Notice in Writing*), the *Owner* may

instruct the *Contractor* to perform *Work* during restricted hours on a particular day.

3.16.5 The *Contractor* shall not perform *Work* on statutory holidays observed by the *Owner*. If the *Contractor* wishes to perform *Work* on a statutory holiday, it shall submit to the *Owner* a written request (by way of *Notice in Writing* that contains a description of the location and nature of *Work* to be performed) at least four (4) calendar days in advance of the statutory holiday on which the *Contractor* wishes to perform *Work*. Upon receipt of the written request from the *Contractor*, the *Owner* may, in its sole, unfettered and absolute discretion, agree to the *Contractor's* written request.

3.16.6 The *Contractor* shall cause its *Subcontractors* and *Suppliers* to comply with the requirements set out in GC 3.16 CONTINUED FACILITY OPERATIONS AND HOURS OF WORK.

3.16.6 The *Contractor's* compliance with its obligations set out in GC 3.16 CONTINUED FACILITY OPERATIONS AND HOURS OF WORK shall not in any way entitle the *Contractor* to a *Change Order*, an increase in the *Contract Price*, an extension to the *Contract Time*, or a claim for additional compensation, costs (including charges for premium, overtime and/or double-time work), damages or schedule relief of any kind whatsoever.

#### GC 4.1 CASH ALLOWANCES

.1 Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

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, at the *Consultant'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*.

- .2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

4.1.5 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.

- .3 Add new paragraph 4.1.8:

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.

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

- .1 Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.

- .2 Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:

5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.

- .3 Delete paragraph 5.1.2 in its entirety.

## **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

- .1 Add to the end of paragraph 5.2.7 the following new sentence:

Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to General Condition 13.1 - OWNERSHIP OF MATERIALS.

- .2 Add new paragraphs 5.2.8, 5.2.9, and 5.2.10:

5.2.8 As a condition of receiving each progress payment after the first, the *Contractor* shall submit a Statutory Declaration on an original form CCDC Document 9A-2001, attesting to the truth of the statements made therein.

- 5.2.9 The *Contractor* shall submit a Workplace Safety & Insurance Board Clearance Certificate with each application for progress payment.
- 5.2.10 The *Contractor* shall prepare current *As-Built Drawings* during the course of the *Work*, 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 *Owner* may retain a reasonable amount and up to a maximum of the amounts outlined in paragraph 5.4.7, from any progress payment for the value of the *As-Built Drawings* not presented for review until the *As-Built Drawings* are presented for review.

### **GC 5.3 PROGRESS PAYMENT**

- .1 Delete subparagraph 5.3.1.3 in its entirety and substitute new subparagraph 5.3.1.3:
- .3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 35 calendar days after the date it receives an issued certificate of payment from the *Consultant*.

### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

- .1 Delete paragraph 5.4.3 in its entirety and substitute new paragraph 5.4.3:
- 5.4.3 Immediately prior to the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish reasonable dates for finishing the *Work* and correcting deficiencies.
- .2 Add new paragraphs 5.4.4, 5.4.5, 5.4.6, 5.4.7, 5.4.8 and 5.4.9:
- 5.4.4 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Act*) and shall provide to the *Consultant* and the *Owner* the date of publication and the name of the construction trade newspaper in which the publication occurred. If the *Contractor* fails to comply with this provision, the *Owner* may publish a copy of the



certificate and charge the *Contractor* with the costs so incurred.

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

- .1 guarantees;
- .2 warranties;
- .3 certificates;
- .4 testing and balancing reports;
- .5 distribution system diagrams;
- .6 spare parts;
- .7 maintenance manuals;
- .8 samples;
- .9 existing reports and correspondence from authorities having jurisdiction in the *Place of the Work*;

and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction in the *Place of the Work*.

5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes with the use and occupancy of the *Project* in a material way, the failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*, but the amount of the retentions stipulated in paragraph 5.4.7 shall be deducted from the *Contract Price* for the purposes of the formula prescribed in section 2(1) (b) of the *Construction Act*. If the *Contractor* fails to deliver any of the materials required in subparagraphs 5.4.5.7 or 5.4.5.8, the *Owner* shall retain the amount set out in paragraph 5.4.7, until the materials required pursuant to subparagraphs 5.4.5.7 or 5.4.5.8 are delivered.

5.4.7 The amount to be retained by the *Owner* as contemplated in subparagraphs 5.2.10 and 5.4.6 is as follows:

- .1 where the *Contract Price* is less than \$100,000 the amount to be retained is \$5,000;

- .2 where the *Contract Price* is greater than \$100,000 but less than \$500,000, the amount to be retained is 5% of the *Contract Price*; and
- .3 where the *Contract Price* is greater than \$500,000 but less than \$5,000,000, the amount to be retained is the greater of \$25,000 or 3% of the *Contract Price*.

5.4.8 Should the *As-Built Drawings* not be delivered in accordance with subparagraph 5.2.10 or any documents or materials not be delivered in accordance with paragraph 5.4.5 by the earlier of 50 calendar days following publication of the certificate of *Substantial Performance of the Work* and the submission of the *Contractor's* application for final payment under paragraph 5.7.1 of General Condition 5.7 – FINAL PAYMENT, then the amount previously retained pursuant to paragraph 5.2.10 or 5.4.7 shall be forfeit to the *Owner* as compensation for the damages deemed to have been incurred by the *Owner*, and not as a penalty, arising from the failure to deliver the documents or materials, and the *Contract Price* shall be reduced accordingly.

5.4.9 Together with the submission of its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* and to the *Owner* a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the *Contractor* and any *Subcontractor* or *Supplier*, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the *Contractor* and the *Owner*, and this disclosure shall, at a minimum:

- .1 identify the parties involved;
- .2 identify the amount in dispute;
- .3 provide a brief statement summarizing the position of each party;
- .4 include copies of any correspondence or documents in support of either party's position;
- .5 include copies of any documents of any court or arbitration process related to the matter;

- .6 identify the dispute or claim between the *Contractor* and the *Owner* to which the matter relates; and
- .7 include a copy of any written agreement or a summary of any oral agreement between the parties related to resolution of the matter.

The disclosure requirements detailed herein are of a continuing nature and survive completion of the *Work*. Accordingly, the *Contractor* shall supplement the information provided with the original statutory declaration with additional materials pertaining to new or existing disputes or claims, as they become available. The *Contractor* shall not be entitled to recover from the *Owner* any amount pertaining to any claim or dispute referred to in this paragraph, if the provisions of this paragraph have not been fully complied with. For greater certainty, the *Contractor* is not obliged to make the aforementioned disclosure with respect to any dispute or claim that is not related to or does not touch upon any then outstanding and unresolved dispute or claim between the *Contractor* and the *Owner*.

**GC 5.5      PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

- .1      Add new subparagraph 5.5.1.3:
  - 5.5.1.3      submit a statement that no written notices of lien have been received by it.
- .2      Delete from line 1 of paragraph 5.5.2, the words, “the statement” and substitute the words:
  - “the documents”.
- .3      Delete paragraph 5.5.3 in its entirety.

**GC 5.7      FINAL PAYMENT**

- .1      Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1:
  - 5.7.1      When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment. The *Contractor’s* application for final payment

shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered.

- .2 Delete from the first line of paragraph 5.7.2 the words, “calendar days” and substitute the words:

“*Working Days*”.

- .3 Delete from the second line of paragraph 5.7.4 the words, “calendar days” and substitute the words:

“*Working Days*”.

- .4 Add new paragraph 5.7.5:

5.7.5 Prior to the release of the finishing holdback provided for under the *Construction Act*, the *Contractor* shall submit:

- .1 *Contractor’s* written request for release of the finishing holdback, including a statement that no written notices of lien have been received by it;
- .2 a Statutory Declaration CCDC 9A-2001;
- .3 a final Workplace Safety & Insurance Board Clearance Certificate.

## **GC 6.2 CHANGE ORDER**

- .1 Add new paragraph 6.2.3:

The *Contractor* may apply mark-ups for overhead and profit to approved changes to the *Contract Price* as follows:

- .1 The *Contractor* may add to the total net cost of additional *Work* to be carried by its own forces a mark-up of 5% for overhead and profit. The *Contractor* shall not treat its own forces as *Subcontractors*.
- .2 The *Contractor* may add to the total net cost of additional *Work* to be carried out by *Subcontractor(s)* or *Supplier(s)* a mark-up of 2.5% for overhead and profit.

Such mark-up, by the *Contractor*, shall be based on net additional cost for an approved change in the *Work*, such net cost being derived from deducting credits for labour and materials involved in deleted work from the cost of labour and materials involved in additional *Work*. When quantities of the same product or material are changed in the approved change, the change in the *Contract Price* shall be based on the net difference in quantity between the product(s) or material(s) deleted and the product(s) and material(s) added.

.3 Add new paragraph 6.2.4:

The mark-ups described in paragraph 6.2.3 include all necessary supervision, general account items, general clean-up, small tools, *As-Built Drawings*, and job safety necessary to perform the change.

.2 Add new paragraph 6.2.5:

The *Contractor* shall not be entitled to any additional compensation arising out of changes to the *Work* aside from the amounts determined and agreed to under GC 6.2 CHANGE ORDER. In not event shall the *Owner* be liable to the *Contractor* for any costs, including without limitation, indirect or consequential costs, arising out of changes to the *Work* beyond the agreed upon amount of the *Change Order*.

### **GC 6.3 CHANGE DIRECTIVE**

.1 Delete subparagraph 6.3.7.1(1) and replace it with:

“(1) carrying out the work, including necessary supervisory services;”

.2 Delete subparagraph 6.3.7.1(2) and replace it with

“(2) intentionally left blank.”

.3 Amend subparagraph 6.3.7.1(3) so that, as amended, it reads:

“(3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and *As-Built Drawings*: or...”

.4 Amend subparagraph 6.3.7.1(4) so that, as amended, it reads:

“(4) including clerical staff engaged in processing changes in the *Work*.”

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

.1 Add new paragraph 6.4.5:

6.4.5 If the *Contractor* was given access to the *Place of the Work* prior to the submission of the bid on which the *Contract* was awarded, then the *Contractor* confirms that it carefully investigated the *Place of the Work* and, in doing so, applied to that investigation the degree of care and skill required by paragraph 3.14.1. In those circumstances, notwithstanding the provisions of paragraph 6.4.1, the *Contractor* is not entitled to an adjustment to the *Contract Price* or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation, or which could have been reasonably inferred from the material provided with the *Contract Documents*. In those circumstances, should a claim arise, the *Contractor* will have the burden of establishing that it could not have discovered the materially different conditions from a careful investigation, because of restrictions placed on its access or inferred the existence of the conditions from the material provided with the *Contract Documents*.

**GC 6.5 DELAYS**

.1 Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.2 Delete the period at the end of paragraph 6.5.2, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.3 Add new paragraph 6.5.6.

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

as the result of such delay, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any subconsultants, project managers, or others employed or engaged by the *Owner*.

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

.1      Revise the heading, “**OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**” to read, “**OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT**”

.2      Delete paragraph 7.1.6 and add new paragraphs 7.1.6, 7.1.7, 7.1.8, 7.1.9, 7.1.10 and 7.1.11:

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 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 180 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 General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 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 General Condition 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT or General Condition 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* obligation under the *Contract* as to quality, correction, and warranty of the *Work* performed by the *Contractor* up to the time of termination or suspension shall continue after such termination of the *Contract* or suspension of the *Work*.
- 7.1.11 Notwithstanding any other provision in the *Contract*, the *Owner* shall not be liable to the *Contractor* for any actual or alleged damages of any kind whatsoever (including without limitation, indirect, incidental, special, consequential or other damages, including loss of profits) on account of the publication of a Notice of Termination pursuant to the *Construction Act* and the *Contractor* waives any claim against the *Owner* related to or arising from the publication.

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

- .1 Delete paragraph 7.2.2 in its entirety.



- .2 Delete subparagraph 7.2.3.1 in its entirety.
- .3 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:
- 7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a court, except where the *Owner* has a bona fide claim for set off, or
- .4 Delete from subparagraph 7.2.3.4, the words:
- ", except for General Condition 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER,"
- .5 Delete from the end of paragraph 7.2.4 the words "or terminate the *Contract*" and substitute the words:
- "until the default is corrected, provided, however, that in the event of such suspension, the provisions of subparagraph 7.1.10 shall apply. If the *Contractor's Notice in Writing* to the *Owner* was given pursuant to subparagraph 7.2.3.3, then, 180 calendar days after the delivery of the *Notice in Writing*, the *Contractor* may terminate the *Contract*, provided, however, that in the event of such termination, the provisions of subparagraph 7.1.10 shall apply."

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

- .1 Delete last sentence of 8.1.3 and substitute the following sentence:
- If it is subsequently determined that such instructions were at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.

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

- .1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:
- 9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;

- .2 Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground 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.

- .3 Add new paragraph 9.1.5:

9.1.5 With respect to any damage to which paragraph 9.1.4 applies, 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.

- .4 Add new paragraph 9.1.6:

9.1.6 The *Contractor* shall be responsible for securing the *Place of Work* at all times and shall take all reasonable precautions necessary to protect the *Place of Work*, its contents, materials (including *Owner*-supplied materials) and the public from loss or damage during and after working hours. Where the *Consultant* or the *Owner* deems the provision of security guard services to be necessary, the *Contractor* shall provide those services at the *Owner's* expense.

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

- .1 Add new subparagraph 9.2.5.5

9.2.5.5 take all reasonable steps to mitigate the impact on *Contract Time* and *Contract Price*

- .2 Delete subparagraph 9.2.7.4 in its entirety.

- .3 Add “or released onto” in the preamble to paragraph 9.2.8, after the words “brought onto”.
- .3 Add to subparagraph 9.2.8.3 immediately before the semicolon, the following new words:

"and as a result of the delay"

#### **GC 9.4 CONSTRUCTION SAFETY**

- .1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1

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 applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

- .2 Add new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5 and 9.4.6:

9.4.2 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current Workplace Safety & Insurance Board 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 *OHS*A.

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors, appointees, and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under the *OHS*A, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to

which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.4

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. Prior to admission to the *Place of the Work*, the *Contractor* may, as a condition of admission, require any other contractor or the *Owner's* own forces to sign a written acknowledgement in the following form:

**Acknowledgement**

The undersigned acknowledges that the *Work* it will perform on behalf of the *Owner* requires it to enter a *Place of the Work* which is under the total control of a *Contractor* that has a *Contract* with the *Owner*, pursuant to which the *Contractor* has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act*, as well as responsibility to co-ordinate and schedule the activities of our *Work* with the *Work* of the *Contractor* under its *Contract*. The undersigned agrees to comply with the *Contractor's* directions and instructions with respect to health, safety, co-ordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned's *Contract* with the *Owner*, as the case may be. The undersigned also agrees to have the *Contractor* named as an additional insured on any comprehensive liability insurance policy, where such insurance is required.

---

Name:

Title:

Date:

- 9.4.5 The *Owner* and/or the *Consultant* shall have the right, from time to time during the performance of the *Work*, to perform or cause to be performed, an on-site safety audit of the *Work* and the *Place of the Work*. The *Owner* may identify safety issues or safety incidents and the *Contractor* shall address such issues or safety incidents promptly to the satisfaction of the *Owner*, at the *Contractor's* cost, and provide the *Owner* with sufficient evidence of correction. No act or omission of the *Owner* during the audit shall constitute a transfer of liability from the *Contractor* to the *Owner*. The *Contractor* remains responsible for ensuring safety of the *Work* and the *Place of the Work*.
- 9.4.6 The *Contractor* shall be knowledgeable with respect to, and comply with, and shall cause its *Subcontractors* and *Suppliers* to be knowledgeable with respect to, and comply with, the *Owner's* Commitment to Health and Safety policy document.
- 9.4.7 The *Contractor* represents and warrants that its safety practices and in-house safety programs are at least as stringent as those provided by the *Owner* to the *Contractor* (including without limitation the *Owner's* Commitment to Health and Safety policy document).

## **GC 9.5 MOULD**

- .1 Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:
- "and as a result of the delay"
- .2 Delete subparagraph 9.5.3.4 in its entirety.

## **GC 10.1 TAXES AND DUTIES**

- .1 Add new paragraph 10.1.3:
- 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 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.

- .2 Add new paragraph 10.1.4:

10.1.4 In the event that new or additional taxes in respect of the *Work* are required by federal, provincial, territorial, regional or municipal legislation after the *Contract* is executed, the amount payable under this *Contract* shall be adjusted to include such taxes.

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

- .1 Delete paragraph 10.2.4 in its entirety and substitute with new paragraph 10.2.4:

"The *Contractor* shall give the required notices and comply with all laws (including, without limitation, the *Construction Act*, *MFIPPA*, *PIPEDA*, *OHSA* and *AODA*), ordinances, by-laws (including, without limitation, the City of Oshawa Noise By-Law 6917-14), rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety. The *Contractor* shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern."

- .2 Delete from the first line of paragraph 10.2.5 the word, "The" and substitute the words:

"Subject to paragraph 3.4.1, the".

## **GC 10.3 PATENT FEES**

- .1 Delete paragraph 10.3.2 in its entirety.

## **GC 10.4 WORKERS' COMPENSATION**

- .1 Add to subparagraph 10.4.1 immediately after the first comma, the following new words:

"again with each application for progress payment, and"

- .2 Add to the beginning of subparagraph 10.4.2 the following new words:

"The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*."

- .3 Add new paragraph 10.4.3:

10.4.3 Where a *Subcontractor* is not required to participate in the insurance plan provided for under the workers' compensation legislation, the *Contractor* shall require the *Subcontractor* to provide a sworn declaration of its exemption as a condition of the *Subcontractor's* admission to the *Place of Work*. When requested by the *Owner*, the *Contractor* shall require the *Subcontractor* to provide a letter of exemption under the workers' compensation legislation.

## **GC 11.1 INSURANCE**

- .1 Delete GC 11.1 INSURANCE in its entirety and substitute with new GC 11.1 INSURANCE:

"GC 11.1 INSURANCE

11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, or the *Contractor's* responsibilities and obligations under the *Contract*, insurance coverage shall be arranged and paid for as set out in this GC 11.1 – INSURANCE.

11.1.2 The *Owner* shall purchase and maintain the following types of insurance policies issued by insurance companies licensed to carry on business in Canada:

- .1 "All Builders' Risk and Boiler and Machinery Insurance Coverage. This policy shall cover "All Risks" of direct physical loss or damage to the *Project*, including the perils of earthquake and flood, subject to customary exclusions. It shall cover all property forming part of the *Project*, including goods and materials to be incorporated in the *Project* while at the *Project* site or while at off-site storage

or transit thereto, anywhere within Canada and the continental United States of America, on or over land, or inland and coastal waters. It shall not provide coverage for the *Contractor's* equipment other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the *Work*.

The policy shall be written in the joint names of the *Owner*, the *Contractor*, the *Consultant*, *Subcontractors* of any tier and any of the *Contractor's* consultants of any tier engaged on the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Project* site and who do not perform any installation or construction work at the *Project* site.

The policy shall provide for a limit of coverage not less than the estimated final completed value of the *Project*, with a specified sub-limit for property in off-site storage and a specified sub-limit for transit risk based on the maximum value of any one shipment. It may also contain other sub-limits usual to this type of insurance. It shall contain a waiver of the insurer's subrogation rights against all insureds and their officers, employees, servants, and agents (with the exception of architects, engineers, manufacturers and consultants for their errors or omissions in professional services) and it shall provide that, in the event of loss or damage, payment shall be made to the *Owner* as their respective interests may appear on their own behalf and as trustees for the benefit of any and all insureds.

Each claim under this insurance policy shall be subject to a maximum deductible of \$25,000 except for the earthquake, flood, water damage and DE5/LEG 3 losses, which shall be subject to higher maximum deductibles.

This policy shall be maintained continuously from the commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted by the *Owner*.

- .2 Wrap-Up Liability Policy. This policy shall cover the risks of liability for bodily injury, including death, and for property damage arising from the activities at the *Project* site, subject to customary exclusions. It shall be written in the joint names of the *Owner*, the *Contractor*, the



*Consultant, Subcontractors* of any tier and any of the *Contractor's* consultants of any tier engaged on the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Project* site and who do not perform any installation or construction work at the *Project* site. It shall provide for a limit of liability not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and a deductible of not more than \$25,000 per occurrence.

This policy shall include the following coverage features:

- 1) Premises and Operations Liability;
- 2) Owners' and Contractors' Protective Liability;
- 3) Products and Completed Operations Liability;
- 4) Blanket Contractual Liability;
- 5) Cross Liability and Severability of Interests Clause;
- 6) Contingent Employer's Liability;
- 7) Personal Injury Liability;
- 8) "Occurrence" basis coverage for Bodily Injury and Property Damage;
- 9) "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations coverage;
- 10) "Broad Form" Loss of Use of Property coverage;
- 11) Coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunnelling, and all work below ground surface;
- 12) Non-Owned Automobile Liability insurance, including third party liability arising from use and operation of hired vehicles; and
- 13) Sudden and Accidental limited pollution coverage – IBC 2313 Form 240 hour detection and reporting.

This insurance shall be maintained continuously from commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted by the *Owner*. The Completed Operations coverage shall be maintained for not less than twenty four (24) months after acceptance of the *Project* by the *Owner*.

- .3 The *Owner* shall promptly provide a Certificate of Insurance to any insured party upon request as evidence of the project-specific policies obtained by the *Owner*.

- .4 The *Owner* does not represent or warrant that the project-specific insurance policies described in paragraph 11.1.2 will be sufficient to protect the *Contractor* against all of its responsibilities and obligations under this *Contract* or to protect any other insured parties against their respective responsibilities and obligations. The *Contractor* and any other insured parties may obtain such additional insurance as they consider necessary at their own expense.
- .5 The *Contractor* shall co-operate, and shall cause each *Subcontractor* of any tier, and any of the *Contractor's* consultants of any tier to co-operate, with the *Owner* in the administration of the project-specific insurance policies described in paragraph 11.1.2, including promptly notifying the *Owner* of any claim or event or circumstance that may result in a claim. The *Contractor* shall comply, and shall cause each *Subcontractor* of any tier and any of its consultants of any tier to comply, with reasonable written procedures that may be issued by the *Owner* from time to time in respect of the administration of the insurance policies for the *Project*.
- .6 In consideration for the fact that the *Owner* shall provide and pay for the project-specific insurance policies described in paragraph 11.1.2: (a) the *Contractor* shall confirm, and shall require all *Subcontractors* of any tier and any of its consultants of any tier to confirm, that their contract prices do not include any allowance for insurance premiums (whether payable by the *Contractor*, *Subcontractors* of any tier or any of the *Contractor's* consultants of any tier) in respect of risks covered by the insurance policies provided by the *Owner*; and (b) the *Contractor* shall declare, and shall require all *Subcontractors* of any tier and any of its consultants of any tier to declare, the amounts of any insurance premiums that have been deducted from their tender and bid prices in respect of insurance policies that would normally or otherwise be purchased and maintained by them. For greater clarity, such premium deductions should be made, and declared, for the following types of insurance normally carried by the *Contractor* and *Subcontractors*:
  - (1) Commercial General Liability insurance covering all operations (except for the cost of off-site and post-completed operations coverage); and

- (2) Builder's Risk insurance and/or Installation Floater insurance covering all projects on a blanket basis or on a project-specific basis.

11.1.3 The *Contractor* shall purchase and maintain (and, where stated herein, shall require all *Subcontractors* of any tier and any of its consultants of any tier, to purchase and maintain by, in addition to any other means that may be necessary, including provisions equivalent to those in this paragraph 11.1.3), the types of insurance policies listed in this paragraph 11.1.3. All insurance policies described in this paragraph 11.1.3 shall be issued by insurance companies that are licensed to carry on business in Canada and are acceptable to the *Owner* acting reasonably and the policies shall contain terms, conditions, exclusions, limits and deductibles acceptable to the *Owner* acting reasonably. Unless specifically stated otherwise, the duration of the insurance policies listed in this paragraph 11.1.3 shall be from the date of commencement of the *Work* until the *Project* has been finally accepted by the *Owner*.

- .1 Automobile Insurance. This insurance shall cover all licensed vehicles owned or leased for a period in excess of thirty (30) calendar days by the *Contractor* or *Subcontractors* of any tier or the *Contractor's* consultants of any tier. It shall provide for third party liability limits of not less than \$5,000,000 inclusive for bodily injury and property damage plus statutory accident benefits.
- .2 Project-Specific Contractors Pollution Liability. The policy shall cover third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the *Contractor's* operations and completed operations (i.e. *Work* performed). This policy shall be written with a limit of not less than \$5,000,000 per claim with an aggregate of not less than \$5,000,000 within any policy year with a deductible of not more than \$5,000. The *Owner* shall be named as an additional insured on this policy. Such insurance will be maintained from the date of commencement of the *Work* and will include an extended reporting period of twenty four (24) months (unless occurrence based policy form) from the date of *Substantial Performance of the Work*.
- .3 *Contractor's* Equipment Insurance. This policy shall cover all tools and equipment used at the *Project* by, or on behalf of, the *Contractor* or *Subcontractors* of any tier against "All Risks" of direct physical loss or damage, including the

perils of earthquake and flood, subject to customary exclusions. This insurance shall be maintained continuously from commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted by the *Owner*. All such policies shall contain a Waiver of Subrogation against the *Owner*, the *Contractor*, the *Consultant*, *Subcontractors* of any tier, and any of the *Contractor's* consultants of any tier engaged on the *Project*, and shall provide for thirty (30) days prior written notice of cancellation or material change to be given by the insurers to the *Owner*, the *Consultant* and the *Contractor*.

- .4 Workers' Compensation Insurance. Workers Compensation Insurance shall be maintained in compliance with the laws of Canada and Ontario for all employees engaged to perform services or work in connection with the *Project*. Evidence of such compliance shall be provided to the *Owner* prior to commencement of the *Work* by the *Contractor*, *Subcontractors* of any tier and any of the *Contractor's* consultants of any tier.
- .5 Commercial General Liability Insurance (Off-site and Completed Operations). This policy shall cover the risks of liability for bodily injury and property damage arising from the operations and activities away from the *Project* site by the *Contractor*, *Subcontractors* of any tier, the *Consultant* and any of the *Contractor's* consultants of any tier. This policy shall be subject to limits of liability not less than \$10,000,000 and a deductible of not more than \$25,000 per occurrence. It shall include all of the coverage features listed in items (1) to (13) of paragraph 11.1.2.2 of the *Contract*.

This insurance shall be maintained continuously from commencement of the *Work* until all construction, erection, installation and testing has been completed and the *Project* has been finally accepted by the *Owner*.

The "Products-Completed Operations Hazard" coverage shall cover the risks of liability for bodily injury and property damage arising from the operations, activities, the *Work* performed on and away from the *Project* site and shall be maintained for seventy-two (72) months after the *Project* has been finally accepted by the *Owner*.

- .6 Additional Insurance. The *Contractor* shall purchase and maintain any additional insurance that it is required to carry by law or that it considers necessary to cover risks not otherwise covered by the insurance policies specified herein. The *Contractor* shall also purchase and maintain, and cause each *Subcontractor* of any tier and any of the *Contractor's* consultants of any tier to purchase and maintain, such other insurance, or amendments to the foregoing insurance policies, as the *Owner* may reasonably require and direct.
  - .7 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Contractor* shall carry professional liability insurance with limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, unless specified otherwise in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the *Contract* until two (2) years after *Substantial Performance of the Work*.
- 11.1.4 Prior to commencement of the *Work*, and upon the placement, renewal, amendment or extension of all or any part of the insurance policies described in paragraph 11.1.3, the *Contractor* shall promptly provide the *Owner* certificates of insurance and, if requested by the *Owner*, true copies of the policies certified by an authorized representative of the insurers including all amending endorsements applicable to this *Contract*. If the *Contractor* fails to provide evidence that the insurance policies described in paragraph 11.1.3 have been purchased and maintained, the *Owner* may purchase and maintain such insurance policies and the cost thereof shall be paid by the *Contractor* to the *Owner* on demand or the *Owner* may deduct the cost thereof from any amounts that are due or may become due to the *Contractor*.
- 11.1.5 The *Contractor* shall not do, omit to do, or authorize or permit a *Subcontractor* of any tier and any of the *Contractor's* consultants of any tier to do or omit to do, anything that would prejudice, or result in loss of coverage under, any policy of insurance required to be purchased or maintained by the *Owner*, the *Contractor* or any *Subcontractor*.
- 11.1.6 The *Contractor* waives all rights of recourse against the *Owner* and the *Consultant* in respect of loss or damage to the *Contractor's* owned, leased or hired property. The *Contractor* shall also include a provision in its subcontracts that requires all *Subcontractors* to

waive all rights of recourse against the *Owner* and the *Consultant* in respect of loss or damage to the owned, leased or hired property of the *Contractor* and of *Subcontractors*.

- 11.1.7 The *Contractor* shall be responsible for deductible amounts under the policies purchased or maintained by the *Contractor* and the *Owner*.
- 11.1.8 Each policy of insurance that is maintained by the *Contractor* shall provide that sixty (60) days' prior written notice must be given to the *Owner* before any policy is suspended, materially detrimentally altered or cancelled.
- 11.1.9 Each policy of insurance that is maintained by the *Contractor* (other than automobile collision insurance, the *Contractor's* equipment insurance and professional liability insurance) shall name the *Owner* and the *Contractor* as additional insureds and/or loss payees as applicable and as their interests may appear.
- 11.1.10 In addition to coverages provided for in paragraphs 11.1.3.2 and 11.1.3.4, to the extent available, all other policies shall contain a waiver of subrogation rights which the insurers may have against the *Owner* whether the damage is caused by the act, omission or negligence of any of such persons.
- 11.1.11 In the event that a claim is made on another project that could jeopardize the insurance coverage available for the *Project*, the *Contractor* shall provide prompt written notice of such claim to the *Owner*.
- 11.1.12 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 a true copy of the policies certified by an authorized representative of the insurer, together with copies of any amending endorsements.
- 11.1.13 In all instances in GC 11.1 INSURANCE where the *Contractor* is required to obtain insurance coverages naming or jointly naming the *Owner*, such policies shall also name Her Majesty the Queen in right of Ontario. Each of the policies of insurance shall also contain a provision requiring not less than thirty (30) calendar days' written notice to each named insured prior to cancellation or any change that would reduce coverage. At least ten (10) calendar days prior to commencement of the *Work* and upon any 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 applicable to the *Work*.”

## **GC 11.2      CONTRACT SECURITY**

- .1      Delete paragraphs 11.2.1 and 11.2.2 in their entirety and substitute new paragraphs 11.2.1, 11.2.2 and 11.2.3 as follows:

11.2.1      The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner*:

.1      a performance bond, in the form set out in the *Contract Documents*, in an amount equal to 100% of the *Contract Price*, covering the performance of the *Contract*, including the *Contractor's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties; and

.2      a labour and material payment bond, in the form set out in the *Contract Documents*, in an amount equal to 100% of the *Contract Price*, covering payment for labour, *Product*, or both.

11.2.2      The *Contractor* shall, prior to the commencement of the *Work*, provide to the *Owner* performance bonds, in the form set out in the *Contract Documents*, covering the performance of the *Contractor's* mechanical and electrical trade subcontracts (including the requirements with respect to correction of deficiencies and fulfillment of warranties under said subcontracts). The amount of the performance bonds shall be equal to 100% of the subcontracts for which the bonds are furnished.

11.2.3      The *Contractor* shall, prior to the commencement of the *Work*, provide to the *Owner* performance bonds, in the form set out in the *Contract Documents*, covering the performance of any of the *Contractor's* trade subcontracts (including the requirements with respect to correction of deficiencies and fulfillment of warranties under said subcontracts) that are related to divisions that exceed 20% of the value of the *Contract Price*. The amount of the

performance bonds shall be equal to 100% of the subcontracts for which the bonds are furnished.

11.2.4 The bonds referred to in paragraphs 11.2.1, 11.2.2 and 11.2.3 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*.

11.2.5 If approved changes pursuant to the *Contract* result in approved increase or cumulative increases to the *Contract Price*, the *Contractor* shall promptly acquire additional bonding at the *Owner's* expense. Where additional bonding premiums are paid for by the *Owner*, the *Contractor* shall promptly submit to the *Owner* written confirmation that the premiums were paid to the surety and promptly provide the *Owner* with the original and revised performance bond(s).

## **GC 12.1 INDEMNIFICATION**

.1 Delete General Condition 12.1 – INDEMNIFICATION in its entirety and substitute:

12.1 The *Contractor* shall indemnify, defend, and hold harmless Her Majesty the Queen in right of Ontario, the *Owner*, the *Consultant*, and their respective agents, appointees, directors, officers and employees from and against claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to the *Contractor's* performance of the *Contract*. Nothing in this paragraph 12.1 shall limit any claim that Her Majesty the Queen in right of Ontario, or the *Owner*, may have under the insurance coverage to be provided under General Condition 11.1 - INSURANCE.

## **GC 12.2 WAIVER OF CLAIMS**

.1 Delete the reference to "395 calendar days" in the last line of paragraph 12.2.2 and substitute "120 calendar days".

.2 Delete the last sentence of subparagraph 12.2.3.4 and substitute:



"Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:

- .1 if the *Contract Price* is \$2,000,000 or less, the sum of \$50,000, before *Value Added Taxes*;
- .2 if the *Contract Price* exceeds \$2,000,000, the sum of \$100,000, before *Value Added Taxes*;

but, in any event, a defect or deficiency in the *Work* which affects the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents* shall be deemed to be a "substantial defects or deficiencies" regardless of the cost of repair.

- .2 Amend paragraph 12.2.5 by adding ",12.2.3.4" immediately after the reference to paragraph 12.2.3.3.

### **GC 12.3 WARRANTY**

- .1 Delete from the first line of paragraph 12.3.2 the word, "The" and substitute the words:

"Subject to paragraph 3.4.1, the..."

- .2 Add the following sentences to the end of paragraph 12.3.3:

"Generally, any manufactured item or material, which when used as directed, must be capable of such use for the duration of the specified warranty period. Failure to comply with this requirement shall be considered as being a "defect".

The costs of investigations, tests, repairs and/or replacement and the making good of any resulting damage shall be borne by the *Contractor*. The *Contractor* shall be responsible for ensuring that all work required to be performed pursuant to GC 12.3 WARRANTY is performed without undue delay.

The performance of replacement work and making good of defects contemplated by GC 12.3 WARRANTY shall be executed by the *Contractor* at such times that are convenient for the *Owner*, which may entail or require overtime work on the part of the *Contractor*. Additional charges for overtime work in this regard shall be borne by the *Contractor*. Prior to the expiry of the warranty period under the *Contract*, the *Owner*

reserves the right to carry out a detailed and exhaustive inspection of the *Project* with regard to all work performed under the *Contract* and the *Contractor* shall make good any defective or unsatisfactory materials and/or workmanship observed.”

- .3 Add the following sentence to the end of paragraph 12.3.4:

“Defects and deficiencies shall include, without limitation, shrinkage, expansion and movement.”

**Add new PART 13 as follows:**

## **PART 13 OTHER PROVISIONS**

### **GC 13.1 OWNERSHIP OF MATERIALS**

- 13.1.1 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 when notified in writing to do so by the *Consultant*.

### **GC 13.2 CONSTRUCTION LIENS**

- 13.2.1 In the event that a claim for lien is registered against the *Project* or otherwise preserved by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then the *Contractor* shall, at its own expense:
- .1 within ten (10) calendar days of receiving a *Notice in Writing* from the *Owner* to do so, cause any such claims for lien and certificates of action to be discharged, released, or vacated by the posting of security or otherwise and provide proof of same to the *Owner*.
- 13.2.2 In the event that a written notice of lien is given to any person, including but not limited to the *Owner*, by a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, then the *Contractor* shall, at its own expense:
- .1 within ten (10) calendar days of receiving a *Notice in Writing* from the *Owner* to do so, cause any such written notice of lien to be withdrawn or vacated in accordance with the *Construction Act* and provide proof of same to the *Owner*.

- 13.2.3 In the event that the *Contractor* fails to comply with the requirements of paragraphs 13.2.1 and 13.2.2, the *Owner* shall have the right (but not the obligation) to fulfil those requirements without further *Notice in Writing* to the *Contractor* and to set off and deduct from any amount owing to the *Contractor* all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with the discharging or vacating of a claim for lien or certificate of action or the withdrawing or vacating of a written notice of lien, and defending any related action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses of so doing.
- 13.2.4 If any construction lien action or other legal proceeding arising out of the *Work* is commenced against the *Owner*, the *Contractor* shall take all reasonable steps to remove the *Owner* from such action or legal proceeding, and shall indemnify, defend and hold the *Owner* harmless in such action or legal proceeding.

### **GC 13.3 CONTRACTOR DISCHARGE OF LIABILITIES**

- 13.3.1 In addition to the obligations assumed by the *Contractor* pursuant to GC 3.7 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors*, *Suppliers*, and *Products*, used or reasonably required for use in the performance of the *Work*, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties from whom payment has been withheld.

### **GC 13.4 RECORDS/DAILY REPORTS/DAILY LOGS**

- 13.4.1 The *Contractor* shall maintain and keep accurate *Project* records (which means all tangible records, documents, computer printouts, electronic information, books, plans, *Drawings*, *Specifications*, accounts or other information relating to the *Work*) in its office in Ontario in accordance with requirements of law, but in any event for not less than six (6) years from *Substantial Performance of the Work* or until all claims have been settled. During this time, the *Contractor* shall allow the *Owner* access to the *Project* records during normal business hours upon the giving of reasonable notice. The *Contractor* shall ensure that equivalent provisions to those provided herein are made in each subcontract and shall require the *Subcontractors* and *Suppliers* to incorporate them into every level of contract thereunder for any part of the *Work*.

## **GC 13.5 CONTINGENT LIABILITY**

- 13.5.1 The parties expressly agree that notwithstanding any other provision of this Agreement, the remedies, recourse and rights of the *Contractor* or any third party shall be limited to the *Owner*, and the *Contractor* unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the Agreement, and the *Contractor* shall have no remedies, recourse or rights in respect of the Agreement against the Crown in right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or member, other than against the *Owner* and the *Owner's* assets.

## **GC 13.6 ACCESSIBILITY**

- 13.6.1 The *Contractor* acknowledges that the *Owner* is committed to the goals of the *AODA*. The *Contractor* shall comply, and shall cause its *Subcontractors* and *Suppliers* to comply, with all applicable *AODA* standards and requirements.
- 13.6.2 The *Contractor* shall, within seven (7) calendar days of receiving a request from the *Owner* to do so, provide the *Owner* with evidence that the *Contractor's* personnel have completed *AODA* customer service standard training.
- 13.6.3 The *Contractor* shall comply with the *Owner's* Accessibility Customer Service Policy and shall cause every *Subcontractor* and *Supplier* that enters the *Place of the Work* to adhere to the *Owner's* Accessibility Customer Service Policy.

## **GC 13.7 ONTARIO HUMAN RIGHTS CODE AND THE OWNER'S DISCRIMINATION, HARASSMENT AND SEXUAL VIOLENCE AND LABOUR POLICIES**

- 13.7.1 The *Contractor* shall comply, and shall cause its *Subcontractors* and *Suppliers* to comply, with all of the *Owner's* Discrimination, Harassment and Sexual Violence Policies and the Ontario Human Rights Code.
- 13.7.2 The *Owner* and the *Contractor* acknowledge and agree that the *Contractor's* failure to comply with paragraph 13.6.1 shall be considered a breach of a material term of this *Contract* and shall be

considered a default of the *Contractor* under the provisions of paragraph 7.1.4.

#### **GC 13.8      UNIQUE CONTENT**

- 13.8.1      The *Contractor* shall not have the right to use any official marks, symbols, insignia, logos, branded promotional items, or nomenclature of the *Owner* without the *Owner's* prior written consent, which consent may be arbitrarily withheld for any reason that the *Owner*, in its sole and unfettered discretion, considers sufficient.
- 13.8.2      The *Contractor* acknowledges and agrees that any official marks, symbols, insignia, logos, branded promotional items or nomenclature of the *Owner* are and will remain the *Owner's* property and the *Contractor* shall not share any of the *Owner's* official marks, symbols, insignia, logos, branded promotional items or nomenclature with any other third parties without the *Owner's* prior written consent, which consent may be arbitrarily withheld for any reason that the *Owner*, in its sole and unfettered discretion, considers sufficient.

#### **GC 13.9      SUBSTITUTING FORMS OF HOLDBACK**

- 13.9.1      The *Contractor* may, at any time, submit an application in writing to the *Owner* requesting that all or any holdbacks being retained by the *Owner* in the form of funds be replaced with one or more of the following forms of holdback: a letter of credit (in the form prescribed by the *Construction Act*), a demand-worded holdback repayment bond (in the form prescribed by the *Construction Act*) or any other form of holdback prescribed by the *Construction Act*.
- 13.9.2      If the *Owner* agrees to a request made by the *Contractor* under subparagraph 13.9.1, the *Owner* shall notify the *Contractor* that it agrees to the *Contractor's* request and the *Contractor* shall then proceed to obtain and provide to the *Owner* the agreed upon substitute form(s) of holdback. Once the *Contractor* has provided the agreed upon substitute form(s) of holdback to the *Owner* and the *Owner* has satisfied itself that the substitute form(s) of holdback are in the appropriate form and are consistent with the form agreed upon by the parties, the *Owner* shall release to the *Contractor* the holdback funds retained.
- 13.9.3      Notwithstanding any other provision in the *Contract*, the *Owner* is under no obligation whatsoever to agree to any requests made by the *Contractor* under subparagraph 13.9.1. For greater certainty,

the *Owner* has absolute and unfettered discretion in determining whether or not to accept or reject a request made by the *Contractor* under subparagraph 13.9.1.

**END OF DOCUMENT**