

**APPENDIX 3
SUPPLEMENTARY CONDITIONS**

ITT #24-509-41

SUPPLEMENTARY GENERAL CONDITIONS to Standard Construction Document CCDC 2 - 2020 made between *Cobourg Non-Profit Housing Corporation*, as *Owner*, and [*Contractor*], as *Contractor*, dated _____ with respect to the construction of the accessibility ramp replacements located at 330 Alexandria Drive, Cobourg, ON K9A 5C8.

Standard Form of *Contract*

The Standard Construction Document CCDC 2 (2020), Stipulated Price *Contract* between the *Owner* and the *Contractor*, shall be considered complete only as amended and supplemented by the following supplementary general conditions.

ARTICLE A - 4 CONTRACT PRICE

SC 1. DELETE paragraph 4.4 and replace it with the following:

“4.4 For greater certainty the total amount payable by the *Owner* to the *Contractor* shall be the amount stated in Article 4.3 above, subject only to any *Change Order* or *Change Directive*.”

ARTICLE A - 5 PAYMENT

SC 2. AMEND paragraph 5.1.1 by adding the words: “or as agreed by the *Owner* to be undisputed and owing” after the words “certified by the *Consultant*”.

SC 3. DELETE paragraph 5.1.2 and replace it with the following:

“5.1.2 On the expiry of the statutory lien holdback period following the *Substantial Performance of the Work*, as certified by the *Consultant*, and if no lien claims are outstanding, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and”

SC 4. AMEND paragraph 5.1.3 by adding the words: “as certified by the *Consultant*,” after the first instance of the word “payment” and the words “undisputed and” before the words “unpaid balance”.

SC 5. DELETE paragraph 5.2.2 and replace with the following:

“5.2.2 Interest on late payments, if any, will be in accordance with the *Payment Legislation*.”

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SC 6. ADD new paragraph 5.3 as follows:

“5.3 As such payments become due, the *Contractor* shall, in accordance with the terms of its agreements with any *Subcontractors*, *Suppliers* and workmen, pay all of its *Subcontractors*, *Suppliers* and workmen in full on account of work properly performed or *Products* properly supplied, as applicable, less any holdback monies retained in compliance with the *Payment Legislation*. The *Contractor* may, subject to the provisions of the *Payment Legislation*, hold back a portion of payments certified to be payable to a *Subcontractor* provided that:

5.3.1 It relates to *Work* that the *Contractor* believes is incomplete or deficient; and

5.3.2 It takes immediate action against the *Subcontractor* in question such that either the *Subcontractor* or another *Subcontractor* repairs the deficient *Work* forthwith; or

5.3.3 It relates to liens filed on title to the *Place of the Work* which arise from the *Subcontractors'* or *Supplier's* work.”

SC 7. ADD new paragraph 5.4 as follows:

“5.4 Notwithstanding any other provision of the *Contract*, and subject to the provisions of the *Payment Legislation*, the *Owner* may set off against or withhold from any payment owing to the *Contractor* in the amounts specified in this *Contract* or, where no amount is otherwise specified, to the extent necessary, in the *Owner's* view acting reasonably, to protect the *Owner* from any loss or damage arising in connection with:

5.4.1 errors, discrepancies, inconsistencies or irregularities in any *Proper Invoice* or other application for payment;

5.4.2 failure by the *Contractor* to provide any document or other deliverable required to be submitted with or to process a *Proper Invoice* or other application for payment (including for payment of holdback), or to certify payment of same;

5.4.3 deficient, defective or non-conforming *Work* or other unauthorized deviations by the *Contractor* from the *Contract Documents* which have not been corrected;

5.4.4 written notice of lien, liens preserved, or lien claims made against the *Owner* or against title to the *Place of the Work* which have not been vacated, released, or discharged by the *Contractor* as required under GC 13.1 – LIENS;

5.4.5 failure of the *Contractor* to make any payment when due to third parties and any outstanding claims by third parties against the *Owner* relating to the *Work*, including *Subcontractor* or *Supplier* claims;

5.4.6 damage to the *Work* or property of the *Owner* for which the *Contractor* is responsible; and

5.4.7 failure by the *Contractor* to make payments to the Workplace Safety and Insurance Board of the Province of Ontario or similar body, for which the *Owner* may be found liable.

SC 8. ADD new paragraph 5.5 as follows:

“5.5 When the *Contractor* has remedied the cause of the set-off or withholding and has furnished evidence satisfactory to the *Owner* of such remedy, the amount of the withholding will, subject to paragraph 5.4, be paid without interest notwithstanding any other provision of this *Contract*.”

ARTICLE A - 9 TIME IS OF THE ESSENCE

SC 9. ADD the following new Article 9.1:

“9.1 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 the *Substantial Performance of the Work*. The *Contractor* agrees that time is of the essence of this *Contract*.”

DEFINITIONS

SC 10. AMEND the definition of “*Contract Documents*,” by adding the words “and agreed upon in writing” at the end of the definition.

SC 11. ADD the following definitions:

“**Approved Construction Schedule**” shall be the schedule provided in accordance with Article A-1.3 and further defined in GC3.4.

“**Force Majeure**” means any cause, beyond either parties’ control, other than 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 permits or licenses; 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*, or acts of God; or declared epidemic or pandemic outbreak or other public health emergency (e.g. SARS, COVID-19).

“Key Personnel” means the individuals named in named in the *Contractor’s* Schedule D to Bid Form.

“Lender” shall mean County of Northumberland.

“Owner’s Representative” shall mean the Housing Services Corporation.

“Proper Invoice” shall comply with any invoicing requirements specified in the *Contract Documents*, and shall include:

- (a) a written requisition for payment which must include:
 - (i) the *Contractor’s* name, address and HST number;
 - (ii) the date of the *Proper Invoice* and the period during which the services or materials were supplied which shall be to the end of the month in question;
 - (iii) information identifying this *Contract* (by its date) and/or any other authority, whether in the *Contract* or otherwise, under which the services or materials were supplied;
 - (iv) the name, title, telephone number and mailing address of the person to whom payment is to be sent; and
 - (v) any other information that may be prescribed under the *Payment Legislation*;
- (b) a statement showing the total value of the *Work* performed and the *Products* delivered to the Place of Work to the end of the period that is the subject of the *Proper Invoice* (the **“Completed Value”**) less the total of all amounts previously payable and invoiced and the total of all previous holdback amounts, and include a statement of the proportion that the *Completed Value* is to the total amount of the *Contract* as of the date of the *Proper Invoice*;
- (c) a current sworn statutory declaration in the form of the CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor;
- (d) a valid Workplace Safety Insurance Board (**“WSIB”**) Clearance Certificate certifying that the *Contractor* was registered with the WSIB Board as an Employer throughout the duration of the *Contract*;
- (e) certificates of insurance for any policies required to be obtained by the *Contractor* pursuant to the *Contract Documents* and updated certificates of insurance should any such policies be changed, renewed, or replaced, except that such certificates need only be submitted the first time required; and
- (f) a declaration that no written notices of lien have been received by the *Contractor*.

“Property Manager” shall mean Cobourg Non-Profit Housing Corporation.

“Restricted Period” shall mean the period of time between the third last Monday of December to the second Monday of the following (new) year, inclusive, of any given calendar year throughout the duration of the *Contract*.

GC 1.1 CONTRACT DOCUMENTS

SC 12. REPLACE paragraph 1.1.3 with the following:

1.1.3 “The *Contractor* shall review the *Contract Documents* and report promptly to the *Consultant* and *Owner* any error, inconsistency, or omission the *Contractor* may discover or any doubt as to the meaning or intent. Unless the *Contractor* fulfills this requirement, subsequent claims by the *Contractor* for extra compensation will not be accepted. 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* or has had the meaning of intent clarified.”

SC 13. REPLACE paragraph 1.1.8 with the following:

"1.1.8 Unless the context of the *Contract* otherwise clearly requires, references to the plural include the singular, and to the singular, the plural. Reference to the word “or” have the inclusive meaning represented by the phrase “and/or.” The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

SC 14. ADD the following new paragraphs 1.1.12 to 1.1.14:

“1.1.12 If the *Contractor* believes that there is some discrepancy, omission, error or departure from the applicable By-laws in the *Contract Documents* or *Consultant’s* instructions, the *Contractor* shall immediately cease work on the portion affected until resolved with the *Consultant* and instructed to proceed.

1.1.13 The *Contractor* will be provided with one electronic set of *Contract Documents*. Additional sets or hard copy sets may be provided at the *Contractor’s* expense.

1.1.14 The *Contract Documents* are to be interpreted as a whole, although they are arranged in divisions for convenience and clarity. The *Contractor* is responsible for all the *Work*, regardless of the division of the *Work* in the *Contract Documents*, and such division does not impose any obligation of the *Consultant*, *Project Manager*, or upon the *Owner* as arbiter to establish limits, or responsibility between the *Contractor* and the *Subcontractors*.”

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GC 2.2 ROLE OF THE CONSULTANT

SC 15. ADD to the end of paragraph 2.2.12 the following:

"If in the opinion of the *Contractor* a *Supplemental Instruction* involves an adjustment in *Contract Price* or *Contract Time*, the *Contractor*, shall within five (5) *Working Days* of receipt of *Supplemental Instruction* advise the *Consultant* and *Owner* in writing accordingly. Failure to provide written notification within the time stipulated shall preclude the *Contractor* from making a claim for an adjustment in the *Contract Price* or *Contract Time* as a result of the *Supplemental Instruction*"

SC 16. ADD the following new paragraph 2.2.19:

"2.2.19The *Consultant* shall be the payment certifier for the purposes of the *Payment Legislation* determinations in respect of the *Contract* and all lien holdback funds released pursuant to the *Contract*."

GC 2.4 DEFECTIVE WORK

SC 17. DELETE the words "that has been rejected by the *Consultant*" and replace with the words "whether or not rejected by the *Consultant*" in the first line of GC 2.4.1.

SC 18. ADD the words ", at its expense," after the word "*Contractor*" in the first line of GC 2.4.1.

GC 3.1 CONTROL OF THE WORK

SC 19. ADD to the end of paragraph GC 3.1.1 the following words: "and compliance with the Health and Safety Requirements".

SC 20. ADD the following new paragraphs 3.1.3 to 3.1.7:

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

3.1.4 The *Contractor* shall render all necessary assistance to the *Consultant*, and if required shall take and furnish *Consultant* with levels, measurement, or anything else required by the *Consultant* on the *Work* or the *Place of Work* as the case may be. The *Contractor* shall provide sufficient, safe, and proper facilities at all times for the inspection of the *Work* by the *Consultant*.

- 3.1.5 The *Contractor* understands that the *Work* must be complete in every detail, notwithstanding every item necessarily involved is not particularly mentioned in the *Contract Documents*. The *Contractor* will be held to provide all labour and materials necessary for the entire completion of the *Work* intended and shall not avail himself of any unintentional error or omission in the *Contract Documents*, should such error exist.
- 3.1.6 The *Owner* will not allow any claim for extra payments to the *Contractor* for any extra work made necessary because of difficulties and encounters due to conditions of the *Place of the Work* that were visible upon or reasonable inferable from and examination at the *Place of Work*.
- 3.1.7 Any inspection and testing performed by the *Owner* or under any cash allowance is solely for the *Owner's* own information and shall not relieve the *Contractor* from his/her responsibility under the *Contract* for the proper conduct of the *Work* and for conducting whatever tests that are necessary to ascertain that the *Work* is in accordance with the *Contract*."

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

SC 21. AMEND clause 3.2.3.4 with the following:

"3.2.3.4 Add to the end of the last sentence "Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the deficiencies of other *Contractor's* work except as to those of which they were not reasonably discoverable."

GC 3.4 CONSTRUCTION SCHEDULE

SC 22. DELETE Section 3.4 in its entirety and replace with the following:

"3.4.1 The parties acknowledge that the *Approved Construction Schedule* is attached as Appendix A hereto and that it indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*.

3.4.2 The *Contractor* shall:

- (a) Provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the *Approved Construction Schedule* referred to in paragraph 3.4.1 or any successor or revised schedule accepted by the *Owner*.
- (b) Monitor the progress of the *Work* on a weekly basis relative to the *Approved Construction Schedule* referred to in paragraph 3.4.1, or any successor or revised schedule accepted by the *Owner*.

- (c) Provide the *Consultant* and the *Owner* with updated progress schedules (Gantt charts in PDF or Excel format) on at least a monthly basis, and advise the *Consultant* and the *Owner* by *Notice in Writing* of any variation from the baseline or slippage in the schedule which has the potential to delay completion of the *Work* within the *Contract Time*. The *Owner* shall be entitled to withhold 5% of the total amounts claimed in each subsequent application for payment for each failure to submit any progress schedule when due or failure to submit a compliant progress schedule, until each missing and/or non-compliant progress schedule is delivered or corrected and resubmitted by the *Contractor*.
 - (d) If, after applying the expertise and resources required under paragraph 3.4.2(a), the *Contractor* forms the opinion that the slippage in schedule reported in paragraph 3.4.2(c) cannot be recovered by the *Contractor*, it shall, in the same notice provided under paragraph 3.4.2(c), indicate to the *Consultant* and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6- CHANGES IN THE WORK.
- 3.4.3 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, based on critical path methodology, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to 3.4.2(c), the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule 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, the *Contractor* shall proceed with PART 6 — CHANGES IN THE WORK. Unless the *Contractor* is entitled to a change pursuant to Part 6 – CHANGES IN THE WORK, the *Contractor* will be responsible for all costs of developing and implementing the recovery plan."

GC 3.5 SUPERVISION

SC 23. REPLACE paragraph 3.5.1 with the following:

- "3.5.1 The *Contractor* shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the *Place* or *Places of the Work* while *Work* is being performed. The *Contractor's* appointed representative(s), as identified to the *Consultant* prior the start of the *Work*, shall not be changed except for valid reasons, and then only where the *Contractor* has obtained the written consent of the *Consultant*, acting reasonably, and the *Consultant* has agreed to the proposed successor representative."

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GC 3.6 SUBCONTRACTORS AND SUPPLIERS

SC 24. REPLACE paragraph 3.6.4 with the following:

“3.6.4 If the *Owner* objects to the employment of a proposed *Subcontractor* or *Supplier* and such objections are determined to be unreasonable, the *Owner* agrees to pay such additional amounts, if any, that the *Contractor* shall be obliged to pay by virtue of the *Owner's* objection. Such an objection will not be considered unreasonable if the *Owner* or its *Consultant* has experience of unsatisfactory performance from that *Subcontractor* or *Supplier* on prior jobs.”

SC 25. REPLACE paragraph 3.6.6 with the following:

“3.6.6 The *Consultant* may, upon reasonable request and at their discretion, provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified by payment.”

GC 3.7 LABOUR AND PRODUCTS

SC 26. ADD the following new paragraphs 3.7.4 to 3.7.8:

“3.7.4 *Products*, which are specified by their proprietary names, or by parts of catalogue number, shall form the basis for the *Specifications* and the *Contract*. No substitutes for these may be used without the *Consultant's* approval in writing. Substitutes will be considered only when submitted in sufficient time to permit proper review by the *Consultant*. In applying for permission to use substitutes, the *Contractor* shall prove to the *Consultant's* satisfaction that the substitute is equal to or better than the specified product. Each application shall be accompanied by a complete list of properties of the specified product and the proposed substitute. No application to use substitutes will be considered unless made in this way.

3.7.5 The *Contractor* shall use all *Products* in strict accordance with the *Manufacturer's* directions except where specified otherwise. Whenever specific reference to *Manufacturers' directions* or instruction is made in *Specifications*, the *Contractor* shall submit copies of such instruction or direction, or both, for approval to the *Consultant* before commencing such work.

3.7.6 Whenever more than one product is specified for one use, the *Contractor* may select for this use any of the *Products* so specified unless the *Specification* or *Drawings* indicate otherwise.

3.7.7 The *Contractor* shall ensure that all materials are delivered to the *Place of the Work* in original containers and packages with labels and seals intact and that they are protected from the elements and visible for inspection by the *Consultants*.

3.7.8 The *Contractor* is responsible for the safe on-site storage and protection of *Products* to be installed under the *Contract* (including *Products* supplied by the

Owner) so as to avoid dangerous conditions at the *Place of the Work* or contamination of the *Products* or other persons or property, including the *Place of the Work*."

GC 3.8 SHOP DRAWINGS

SC 27. AMEND paragraph 3.8.3.1 with the following:

"3.8.3.1 In the third line after the words "or will do so", add the words "prior to performing the relevant work."

SC 28. ADD the following new paragraph 3.8.8:

"3.8.8 Reviewed shop drawings shall not authorize a *Change Order* or *Change Directive*."

SC 29. ADD the following General Conditions:

"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, instructions of the *Consultants*, or the *Contract Documents*."
- 3.9.2 The *Contractor* may be requested at any time to suspend noisy or otherwise objectionable operations during certain functions. Should such operations cause undue interference with the said functions, the *Contractor* will be expected to extend the fullest co-operation and courtesy in this regard.
- 3.9.3 If the existing building remains occupied during the contract, the *Contractor* shall execute the work to cause minimum interference to the occupants and personal effects. Moreover, the *Contractor* shall maintain access to the building facilities at all times during the *Contract*.
- 3.9.4 The *Contractor* shall assume that all work will be carried out during normal working hours based on a 5-day week. After contract award, permission may be granted from the *Owner* to work outside these limitations provided the request is presented by the *Contractor* in written format fifteen (15) *Working Days* prior to construction. The *Owner* reserves the right to offer this option (i.e. weekend work) only upon confirmation with present tenants.

GC 3.10 CLEAN UP

- 3.10.1 The *Contractor* shall keep the building and *Place of the Work* free from accumulation of dirt debris and excess materials. The *Contractor* shall remove the debris from the *Place of the Work* at the close of each *Working Day* or more often if required.

3.10.2 The *Contractor* shall perform final clean-up after completion of entire *Work*.

GC 3.11 STANDARD OF CARE

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

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

- (a) The personnel it assigns to the *Project* are appropriately experienced.
- (b) It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation.
- (c) 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*.

3.11.3 The *Contractor* shall at all times be responsible for obtaining all required approvals for the *Work* and shall at all times comply with all applicable laws in the performance of its obligations hereunder. Applicable laws shall include any and all applicable domestic, federal, provincial, territorial, regional, municipal or local statutes, laws, by-laws, rules, regulations, codes (including design and building codes), ordinances, permits, decrees, writs, injunctions, orders or the like, of any governmental authority, applicable to the *Contractor*, or to the performance of the *Work*.

GC 3.12 KEY PERSONNEL

3.12.1 The *Contractor* shall not replace any of the *Key Personnel*, as specified in the *Contractor's* Schedule D to Bid Form without the prior written approval of the *Owner*. If any of the *Key Personnel* become unavailable to perform the *Work*, then the *Contractor* shall promptly designate a replacement(s) who shall be subject to the *Owner's* written approval. The *Owner* shall be entitled to complete information on any such replacement of the *Key Personnel*, including a current resume."

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GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

SC 30. DELETE GC 5.1 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

SC 31. REPLACE paragraphs 5.2.1 with the following:

“5.2.1 Applications for payment on account as provided in Article A-4 – CONTRACT PRICE shall be made as follows:

5.2.1.1 The *Contractor* may make an application for payment by submitting a *Proper Invoice* to the *Owner* and *Payment Certifier* as the *Work* progresses on the 1st day of each month except during the *Restricted Period*, or the next *Working Day* (or next *Working Day* falling after the *Restricted Period*, as applicable) thereafter (each an “**Invoice Due Date**”). Any written bill or other request for payment that would otherwise comprise a *Proper Invoice* but is provided on a date other than an *Invoice Due Date* shall be deemed to have been given to the *Owner* on the new following *Invoice Due Date*. The *Contractor* shall ensure that the *Contractor’s* agreements with each *Subcontractor* and *Supplier* require the delivery of invoices accordingly. Applications for payment shall not be delivered by the *Contractor* or received by the *Owner* during the *Restricted Period*.

5.2.1.2 Based on its examination of such claim for payment, the *Payment Certifier* shall issue a certificate for payment in such form as the *Owner* may require.

SC 32. AMEND paragraphs 5.2.4 to 5.2.6 as follows:

5.2.4 Replace “to the *Consultant*” with “to the *Owner* and the *Consultant*”.

5.2.5 Replace “as the *Consultant*” with “as the *Owner* and the *Consultant*”.

5.2.6 Replace “as the *Consultant*” with “as the *Owner* and the *Consultant*”.

SC 33. ADD the following at the end of paragraph 5.2.7:

“5.2.7 Each application for payment shall also include a declaration that no written notices of lien have been received by it.”

GC 5.3 PAYMENT

SC 34. ADD the following new paragraph:

“5.3.2 The *Owner* may deduct from any amounts due or to become due to the *Contractor*, any sum or sums owing by *Contractor* to the *Owner*, including compensation for any breach by the *Contractor* of any part of this *Contract*, or to the *Owner* discharging any liens by the *Contractor* or by any *Subcontractor*.”

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

SC 35. AMEND paragraph 5.4.1 by adding the following before the first sentence:

“When the *Contractor* considers that the *Work* is substantially performed or if permitted by the *Construction Act (Ontario)* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within *one Working Day*, deliver to the *Consultant* and to the *Owner* an application for certification of *Substantial Performance of the Work* or of the designation portion of the *Work*, which shall include:

- (a) a comprehensive list of items to be completed or corrected and the estimated value of and projected completion dates for each such completion or correction, although failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*;
- (b) a statement based on the schedule of values for the relevant portion of the *Work* together with details of any variances from the *Construction Budget* and an explanation thereof;
- (c) written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, government and utilities authorities having jurisdiction, including but not limited to provision of an occupancy permit from the local authority having jurisdiction over the *Project*, provided that the local authority’s operating procedures allow for the issuance of an occupancy permit and one is made available;
- (d) evidence satisfactory to the *Consultant* and *Owner*, acting reasonably, of provision to the *Owner* of all required spare parts, testing and balancing results, distribution system diagrams, manufacturers’ inspections, and any other required certifications by all testing, cleaning or inspection authorities or associations, as specified in the *Contract Documents*, as applicable; and
- (e) all other materials or documentation required to be submitted under the *Contract* which have not yet been submitted, except the materials and documents specified in GC 5.4.3.”

SC 36. AMEND paragraph 5.4.1.2 by adding the following to the last sentence:

“5.4.1.2 provided that no written notices of lien have been claimed or liens are registered against the *Project* or that any such liens have been vacated, released, discharged or otherwise addressed to the satisfaction of the *Owner*, acting reasonably.”

SC 37. ADD the following new paragraph 5.4.1.3:

“5.4.1.3 in consultation with the *Owner* and the *Contractor* establish the value of retention monies to be held back and released upon completion of incomplete work or deficiencies.”

SC 38. DELETE paragraph 5.4.2 in its entirety and replace with the following:

“5.4.2 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.”

SC 39. DELETE paragraphs 5.4.3 and 5.4.4 and replace with the following:

“5.4.3 Within thirty (30) days of the published date of *Substantial Performance of the Work*, the *Contractor* will submit to the *Owner* and *Consultant* an application for payment of the lien holdback which shall include:

- (a) all guarantees, warranties, operations and maintenance manuals required by the *Contract Documents*, whether originating from the *Contractor* or *Subcontractors* or *Suppliers*;
- (b) two sets of “as-built drawings”;
- (c) a current sworn statutory declaration of the *Contractor* in the form of the CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor;
- (d) a Workplace Safety and Insurance Board Certificate of Clearance showing that the *Contractor* is in good standing; and
- (e) evidence satisfactory to the *Consultant*, the *Owner* and the *Lender* (if any) that there are no written notices of lien or liens registered against or otherwise claimed in respect of any portion of the *Project* or that any written notices of lien or registered liens have been vacated, released, discharged, or otherwise addressed to the *Owner’s* satisfaction, acting reasonably.

If the *Contractor* has not provided one or more of the documents or other deliverables specified in GC 5.4.3 or GC 5.4.1 (without prejudice to the *Consultant’s* entitlement to determine that *Substantial Performance of the Work* has not yet been achieved as a result of such failure) within the applicable time periods noted above, the *Owner* shall be entitled to set off or withhold up to fifteen percent (15%) of the total amount of the holdback (or such other amount as the *Contractor* and *Owner* may agree to) in order to protect the *Owner* from loss with respect to the missing documents until all missing documents or other deliverables have been provided by the *Contractor*.

- 5.4.4 Subject to the requirements of any *Payment Legislation* and the *Contract*, all holdback amount prescribed by the applicable lien legislation for the *Work* shall become due and payable to the *Contractor* no later than ten (10) *Working Days* following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*.”

SC 40. ADD the following new paragraph 5.4.7:

- “5.4.7 The *Contractor* shall publish, in a construction trade newspaper in the area of the location of the *Work*, a copy of the Certificate of Substantial Performance of the *Work* within seven (7) days of receiving a copy of the Certificate signed by the *Consultant*, and the *Contractor* shall on the day of publication provide suitable evidence of the publication to the *Consultant* and *Owner*, including the date of publication and the name of the construction trade newspaper. If the *Contractor* fails to publish such notice, the *Owner* shall be at liberty to publish and back charge the *Contractor* its reasonable costs for doing so.”

GC 5.5 FINAL PAYMENT

SC 41. DELETE paragraph 5.5.1 in its entirety and replace with the following:

- “5.5.1 When the *Contractor* has attained *Ready-for-Takeover* of the *Work*, the *Contractor* shall submit an application for final payment. The *Contractor* must, when applying for final payment, provide the *Consultant* with:
- (a) a statement based on the schedule of values for the relevant portion of the *Work* together with details of any variances from the *Construction Budget* and an explanation thereof;
 - (b) a current sworn statutory declaration of the *Contractor* in the form of the CCDC 9A - Statutory Declaration of Progress Payment Distribution by Contractor;
 - (c) a Workplace Safety and Insurance Board Certificate of Clearance; and
 - (d) evidence satisfactory to the *Consultant*, the *Owner* and the *Lender* (if any) that there are no written notices of lien or liens registered against or otherwise claimed in respect of any portion of the *Project* or that any written notices of lien or registered liens have been vacated, released, discharged, or otherwise addressed to the *Owner's* satisfaction, acting reasonably.”

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GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

SC 42. ADD the following new paragraphs 6.1.3 to 6.1.5:

- “6.1.3 No work in excess of the estimated quantities indicated on the bid form shall be carried out without written authorization from the *Consultant* and the *Owner*.
- 6.1.4 Any extra work which is carried out without authorization from the *Consultant* and the *Owner* will be entirely at the *Contractor's* own risk and expenses.
- 6.1.5 Contemplated Change Notice
- (a) Submission of Quotation
- (i) If the *Owner* determines that the cost of the work will be affected due to a contemplated change, the *Contractor* shall submit a quotation to the *Owner* in accordance with the instructions specified herein.
 - (ii) Quotations for *Contemplated Change Notices* must include a detailed breakdown of all labour, material, plant and equipment costs incurred by the *Contractor*. Quotations from *Subcontractors* involved in the change must also be supported by similarly detailed breakdowns of the *Subcontractors'* costs. All quotations must be fully supported with invoices and payroll records, and hourly rates can only be net payroll costs plus allowed markup.
 - (iii) It is the responsibility of the *Contractor* to ensure that all *Subcontractors'* quotations included in the *Contractor's* quotation to the *Consultant* are fair and reasonable in view of the terms expressed herein.
 - (iv) The labour hours required for the contemplated change shall be based on the estimated number of hours to perform the work.
 - (v) Time spent by a working foreman may be included in the number of labour hours, at a rate agreed to in writing by the *Contractor* and the *Owner*.
 - (vi) Time attributable to material handling, productivity factors and approved rest periods is to be included in the number of hours required by the contemplated change and will not be paid as a separate item under hourly rates.
 - (vii) Mark-ups referred to in Sections 6.1.5.4 and 6.1.5.5 below are not to be included in the hourly labour rates.

- (viii) Credit for work deleted will only be for the work directly associated with the changes stipulated in the particular *Contemplated Change Notice*.
- (ix) When a change deletes work which has not yet been performed, the *Owner* is entitled to an adjustment in the *Contract Price* equal to the cost the *Contractor* would have incurred had the work not been deleted.
- (x) Mark-ups referred to in Sections 6.1.5.4 and 6.1.5.5 below shall not be applied to any credit amounts for deleted work.
- (xi) In those cases where the change involves additions and deletions to the work, the percentage mark-ups referred to in Sections 4 and 5 below shall apply only when the cost of the additions minus the cost of the deletions would result in an increase in the *Contract Price*. The percentage allowance shall only be applied to that portion of the costs of the additions that is in excess of the cost of the deletions.
- (xii) If the contemplated change in the work necessitates a change in the contract completion date, or has an impact on the work, the *Contractor* shall identify and *Contractor* include the resulting cost in the breakdown of its quotation to the *Owner*.
- (xiii) The work shall conform to the contract documents unless otherwise stated in the *Change Order* signed by the *Owner*. The *Contemplated Change Notice* shall identify all changes to the schedule.
- (xiv) Upon acceptance of the *Contractor's* quotation by the *Owner*, the *Owner* shall prepare and issue the formal Change Order.

(b) Labour Rates

(i) Hourly Labour Rates

- (A) The hourly labour rates listed in the *Contractor's* quotation shall be limited to the base rate of pay plus all applicable payroll burdens.

(c) Material, Plant and Equipment Costs

(i) Costs

- (A) The costs of all purchases and rentals must be based on the actual amount paid to the *Suppliers* by the *Contractor* or *Subcontractor* and said costs are to include all applicable discounts.

(d) Allowances on Work by Own Forces

(i) Markup

(A) *Contractor's* mark-up on its own work:

Overhead/Profit ten percent (10%)

(ii) The mark-up shall include all of the costs of all labour, material, plant and equipment furnished or supplied by the *Contractor* or *Subcontractor* that is required by the contemplated change, shall be added to the *Contractor's* or *Subcontractor's* quotation as full compensation for:

(A) All supervision, coordination, administration, overhead, margin and the risk of undertaking the work within the stipulated amount.

(B) Miscellaneous additional costs related to:

(I) The purchase or rental of material, plant and equipment.

(II) The purchase of small tools and supplies.

(III) Safety and protection measures.

(IV) Permits, bonds, insurance, engineering, as-built drawings, commissioning and site office.

(e) Allowances on Work by Subcontractors

(i) Markup

(A) *Contractor's* mark-up on each individual *Subcontractor's* work:

Overhead/Profit five percent (5%)

(B) The mark-up shall include the total of all quotations received from *Subcontractors*, and shall be added to the *Contractor's* quotation as full compensation for:

(I) All supervision, coordination, administration, overhead, margin and the risk of undertaking the work within the stipulated amount.

- (II) Miscellaneous costs related to:
 - (1) Safety and protection measures.
 - (2) Permits, bonds, insurance, engineering, as-built drawings, commissioning and site office.
- (III) *Subcontractor's* mark-up on its own work:
 - Overhead/Profit ten percent (10%)”

GC 6.2 CHANGE ORDER

SC 43. ADD the following new paragraphs 6.2.3 to 6.2.4:

- “6.2.3 The *Contractor* shall observe the following procedure when submitting a claim for a change in the *Contract Price* and if applicable, a change in the *Contract Time*:
- (a) The claim must set out the value of the changes (referred to in the notice of contemplated change) in sufficient detail for a proper assessment to be made including breakdowns of labour and materials for the *Contractor* and each *Subcontractor*. The valuations must indicate that additional sums for overhead and profit are included as set out herein.
 - (b) The claim must indicate that the total value of the changes (referred to in the notice of contemplated change) is the product of the quantity of work involved and of the applicable unit price as set out in the *Schedule of Contract Unit Prices* or such other unit price as may be agreed upon. Unit prices include all additional sums for overhead and profit. No additional mark-ups are permitted for valuations submitted under this method.
 - (c) The claim must set out the value of the changes (referred to in the notice of contemplated change) and be accompanied by the signed time sheets, invoices and vouchers to enable to proper assessment to be made. The valuation must indicate that additional sums for overhead and profit are included as set out herein.
- 6.2.4 Where changes in the work are to be established by cost and a percentage fee for overhead and profit, the following percentages shall apply:
- (a) The *Contractor* shall be entitled to a mark up for combined overhead and profit of ten percent (10%) on work he performs.
 - (b) *Subcontractors* shall be entitled to a mark up for combined overhead and profit of ten percent (10%) on work he performs.
 - (c) The *Contractor* shall be entitled to a mark up for combined overhead and profit of five percent (5%) on work performed by *Subcontractors*.”

GC 6.5 DELAYS

SC 44. AMEND paragraph 6.5.1 by adding the words “provided that it can be clearly shown that the delay lies on the critical path, the *Contractor’s* forces cannot work efficiently elsewhere on the *Project*, and that the incurred cost is limited to that which could not reasonably have been avoided.” after the word “delay” in the last sentence.

SC 45. DELETE the last sentence of paragraph 6.5.2 and replace with the following:

“6.5.2 For the purposes of this Section a “stop work order” means an order impacting the *Place of the Work* only and does not include a general order preventing work on construction sites generally.”

SC 46. AMEND paragraph 6.5.3.4 by adding the words “lack of financial resources or” immediately following the words “other than”.

SC 47. ADD new paragraphs 6.5.6 and 6.5.7 as follows:

“6.5.6 For clarity in the event of a delay that is not subject to Sections 6.5.1, 6.5.2, or 6.5.3, the costs associated with such delay and of implementing the remedial plan contemplated in Section 5.3.5 shall be at the sole expense of the *Contractor*.”

6.5.7 In no event will relief be granted or recovery be permitted for cumulative claims for delay be permitted. The *Contractor* is required to submit a separate claim in accordance with the *Contract* for each alleged event of delay (except in the event of a continuing delay caused by one event, in which case only one claim need be submitted). In no event will relief for delay include compensation for consequential, indirect or special damages.

6.5.8 If the performance of the *Work* or the performance of any other obligation(s) of a party to this *Contract* is delayed 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 *Force Majeure* event causing the delay, unless the *Contractor* agrees to a shorter extension. Neither party shall be entitled to payment for its costs or reimbursement of its expenses 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 either party to the other for the extension of *Contract Time*.

(a) Notwithstanding the foregoing, the *Owner* may issue a *Change Directive* requiring the *Contractor* to undertake those specific actions identified in the *Change Directive* as the *Contractor* can reasonably and safely initiate to remove or relieve either the *Force Majeure* or its direct or indirect effects on the *Project*, in which case the *Contract Price* may be adjusted in

accordance with GC 6.3. If the *Contractor* fails within the time period specified in the *Change Directive* to take such action, then the *Owner* may, at its sole and absolute discretion and after it has given written notice to the *Contractor*, take some or all of such actions to partially or wholly remove or relieve such *Force Majeure* or its direct or indirect effects, and thereafter require the *Contractor* to resume the performance of the *Work*.”

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

SC 48. AMEND paragraph 7.1.1 by adding to the end of the paragraph the following words: “If a *Performance Bond* has been provided by the *Contractor* guaranteeing faithful performance of the *Work*, the *Owner* shall give written notice to the applicable surety invoking the terms of the bond.”

SC 49. AMEND paragraph 7.1.3.1 by adding the words “and is diligently proceeding with” immediately following the word “commences”.

SC 50. AMEND paragraph 7.1.4.2 by adding the following words to the end of the last sentence: “by written notice to the *Contractor*. If a *Performance Bond* has been provided by the *Contractor*, the *Owner* will provide the applicable surety with a copy of such notice.”

SC 51. ADD the following new clause 7.1.5.5:

“7.1.5.5 invoke the terms of the *Performance Bond* if such *Bond* has been provided under the *Contract*.”

SC 52. ADD the following new paragraphs 7.1.7 and 7.1.8:

“7.1.7 Notwithstanding any other term or condition in this *Contract*, the *Owner* may exercise the right to terminate the *Contract* without cause by giving ten (10) days written notice to the *Contractor*, specifying the date upon which such termination becomes effective.

7.1.8 In the event of termination pursuant to paragraph 7.1.7, the *Owner* shall be entitled to take possession of the *Place of the Work*, the *Work*, and the *Products* and, at the option of the *Owner*, and upon agreement on mutually acceptable rental rates to be paid to the *Contractor*, utilize the Construction Equipment to the extent the *Owner* deems necessary to complete the *Work*, and the *Contractor* shall be paid, within twenty eight (28) days of the date than an application for payment containing the information and documents required of a *Proper Invoice* is received by the *Consultant*, for the following, without duplication, but subject to ARTICLE A-5, PAYMENT and the other requirements in the *Contract Documents* dealing with payment (including the submission of statutory declarations and evidence of compliance with worker’s compensation legislation), as applicable:

- (a) the value proportionate to the *Contract Price*, of the *Contract Price*, of the applicable *Work* performed up to the effective date of termination; plus
- (b) reasonable demobilization costs paid by the *Contractor* which have been pre-approved by the *Consultant* or *Owner*, in writing; plus
- (c) *Subcontractor* and *Supplier* cancellation costs reasonably paid, which have been pre-approved by the *Consultant* in writing, by the *Contractor* as a result of such termination; plus
- (d) ten percent (10%) of *Contractor's* profits for the outstanding *Work* in with the *Contract*.

Except for the amounts referred to in this paragraph 7.1.8, the *Contractor* shall not be entitled to any additional reimbursement, remuneration or damages resulting from the termination in accordance with paragraph 7.1.7, including indirect, consequential, special, incidental or other damages of any nature whatsoever such as, without limitation, loss of opportunity, goodwill, profit, or revenue.

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

SC 53. AMEND paragraph 7.2.2 with the following:

"7.2.2 After the word "*Owner*", add the words "*fifteen (15) Working Days*".' and add the following at the end of the paragraph: "For the purposes of this Section an "*order*" means an order impacting the *Place of the Work* only and does not include a general order preventing work on construction sites generally."

SC 54. AMEND paragraph 7.2.4 by replacing the words "*5 Working Days*" with "*fifteen (15) Working Days*."

SC 55. DELETE from paragraph 7.2.5 the words "including reasonable profit," and add at the end of paragraph 7.2.5 the following:

"7.2.5 Any damages to which the *Contractor* may be entitled to under this section shall exclude any indirect, special, consequential, or punitive damages and no event shall such damages exceed the profit expected by the *Contractor* if it had fulfilled the contract requirements, together with its reasonable out of pocket costs arising as a result of such termination."

SC 56. DELETE paragraphs 7.1.5.1 and 7.1.5.4 in their entirety, and delete and the following words from paragraph 7.1.5.3: "and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to *Work* performed by the *Contractor* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Contract Price*; 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, and".

SC 57. ADD new GC 7.3 as follows:

“GC 7.3 RIGHTS AND OBLIGATIONS IN THE EVENT OF TERMINATION

- 7.3.1 Should the *Owner* terminate the *Contract* pursuant to GC 7.1 or should the *Contractor* terminate the *Contract* pursuant to GC 7.2, the *Owner* shall be entitled to:
- 7.3.1.1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense,
 - 7.3.1.2 withhold or set off against amounts owed to the *Contractor* (if any) a reasonable allowance as determined by the *Consultant*, or by the *Owner* acting reasonably, to cover the cost of corrections to *Work* performed by the *Contractor* that may be required under GC 12.3 –WARRANTY,
 - 7.3.1.3 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor’s Work* under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance withheld, pay the *Contractor* the difference.
- 7.3.2 Should the *Owner* terminate the *Contract* pursuant to GC 7.1 or should the *Contractor* terminate the *Contract* pursuant to GC 7.2, the *Contractor* shall be obligated to:
- 7.3.2.1 leave the *Work* and the *Products* at *Place of the Work* in a safe and secure state as required by the *Owner* and/or governing authorities having jurisdiction and the *Contract Documents*, except to the extent that the *Owner* takes possession of the *Work* and *Products* at the *Place of the Work* prior to the *Contractor’s* demobilization,
 - 7.3.2.2 make commercially reasonable efforts to mitigate the costs of termination (including any costs associated with demobilization and termination of any subcontracts and supply contracts, as applicable, and
 - 7.3.2.2 remain responsible after termination of the *Contract* for the obligations under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Contractor* up to the time of termination.”

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GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

SC 58. ADD the following new paragraphs 8.3.9 to 8.3.16:

- 8.3.9 Within five (5) days of receipt of the notice of arbitration by the responding party under paragraph 8.3.6, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:
- (a) a copy of the notice of arbitration;
 - (b) a copy of supplementary conditions 8.3.9 to 8.3.15 of this *Contract*; and
 - (c) any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.
- 8.3.10 The *Owner* and *Contractor* agree that the *Consultant* may elect, within ten (10) days of receipt of the notice under paragraph 8.3.9, to become a full party to the arbitration under paragraph 8.3.6 if the *Consultant*:
- (a) has a vested or contingent financial interest in the outcome of the arbitration;
 - (b) gives the notice of election to the *Owner* and the *Contractor* before the arbitrator is appointed
 - (c) agrees to be part to the arbitration within the meaning of the rules referred to in paragraph 8.3.6; and
 - (d) agrees to be bound by the arbitral award made in the arbitration.
- 8.3.11 If the *Consultant* is not given the written notice required under paragraph 8.3.9, both the *Owner* and the *Contractor* are stopped from pursuing an action, counter claim or other proceeding or making an application against the *Consultant* arising out of the issues in dispute in the arbitration between the *Owner* and the *Contractor* under paragraph 8.3.6.
- 8.3.12 If an election is made under paragraph 8.3.10, the *Consultant* may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in paragraph 8.3.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the *Consultant* receives a copy of the notice of arbitration.
- 8.3.13 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.3.10 to become a fully party may:
- (a) on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.3.10; and

- (b) make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.3.14 In the event of notice of arbitration given by a consultant to a sub-consultant, the sub-consultant is not entitled to any election with respect to the proceeding as outlined in 8.3.10 and is deemed to be bound by the arbitration proceeding.

8.3.15 The award of an arbitrator shall be final and binding upon the Parties and shall be enforceable by them in any Court of competent jurisdiction.

8.3.16 Adjudication:

- (a) The Construction Dispute Interim Adjudication procedure set forth in Part II.1 of the *Construction Act* applies to all disputes related to the Prompt Payment of Invoices under the *Construction Act* under this *Contract* that may be referred to an adjudication thereunder.
- (b) The *Contractor* agrees to provide the *Owner* with written notice of any adjudication under the *Construction Act* of which the *Contractor* is aware involving the *Contractor* or any worker, *Subcontractor* or *Supplier* of the *Contractor* or any worker, *Subcontractor* or *Supplier* of any of same (whether or not the *Contractor* is also a party to such adjudication), which written notice shall include full particulars of such dispute known to the *Contractor*.
- (c) The *Contractor* shall ensure that its contracts with its *Subcontractors* and *Suppliers* (and their contracts with their subcontractors and suppliers) have a clause comparable to the immediately preceding paragraph, so as to ensure that all parties to the construction supply chain are receiving notice of any adjudications lower down on such supply chain."

GC 9.1 PROTECTION OF WORK AND PROPERTY

SC 59. REPLACE subparagraph 9.1.1.1 with the following:

"9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in GC 3.11 STANDARD OF CARE."

SC 60. ADD the following new paragraphs 9.1.5 to 9.1.21:

- 9.1.5 The *Contractor* shall protect adjacent property and building against damage, by suitable means and approved by *Consultant*, which may occur as a result of the repairs.
- 9.1.6 The *Contractor* shall not close or obstruct nor store materials in roadways, sidewalks or passageways without prior approval from the *Owner*.

- 9.1.7 The *Contractor* shall not interfere with the use of the safe passage to and from the buildings and adjacent public sidewalks and roads.
- 9.1.8 The *Contractor* shall conduct the repair operation in such a manner as to minimize interference with roadways, sidewalks, alleys or passageways.
- 9.1.9 The *Contractor* shall take all precautions and provide all required protection to ensure the safety of the general public and the workmen in accordance with the current edition of the *Occupational Health and Safety Act* and *Regulations for Construction Projects* (Ontario).
- 9.1.10 The *Contractor* shall comply with all Acts, Regulations and Statutes as stipulated by the Ministry of Labour (*Occupational Health and Safety Act* and *Regulations for Construction Projects* and *Window Cleaning* (Ontario) including proper installation of swing stage equipment and associated tieback safety systems. The *Contractor* shall include all costs associated with the above in the submitted bid.
- 9.1.11 The *Contractor* shall take the necessary precautions to keep the dust, dirt and noise to an acceptable level as directed by the *Owner*. The *Contractor* shall also comply with the laws, ordinances, rules and regulations relating to the *Work* in connection with the above.
- 9.1.12 The *Contractor* shall supply and install suitable protection for patio furniture, slabs, lawn, flowerbeds and other landscaped items and furnishings.
- 9.1.13 The *Contractor* shall provide suitable protection for all entrance and exit ways into all buildings, all fresh-air intakes, telephone, hydro and mechanical rooms, elevator shafts and all plumbing against dust, dirt, construction debris, water and fumes.
- 9.1.14 The *Contractor* shall provide protection for all entrances and exit ways, floors, walls and all standing fixtures, against spillage of materials and/or damage during the construction period.
- 9.1.15 The *Contractor* shall provide covered walkways to ensure safe passage to and from the buildings and adjacent public sidewalks and roads at all building entrances and exits. All costs associated with the above shall be included in the submitted bid.
- 9.1.16 The *Contractor* shall not store materials or use equipment in a manner, which would load the surface beyond its design capacity.
- 9.1.17 The *Contractor* shall maintain all exterior openings in the building weather-tight at all times. The *Contractor* shall provide all temporary protection, enclosures, tarpaulins and other materials as may be required to prevent entry of all elements.

- 9.1.18 The *Contractor* shall protect all light fixtures and existing signage from damage.
- 9.1.19 Should the *Work* be closed down for any cause, the *Contractor* shall assume all responsibility for protecting the *Work* and ensuring that it does not pose a hazard to any persons during such period.
- 9.1.20 Due consideration shall be given to fire safety in the building. The work areas must be kept reasonably clean and free from debris which could constitute a fire hazard.
- 9.1.21 Any person not following stipulated safety regulations shall be dismissed.”

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

SC 61. AMEND paragraph 9.2.7.4 and 9.2.8.4 as follows:

9.2.7.4 Substitute the word “*Contractor*” with “*Contractor and the Consultant*”.

9.2.8.4 Substitute the word “*Owner*” with “*Owner and the Consultant*”.

GC 9.4 CONSTRUCTION SAFETY

SC 62. AMEND paragraph 9.4.1 by adding the following words to the end:

“The *Contractor* shall submit to the *Owner* at least fifteen (15) *Working Days* prior to commencement of the *Work* the *Contractor’s* health and safety policies and procedures to be implemented on the *Project*. These policies and procedures must include a process for proactively identifying potential hazards at *the Place of the Work*, a reporting process for accidents and near-misses, and a process for developing and implementing corrections in response to identified potential hazards, accidents and near-misses. To the extent that the *Owner’s* health and safety policies and procedures are more stringent, the *Contractor* shall amend its *Project*-specific health and safety policies and procedures to incorporate the more stringent requirements of the *Owner’s* health and safety policies and procedures.

SC 63. AMEND paragraph 9.4.2 by adding the following words to the end:

“The *Contractor* will take all reasonable steps to ensure that at all times, its *Consultants*, other *Consultants*, *Subcontractors* and *Suppliers*, the *Owner’s* own forces, and other contractors, subcontractors, and suppliers comply with all health and safety precautions and programs established at the *Place of the Work* during the course of the *Project*.

SC 64. DELETE entirely paragraph 9.4.4 and replace with the following:

“9.4.4 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 *Occupational Health and Safety Act* (Ontario), 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*. Without limiting the foregoing, the *Contractor* shall be solely responsible for construction safety in respect of its *Consultants*, other *Consultants*, *Subcontractors* and *Suppliers*, the *Owner's* own forces, and other contractors, subcontractors, and suppliers during the course of the *Project*. Without limiting the generality of the foregoing, the *Contractor* shall comply with the applicable occupational health and safety laws, the applicable health and safety policies and procedures for the *Project*, and any orders, recommendations, and restrictions made by the federal, provincial or municipal governments which relate to occupational health and safety or made in response to the COVID-19. "

SC 65. DELETE entirely paragraph 9.4.5 and replace with the following:

"9.4.5 The *Contractor* shall fully indemnify and hold harmless the *Owner* in respect of any fines, penalties or other costs imposed or assessed on or incurred by the *Owner* (including investigation and defense costs) arising from the *Contractor's* failure (or the failure of those for whom *Contractor* is responsible pursuant to GC 9.4.4) to comply with the applicable occupational health and safety laws, the applicable health and safety policies and procedures for the *Project*, and any orders, recommendations, and restrictions which relate to occupational health and safety or which are made in response to the COVID-19 emergency."

GC 10.1 TAXES AND DUTIES

SC 66. DELETE entirely the paragraph 10.1.2.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

SC 67. AMEND clause 10.2.2 by replacing the word "*Owner*" with "*Contractor*"; replacing the words "except for" with "including"; and adding the following sentence at the end: "The *Owner* will reimburse the *Contractor* for the building permit fee."

GC 10.3 PATENT FEES

SC 68. AMEND paragraph 10.3.1 by adding to the end of the first sentence "and such royalties or fees shall be deemed to have been included in the *Contract Price*."

GC 11.1 INSURANCE

SC 69. DELETE paragraph 11.1 .1 in its entirety and REPLACE with the following:

"11.1.1 Without restricting the generality of GC 2.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the insurance coverages as specified in CCDC 41 – CCDC Insurance Requirements."

SC 70. ADD the following new paragraphs 11.1.9 to 11.1.10:

“11.1.9 The *Contractor* shall submit a certificate of insurance, which states that all requirements of the *Contract* are included in the policy coverage. This certificate must be submitted prior to commencement of the *Work*.

11.1.10 The *Contractor* shall name the *Owner, the Owner’s Representative, Property Manager* and the *Consultant* as additional insured.”

SC 71. ADD the following GC 11.2:

“GC 11.2 CONTRACT SECURITY

11.2.1 The *Contractor* shall promptly provide and pay for a *Performance Bond* in the amount of fifty percent (50%) of the *Contract Price* covering the performance of the *Contract* (from commencement of the *Work* and for an additional period of 2 years from *Ready-for-Takeover*) including the requirements of GC 12.3 WARRANTY.

11.2.2 The *Contractor* shall also promptly provide and pay for a Labour and Materials Payment Bond in the amount of fifty percent (50%) of the *Contract Price*.

11.2.3 If the *Contract Documents* require surety bonds to be provided, such bonds 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*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

11.2.4 Where the *Contract* falls within the purview of bond requirements under section 85.1 of the *Construction Act* (Ontario), the bonding under paragraphs 11.2.1 and 11.2.2 shall be in the prescribed form under the *Construction Act* (Ontario).”

GC 12.1 READY-FOR-TAKEOVER

SC 72. ADD new paragraphs 12.1.1. 9 and 12.1.1.10 as follows:

“12.1.1.9 The cost of completion of the *Project*, including, without limitation, the cost of correction of a known defect or last supply of services and materials, but excluding any landscaping or other exterior work which is incomplete due to the seasonal delays is not more than the lesser of: (a) 1 per cent of the *Contract Price*; and (b) \$5,000.

12.1.1.10 All other requirements as stipulated in the *Contract Documents*.”

SC 73. DELETE paragraph 12.1.2 in its entirety.

GC 12.2 EARLY OCCUPANCY BY THE OWNER

SC 74. AMEND 12.2.3 by adding the following to the beginning of the paragraph: “Unless agreed to by the *Owner* and *Contractor*, each acting reasonably,”.

SC 75. AMEND 12.2.4 by adding the following to the beginning of the paragraph: “Unless agreed to by the *Owner* and *Contractor*, each acting reasonably,”.

GC 12.3 WARRANTY

SC 76. AMEND paragraph 12.3.1, 12.3.4 and 12.3.5 as follows:

12.3.1 Replace “one year from the date when *Ready-for-Takeover* has been attained” with “two (2) years from that *Ready-for-Takeover* has been attained.”

12.3.4 Replace “one year warranty period” with “two (2) year warranty period.”

12.3.5 Replace “one year warranty period” with “two (2) year warranty period.”

SC 77. ADD the following new paragraphs:

“12.3.7 The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work*, services or materials performed or supplied by any subcontractor, supplier or other person in or about the *Work*, are in the name of, and enforceable by, the *Owner*. Until expiry of the relevant warranty rights against the *Contractor*, the *Owner* shall not directly exercise any rights under such warranty, guarantees or other obligation without first notifying the *Contractor* thereof and giving the *Contractor* the opportunity to correct the relevant defect, or cause it to be corrected.

12.3.8 Upon certified completion of any item of *Work* carried under warranty, the warranty period shall re-commence from the date of the completed warranty work for that particular item of *Work*.

12.3.9 The *Contractor* shall begin to remedy defect not later than fifteen (15) days after written notice thereof by the *Consultant* or *Owner* and shall work diligently to complete correction and make good any *Work* damaged as a result of the correction as soon as possible, at *Contractor's* cost.

12.3.10 The *Contractor* shall cause a warranty inspection to be made just prior to the termination of the warranty period to list all outstanding deficiencies to be corrected by the *Contractor* at no cost to the *Owner*. It is understood that the making good of such deficiencies shall include all labour and materials, including the repair or replacement of adjacent materials which are damaged by the work of the repair, and shall specifically include the painting of any new material that is required.

12.3.11 Neither the *Consultant's* final certificate nor payment thereunder shall relieve the *Contractor* from their responsibility hereunder."

GC 13.1 INDEMNIFICATION

SC 78. AMEND paragraph 13.1.1 by adding "and the *Owner's Representative*" after the word "other" in the first sentence.

SC 79. ADD new GC 13.3 as follows:

"GC 13.1 LIENS

13.3.1 If a claim for lien related to the Work under this Contract is registered against title to the Place of the Work, then the Contractor shall subject to paragraph 13.1.5, at its own cost within ten (10) Working Days of becoming aware of such lien, vacate, release or discharge the lien or cause the lien to be vacated, released or discharged. The Contractor shall be entitled to recovery of the costs of vacating, releasing or discharging the lien where such lien is the result of or to the extent the lien arises out of the Owner's failure to pay the Contractor any undisputed amounts owed in accordance with the terms of the Contract.

13.3.2 If the *Contractor* fails to carry out its obligations pursuant to paragraph 13.3.1 within the time permitted therein, the *Owner*, at its sole discretion, shall have the right to vacate, release or discharge the lien and the Contractor shall reimburse the *Owner* for all costs of same, including legal and bonding costs, if any.

13.1.3 If any litigation or other proceeding is commenced with respect to a lien which the *Contractor* was obligated to vacate, release or discharge pursuant to paragraph 13.3.1, then the *Contractor* shall fully defend, indemnify and hold harmless the *Owner* and its agents with respect to any potential or actual liability arising in relation to such litigation or other proceeding.

13.1.4 The *Contractor* shall immediately provide the *Owner* with a copy of any liens or written notice of lien related to the *Work* provided under this *Contract*, of which it becomes aware and copies of any discharges or applicable orders issued in relation to any liens or written notices of liens.

13.1.5 The provisions of GC 13.31 – LIENS do not apply to liens claimed or registered directly by the *Contractor*.

CCDC 41 INSURANCE REQUIREMENTS

SC 80. AMEND paragraph 1 as follows:

"1. General liability insurance in the amount of \$5,000,000 for any one occurrence which shall:

- (i) include a broad form of property damage endorsement and coverage for personal injury, contractual liability, products and completed operations, and \$2,000,000 non-owned automobile;
- (ii) be endorsed to name the *Owner* and *Owner's Representative* (and any other party that the *Owner* may reasonably require) as an additional insured with respect to liability arising out of the operations and services of the *Consultant*, its employees, agents, subconsultants and representatives;
- (iii) constitute primary coverage and not coverage in excess of, or contributory with, any insurance otherwise available to the *Owner*; and
- (iv) provide the certificate holders with thirty (30) days' notice of cancellation.

SC 81. AMEND paragraph 2 as follows:

“2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. 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*.

SC 82. DELETE paragraph 3 in its entirety.

SC 83. DELETE paragraph 4 in its entirety.

SC 84. DELETE paragraph 6 in its entirety.

SC 85. DELETE paragraph 8 in its entirety.

(End of section)