

Appendix D-Form of Agreement

SUPPLEMENTARY CONDITIONS Amendments to CCDC 2 – 2020

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

AGREEMENT BETWEEN OWNER AND CONTRACTOR

ARTICLE A-3 CONTRACT DOCUMENTS

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

- Particulars as set out in Appendix 'C' of the bid solicitation document.
- Submission
- Supplementary Conditions
- Specifications
- Drawings
- Request
- Addendum(s)
- Submission

ARTICLE A-5 PAYMENT

Insert new Article A-5.1 to read as follows:

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with applicable legislation, including the *Construction Act*, the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* for the *Work* when due, subject to:
 - (1) receipt by the City of Proper Invoices;
 - (2) the holdback requirements of the *Construction Act*; and
 - (3) a retention of an amount for a reserve fund as described in GC 5.2.13;
- .2 upon expiry of the lien period after certification of *Substantial Performance of the Work*, pay to the *Contractor* the holdback, less the amount to be retained for the reserve fund referred to in GC 5.2.13; and
- .3 upon issuance of the final certificate of payment for the *Work*, pay to the *Contractor* the unpaid balance of the *Contract Price* relating to the *Work*.

Add new Article A-5.3 to read as follows:

- 5.3 For two (2) years after the *Ready-for-Takeover*, the *Contractor* shall maintain all necessary records to substantiate all charges and payments under the *Contract*. During the term, and for two (2) years after *Ready-for-Takeover*, the *Contractor* shall

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permit and assist the *Owner* in conducting audits of the operations of the *Contractor* to verify (a) and (b) above. The *Owner* shall provide the *Contractor* with at least ten (10) business days prior notice of its requirement for such audit. The *Contractor's* obligations under this paragraph shall survive any termination or expiry of the *Contract*.

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 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*, or to those of its directors, officers, employees, agents, partners, affiliates and volunteers, 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 the *Personal Information Protection and Electronic Documents Act*. The *Contractor* acknowledges that the *Owner* is bound by the provisions of the *Municipal Freedom*

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of Information and Protection of Privacy Act (“MFIPPA”). 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 MFIPPA, or by the rules of any applicable regulatory authority.

- 10.2 Any publicity or publications related to the Contract shall be at the sole discretion of the Owner. The Owner may, in its sole discretion, acknowledge the Work provided by the Contractor in any such publicity or publication. The Contractor shall not make use of its association with the Owner without the prior written consent of the Owner. Without limiting the generality of this paragraph, the Contractor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Owner.

- 10.3 **THE CONTRACTOR ACKNOWLEDGES THAT BREACH OF ANY PROVISIONS OF THIS ARTICLE MAY CAUSE IRREPARABLE HARM TO THE OWNER OR TO ANY THIRD-PARTY TO WHOM THE OWNER OWES A DUTY OF CONFIDENCE, AND THAT THE INJURY TO THE OWNER OR TO ANY THIRD-PARTY MAY BE DIFFICULT TO CALCULATE AND INADEQUATELY COMPENSABLE IN DAMAGES. THE CONTRACTOR AGREES THAT THE OWNER IS ENTITLED TO OBTAIN INJUNCTIVE RELIEF (WITHOUT PROVING ANY DAMAGE SUSTAINED BY IT OR BY ANY THIRD-PARTY) OR ANY OTHER REMEDY AGAINST ANY ACTUAL OR POTENTIAL BREACH OF THE PROVISIONS OF THIS ARTICLE.**

DEFINITIONS

Item 8. **Contract Time:** Add the following: “All time limit requirements set out in the Contract Documents are to be of the essence of the Contract.”

Add the following new definitions:

27. **Addendum** means a document issued by the Owner that revises a Request.
28. **As-Built Drawings.** *As-Built Drawings* means the Drawings and Specifications revised by the Contractor during the Work, showing any and all changes or variations to the Work from the requirements of the Drawings and Specifications.
29. **Confidential Information.** *Confidential Information* means all information of the Owner that is of a confidential nature, including all confidential information in the custody or control of the Owner, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, Confidential Information shall include:
- (i) all data, formulae, preliminary findings, and other material developed in pursuance of the Deliverables;

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- (ii) all new information derived at any time from any such information whether created by the Owner, the Supplier or any third-party;
 - (iii) all information (including Personal Information) that the Owner is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law;
- but shall not include information that:
- (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the Owner or to any third-party;
 - (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence;
 - (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or
 - (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;
30. **Construction Act:** *Construction Act* means the Construction Act, R.S.O. 1990, c. C.30;
31. **Exposed:** *Exposed* means visible by the occupants at completion of the work, unless scheduled, indicated, or specified otherwise. This includes all items on roof areas, mechanical and service rooms, inside of cupboards and the like.”
32. **Force Majeure:** *Force Majeure* means any cause other than bankruptcy or insolvency which prevents the performance by the *Contractor* of any of its obligations under this *Contract* and not caused by its default or active commission or omission and not avoidable by the exercise of reasonable effort or foresight by the *Contractor*, including labour disputes, strikes, lockouts (including lockouts decreed or recommended for its members by a recognized contractors’ association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or directives of any governmental or other public authority, acts of a public enemy, war, riot, sabotage, blockade, embargo, shortage of materials and supplies, lightning, earthquake, storm, flood, or Acts of God.
33. **Make Good:** *Make Good* or *Making Good* means to restore new or existing work that has been rejected by the *Consultant*, damaged, cut, or patched. In addition, *Make Good* or *Making Good* requires the use of materials identical to the original materials, with visible surfaces matching the appearance of the original surfaces in all details, and with no apparent junctions between restored and original surfaces. Where original materials are not available, the *Contractor* shall propose substitute materials for review by the *Consultant* prior to ordering such materials or commencing *Making Good*. *Making Good* may require replacement of affected work in whole or in part.
34. **Personal Information:** *Personal Information* means recorded information about an identifiable individual or that may identify an individual.
35. **Proper Invoice:** *Proper Invoice* means an application for payment that satisfies

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- all the requirements of the Construction Act and the Contract Documents, and that includes all documentation or materials set out in the Contract Documents required in connection with any application for payment.
37. **Request** means the Request for Quotations No., RFQ-2510155 issued by the City for the construction of Connor Building Renovation and Retrofit.
38. **Submission** means all the documents and forms completed and comprising the Contractor's response to the Request.
39. **Total Performance of the Work:** *Total Performance of the Work* means when the entire *Work* has been performed to the requirements of the *Contract Documents* and the *Contract* and has been certified to be complete by the *Consultant*.
40. Wherever the words "reviewed", "approved", "instructed", "required", "directed", "permitted", "inspected", "ordered", or similar words are used it shall be understood that they mean, unless the context provides otherwise, "reviewed by the *Consultant*", "approved by the *Consultant*", "instructed by the *Consultant*", "required by the *Consultant*", "directed by the *Consultant*", "permitted by the *Consultant*", "inspected by the *Consultant*" and "ordered by the *Consultant*".
41. Wherever the words "satisfactory", "submit", or similar words, or phrases are used in the *Contract Documents*, it shall be understood, unless the context provides otherwise, "satisfactory to the *Consultant*", and "submit to the *Consultant*".
42. The words "by others" when used in the *Specifications* or on the *Drawings* will not mean by someone other than the *Contractor*. The only means by which something shown or specified will be indicated as not being in the *Contract* is by the use of the initials "NIC" or the words "not in (the) *Contract*" or "by *Owner*".

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

Add new paragraph 1.1 as follows:

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.

Change paragraph 1.1.4 to read:

The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, discrepancy or omission the *Contractor* may discover. Such review by the *Contractor* shall be undertaken with the standard of care described in paragraph 3.9.1 of the *Contract*. 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*. 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. Omissions from the *Drawings* and/or *Specifications* which do not allow for a complete job, shall be brought to the *Consultant's* attention before signing the

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Contract. Notwithstanding the foregoing, inconsistencies and omissions shall not include lack of reference on the *Drawings* or in the *Specifications* to labour and/or products that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*.

Change paragraph 1.1.5.1 to read:

The order of priority of documents, from highest to lowest, shall be:

- the *Particulars as set out in Appendix 'C' of the bid solicitation document*,;
- the *Agreement* between the Owner and the *Contractor*;
- the *Definitions*
- the *Supplementary Conditions*
- the *General Conditions*
- any *Specifications*
- any *Drawings*
- the *Request*
- the *Submission*

Add new paragraphs 1.1.7.6 and 1.1.7.7 as follows:

- .6 architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction. It shall be understood that the integrity and installation of the engineering consultant's designed systems are to remain with each of the applicable drawing disciplines.
- .7 Amendments to the *Contract* in the form of *Change Orders* or *Change Directives* shall take precedence of the documents or portions thereof amended thereby.

Delete paragraph 1.1.10 and substitute therefore the following:

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

GC 1.3 RIGHTS AND REMEDIES

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 ..."

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GC 1.4 ASSIGNMENT

Delete G.C.1.4.1 and replace with the following:

The *Owner* shall have the right, without the consent of the *Contractor*, to assign the *Contract* or the benefits of the warranty in GC 12.3 and the indemnity in GC13.1 where such assignment is to an entity undertaking the *Project* for the City of Richmond Hill. The *Contractor* may not assign the *Contract* or a portion thereof without the written consent of the *Owner*, and the granting of such consent shall be in the *Owner's* discretion, not to be unreasonably withheld.

GC 2.2 ROLE OF THE CONSULTANT

Change paragraph 2.2.4 to read:

- 2.2.4 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the percentage of the *Work* completed by the *Contractor*.

Add to paragraph 2.2.12:

If in the opinion of the *Contractor*, a *Supplemental Instruction* involves an adjustment in the *Contract Price* or *Contract Time*, the *Contractor* shall within 10 *Workings Days* of receipt of *Supplemental Instruction* advise the *Consultant* in writing accordingly. Failure to provide written notification within the time stipulated shall imply acceptance of *Supplemental Instruction* by the *Contractor*.

Add the following new paragraphs:

- 2.2.19 The *Consultant* will, in all cases, inform the *Contractor* only of any decisions concerning the *Work*, and the *Contractor* will be solely responsible for passing on such decisions to the *Subcontractors* where this applies.
- 2.2.20 Verbal instructions and amendments, regardless of their source, will not be binding to the *Contract*.
- 2.2.21 The *Consultant's* services will be performed solely for the benefit of the *Owner* and no contractor, subcontractor, manufacturer, supplier, fabricator, consultant or other third party shall have any claim against the *Consultant* as a result of the *Owner-Architect Agreement* or the performance or nonperformance of the *Consultant's* services. The *Contractor* shall bring this provision to the attention of the parties with whom it contracts and have them do the same with those with whom they contract.
- 2.2.22 The specifications are apportioned into divisions and sections for convenience but shall be read as a whole and neither such apportionment nor anything else

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contained in the *Contract Documents* places responsibility upon the *Consultant* to settle disputes among the *Subcontractors* in respect thereof.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

Add the following new paragraphs:

- 2.3.8 The *Consultant* will conduct periodic reviews of the *Work* in progress, to determine general conformance with the requirements of the *Contract Documents*. Such reviews, or lack thereof, shall not give rise to any claims by the *Contractor* in connection with construction safety at the *Place of the Work*, the responsibility for which belongs exclusively to the *Contractor*.
- 2.3.9 Should the *Consultant*, their representatives or inspection agencies not review any part of the *Work*, this shall not relieve the *Contractor* from their responsibility to perform the *Work* in accordance with the *Contract Documents*.

GC 2.4 DEFECTIVE WORK

Add new subparagraphs 2.4.1.1 and 2.4.1.2 as follows:

- 2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *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

Add new paragraphs 3.1.3, 3.1.4 and 3.1.5 as follows:

- 3.1.3 The *Contractor* shall be solely responsible for the proper laying out of the whole of the *Work*. The *Contractor* shall check carefully and verify all lines, levels and relevant measurements shown in the *Contract Documents* necessary for the completion of the *Work* and shall employ an experienced local land surveyor, satisfactory to the *Consultant*, to establish and check grades, bench marks, references, elevations, points and lines as from time to time may be required for the purposes of the *Work* or layout of the same, and the *Contractor* shall at every appropriate stage of the *Work* take all necessary steps to have all proper checks and surveys made so as to ensure that the *Work* and all components thereof will be wholly within the boundaries of the site and in the exact position (or respective positions) established for such *Work* and shall assume full responsibility for the correctness of all such lines, levels and measurements, including the location of existing underground equipment and services.

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- 3.1.4 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.
- 3.1.5 The *Contractor* shall possess the necessary technical skills to evaluate all requirements of the *Contract*, and to have included in the *Contract Price* all costs for the proper implementation of these requirements in accordance with the *Contract Documents*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

Add the following to the end of paragraph 3.2.6:

Cutting and remedial work required as a result of uncoordinated work, ill timed work or faulty workmanship shall become the responsibility of the *Contractor* for making good such defective work at no extra cost to the *Contract*.

GC 3.4 CONSTRUCTION SCHEDULE

Change paragraph 3.4.1 to read:

- 3.4.1 The Contractor shall
- .1 prepare and submit to the *Owner* and the *Consultant*, within 2 weeks of *Contract* award, a detailed construction schedule that indicates the timing of the major 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 within the *Contract Time* and in accordance with the *Contract Documents*. The *Contractor* shall employ construction scheduling software, where required by the *Specifications*, that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule. The *Contractor* shall provide the schedule and any successor or revised schedules in both electronic format and paper copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule;
 - .2 include information relating to the dates for submission and return of shop drawings required under GC 3.18 SHOP DRAWINGS, as part of the above requirements.
 - .3 maintain an updated copy of schedules and charts referred to in 3.4.1.1 at the *Place of the Work* at all times.
 - .4 provide the expertise and resources, such resources including labour 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 3.4 –CONSTRUCTION SCHEDULE;”

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- .5 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 3.4 – 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
- .6 if, after applying the expertise and resources required under subparagraph 3.4.1.4, the *Contractor* forms the opinion that the variation or slippage in schedule reported pursuant to subparagraph 3.4.1.5 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.

Add new paragraph 3.4.2:

- 3.4.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.4.1.5, 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 3.5 SUPERVISION

Delete paragraph 3.5.1 in its entirety and replace 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 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.

Add new sentence to paragraph 3.5.2:

Instructions shall be confirmed to the *Contractor* in writing.

Add the following new paragraphs:

- 3.5.3 Prior to commencement of the *Work* on site the *Contractor* shall, confirm to the *Consultant*, the list of names of the supervisor and necessary assistants. The supervisor and necessary assistants must be as listed in the pre-qualification submission from the *Contractor*.
- 3.5.4 The supervisor and necessary assistants shall devote their time exclusively to the *Work* of this *Contract* and shall remain at the *Place of the Work* during working

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hours. The supervisor shall attend site coordination and progress meetings.

3.5.5 Superintendence shall be deemed not satisfactory, if deemed by the *Owner* and the *Consultant*, and changes or additions to superintendence may be demanded, when:

- .1 control, general safety, organization and coordination of the *Work* is not satisfactory;
- .2 there is conduct which jeopardizes the safety and security of the site or the *Owner's* operations; or,
- .3 the quality of the *Work* does not meet the requirements of the *Contract*; or
- .4 the directions given in accordance with the *Contract Documents* are not followed; or
- .5 the progress of the *Work* is behind the agreed schedule.

GC 3.6 SUBCONTRACTORS AND SUPPLIERS

Add new sentence to the end of paragraph 3.6.2 as follows:

The *Contractor* shall not change any of the *Subcontractors* without the prior written approval of the *Owner*. After execution of the *Contract* no portion of the *Work* shall be subcontracted except with the written consent of the *Owner*.

Add the following new paragraph:

- 3.6.7 The *Contractor* shall be responsible for inspecting, directing, and requiring that the *Work* performed and materials supplied by *Subcontractors* conform to the requirements of the *Contract Documents*.

GC 3.7 LABOUR AND PRODUCTS

Change paragraph 3.7.1 to read:

- 3.7.1 The *Contractor* shall maintain good order and discipline among workers engaged on the *Work* and shall not employ or permit to be employed on the *Work* anyone not skilled in the tasks assigned.

Add new paragraphs 3.7.2.1 and 3.7.2.2 as follows:

- 3.7.2.1 Products, services and equipment used and delivered to the *Place of Work* or intended to be used in the carrying out of this *Contract* shall be free and clear and shall be kept free and clear of all liens, charges and encumbrances. In the event of there being a lien, charge or encumbrance or a claim for a lien, charge or encumbrance the *Owner* may retain from the amount otherwise payable to the *Contractor*, an amount sufficient to satisfy and discharge the same."

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- 3.7.2.2 If the *Owner* gives to the *Contractor* written notice of his intention to satisfy and discharge any such lien, charge or encumbrance or a claim for a lien, charge or encumbrance and, within three (3) days of receipt of such notice, the *Contractor* does not show cause, satisfactory to the *Consultant* acting reasonably, why such lien, charge or encumbrance should not be satisfied and discharged, the *Owner* shall be at liberty and authorized to satisfy and discharge the same and charge the costs, including legal fees, thereof to the *Contractor*. The *Contractor* agrees to indemnify and keep indemnified and save harmless the *Owner* from any and all liens, charges and encumbrances arising as a result of the *Contractor's* performance of the *Work* as more particularly defined in GC 13.1 Indemnification.

Delete GC 3.8.3 and replace with the following:

Products provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Government Specifications Board or General Standards Board, National Building Code, Ontario Building Code and all governmental authorities having jurisdiction at the *Place of the Work* unless otherwise required. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

Add new paragraph 3.8.3.1 as follows:

- 3.8.3.1 *Products* brought onto the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said products and materials shall be at the sole risk of the *Contractor*.

Add the following new paragraphs:

- 3.7.4 The foreperson of each *Subcontractor* engaged on the *Work* must be able to speak and understand the English language well enough to comprehend and carry out instructions issued, and to work in complete coordination with other *Subcontractors*.
- 3.7.5 The cost of overtime required beyond the normal *Working Day* to complete individual construction operations of a continuous nature, or work that the *Contractor* elects to perform at overtime rates without the *Owner* requesting it in writing, shall not be chargeable to the *Owner*.
- 3.7.6 The hours of work, the working conditions and the rates of wages shall be in accordance with the local conditions and requirements and the *Contractor* shall not pay less than the minimum wages established by customary standards in the locality of the site for the same or a similar class of work. The *Contractor* shall provide information necessary to confirm compliance with these requirements to the *Owner* on request.
- 3.7.7 The *Contractor* will, at the request of the *Consultant*, remove from the *Place of the*

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Work any person employed on the *Work* who, in the opinion of the *Consultant*, is incompetent or has been conducting himself improperly and the *Contractor* shall not permit a person so removed to remain on the *Place of the Work* or return to the *Place of the Work*.

- 3.7.8 Materials, appliances, equipment and other *Products* are sometimes specified by reference to brand names, proprietary names, trade marks or catalogue number or catalogue designation or symbols. In such cases, the name of a manufacturer, distributor, supplier or dealer is sometimes given to assist the *Contractor* to find a source supplier. This shall not relieve the *Contractor* from its responsibility for finding its own source of supply even if the source named no longer supplies the *Product* specified. If the *Contractor* is unable to obtain the specified *Product*, he shall supply a substitute *Product* of equivalent value and utility to the specified product as approved by the *Consultant* with no extra compensation. Should the *Contractor* be unable to obtain such a substitute *Product* and the *Owner* accepts an inferior *Product*, the *Contract Price* shall be adjusted accordingly as approved by the *Consultant*.
- 3.7.9 The *Contractor* shall not employ any persons on the *Work* whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. Any costs arising from labour disputes, as a result of the employ of any such person by the *Contractor*, its *Subcontractors* or *Suppliers*, will be at the expense of the *Contractor*."
- 3.7.10 The *Contractor* shall co-operate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including co-operation to attempt to avoid work stoppages, trade union jurisdictional disputes and other labour disputes.

Add new General Conditions 3.9 and 3.10:

GC 3.9 PERFORMANCE BY CONTRACTOR

- 3.9.1 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*.
- 3.9.2 The *Contractor* further represents covenants and warrants to the *Owner* that:
- .1 the personnel it assigns to the *Project* are appropriately experienced;

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- .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 3.10 RIGHT OF ENTRY

- 3.10.1 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 relieves the *Contractor* from responsibility to complete the *Contract*.

GC 4.1 CASH ALLOWANCES

Change paragraph 4.1.7:

In line 1 of paragraph 4.1.7, delete "and the *Consultant* shall jointly" and replace with "*shall*".

Add the following new paragraphs:

- 4.1.8 The *Contractor* shall submit to the *Consultant* and the *Owner* as required, before submission of any application for progress pay and final application for payment, copies of invoices and statements from the *Suppliers* furnishing material and equipment purchased under cash allowance in accordance with the applicable section of the specifications..
- 4.1.9 Administration of Cash Allowances:
 - 4.1.9.1 Expenditure of cash allowance items will be authorized in writing.
 - 4.1.9.2 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. When competitive quotations are not required, a complete breakdown into net costs of labour and materials (all trades) is required. The *Consultant* may direct the *Contractor*, as part of the *Work*, to tender work for which payment is made from a cash allowance.
 - 4.1.9.3 The invited bidders for quotes on *Work* under cash allowances shall be acceptable to the *Consultant* and *Owner*. The successful bidder shall then enter into a *Subcontractor* arrangement with the *Contractor*.

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- 4.1.9.4 Purchases from cash allowances must be approved by the *Owner* and authorized by written instructions issued by the *Consultant*. The form and methods of accounting for costs shall be agreed to by the *Consultant* and *Contractor* before proceeding with the purchase. Cash allowance review will be part of the regular site meetings.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

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

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*.

Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PAYMENT

Change paragraph 5.2.2, first line “dated the last day” to read “dated as of the last day”

Add to the end of paragraph 5.2.3 the following:

“less the aggregate of previous payments and holdback percentages”

Change paragraph 5.2.8 to read:

- 5.2.8 Claims for *Products* manufactured but not yet delivered to the *Place of the Work* will not be considered. Claims for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, provided such *Products* are *Project* specific and cannot readily be used elsewhere, may be considered for payment on an individual basis and shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*. No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interest, liens, and other claims of third parties.

Add the following new paragraphs:

- 5.2.10 The *Contractor* shall submit to the *Consultant*, an updated three (3) month cash flow forecast with each application for payment including the first application.
- 5.2.11 The *Contractor* shall submit a current construction schedule and submittal schedule with each application for payment.
- 5.2.12 Any *Products* delivered to the *Place of the Work*

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k but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding the title has passed to the *Owner* pursuant to GC 14.1 OWNERSHIP OF MATERIALS.

- 5.2.13 The schedule of values required by GC 5.2.4 shall provide for the establishment of a reserve fund equivalent to the value of 3% of the work performed. The reserve fund shall secure the Contractor's remaining completion obligations, including provision of any closeout documentation and warranty obligations, and provided the remaining obligations are met, shall be paid to the *Contractor* as part of final payment; partial release shall not be made. This reserve fund shall be in addition to any required construction lien holdback. The funds shall be subject to claims by the *Owner* and others as provided for under the terms of the *Contract Documents*.
- 5.2.14 The *Contractor* shall not claim for any product supplied under a conditional sales contract until the condition has been waived; and the *Consultant* has been notified in writing to that effect.
- 5.2.15 The *Contractor* shall submit with each application for payment after the first a statutory declaration of an officer of the *Contractor* in form satisfactory to the *Consultant* and *Owner* identifying all Subcontractors and Suppliers verifying that all payments due to Subcontractors and Suppliers for wages and salaries for work done and products furnished in connection with the *Work* and in respect of any liability for which the *Owner* has already paid the *Contractor* as a result of previous applications to the end of the month immediately preceding that covered by the current application have been made.

GC 5.3 PAYMENT

Add the following new paragraph:

- 5.3.2 In the event that any construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly due under the *Contract*, and has otherwise complied with its material obligations under the *Contract*, the *Contractor* shall within 10 days of notification by any party, at its own expense, post the security necessary to vacate or discharge such lien, as the case may be. In the event that a lien action is commenced and a Statement of Claim is issued and served, the *Contractor* shall take all reasonable steps to remove the *Owner* from the main action and to indemnify it and hold it harmless in such action, except where the Statement of Claim makes substantial claims against the *Owner* beyond the recovery of holdback under the *Construction Act*.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK

Add the following to the end of paragraph 5.4.6:

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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. In addition to the monies to be held back in accordance with the *Construction Act*, the *Owner* may hold back monies equal to twice the amount of the cost as estimated by the *Consultant* to correct and/or complete the deficiencies from payments to be made following the issuance of the *Certificate of Substantial Performance of the Work*. If the *Contractor* should fail to complete and/or correct such items within a reasonable time not to exceed a maximum of sixty (60) days, the *Owner* may use the monies held back in addition to the monies to be held back in accordance with the *Construction Act* to complete and/or correct such items. If the balance of the *Contract Price* is not sufficient to cover this amount or to complete and/or correct such items without deductions from the holdback monies, the *Owner* may apply sufficient funds from the holdback monies to the extent that the holdback is not required to satisfy lien claims.

Add new paragraphs 5.4.7, 5.4.8, 5.4.9, 5.4.10 and 5.4.11:

- 5.4.7 Prior to submitting its written application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all materials and 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*.
- 5.4.8 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.7, 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*. If the *Contractor* fails to deliver any of the materials required in subparagraphs 5.4.7, the *Consultant* may retain a reasonable amount or, where applicable, the amount specified in the Project Specific Supplementary Conditions from the payment of holdback under General Condition 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK. Should any documents or materials not be delivered in accordance with paragraph 5.4.7 by the earlier of 60 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 this provision 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 In addition and as a condition to the payment of the holdback monies, the *Contractor* shall supply to the *Owner* through the *Consultant* the following:
- a true copy of each *Subcontract* and *Supplier* contract, together with a statutory declaration of the *Contractor* that the copy of the *Subcontract* or

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Supplier contract so submitted is the total contract as between the parties, unamended, and that no other change orders have been issued in connection with the said *Subcontract*;

- (a) a statutory declaration from each *Subcontractor* and *Supplier* confirming that all accounts have been paid by it under its contract except for statutory holdbacks properly retained;
- (b) all warranties as specified for material and labour from each *Supplier* and *Subcontractor* to the *Contractor*, to be assigned to the *Owner*;
- (c) letters of good standing from the Workplace Safety and Insurance Board on behalf of the *Contractor* and each *Subcontractor*;
- (d) a letter from the *Contractor* acknowledging that the work of each *Subcontract* and *Supplier Contract* is totally complete and confirming its full acceptance of responsibility of such work;
- (e) a statutory declaration from the *Contractor* confirming that all accounts have been paid by it under the *Contract* except for statutory holdbacks properly retained; and
- (f) a statement that no written notices of lien have been received by it.

5.4.10 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. Save

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and except any entitlement to a payment pursuant to a determination of an adjudicator made pursuant to an adjudication under Part II.1 of the Construction Act, 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*.

5.4.11 Within 7 calendar days of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall, at the *Contractor's* expense, publish a copy of the certificate in a approved construction media outlets (as that term is defined in the regulations made pursuant to 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.

5.4.12 In addition and as a condition to the payment of the holdback monies, the *Contractor* shall supply to the *Owner* through the *Consultant* the following:

- .1 a true copy of each *Subcontract* and *Supplier* contract, together with a statutory declaration of the *Contractor* that the copy of the Subcontract or Supplier contract so submitted is the total contract as between the parties, unamended, and that no other change orders have been issued in connection with the said *Subcontract*;
- .2 a statutory declaration from each *Subcontractor* and *Supplier* confirming that all accounts have been paid by it under its contract except for statutory holdbacks properly retained;
- .3 all warranties as specified for material and labour from each *Supplier* and *Subcontractor* to the *Contractor*, to be assigned to the *Owner*;
- .4 letters of good standing from the Workplace Safety and Insurance Board on behalf of the *Contractor* and each *Subcontractor*;
- .5 a letter from the *Contractor* acknowledging that the work of each *Subcontract* and *Supplier Contract* is totally complete and confirming its full acceptance of responsibility of such work;
- .6 a statutory declaration from the *Contractor* confirming that all accounts have been paid by it under the *Contract* except for statutory holdbacks properly retained; and

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.7 a statement that no written notices of lien have been received by it.

Delete paragraph 5.5.3.

GC 5.5 FINAL PAYMENT

Delete paragraph 5.5.1 in its entirety and substitute new paragraph 5.5.1:

5.5.1 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 5.4.7. The *Work* shall be deemed not to be performed until all of the aforementioned documents have been delivered.

Change Paragraph 5.5.4, second line: Change “5 calendar days after issuance of a final certificate for payment” to “28 calendar days after receiving the final *Proper Invoice* from the *Contractor*”.

Add the following new paragraphs:

5.5.5 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.

5.5.6 *Contractor* shall comply with the regulations of the Canada Employment Insurance Commission.

5.5.7 As of the date of the final payment or the date payment is made releasing monies withheld in accordance with the lien legislation applicable to the *Place of the Work*, whichever is the earlier, the *Contractor* expressly waives and releases the *Owner* from all claims except those made in writing prior to that date and still unsettled.

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GC 5.6 DEFERRED WORK

Add the following new paragraph:

- 5.6.2 In addition to any rights the *Owner* has pursuant to the lien legislation applicable to the *Place of the Work*, if a lien is registered or an action commenced against the *Owner*, the *Owner* shall have the right to withhold from any money otherwise due to the *Contractor*, the full amount claimed in the lien action plus an additional amount sufficient to satisfy all of the *Owner's* expenses relating to such lien action, including legal and consulting costs. These funds, less expenses incurred, shall be released to the *Contractor* upon the full discharge of all liens and dismissal of all actions against the *Owner*.

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

Add the following new paragraphs:

- 6.1.3 The value of a change shall be determined in one or more of the following methods as directed by the *Consultant*:
- 6.1.3.1 by estimate and acceptance of a lump sum;
- 6.1.3.2 by unit prices established in the *Contract* or subsequently agreed upon unit prices shall include overhead, profit, and other reasonable charges of the *Contractor* and shall be the total cost to the *Owner*. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity; or,
- 6.1.3.3 by actual credits and cost to the *Owner*, determined in accordance with paragraph 6.1.4.
- 6.1.4 Where the value of a change in the work is being set using the actual credits and cost method described under paragraph 6.1.3.3, and where a change in the *Work* involves additions, deletions, or other revisions to the *Work*, the *Contract Price* shall be increased only by the net actual value of the change in the *Work*, including taxes, but excluding *Value Added Taxes*, **plus the following:**
- 6.1.4.1 **Contractor mark-up on its own work: Overhead and Profit: 10%**
- 6.1.4.2 **Contractor mark-up on Subcontractor work: Overhead and Profit: 5%**
- 6.1.4.3 **Subcontractor mark-up on its own work: Overhead and Profit: 10%**
- 6.1.4.4 **If a *Subcontractor* retains another subcontractor (sub-subcontractor), no additional mark-up shall be charged to the *Owner* for the sub-subcontract work.**
- 6.1.5 Costs for the following items shall be considered to be included in the allowance

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for overhead:

- 6.1.5.1 *Contractor's* site and head office expenses
- 6.1.5.2 Wages of project managers, superintendents, assistants, watchpersons and administrative personnel
- 6.1.5.3 Temporary site office, including costs for telephone and facsimile machine
- 6.1.5.4 Small tools (valued less than \$2000)
- 6.1.5.5 Insurance and bonding premiums subject to GC 6.1.12.
- 6.1.5.6 Record drawings (per *Owner's* AutoCAD layering standard.)
- 6.1.5.7 Clean-up and disposal of waste materials
- 6.1.5.8 Overhead and profit may not be charged on changes in the *Work* where there is a net decrease to the *Contract Price*.
- 6.1.6 Labour costs shall be the actual, prevailing rates at the *Place of the Work* paid to the workers, plus statutory charges on labour including statutory workers' insurance, employment insurance, Canada Pension, vacation pay, medical and health benefits.
- 6.1.7 Quotations for changes in the *Work* shall be accompanied by itemized breakdowns together with detailed, substantiating quotations or cost vouchers from *Subcontractors* and *Suppliers*, submitted in a format acceptable to the *Consultant*.
- 6.1.8 Unit and alternative prices included in the *Contract* include supply, installation, *Products*, equipment, services, materials, labour, overhead, profit and taxes, but exclude *Value Added Taxes*.
- 6.1.9 The *Owner*, through the *Consultant*, reserves the right to authorize payment for changes in the *Work* by means of cash allowance disbursement authorizations.
- 6.1.10 When additions, deletions, or other revisions to the *Work* covering related work or substitutions are involved in a change to the *Work*, payment, including overhead and profit on net increases to the *Contract Price* only, shall be calculated on the basis of the net difference to the *Contract Price*, if any, with respect to the change in the *Work*.
- 6.1.11 If any change or deviation in, or omission from the *Work* is made by which the amount of *Work* to be performed is decreased, or if the whole or a portion of the *Work* is dispensed with, no compensation is claimable by the *Contractor* for any loss of anticipated profit in respect thereof.
- 6.1.12 Additional bonding and insurance costs will not be accepted as forming part of the

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cost of change orders. Flow through charges from the Surety and/or insurer to the *Contractor* must be substantiated by the Surety and/or insurer as “materially affecting risk” in accordance with CCDC 21 – Guide to Construction Insurances, paragraph 5.8 “Material” Changes in Risk. Material risk must be defined by the Surety and/or insurer and the definition made available to all named parties of the bonds and insurance policies. If a material risk can be demonstrated and is acceptable to all parties, then the obligee and/or named insured is entitled to receive a new bond and/or insurance policy reflecting the change in the *Contract Price*.

- 6.1.13 The *Contractor* shall submit sufficiently detailed information with each *Change Order* or *Change Directive*, showing effect of changes in the *Work* on *Contract Time*, via critical path methodology.
- 6.1.14 When the *Contractor* submits an invoice from a *Subcontractor* or material supplier as part of its detailed breakdown of the cost of change, the *Contractor* is deemed to represent and warrant to the *Owner* that the amount shown on the invoice is the amount the *Contractor* is liable to pay for the services and materials described on the invoice, net of all discounts, unless the *Contractor* indicates otherwise when submitting its detailed breakdown. When the *Contractor* submits an estimate or quotation from a *Subcontractor* or *Supplier* as part of its detailed breakdown of the estimated cost of a change, the *Contractor* is deemed to represent and warrant to the *Owner* that, subject to any qualifications on the face of the estimate or quotation and any qualifications made by the *Contractor* within the detailed breakdown, that the amount set out in the estimate or quotation is the amount the *Contractor* has agreed to pay should the *Contractor* be authorized to proceed with the change, net of all discounts. Notwithstanding the foregoing, the *Contractor* shall be entitled to take a commercially reasonable early payment discount (if offered) when the *Contractor* pays its *Subcontractor* or *Supplier* prior to receiving payment from the *Owner*.
- 6.1.15 It is intended in all matters referred to above that both the *Owner* and *Contractor* shall act promptly.

GC 6.2 CHANGE ORDER

Add the following new paragraph:

- 6.2.3 The procedures of evaluation including applicable overhead and profit mark-up provisions for *Change Orders* shall be as described under 6.1 CHANGES.

GC 6.3 CHANGE DIRECTIVE

Delete paragraphs 6.3.4 and 6.3.6 and replace with the following:

- 6.3.4 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*. The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined in one of the following methods:

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- 6.3.4.1 Estimate and acceptance in a lump sum;
- 6.3.4.2 Unit prices set out in the *Contract* or subsequently agreed upon;
- 6.3.4.3 Actual cost of expenditures and savings to perform the work attributable to the change plus a fixed or percentage mark-up.
- 6.3.6 In the case of a change in the *Work* to be valued in accordance with method (.1) of paragraph 6.3.4, the *Contractor* shall present to the *Consultant* for approval a detailed estimate of the costs of the *Contractor* and the involved *Subcontractors* including products, labour itemized by man hours, labour burden and the overhead and profit of each of the involved *Subcontractors* shown separately.
- 6.3.6.1 In the case of a change to be valued under methods prescribed in paragraphs 6.3.4.2 and 6.3.4.3, the form of the presentation of costs and methods of measurement shall be agreed to by the *Owner*, through the *Consultant*, and the *Contractor* before proceeding with the change.

Change paragraph 6.3.7 to read:

- 6.3.7 When method prescribed in paragraph 6.3.4.3 is used to determine the value of a change in the *Work*, the *Contractor* shall keep and present, in such form as the *Consultant* may require, an itemized accounting of the actual cost of expenditures and savings together with supporting data. The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the items contained in paragraphs 6.3.7.1 to 6.3.7.19.

Delete subparagraph 6.3.7.1(2) and replace it with:

- (2) carrying out the work, including necessary supervisory services;

Delete subparagraph 6.3.7.1(23) and replace it with

- (3) intentionally left blank.

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

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

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 3.9.1. 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

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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

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

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

Delete GC6.5.2 and replace with the following:

“If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority, and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, resulting in the failure of the *Contractor* to attain *Ready-for-Takeover* by the date stipulated in Article A-1 of the Agreement – THE WORK, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay, but excluding any consequential, indirect or special damages.”

Delete GC6.5.3 and replace with the following:

If the *Contractor* is delayed in the performance of the *Work* by *Force Majeure*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*.

Add the following new paragraphs:

6.5.6 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any suspension or delay of construction regardless of the reason, and the *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* for such care, maintenance and protection from a suspension of construction as a result of a delay described in paragraph 6.5.1 or 6.5.2 or as the result of actions by the *Owner*, but otherwise the costs so incurred shall not be the *Owner's* obligation.

6.5.7 If the *Contractor* is delayed in the execution of the *Work* for any reason other than those for which an extension of the *Contract Time* is permitted under GC6.5 Delays

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or if the *Contractor* does not perform the *Work* substantially in accordance with the agreed progress schedule, the *Contractor* shall take whatever measures are necessary at the *Contractor's* expense to ensure the completion of the *Work* by the *Contract Time*.

6.5.8 Notwithstanding paragraph 6.5.3, the *Contract Time* shall not be extended by reason of weather conditions unless such weather conditions are significantly different from those normally experienced when compared to weather records for previous years.

6.5.9 If the *Owner* is delayed in attaining *Ready-for-Takeover* by the date specified in Article A-1.3 of the Agreement – THE WORK by an action or omission of the *Contractor*, or anyone employed or engaged by the *Contractor* directly or indirectly, contrary to the provisions of the *Contract Documents*, then in addition to any other rights or remedies available to it, the *Owner* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Owner* as the result of such delay and the *Owner* may retain and set-off such reimbursement amounts from progress payments to the *Contractor*.

6.5.10 If the *Owner* is delayed in attaining *Ready-for-Takeover* by the date specified in Article A-1.3 of the Agreement – THE WORK by a stop work order issued by a court or other public authority as a result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then in addition to any other rights or remedies available to it, the *Owner* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Owner* as the result of such delay and the *Owner* may retain and set-off such reimbursement amounts from progress payments to the *Contractor*.

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

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**”

Paragraph 7.1.1, first line – insert after the word “assignment” the words “or a proposal”

Paragraph 7.1.2, second line - insert after the eighth word “degree” the following:

“including failure of the *Contractor* to pay its *Subcontractors*, *Suppliers* or workmen on a timely basis...”

Revise paragraph 7.1.3.1 as follows:

After the word “commences” add the words “and is diligently proceeding

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with.”

Paragraph 7.1.5.3, fourth line - insert after the word “WARRANTY” the following:

“and all other costs incurred by the *Owner* as a result of such termination....”

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.

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- 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*.

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

Delete paragraph 7.2.2 in its entirety.

Delete subparagraph 7.2.3.1 in its entirety.

Delete from subparagraph 7.2.3.4, the words:

", except for General Condition 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER,"

Add to the end of paragraph 7.2.3 the following:

The foregoing defaults in contractual obligations shall not apply to the withholding of payments in accordance with the *General Conditions*, because of the registration of liens against the *Owner's* property, as a result of the execution of the *Work* by the *Contractor*, its *Subcontractors* or *Suppliers*, until such claims and liens are discharged as a result of payment by the *Contractor*.

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 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."

Add the following provision:

- 7.2.6 If the *Contractor* stops the *Work* or terminates the *Contract* as provided in this GC7.2, it shall ensure the *Place of the Work* is left in a secure and safe condition as required by all authorities having jurisdiction and the *Contract Documents*."

GC 8.1 AUTHORITY OF THE CONSULTANT

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

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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 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

Delete paragraphs 8.3.6, 8.3.7, and 8.3.8 in their entirety and substitute new subparagraph 8.3.6:

- 8.3.6 When a dispute has not been resolved through negotiation or mediation, within 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.3.5, either party may give a *Notice in Writing* to the other party and to the *Consultant* inviting the other party to agree to submit the dispute to be finally resolved by arbitration, pursuant to provisions of the *Arbitration Act, 1991*. If the other party wishes to accept the invitation to submit the dispute to arbitration, it shall so indicate by the delivery of a responding *Notice in Writing* within 10 *Working Days* of receipt of the invitation. If, within the required times, no invitation is made or, if made, is not accepted, either party may refer the dispute to the courts or to any other form of dispute resolution, including arbitration, which the parties may agree to use.

Add the following new paragraphs:

- 8.3.7 The cost of arbitration shall be apportioned against the parties hereto or against anyone of them as the Arbitrator may decide, as provided in CCDC 40, except that those costs shall not include counsel fees for any of the parties to the arbitration. Each party shall pay its own counsel fees.
- 8.3.8 Within 5 days of receipt of the agreement to arbitrate by the responding party under paragraph 8.3.6, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:
- 8.3.8.1 A copy of the agreement to arbitrate;
- 8.3.8.2 A copy of Supplementary Conditions 8.3.9 to 8.3.15 of this *Contract*, and;
- 8.3.8.3 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.
- 8.3.9 The *Owner* and the *Contractor* agree that the *Consultant* may elect, within 10 days of receipt of the agreement to arbitrate under paragraph 8.3.8, to become a full party to the arbitration under paragraph 8.3.6 if the *Consultant*:
- 8.3.9.1 Has a vested or contingent financial interest in the outcome of the arbitration
- 8.3.9.2 Gives the notice of election to the *Owner* and the *Contractor* before the Arbitrator is appointed

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- 8.3.9.3 Agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6, and
- 8.3.9.4 Agrees to be bound by the arbitral award made in the arbitration.
- 8.3.10 If the *Consultant* is not given the written agreement to arbitrate required under paragraph 8.3.8, both the *Owner* and the *Contractor* are estopped 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.
- 8.3.11 If an election is made under paragraph 8.3.9, 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 *Owner* issues or receives a copy of the agreement to arbitrate.
- 8.3.12 The Arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.3.9 to become a full party may:
- 8.3.12.1 On application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.3.9, and;
- 8.3.12.2 Make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.
- 8.3.13 The provisions of paragraph 8.3.8 shall apply mutatis mutandis to written notice to be given by the *Consultant* to any sub-consultant.
- 8.3.14 In the event of agreement to arbitrate given by the *Consultant* to a sub consultant, the sub consultant is not entitled to any election with respect to the proceeding as outlined in 8.3.9, and is deemed to be bound by the arbitration proceeding.
- 8.3.15 The *Contractor* agrees to insert provisions into contracts with *Subcontractors* and *Suppliers* requiring dispute resolution in the same manner as required by GC 8.3.

GC 9.1 PROTECTION OF WORK AND PROPERTY

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 3.9.1;

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*

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Documents, or that are inferable from an inspection of the *Place of the Work* exercising the degree of care and skill described in paragraph 3.9.1.

Add the following new paragraphs 9.1.5, 9.1.6 and 9.1.7:

- 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.
- 9.1.6 The *Contractor* shall be responsible for keeping the work free from trespassers and for protection of work and the public from any loss or injury from commencement to completion and acceptance of the work by the *Owner*.
- 9.1.7 The *Contractor* shall use only such staging area as shall be designated for it by the *Owner* on the *Property* and shall keep the balance of the *Owner's* property and abutting properties clear of obstruction and debris.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

Delete GC9.2.4 and substitute the following:

- 9.2.4 Unless the *Contract Documents* expressly provide otherwise, the *Contractor* shall be responsible for taking all necessary steps in accordance with legal requirements and the *Contract Documents* to dispose of, store or otherwise render harmless toxic or hazardous substances or materials encountered at the *Place of Work* in the course of completion of the *Work*.

Delete subparagraph 9.2.7.4 in its entirety.

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

Delete paragraphs 9.4.2 to 9.4.5 and replace with the following new paragraphs 9.4.2 to 9.4.6 :

- 9.4.2 The *Contractor* shall assume the role of the "Constructor" as defined by the *Occupational Health and Safety Act* (Ontario) ("OHSA").
- 9.4.3 The *Contractor* shall provide a copy of the registration filed with a Director under the OHSA called 'Registration of Constructors and Employers Engaged in

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Construction’.

- 9.4.4 The *Contractor* shall hold regularly scheduled safety meetings and provide minutes of the meetings to the *Owner*.
- 9.4.5 The *Owner* has authority to stop the progress of the *Work* whenever in the opinion of the *Owner* such stoppage is necessary to ensure the safety of life, or of the *Work* or of neighbouring property. The *Owner* shall have the right to immediately terminate the *Contract* should the *Contractor* fail to comply with OHSA or other applicable legislation as it applies to health and safety.
- 9.4.6 Notwithstanding the generality of any other provision of the *Contract*, 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 *Occupational Health and Safety Act*, 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.

GC 9.5 MOULD

Add to subparagraph 9.5.2.3 immediately before the comma, the following new words:

"and as a result of the delay"

Delete subparagraph 9.5.3.4 in its entirety.

GC 10.1 TAXES AND DUTIES

Add new paragraphs 10.1.3, 10.1.4, 10.1.5 and 10.1.6 as follows:

- 10.1.3 When an exemption or recovery of government sales taxes, customs duties or excise taxes or *Value Added Taxes* is applicable to the *Contract*, the *Contractor* shall at the request of the *Owner* (or his agent) assist, join in, or make 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 as may be required to implement the foregoing.
- 10.1.4 The *Contractor* is not entitled to any mark-up on account of profit, overhead, or otherwise due to any increase in taxes or duties. Should the cost (as defined in paragraph 6.1.4 of GC 6.1 - Changes) be retroactively reduced by a change in taxes and/or duties, the *Owner* will be entitled to withhold payment to the *Contractor* of a sum equal to the amount of the tax and/or duty reduction.

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- 10.1.5 The *Contractor* shall maintain accurate records tabulating equipment and component costs showing respective taxes and customs duties or excise taxes.
- 10.1.6 Any tax, including, without limiting the generality of the foregoing, any government sales tax, customs duty or excise tax, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to co-operate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* co-operation with the *Owner* in the application for any refund of any taxes, which co-operation shall include, but not be limited to, making or concurring in the making of application for any such refund or exemption and providing to the *Owner* copies or, where required, originals, of records, invoices, purchase orders and other documentation necessary to support such applications for exemptions or refunds. All such refunds shall either be paid to the *Owner* or shall be a credit to the *Owner* against the *Contract Price* in the *Owner's* discretion.

GC 10.2 LAWS, NOTICES, PERMITS AND FEES

Revise paragraph 10.2.2 as follows:

- (a) In the first line, after the words "building permit" add the words "the approval of drawings and specifications required by the applicable Provincial labour legislation,"
- (b) Add to the end the following:

"The *Contractor* shall co-operate and do all things necessary to expedite and obtain required permits and approvals. The *Contractor* shall pay construction damage deposits levied by the municipality in connection with the issue of building permits."

Add to the end of paragraph 10.2.4 the following words:

"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."

GC 10.3 PATENT FEES

Delete paragraph 10.3.2 in its entirety.

GC 10.4 WORKERS' COMPENSATION

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Add the following new paragraphs:

- 10.4.2 “The *Contractor* shall ensure that each *Subcontractor* complies with the workers' compensation legislation at the *Place of the Work*. At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.”
- 10.4.3 “Without limiting the generality of any other provision in the *Contract*, the *Contractor* unconditionally agrees to indemnify and save harmless the *Owner* and *Consultant* from and against all loss, liability, costs, charges, claims, damages, expenses or liens which may arise as a consequence of or result from any failure by the *Contractor* or any *Subcontractor* or other person employed by the *Contractor* to comply fully with the provisions of the *Contract Documents* or which may arise as a consequence of or grow out of any injury, illness or death of any employee of the *Contractor* or any employee of any *Subcontractor* engaged or participating in the performance of the *Work* to be performed under this *Contract*.”

GC 11.1 INSURANCE

Delete paragraphs 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7 and 11.1.8 and substitute new paragraphs 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7 and 11.1.8:

“11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the *Contractor* shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this *Contract*, and for a 24 month period following deemed completion of the *Work* in accordance with GC 5.5.1, insurance satisfactory to the *Owner* with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. The *Contractor* shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this paragraph shall be primary and shall not call into contribution any insurance available to the *Owner* and any indemnified persons.

The *General Contractor* shall require each contractor and subcontractor to obtain and maintain all necessary and appropriate insurance that a prudent person in the business of the contractor or subcontractor would maintain and shall ensure that the *General Contractor* and all Indemnified Parties are named as additional insureds on the subcontractors' insurance policies with respect to any liability arising in the course of performance of the subcontractors' operations and obligations of their deliverables and for the duration of their contracted services.

- (a) **Wrap-up Construction General liability insurance** in respect of the *Project* and all operations of the *Contractor* as outlined in this *Contract* against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the *Contractor*, their respective employees, servants, agents, contractor's, invitees, licensee's,

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or sub-contractors (each an “Indemnified Party”), to the inclusive limit of not less than **TEN Million (\$10,000,000)** Dollars per occurrence, or such other amounts as the *Owner* may in its discretion determine from time to time. Such insurance shall specifically state by its wording or by endorsement that the following coverage is included:

- (i) *The Contractor shall be identified as the named insured and include the Owner, all Indemnified Party(ies), subcontractors, agents, architects, engineers, consultants, planners, project managers as additional insureds under the policy with respect to the operations and obligations of the Contractor and their performance of the Work as outlined in this Contract and any extensions thereof;*
- (ii) Blanket contractual liability, owner’s and contractor’s protective liability, broad form products and completed operations coverage, tenants legal liability, broad form property damage, contingent employer’s liability, and employees as additional insured;
- (iii) **Sudden and accidental pollution liability** (minimum of 120 hours discovery and reporting);
- (iv) **Non-owned automobile Liability** Insurance with a minimum limit of liability of Two Million (\$2,000,000) per occurrence in respect of vehicles not owned by the *Contractor*, that are used or operated on its behalf for the performance of the *Project*;
- (v) **Hoist, crane and Hook liability** coverage in the amount of the value of the equipment being lifted at any one time during the performance of the *Work* and not less than Five Million (\$5,000,000) per occurrence;
- (vi) Includes coverage for the *Project* that contemplate the handling of **Asbestos and PCB replacement**;
- (vii) **No “XCU” coverage exclusion** - provides coverage for property damage and injury related to construction works such as excavation, pile driving, blasting, vibration, shoring, underpinning, raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause, explosion due to mechanical equipment, and underground works;

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- (vii) Unless otherwise approved by the *Owner*, the *Contractor's deductible* or self-insured retention on Commercial General Liability coverages shall not be more than \$100,000.00;
 - (viii) the policy contains a **cross-liability and severability of interests** clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (ix) a **waiver of subrogation** rights which the insurers may have against the *Owner* and any *Indemnified Parties* and against those for whom it is in law responsible.
- (b) **Contractor's Property and Equipment or Installation Floater** All Risks Property insurance coverage on a replacement cost basis in such amounts as required to adequately insure the *Contractor's* and sub-contractors' property, equipment or machinery and other such property in their care, custody and control or used by the *Contractor* and sub-contractors' in the delivery of the *Project* and their operations thereon. The policy shall contain a waiver of rights of subrogation against the *Owner* and any *Indemnified Parties*.
- (c) **Automobile liability insurance** with limits of not less than Five Million (\$5,000,000.00) Dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/leased automobiles of the *Contractor and/or any sub-contractors*. **NOTE: It is the responsibility of the Contractor to obtain evidence of Automobile Insurance as stated above for any and all automobiles owned, and/or leased by contractors or subcontractors and used in the performance of the Work, as outlined in this Contract.**
- (d) **Environmental Impairment liability** insurance covering all operations as described in this Contract including coverage for loss or claims arising from a pollution condition resulting from covered operations. Such policy shall provide coverage in the amount of **Two Million (\$2,000,000.00)** Dollars and shall remain in force throughout the term of this *Contract* and for a period of at least 12 months following the expiry of the Term.
- (e) If the scope of the *Work* involves the rendering of professional services or giving of advice from a recognized professional (examples of recognized professions – architects, engineers, lawyers, certain consultants, insurance

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brokers, physicians, etc.) **Professional Liability Insurance or Errors and Omissions Insurance** in the amount of not less than Two Million (\$2,000,000) Dollars with an aggregate limit Five Million (\$5,000,000) Dollars and shall continue for thirty-six (36) months following completion of *Work*.

- (f) **Broad Form Builders Risk Insurance** which covers the *Place of Work* for the full amount of the *Contract Price*, inclusive of all change orders that increase the project price, plus the full value of any optional features or other options that the Owner elects to order. Such policy shall:
- (i) Provide broad form all risks coverage of direct loss or damage (including vandalism, theft and sinkhole) on a full replacement cost basis;
 - (ii) be in force and be maintained from the commencement date of the *Contract* until **Ready-for-Takeover** has been attained;
 - (iii) apply to all *Products*, labour, equipment and supplies of every nature, the property of the *Owner* or *Contractor* or for which the *Owner* or *Contractor* may have assumed responsibility (whether on site, an alternate site or in transit), that is to be used in or pertaining to site preparation, and the erection, fabrication, construction, reconstruction, re-modeling or repair of any building, structure, other fixture or thing;
 - (iv) include the installation, testing and any subsequent use of machinery and equipment, including boilers, pressure vessels or vessels under vacuum;
 - (v) include damage to the *Work* caused by an accident to or the explosion of any boiler or other pressure vessel or equipment forming part of the *Work*;
 - (vi) include off-site storage, transit and installation risks;
 - (vii) include flood and earthquake insurance;
 - (viii) include coverage for loss of income, extra expense and/or expediting expense if such exposures exist;
 - (ix) be subject to a waiver of coinsurance;
 - (x) include By-Laws and Professional Service Fees Coverage;

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- (xi) include Sewer Back-up Coverage and overland flooding;
- (xii) include Off Premises Service Interruption coverage (24 hour waiting period)
- (xiii) permit use and occupancy of the *Project*, or any part thereof, where such use and occupancy is for the purposes for which the *Project* is intended upon completion;
- (xiv) be endorsed to cover any ownership interest of the *Owner*;
- (xv) unless otherwise approved by the *Owner*, provide for a deductible of not more than \$100,000; and
- (xvi) provide that in the case of a loss or damage, payment shall be made to the *Owner* as their interest may appear. The *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to a reasonable extension of *Contract Time*.
- (xvii) Property Insurance with respect to loss or damage (including fire, theft, burglary, etc.) of the *Contractor's* own property and property in its care, custody and control, including its equipment, tools and stock, used in connection with the *Contract*.

11.1.2 All policies must:

- (a) include the Owner and all Indemnified Party's and sub-contractors as additional insured(s) with respect to the operations and obligations of the Contractor and their performance of the Project as outlined in this Contract – *Note: Automobile and Professional Liability Insurance are exempt from this requirement;*
- (b) contain cross liability and severability of interest provisions, as may be applicable;
- (c) preclude subrogation claims against the *Owner* and any other person insured under the policy; and
- (d) provide that at least 30 days prior written notice (15 days in the case of standard form automobile liability insurance, and 15 days in the event of non-payment of premiums) shall be given to the *Owner* by the insurer

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before the insurer or *Contractor* takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

- 11.1.3 The *Owner* reserves the right to require the *Contractor* to purchase such additional insurance coverage as the *Owner* may reasonably require. The *Owner* reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, Contract value, industry standards, and availability of insurance, as the *Owner* may reasonably require from time to time. Where such a right is exercised by the *Owner*, the *Owner* will compensate the *Contractor* for any resulting increase in applicable insurance premiums only where the *Contractor* can establish to the satisfaction of the *Owner*, acting reasonably, that such increase in applicable insurance premiums for the insurance required pursuant to the *Contract* does not result from the actions or omissions, negligence, claims history or reassessment by the insurer of the insurable risk posed by the *Contractor*.
- 11.1.4 The *Contractor* shall pay all premiums on the policies as they become due provided that the *Owner* may pay premiums as they become due and deduct the amount thereof from monies due from the *Owner* to the *Contractor* should the *Contractor* fail to do so.
- 11.1.5 The *Contractor* shall deposit with the *Owner* such evidence of its insurance policies required under Contract at the time of execution of the Contract and thereafter during the term of the *Contract*, no later than 20 Working Days prior to the renewal date of each applicable policy, a Certificate of Insurance acceptable to the Risk Manager and originally signed by an authorized insurance representative confirming thereon relevant coverage information including but not limited to the Contract name and description, name of insurer, name of insurance broker, name of insured, name of additional insured's as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or at the *Owner's* election, a certified copy of the insurance policy or policies required under this Contract. The *Contractor* shall ensure that the certificate holder is identified on each certificate of insurance as the *Owner* as follows:

Attention:
Procurement Section, Corporate and Financial Services
225 East Beaver Creek Road
Richmond Hill, Ontario, L4B 3P4
File: RFQ-2510155

or at such other address as the *Owner* may advise in writing, and that all certificates, cancellation, nonrenewal or adverse change notices are mailed to that address.

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- 11.1.6 The *Contractor* shall not do or omit to do anything that would impair or invalidate the insurance policies.
- 11.1.7 Delivery to and examination or approval by the *Owner* of any certificates of insurance or policies of insurance or other evidence of insurance does not relieve the *Contractor* of any of its indemnification or insurance obligations under the *Contract*. The *Owner* is not under a duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance, nor to advise the *Contractor* in the event such insurance coverage is not in compliance with the requirements set out in the *Contract*.
- 11.1.8 The *Contractor* shall promptly investigate claims reported to the *Contractor* or sub-contractors by a third party or by the *Owner*. The *Contractor* shall make contact with the claimant within forty-eight (48) hours of the *Contractor's* receipt of notice of a claim. The *Contractor* shall initiate an investigation of the claim immediately upon notice, and advise the claimant by letter of its position regarding resolution of the claim within twenty (20) *Working Days* of the notice. The *Contractor* shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the claimant of the proposed resolution, the *Contractor* agrees to report the claim to its insurer for further review and response to the claimant. Should the *Contractor* fail to follow this procedure, the *Owner* may investigate and resolve such claims, and offset the resultant costs against any monies due to the *Contractor*, from time to time, under the *Contract*.

Add new GC 11.2 CONTRACT SECURITY

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner* a **performance bond, in the form prescribed by the *Construction Act* - Section 006001 of the specifications and in the amount of 75% of the Contract Price, and a labour and materials payment bond, in the form prescribed by the *Construction Act* - of Canadian standard construction document CCDC 222 in the amount of 75% of the Contract Price**, issued by a bonding company acceptable to *Owner* and licensed to issue such instruments in the *Place of the Work*, guaranteeing the faithful performance of the *Contract* in accordance with the *Contract Documents* including the requirements for warranties provided for the GC 12.3 WARRANTY, and the payment of all obligations incurred in the event of the *Contractor's* default, including, but not limited to the following:
- 11.2.1.1 The payment of legal, accounting, architectural, engineering and other *Consultant's* expenses incurred by the *Owner* in determining the extent of *Work* executed and any additional *Work* required as a result of the interruption of the *Work*, and its completion.
- 11.2.1.2 The payment of additional expenses to the *Owner* in the form of security guard services, light, heat, power, loss of use of premises, protection of building envelope and other related costs, payable over the period between the default of the

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Contract and commencement of the *Work* under the terms of this Article, including any associated *Value Added Taxes* including “*Provincial Schedule GST/HST public service bodies rebate*”.

Delete paragraph 11.2.2 in its entirety and substitute new paragraph 11.2.2:

- 11.2.2 The bonds referred to in paragraph 11.2.1 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*.

Add the following new paragraphs:

- 11.2.3 Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the *Owner* for and against costs and expenses (including legal and *Consultant* services and court costs) arising out of or as a consequence of any default of the *Contractor* under this *Contract*.
- 11.2.4 The *Contractor* shall be responsible for notifying the surety company of any changes made to the *Contract* during the course of construction.
- 11.2.5 The premiums for bonds required by the *Contract Documents* are included in the *Contract Price*.
- 11.2.6 Should the *Owner* require additional bonds by the *Contractor* or any of his *Subcontractors*, after the receipt of bids for the *Work*, the *Contract Price* shall be increased by all costs attributable to providing such bonds. The *Contractor* shall promptly provide the *Owner*, through the *Consultant* with any such bonds that may be required.

GC 12.1 READY-FOR-TAKEOVER

Add the following to Section 12.1.1:

- .9 The *Contractor* has delivered all of the following to the *Owner*:
- 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*;
 - .10 as-built drawing

GC 12.3 WARRANTY

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Delete Section 12.3.1 and replace with the following:

Except for extended warranties, the *Contractor* shall perform the *Work* to a quality consistent with the highest standards of construction for comparable projects in the greater Toronto area. The *Contractor* agrees to correct promptly, at its own expense, defects or deficiencies in the *Work* which appear prior to and during the period of one (1) year from the date of Substantial Performance of the *Work* or within such longer period of time specified for certain products or *Work* in the *Contract Documents* except that the *Warranty Period* for any specific part of the *Work* identified by the *Consultant* as not having been completed at the date of *Substantial Performance of the Work* will commence from the date of the *Total Performance of the Work*. The provisions of any special warranties set forth in the *Specifications* are in addition to and not in substitution for the warranties set out in this Article GC12.3.

Add to paragraph 12.3.2 as follows:

“The *Contractor* warrants that the *Work* performed conforms to the requirements of the *Contract Documents*”.

Change paragraph 12.3.6 to read as follows:

“The *Contractor* shall be responsible for obtaining *Product* warranties or guarantees required by the *Contract Documents* to be in excess of one year on behalf of the *Owner*. These *Product* warranties or guarantees shall be issued to the benefit of the *Owner*; such warranties or guarantees shall be properly constituted in a form acceptable to the *Consultant* and the *Contractor* shall submit these to the *Consultant* within 28 days of its application for a Certificate of *Substantial Performance of the Work* or at such other date as may be required by the *Consultant*. The *Contractor* shall be responsible for binding all Subcontractors to the conditions of this Article in respect of the warranty for all *Work* performed by them.”

Add the following new paragraphs:

12.3.7 The *Contractor* shall commence or correct any deficiency within 5 *Working Days* after receiving notice from the *Owner* or *Consultant* or provide a schedule to correct the deficiency that is accepted by the *Owner* or *Consultant*, and complete the work as expeditiously as possible, except that in case the deficiency would prevent maintaining security or keep basic systems essential to ongoing business of the *Owner*, operational as designed, all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 5 *Working Days* of a request made during normal business hours of the *Contractor*, the *Owner* is authorized, regardless of GC 3.1, to carry out necessary repairs or replacements at the *Contractor's* expense and offset the resultant costs against any monies due to the *Contractor*.

12.3.8 All items which are required to be repaired or replaced under the terms of this

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warranty, or any extended warranties required by the contract documents, shall be warranted from the date of completion of the warranty repair or replacement for a period equal to the time remaining on the original warranty under which it was repaired or replaced at the time the *Contractor* was notified of the defect.

- 12.3.9 If any defects are corrected after *Substantial Performance of the Work* the warranty for the *Work*, with reference to *Products* and workmanship in accordance with GC 12.3 WARRANTY, will start from the date when such defects are confirmed corrected by the Consultant.
- 12.3.10 If a designated portion of the *Work* is substantially performed for the *Owner's* benefit, the warranty of that portion of the *Work* will start from the same date when all defects are corrected.

Add the following provisions:

- 12.3.11 Nothing in this *Contract* shall be deemed to restrict any liability of the *Contractor* arising out of any law in force.
- 12.3.12 Neither test results nor selection or approval by the *Owner* or the *Consultant* of testing entities nor any other thing in this Article shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the *Contract Documents*."
- 12.3.13 To the extent that they are issued to the benefit of the Contractor, the *Contractor* shall assign to the *Owner* 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*, with the consent of the other party thereto where required by law or by the terms of the contract or engagement. Such assignment shall be an addition to and without detracting from the warranty rights of the *Owner* under the provisions of the *Contract Documents*. Until expiry of the relevant warranty rights against the *Contractor*, the *Owner* shall hold the warranties, guarantees, and other obligations of the third parties and the *Contractor*, and 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.

GC 13.1 INDEMNIFICATION

GC 13.1 INDEMNIFICATION

Delete GC 13.1 INDEMNIFICATION, including paragraphs 13.1.1, 13.1.2, 13.1.3 and 13.1.4 in their entirety and substitute with GC 13.1 INDEMNIFICATION AND CLAIMS HANDLING, including new paragraphs 13.1.1, 13.1.2, 13.1.3 and 13.1.4:

"GC 13.1 INDEMNIFICATION AND CLAIMS HANDLING

- 13.1.1 The *Contractor* shall indemnify, defend and hold harmless the *Owner*, the *Consultant*, and all contractors and sub-contractors, the *Regional Municipality of York* and their respective directors, officers, council members, partners, agents

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and employees from and against all claims, demands, losses, costs (including all legal costs), damages, actions, suits or proceedings that arise directly or indirectly out of, or are attributable to, the *Contractors'* performance of, or failure to perform, the *Contract* or out of the condition of the *Work*, the *Place of the Work*, adjoining lands or highways used in connection with the performance of the *Work*, including any act or omission of the *Contractor* or its agents, any *Subcontractors*, employees, workers or other persons for whom the *Contractor* is in law responsible. This indemnification shall include any legal costs incurred by the *Owner* on a substantial indemnity basis, including those incurred to defend any criminal or quasi-criminal prosecutions against the *Owner* resulting from the actions of the *Contractor*.

13.1.2 The *Owner* shall respond to, and deal with, all first and third-party claims in its standard manner of dealing with such claims.

13.1.3 The *Contractor* shall not admit to, or advise any third-party claimant respecting responsibility for any claims, but shall merely direct such claimants to the *Owner* for investigation.

Add new paragraph 13.1.4:

13.1.4 The *Owner* may, at its sole discretion, withhold funds in the amount of any monies owing to the *Owner* by the *Contractor* under 12.1 from monies owing to the *Contractor* by the *Owner* under this *Contract* or any other contract between the *Owner* and the *Contractor*.

Delete GC13.2, WAIVER OF CLAIMS, in its entirety and substitute the following:

GC13.2 Intentionally left blank

Add new PART 14 as follows:

PART 14 OTHER PROVISIONS

GC 14.1 OWNERSHIP OF MATERIALS

14.1.1 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 14.2 CONSTRUCTION LIENS

14.2.1 In the event that a claim for lien is registered against the *Project* 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 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and

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- .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

- 14.2.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 14.2.1, the *Owner* may fulfil those requirements without *Notice in Writing* to the *Contractor* and 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 discharging or vacating the claim for lien or certificate of action and defending the 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.

GC 14.3 CONTRACTOR DISCHARGE OF LIABILITIES

- 14.3.1 In addition to the obligations assumed by the *Contractor* pursuant to General Condition 3.6 – SUBCONTRACTORS AND SUPPLIERS, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* 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 14.4 RECORDS/DAILY REPORTS/DAILY LOGS

- 14.4.1 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 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 hereunder for any part of the *Work*.

END OF SECTION