Update: October 8, 2023

SUPPLEMENTARY CONDITIONS TO THE CCDC2-2020
STIPULATED PRICE CONTRACT

These Supplementary Conditions (SCs) form part of the *Contract Documents* and supplement and amend the Articles, Definitions and General Conditions of the Contract.

Where any of the provisions are supplemented or amended hereinafter, the unaffected provisions shall be considered as added thereto. Where provisions have been replaced, the new provision will be considered as superseding the affected provisions thereof.

If any paragraph or provision of the Contract is held illegal or unenforceable or is otherwise stricken, then any and all remaining paragraphs of the Contract shall remain valid and binding upon the parties. If any covenant set forth herein is found to be illegal or unenforceable, it is the intention of the parties that such covenant shall not thereby be terminated, but shall be deemed amended to the extent necessary to render it valid and enforceable.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC1. THE WORK

SC1.1 Add: "and attain *Ready-for-Takeover* by the 6 day of August in the year 2027," immediately before the period in **paragraph 1.3**.

SC2. AGREEMENT AND AMENDMENTS (Article A-2)

SC2.1 Add the following at the end of **paragraph 2.2**: "For an amendment to be effective and binding, it must be in writing and signed or approved by the proper signing authorities of the parties."

SC3. PAYMENT (Article A-5)

SC3.1 Delete **paragraph 5.2** and replace with the following:

".1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by adjudication, arbitration or court, simple interest at the following rates on such unpaid amounts shall also become due and payable until payment is made:

(1) for payments of the *Contract Price* and for any changes, the minimum rate required under the *Construction Act*; and

(2) for all other payments 1% per annum above the prime rate, as it may change from time to time, quoted by Royal Bank of Canada for Canadian Dollar prime business loans in Canada.

.2 In the case of settlement of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, any interest shall be paid at the rate and in the manner prescribed in paragraph A-5.2.1 or paid in accordance with the terms of the settlement or other resolution of the claim as applicable."

SC4. RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING (Article A-6)

SC4.1 Add the following at the end of **paragraph 6.2**:

"6.2 Despite paragraphs 6.1 to 6.5 of this Article A-6 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING, a *Notice in Writing* sent by electronic communication shall not be effectively given unless actually received, and further provided that all applications for payment and all notices and communications relating to adjudication will also be sent to the *Owner* by electronic mail to "construction@wlu.ca" with a copy to the *Consultant*, and with the *Project* name and number in the subject line."

SC5. SUCCESSION (Article A-8)

SC5.1 In **paragraph 8.1**, immediately before the word "assigns" in the second line, add the word "permitted".

SC6. STIPULATED PERSONNEL (Article A-9)

SC6.1 Add the following as **Article A-9 – STIPULATED PERSONNEL**:

"9.1 The following personnel (collectively "***Key Personnel***" and each a "***Key Person***") of the *Contractor*:

Role / position:	**Name:**
Superintendent (s)	
Project Manager(s)	

shall not be changed without the prior written consent of the *Owner*, which consent shall not be unreasonably withheld. The *Contractor* shall provide the *Owner* with advance notice of any proposed change, and shall endeavor to provide such notice as soon as reasonably possible. Such notice shall include an explanation and reason for the request and the resumes of professional education and experience for candidates proposed as replacements.

9.2 If the *Contractor* removes or reassigns any *Key Person* in breach of this Article A-9, then without prejudice to the *Owner*'s consent rights in paragraph 9.1 of Article A-9, the *Contractor* shall pay liquidated damages of 5 % of the *Key Person*'s gross annual salary or times the *Key Person*'s hourly/weekly rate] per occurrence ("***Key Personnel Liquidated Damages***") by direct payment to the *Owner* or set off against future invoices.

9.3 The *Contractor* agrees that the *Key Personnel Liquidated Damages* reflect a genuine pre-estimate of the loss that may be suffered by the *Owner* for the removal or replacement of any *Key Personnel*, and do not constitute a penalty. If the *Contractor*'s obligation to pay *Key Personnel Liquidated Damages* is, or becomes, void or unenforceable either in whole or in part for any reason, then the *Owner* will, to the extent of the voidness or unenforceability, be entitled to claim unliquidated damages at law in connection with the *Contractor*'s removal or replacement of any *Key Personnel* in breach of this Article A-9."

DEFINITIONS

SC7. DEFINITIONS

SC7.1 The following definitions are modified or replaced, as set out below:

Subcontractor

The definition of "*Subcontractor*" is deleted and the following is substituted therefor:

"Subcontractor means any person or entity having a contract with the *Contractor* or another subcontractor to perform a part or parts of the *Work* at the *Place of the Work*."

Supplier

The definition of "*Supplier*" is deleted and the following is substituted therefor:

Supplier means any person or entity have a contract with the *Contractor* or another subcontractor or supplier to supply *Products*."

SC7.2 The following definitions are added:

"***Adjudicable Dispute***
Adjudicable Dispute means any dispute or difference that is adjudicable under the *Construction Act*.

Construction Act
Construction Act refers to the *Construction Act*, R.S.O. 1990, C. 30, as amended from time to time. The *Construction Act* is the lien legislation applicable to the *Place of the Work*, for the purpose of the *Contract*.

Construction Holdback
Construction Holdback refers to the holdback retained by the *Owner* under the *Construction Act* as provided for in the *Contract*.

OHSA
OHSA refers to the *Occupational Health and Safety Act*, R.S.O. 1990, C. O.1, as amended from time to time.

Proper Invoice
Proper Invoice means an application for payment containing the information and documents set out in Schedule A – Proper Invoice.

Statutory Declaration
Statutory Declaration means the statutory declaration in the form of a CCDC 9A or such other form of statutory declaration indicated in the procurement documents issued by the *Owner* for this *Contract* or required in this *Contract*.

Submittals
Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor*, including but not limited to:

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

Warranty Holdback
Warranty Holdback refers to the holdback retained by the *Owner* under paragraph 12.3.10 of the General Conditions of the *Contract*.

WSIB
WSIB refers to the Ontario Workplace Safety and Insurance Board."

GENERAL CONDITIONS

SC8. CONTRACT DOCUMENTS (GC 1.1)

SC8.1 Delete paragraph 1.1.3 in its entirety, and replace with the following:

"1.1.3 The *Contractor*:

.1 shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall promptly report the matter to the *Owner* and the *Consultant*, and the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

.2 shall comply with the standard of care described in paragraph 1.1.3.1 in its review of the *Contract Documents*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered."

.3 notwithstanding paragraphs 1.1.3.1 and 1.1.3.2, represents and agrees that it has examined all of the *Contract Documents* to fully acquaint itself with the complete scope and requirements of the *Work* prior to the execution of the *Contract* and that no claim for a change in the *Work* will be accepted as a result of failure of the *Contractor* to do so."

SC8.2 Delete **paragraph 1.1.5.1** in its entirety, and replace with the following:

"the order of priority of documents, from highest to lowest, shall be
- these Supplementary Conditions,
- the Agreement between the *Owner* and the *Contractor*,
- the Definitions,
- the General Conditions,
- Division 1 of the *Specifications,*
- Division 2 through to the end of the Technical *Specifications,*
- material and finishing schedules,
- the *Drawings.*"

SC8.3 Add as a new first sentence to **paragraph 1.1.10**, before the existing sentences:

"The *Owner* shall, whether itself or through the *Consultant,* furnish to the *Contractor* no hard copies of the *Contract Documents*, exclusive of those required by jurisdictional authorities and the executed *Contract Documents*. The *Owner* will make available electronic files in pdf format for the *Contractor* to replicate as required to carry out the *Work*."

SC9. ASSIGNMENT (GC 1.4)

SC9.1 In **paragraph 1.4.1**, delete the words ", which consent shall not be unreasonably withheld".

SC9.2 Add the following as **paragraph 1.4.2**:

"1.4.2 Notwithstanding paragraph 1.4.1, the *Contractor* hereby consents to the assignment of the *Contract* by the *Owner* as collateral security for any financing arranged by the *Owner* relating to the *Project,* and the *Contractor* agrees to execute any consent document reasonably requested by the *Owner* or its lender therefor."

SC10. CONFIDENTIALITY (GC 1.5)

SC10.1 Add the following **GC 1.5**:

"**GC 1.5 – CONFIDENTIALITY**

1.5.1 The *Owner* and the *Contractor* shall keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of the *Project,* the *Work* or the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose such matters, except in strict confidence, to its professional advisors, and, in respect of the *Contractor*, as is necessary to perform the *Work*.

1.5.2 The matters that are subject to the confidentiality requirement of the GC 1.5 – CONFIDENTIALITY shall not include information that: (i) has become generally available to the public other than as a result of a disclosure by the other party or any of its representatives; (ii) was available to the other party or its representatives on a non-confidential basis before the date of this *Contract*; or (iii) becomes available to the other party or its representatives on a non-confidential basis from a Person other than the first-mentioned party or any of its representatives who is not, to the knowledge of such other party or its representatives, otherwise bound by confidentiality obligations to such first-mentioned party in respect of such information or otherwise prohibited from transmitting the information to the other party or its representatives."

SC11. DEFECTIVE WORK (GC 2.4)

SC11.1 In **paragraph 2.4.3**, delete "the difference in value between the *Work* as performed and that called for by the *Contract Documents*", and replace with "the value of such work as is necessary to correct any defective *Work* or non-compliance with the *Contract Documents*".

SC11.2 Add the following as **paragraphs 2.4.4 and 2.4.5**:

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

2.5.5 The *Contractor* shall prioritize the correction of any defective *Work* which adversely affects the day to day operations of the *Owner*."

SC12. CONTROL OF THE WORK (GC 3.1)

SC12.1 Add the following **paragraphs 3.1.3 to 3.1.7**:

"3.1.3 Time is of the essence in the *Contractor's* performance of this *Contract*. The *Contractor* shall at all times proceed with the *Work* diligently and in an orderly fashion so as to ensure that *Ready-for-Takeover* is attained by the date set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.

3.1.4 The *Contractor* shall keep the *Owner* informed of the progress of the Work. The *Contractor* shall at all times perform the *Work* in accordance with the construction schedule.

3.1.5 The *Contractor* is solely responsible for the quality of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.

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

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

SC13. CONSTRUCTION BY OWNER OR OTHER CONTRACTORS (GC 3.2)

SC13.1 In **paragraph 3.2.3.4**, delete the word "promptly". Also in **paragraph 3.2.3.4**, delete "prior to proceeding with that portion of the *Work*." and replace with "within 5 *Working Days* of discovery of such apparent deficiency and prior to proceeding with that portion of the *Work*. Failure by the *Contractor* to so report shall operate as an irrevocable waiver of any claims against the *Owner* by reason of the deficiencies in the *Work* of other *Contractor's* or *Owner's* own forces."

SC14. CONSTRUCTION SCHEDULE (GC 3.4)

SC14.1 Delete **paragraph 3.4.1.1** and replace with the following:

".1 prepare and submit to the *Owner* and the *Consultant* within 7 days after award of the *Contract*, a construction schedule that complies with the requirements in **paragraph 3.4.2** of this GC 3.4;"

SC14.2 Add the following as **paragraph 3.4.2:**

"3.4.2 The construction schedule shall, at a minimum, indicate the timing of the major activities of the *Work* and provide sufficient detail of the critical events and their interrelationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*. Without limiting the generality of this GC 3.4.2, the construction schedule, and all updates to the construction schedule, shall:.1 represent the *Contractor*'s best judgment as to how it shall complete the *Work* in compliance with the *Contract Time* and any interim milestone dates specified in the *Contract Documents*;

.2 be prepared using Microsoft Pr(, or other software as approved by the *Owner*, and be submitted in both native electronic format and hard copy;

.3 reflect logical sequencing and relationships between activities with an achievable duration for each activity, and clearly identify the uninterrupted critical path from commencement of the *Work* through to achievement of *Ready-for-Takeover*;

.4 for each activity, clearly show:

(a) the duration, early/late start dates, early/late finish dates and available float;

(b) the activity number, activity description and responsible party (the *Contractor*, applicable *Subcontractor* or *Supplier*, or where applicable the *Owner* or *Consultant*);

(c) where applicable, cost values, quantities and labour resources;

.5 be prepared and updated in collaboration with, and supported by, all key *Subcontractors* and *Suppliers* whose activities affect the critical path for achieving *Ready-for-Takeover* within the *Contract Time*; and

SC15. .6 include a separate narrative with lists of assumptions and exclusions.SUPERVISION (GC 3.5)

SC15.1 Add the following to the end of **paragraph 3.5.2**: "If the supervisor is changed, any replacement supervisor must first be approved by the *Owner*."

SC15.2 Add the following as **paragraphs 3.5.3 and 3.5.4:**

"3.5.3 The *Owner*, acting reasonably, shall have the right to order the *Contractor* to remove from the *Project* any representative or employee of the *Contractor*, *Subcontractors* or *Suppliers* who, in the opinion of the *Owner*, are a detriment to the *Project*.

3.5.4 The appointed representative 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 hours."

SC16. SUBCONTRACTORS AND SUPPLIERS (GC 3.6)

SC16.1 Add the following to the end of **paragraph 3.6.2**:

"The *Contractor* shall not be entitled to change from the proposed *Subcontractors* and *Suppliers* or to change any specified *Product* or system without the prior written consent of the *Owner,* acting reasonably. The selection of *Subcontractors* and *Suppliers* for the *Work* or parts thereof is further subject to any stipulation made by the *Owner* or the *Consultant*, or agreed upon by the *Owner* and the *Contractor*, regarding *Subcontractors* or *Suppliers*, during the bidding process or leading up to the *Contract*. The *Contractor* shall not be entitled to change from the proposed *Subcontractor* and *Suppliers* or to change any specified *Product*

or system without the prior written consent of the *Owner*. If an approved change results in savings to the *Contract Price*, such savings shall be credited to the *Owner*."

SC16.2 Add the following as **paragraph 3.6.7**:

"3.6.7 In the interpretation of the *Contract*, the terms and conditions of the *Contract* relative to the *Contractor* will extend and apply to the *Subcontractors* and *Suppliers*. The *Contractor* shall ensure compliance by the *Subcontractors* and *Suppliers* with the terms and conditions of this *Contract* and performance by the *Subcontractors* and *Suppliers* in accordance with the requirement of the *Contract*. Any failure, breach or default on the part of a *Subcontractor* or *Supplier* shall be treated as and shall constitute failure, breach or default by the *Contractor* under the *Contract*."

SC17. SHOP DRAWINGS (GC 3.8)

SC17.1 Delete the title of **GC 3.8**, and replace with the following: **"GC 3.8 SHOP DRAWINGS AND OTHER SUBMITTALS"**

SC17.2 Add the phrase "and *Submittals*" after the phrase "*Shop Drawings*" in **paragraphs 3.8.1, 3.8.2, 3.8.3, 3.8.5** (and "or *Submittal*" after "*Shop Drawing*" on the second line), **3.8.6 and 3.8.7**.

SC17.3 Add the following to the end of **paragraph 3.8.5**:

"If the *Shop Drawings* deviate in any manner from the requirements for the *Work* as set out in *Contract Documents,* the *Contractor* shall advise the *Consultant* of same in writing, in a communication separate from the *Shop Drawings* themselves, at the time of submission of the shop drawings, stating in detail how, where and why the *Shop Drawings* and any associated or related submissions differ from the requirements for the *Work* established by the *Contract Documents* and seeking written authorization from the *Owner* and *Consultant* for such deviation. The mere submission of *Shop Drawings* does not constitute notice of a proposed deviation from the *Contract* requirements. In the absence of such express notice, the *Owner* and *Consultant* are entitled to assume that the *Shop Drawings* comply strictly with the requirements for the *Work* as set out in the *Contract Documents*."

SC17.4 In **paragraph 3.10.7**, delete the words "with reasonable promptness so as to cause no delay in the performance of the *Work*" and replace with "within 10 days, or 15 days for multi-consultant review".

SC18. DOCUMENTS AT THE SITE (GC 3.9)

SC18.1 Add the following as **GC 3.9**:

"**GC 3.9 DOCUMENTS AT THE SITE**

"3.9.1 The *Contractor* shall keep one copy of current *Construction Documents*, *Submittals*, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

3.9.2 The *Contractor* shall keep a daily log of the *Work* for review by the *Consultant* and the *Owner*, which daily log shall include the following information:

.1 the date;

.2 the weather conditions at the *Place of the Work*;

.3 the identity of the employees of the *Contractor* present at the *Place of the Work*; and

.4 the identity of the *Subcontractors* and the respective numbers of their workers at the *Place of the Work*.

3.9.3 The *Contractor* is responsible to supply the *Consultant* with a complete and accurate set of as-built drawings, no later than two weeks following *Ready-for-Takeover*. The *Contractor* shall maintain,

on site, at all times, a complete set of drawings solely dedicated for this purpose, and shall ensure that such set is annotated on a regular basis to record all changes and amendments made to all aspects of the works, including architectural, landscape, structural, mechanical (plumbing, HVAC and fire protection systems), electrical, and civil. The as-built drawings will be by the *Contractor* and by the *Subcontractor* involved in the work described by the particular drawing. The as-built drawings shall provide complete and accurate information to permit the *Consultant* to prepare the official set of record drawings for the *Project*."

SC19. USE OF THE WORK (GC 3.10)

SC19.1 Add the following as **GC 3.10 and GC 3.11**:

"**GC 3.10 USE OF THE WORK**

3.10.1 The *Owner* shall be entitled to take early possession of and use portions of the *Work* prior to *Ready-for-Takeover.* Such taking possession or use of the *Work* or part thereof shall not be construed as acceptance or completion of the *Work,* or release of the *Contractor's* obligations under the *Contract Documents* (including its responsibilities as constructor for health and safety)."

GC 3.11 CLEANUP

"3.11.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.

3.11.2 Should the *Contractor* fail to perform ongoing or final cleanup when required by the *Owner,* the *Owner* may have the cleanup performed by whatever means may be expedient and all associated costs will be charged to the *Contractor,* and the *Owner* may deduct and set off such costs against amounts otherwise owed or payable to the *Contractor.*"

SC20. CASH ALLOWANCES (GC 4.1)

SC20.1 In **paragraph 4.1.5**, after the words "by *Change Order*", add "or *Change Directive*".

SC20.2 Add the following as **paragraph 4.1.8**:

"4.1.8 The cash allowances, if any, are for the *Owner's* use, at the *Owner's* discretion. The *Contractor* shall account to the *Owner* for any cash or other discounts, rebates, or other consideration, reduction or adjustments, in connection with the costs related to cash allowances. The *Contractor* shall assist the *Owner* and the *Consultant* and will act for and in the best interests of the *Owner,* provide the services needed to elicit bids, quotes and proposals from any prospective *Subcontractor* or *Supplier*, in connection with the subject matter of the cash allowances."

SC21. CONTINGENCY ALLOWANCE (GC 4.2)

SC21.1 In **paragraph 4.2.3**, add, at the beginning "Subject to paragraph 4.2.2 of GC 4.2 – CONTINGENCY ALLOWANCE,".

SC21.2 In **paragraph 4.2.4**, after the words "by *Change Order*" add "or *Change Directive*", and, at the end of **paragraph 4.2.4**, add the following: "The contingency allowance, if any, is for the *Owner*'s use, at the *Owner*'s discretion. If the aggregate of the amounts of the contingency allowance is not fully utilized, then the *Contract Price* shall be adjusted (i.e. reduced) accordingly. Such un-utilized portions of the contingency allowance will be retained by the *Owner*."

SC22. FINANCING INFORMATION REQUIRED OF THE OWNER (GC 5.1)

SC22.1 Delete **GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER** in its entirety and replace it with the following:

"**GC 5.1 – ESTIMATES**

5.1.1 On the 25th day of each month, the *Contractor* will deliver to the *Consultant* a draft of the *Contractor*'s proposed application for payment for all of the *Work* performed by the *Contractor* in that month, including an estimate of the *Work* to be performed and *Products* to be delivered at the date of such application for payment but before the end of that month, in order to facilitate and expedite payments under GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.8 – FINAL PAYMENT FOR THE WORK. Such draft application for payment will include all of the information and documents required for a *Proper Invoice*.

5.1.2 The *Contractor* shall review with the *Consultant* and the *Owner*, at a scheduled time, the percentage of *Work* completed for each item indicated in the Schedule of Values. This procedure shall be complied with for each application for payment prior to submitting the formal application for payment under paragraph 5.2.1.

5.1.3 Nothing in GC 5.1 – ESTIMATES is intended to condition, pre-condition, prevent or delay the *Contractor*'s right to submit its applications for payment in accordance with this *Contract* and the *Construction Act*."

SC23. APPLICATIONS FOR PROGRESS PAYMENT (GC 5.2)

SC23.1 Delete **paragraphs 5.2.1 and 5.2.2** and replace with the following:

"5.2.1 Notwithstanding paragraph 5.1.1, The *Contractor* shall submit its applications for payment simultaneously to the *Consultant* and the *Owner* monthly as the *Work* progresses at least one day after the end of the month to which the application for payment relates, and not more than 180 days after, the end of the month to which the application for payment relates. Within 10 days following the *Contractor*'s application for payment, the *Contractor* shall additionally submit to the *Consultant* and the *Owner* a construction progress schedule and narrative as part of the application for payment.

5.2.2 The *Contractor* shall ensure that each application for payment for *Work* complies with the requirements set out in this *Contract*, and will include as part of it application for payment of all the documents and information required in this Part 5 – PAYMENT and required for a *Proper Invoice*. In each application for payment, the *Contractor* shall identify or summarize any changes, updates, additions and deviations from the draft and estimates provided in accordance with paragraph 5.1.1. The *Owner* may, in its discretion, reject any application for payment that does not comply with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT or GC 5.3 – PROGRESS PAYMENT, or the *Owner* may withhold up to 50% of the amounts otherwise payable in relation to that application for payment until such application for payment includes all of the documents and information required under this Part 5 – PAYMENT and for a *Proper Invoice*."

SC23.2 Delete **paragraph 5.2.7** and replace with the following:

"5.2.7 The *Owner* shall have the right to require that the *Contractor* pre-purchase or pre-order particular *Products* (which may include *Product* for which cash allowances have been stipulated) as a cost saving measure (e.g. during periods of rapid cost escalation) or to ensure timely delivery to the *Place of the Work* when needed for the *Work*. Where the *Owner* has invoked this right, then, despite paragraph 5.2.3 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT, the *Contractor* shall be entitled include, in its applications for payment the amounts expended by the *Contractor* therefor, despite such Products not having yet been delivered to the *Place of the Work*."

SC24. PROGRESS PAYMENT (GC 5.3)

SC24.1 Replace **paragraph 5.3.1.2** with the following:

".2 subject to the certifications set out in the *Consultant's* certificate for payment and the *Construction Act*, including the delivery of a notice of non-payment under the *Construction Act*, the *Owner* shall

make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 days after the date that the *Consultant* or the *Owner* receives the *Contractor*'s application for payment containing a *Proper Invoice*, in accordance with this *Contract*."

SC24.2 Add the following as **paragraphs 5.3.2 to 5.3.5**:

"5.3.2 The *Owner* may, upon delivering to the *Contractor* a notice of non-payment under the *Construction Act*, withhold or deduct from amounts otherwise due to the *Contractor*:

.1 the full value plus security for costs, of any construction lien filed against the title to the *Project* with respect to the *Work*, plus any costs, including legal costs, incurred by the *Owner* to have the lien released, discharged, or vacated;

.2 any other monetary claims against the *Contractor* which are enforceable against the *Owner* including garnishing orders;

.3 security for any actual or potential liability to others for costs, damages or expenses resulting from the *Contractor's* performance of the *Work*;

.4 the *Warranty Holdback*; and

.5 any other amounts which the *Owner* is authorized to withhold or deduct under the terms of the *Contract*.

5.3.3 The *Owner* may, upon delivering to the *Contractor* a notice of non-payment under the *Construction Act*, stating the basis and amount of deduction, withhold the whole or part of any progress or other payment otherwise due to the *Contractor*, to the extent the *Owner*, acting reasonably and in good faith, considers necessary to protect the *Owner* from any actual or anticipated loss, damage, claim, cost or expense arising from one or more of the following events or circumstances:

.1 rejected materials or deficient or defective *Work* are not being remedied; or

.2 the *Contractor* is in breach or default of its liabilities or obligations under the *Contract*.

5.3.4 The *Owner* may elect to pay a portion or portions of any amounts due to the *Contractor* directly to one or more *Subcontractor* or *Suppliers* or to the labourers of one or more *Subcontractor* or *Suppliers,* provided that the *Owner* shall not do so unless such action is warranted in the reasonable determination of the *Owner*. It shall be reasonable for the *Owner* to do so if the *Contractor* has failed to pay any *Subcontractor* or *Supplier* or the labourers of one or more *Subcontractor* or *Supplier* and in the reasonable determination of the *Owner* direct payment is warranted to assist in continuation of the progress of the *Work* or any part of the *Work*. Such payments will be identified in a notice of non-payment, deducted from amounts otherwise due, and credited as an amount paid to the *Contractor*.

5.3.5 Title to all *Product* delivered to the *Place of the Work* for which credit for *Work* performed is claimed in any application for payment shall, on the making of such payment, vest in the *Owner*, notwithstanding that risk of loss remains with the *Contractor* until *Ready-for-Takeover*."

SC25. SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK (GC 5.4)

SC25.1 Delete **paragraph 5.4.2** in its entirety.

SC25.2 Delete **paragraph 5.4.3** in its entirety, and replace with:

"5.4.3 Subject to the requirements of the *Construction Act*, the *Construction Holdback* shall become due and payable to the *Contractor* no later than 10 *Working Days* following the expiration of the

holdback period stipulated in the *Construction Act,* subject to delivery by the *Owner* of any notice of non-payment under the *Construction Act*."

SC25.3 Add at the end of **paragraph 5.4.4**, before the period: "containing all of the documents and information required under paragraph 5.2.2 and a *Proper Invoice*".

SC25.4 Delete **paragraph 5.4.5** and replace with the following:

"5.7.1 Where, upon application by the *Contractor* containing all of the documents and information required for an application for payment and a *Proper Invoice*, the applicable payment certifier has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Ready-for-Takeover*, the *Owner* may pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 10 *Working Days* following the expiration of the holdback period for such work stipulated in the *Construction Act.* The *Owner* may, upon issuing a notice of non-payment under the *Construction Act*, retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the *Construction Act*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner.*

SC26. FINAL PAYMENT (GC 5.5)

SC26.1 In **paragraph 5.5.1**, add "containing all of the documents and information required under paragraph 5.2.2 and a *Proper Invoice*, as well as 3 reproducible copies of as-built drawings (if not already provided)," after the words "final payment".

SC26.2 Add the following as **paragraphs 5.5.5 to 5.5.7**:

"5.5.5 No partial or progressive payments of the *Warranty Holdback* amounts will be considered. No application for payment for final payment will be accepted until all incomplete and deficient *Work* has been completed to the satisfaction of the *Consultant.*

5.5.6 If the defective or incomplete *Work* is not corrected or completed by the *Contractor* within the reasonable time established pursuant to paragraph 12.1.4 of GC 12.1 – READY-FOR-TAKEOVER, then the *Owner* may have all or a portion of the deficient or defective work corrected or completed by whatever means may be expedient and the *Owner* may deduct and set off all associated costs against amounts otherwise owed or payable to the *Contractor***.**

5.5.7 The issuance of a final certificate for payment or the payment of *Construction Holdback* and deficiency holdback amounts shall not relieve the *Contractor's* responsibility for correction of any other deficiencies or incomplete items, at no additional cost to the *Owner*, that may not have been included in the list of deficient items or which may not have been apparent during the review carried out pursuant to GC 12.1 READY-FOR-TAKEOVER."

SC27. OWNER'S RIGHT TO MAKE CHANGES (GC 6.1)

SC27.1 In **paragraph 6.1.1.2**, add "or *Change Directive*" after the words "by *Change Order*".

SC27.2 Add the following at the end of **paragraph 6.1.2**:

"This requirement is of the essence and it is the express intention of the parties hereto that any claims for a change in the *Contract Price* shall be based, and that the *Contract Time* shall be altered, only upon strict compliance with the requirements of GC 6 – CHANGES IN THE WORK. Accordingly, no course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claim that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for payment under this *Contract* or any extension of the *Contract Time* without a *Change Order* or *Change Directive*."

SC27.3 Add the following as **paragraph 6.1.3**:

"6.1.3 The amounts or methods of adjustment agreed upon pursuant to GC 6.2 – CHANGE ORDER and the adjustment, markups and basis for valuing the cost set out in GC 6.3 – CHANGE DIRECTIVE shall encompass and include any and all claims of any kind whatsoever of the *Contractor* resulting from the change in the *Work*, including claims for delay, impact or acceleration of the *Work*. The *Contractor* shall not be entitled to any further claim or adjustment, for time or delay or price, therefor."

SC28. CHANGE ORDER (GC 6.2)

SC28.1 Add the following as **paragraphs 6.2.3 to 6.2.6**:

"6.2.3 The *Contractor* shall provide quotations for proposed changes in the *Work* in the form and within the time frame reasonably requested by the *Consultant*. The *Contractor* acknowledges that failure to do so will result in delays to the approval and payment of changes in the *Work* and additional costs to the *Owner*. If the *Contractor* fails to provide good faith quotations in the form or time prescribed, then the *Consultant* will be entitled to establish a reasonable valuation for the change in the *Work* and to establish a reasonable adjustment, if any, in the *Contract Time* attributable to the change in the *Work*, and the *Contractor* shall be bound thereby.

6.2.4 If the *Owner* elects to proceed with a change in the *Work* on the basis of cost of the *Work*, then the *Contractor* shall be entitled to an adjustment in the *Contract Price* as set out in GC 6.3 – CHANGE DIRECTIVE.

6.2.5 When requested by the *Consultant,* the *Contractor* shall promptly provide itemized labour and material cost breakdowns and any other detailed information required to substantiate the *Contractor* claims for a change to the *Contract Price* or *Contract Time.*

6.2.6 Upon issuance of a *Change Order* by the *Consultant* to the *Contractor* for a proposed change in the *Work,* the *Contractor* is deemed to have accepted the valuation for the change in the *Work* proposed by the *Consultant* and the adjustment if any in the *Contract Time* proposed by the *Consultant* if no *Notice in Writing* disputing it is given to the *Owner* within 3 *Working Days* of the date of issuance of the *Change Order.*"

SC29. CHANGE DIRECTIVE (GC 6.3)

SC29.1 In **paragraph 6.3.3**, delete the words "direct a change in the *Contract Time* only", and replace with "accelerate the date for attainment of *Ready-for-Takeover* to a date that is earlier than the fixed date that appears in Article A-1.3".

SC29.2 In **paragraph 6.3.6.3**, delete the words "fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties", and replace with:

"percentage fee, referred to in paragraphs 6.3.6.1 and 6.3.6.2 of this GC 6.3 – CHANGE DIRECTIVE, and the cost of performing the *Work* to be valued in accordance with paragraph 6.3.7 of this GC 6.3 – CHANGE DIRECTIVE and shall be calculated and determined applying the following percentage mark-ups for overhead and profit:

(a) For the performing contractor, one 10% mark-up on the direct cost of the net change in the *Work* for the performing contractor shall be allowed. The performing contractor is the one who is directly carrying out the actual change in the *Work*. The performing contractor may be the *Contractor* or any *Subcontractor*; and

(b) A 5% mark-up on the performing contractor's work, for each administering contractor (where applicable), irrespective of the number of administering contractors (provided that reasonable efforts will be made by the *Contractor* to minimize the number of administering contractors needed) that may exist between the performing contractor and the *Owner*.

The principle to be applied is that the entity (the performing contractor) that actually does the work shall add 10% and 5% of the net increased cost of the work done by it, and intermediate entities (between the performing contractor and the *Owner*), including the *Contractor*, shall each add 5% for administering the change. These percentages include all *Contractor* head office overhead (which includes processing and supervision)."

SC29.3 In **paragraph 6.3.7**, add the following at the end:

"provided that:

.1 if unit prices are set out in the Contract or subsequently agreed upon, then the unit prices alone shall govern, despite the other provisions of paragraph 6.3.6 and of this paragraph 6.3.7 of GC 6.3 – CHANGE DIRECTIVE; and

.2 payment for the cost of performing the *Work* attributable to the *Change Directive* shall be made only if and to the extent that the *Contractor* has taken all reasonable steps to mitigate and minimize the impact of the change and the resulting cost, and only to the extent of the incremental increase if any in the outlays of the *Contractor* attributable to the *Change Directive*, and, as to any personnel or resources not exclusively dedicated to the work attributable to the *Change Directive*, only a reasonable allocation or reasonable hourly or other time charge shall be applied, and shall exclude any charges for personnel (such as the principals and executive and senior officers of the *Contractor*) and resources the *Owner* could reasonably expect would form part of *Contractor's* head office overhead (for which the percentage fee is stipulated in paragraph 6.3.6.3)."

SC30. CONCEALED OR UNKNOWN CONDITIONS (GC 6.4)

SC30.1 Add the following as **paragraph 6.4.5**:

"6.4.5 Notwithstanding anything in the *Contract* to the contrary, the *Contractor* confirms that, prior to responding to the *Owner*'s procurement for this *Contract*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.1.6 of GC 3.1 – CONTROL OF THE WORK. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission to the *Owner*'s procurement."

SC31. DELAYS (GC 6.5)

SC31.1 In **paragraph 6.5.1**, add the phrase ", but excluding any consequential or loss of potential earnings damages" at the end of the paragraph, before the period.

SC31.2 Amend **paragraph 6.5.3** as follows:

.1 Delete "one" and replace with "ones" in **paragraph 6.5.3.4**;

.2 Add "except lack of funds or breakdown of *Construction Equipment*" at the end of **paragraph 6.5.3.4**; and

.3 In the final paragraph of **paragraph 6.5.3**, delete "in consultation with the *Contractor*. The extension of time shall not be less than", and replace with "in consultation with the *Contractor* and the *Owner*. Subject to paragraphs 6.5.4 and GC 6.5.6, the extension of time shall not be less than"; and delete "unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.*"*

SC31.3 At the end of **paragraph 6.5.4**, add the following:

"A notice of claim with respect to any delay shall indicate the reasons for such delay and the best estimate of the *Contractor* as to its estimated duration and the likely effect upon the time to complete the *Work*. Upon

termination of the circumstances giving rise to the delay, the *Contractor* shall give to the *Owner Notice in Writing* of the termination of the delay."

SC31.4 Add the following as **paragraphs 6.5.6 to 6.5.8**:

"6.5.6 The extension of *Contract Time* and reimbursement of costs shall be made only if and to the extent that the *Contractor* has taken all reasonable steps to mitigate and minimize the impact of the delay, and can establish with supporting documentation that the delays materially affected the *Contractor's* performance of the *Work* within the *Contract Time* and the *Contractor's* costs in the performance of the *Work* to such a degree that no reasonable measures could have been taken (other than those that were taken by the *Contractor*) to avoid or prevent the additional time and costs incurred. Any claim by the *Contractor* for delay shall apply only to the extent that the delay exceeds two calendar months, and only in respect of periods for which there was no concurrent delay caused or materially contributed to by the *Contractor*. Any float (also described as "slack" or "cushion") that exists in the construction schedule does not belong exclusively to the *Owner* or exclusively to the *Contractor*, but rather will firstly, be used for and applied to obviate any delay or extension of time otherwise provided for in the *Contract* (including any delay or extension of time that would otherwise result from a *Change Order* or *Change Directive*) that the *Contractor* would otherwise be entitled to, and despite any provision of the *Contract* allowing for delay or extension of time the *Contract Time* will not be delayed or extended to the extent that float is available at the time the matter, circumstance or event arose or occurred; and any remaining will, in the administration and interpretation of the *Contract*, be shared and applied equitably by and between the *Owner* and the *Contractor*.

6.5.7 The claim for reimbursement by the *Contractor* under paragraphs 6.5.1 and 6.5.2 of GC 6.5 – DELAYS shall be determined on the basis of the cost of the *Contractor*'s actual expenditures and savings attributable to the delay, valued in accordance with paragraph 6.3.7 of GC 6.3 – CHANGE DIRECTIVE. No claim for profit or overhead shall be included other than as stipulated in paragraphs 6.3.6.3 and 6.3.7 of GC 6.3 – CHANGE DIRECTIVE.

6.5.8 If the *Contractor* fails to perform the *Work* in accordance with the construction schedule as amended from time to time, the *Consultant* may direct the *Contractor*, at the *Contractor*'s own cost, to take whatever measures the *Consultant* considers necessary, including but not limited to, overtime, weekend work, shift work and an expanded work force and additional equipment to ensure or endeavor to ensure the completion of the *Work* within the *Contract Time*."

SC32. CLAIMS FOR A CHANGE IN CONTRACT PRICE (GC 6.6)

SC32.1 At the end of **paragraph 6.6.3**, add the following:

"For all charges or claims for payment made by the *Contractor* to the *Owner*, the *Contractor* shall keep time and usage records and otherwise provide documentary evidence satisfactory to the *Owner*, acting reasonably, to demonstrate that such charges are reasonable and the work done and usage were properly charged to and allocable to the *Project*."

SC32.2 Add the following as **paragraphs 6.6.7 and 6.6.8**:

"6.6.7 Where changes are to be evaluated on the basis stipulated in paragraph 6.3.7 of GC 6.3 – CHANGE DIRECTIVE, the *Contractor* shall promptly submit a detailed breakdown of all labour, materials, overhead and profits of each performing contractor. Contemporaneous records are required. The *Owner* is not liable for costs not so substantiated.

6.6.8 For any change or contemplated change, the *Contractor* shall, upon the request of the *Owner*, promptly submit a proposed claim for lump sum adjustment to the *Contract Price* for the scope of the change and a proposed overall change in *Contract Time*, if any."

SC33. OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT (GC 7.1)

SC33.1 Add "commits an act of bankruptcy, is insolvent," after the word "adjudged bankrupt" into the first line of **paragraph 7.1.1**.

SC33.2 Delete "as provided in paragraphs 7.1.1 and 7.1.4" from the first line of **paragraph 7.1.5**, and replace with "in whole or in part or terminates the *Contract*, as provided in paragraphs 7.1.1 and 7.1.4 or GC 16 – LABOUR AFFILIATIONS or GC 17 – LABOUR DISPUTES or elsewhere in the *Contract*".

SC33.3 Delete **paragraph 7.1.5.1** and replace with:

".1 take possession of the *Work* and, subject to the rights of third parties, all *Products*; utilize the *Construction Equipment*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense,".

SC33.4 Add the following as **paragraphs 7.1.7 to 7.1.10**:

"7.1.7 For greater certainty, but without limiting the circumstances in which notice of default might be given, the *Owner* will be entitled to give the *Contractor Notice in Writing* that the *Contractor* is in default pursuant to paragraph 7.1.2 of GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTONUE WITH THE WORK, OR TERMINATE THE CONTRACT and instruct the *Contractor* to correct the default as set out therein:

.1 if the *Contractor* fails to make payment to its *Subcontractors and Suppliers*;

.2 if *Work* of the *Contractor* is rejected and the *Contractor* fails to promptly correct same;

.3 if the *Contractor* has made an assignment of the *Contract* without the required consent of the *Owner;*

.4 if the *Contractor* abandons the *Work;*

.5 if the *Contractor* fails to provide bonds or contract security required;

.6 if the *Contractor* fails to carry and maintain required insurance;

.7 if the *Contractor* fails to discharge construction liens when required to do so; and

.8 if the *Contractor* fails to take steps satisfactory to the *Consultant* to expedite the performance of the *Work* or fails to provide a *Recovery Schedule* acceptable in form and content to the *Consultant,* or fails to provide documents requested by the *Consultant* to confirm adherence to a *Recovery Schedule*.

"***Recovery Schedule***" refers to documentation and information produced, prepared and provided by the *Contractor* to the *Consultant* to establish to the satisfaction of the *Consultant* how the progress of the *Work* or any aspect of it will be expedited to ensure that the construction schedule, and specific milestone dates from time to time designated by the *Owner* acting reasonably, will be met. The *Recovery Schedule* shall provide full and sufficient detail to enable the *Consultant* to be satisfied as to the precise steps that the *Contractor* will take to expedite progress, including but not limited to detailing any proposed increase in manpower, any proposed overtime work, any proposed re-sequencing of *Work* and any proposed expediting of deliveries of *Product* or equipment.

7.1.8 The *Owner* may, without cause, by giving the *Contractor* 30 days' prior *Notice in Writing*, terminate the *Contract* or terminate the *Contractor*'s right to continue with the *Work* or portions of the *Work*. The *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination, for loss sustained upon *Products* and construction machinery and *Construction Equipment*,

demobilization, and such other unavoidable, mitigated and evidenced damages as the *Contractor* may have sustained as a result of the termination of the *Contract*. Paragraph 7.1.5.1 of GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT shall apply, but paragraphs 7.1.5.2, 7.1.5.3 and 7.1.5.4 shall not apply.

7.1.9 The *Owner* may require that the *Contractor* suspend performance of the *Work* either for a specified period or an unspecified period by giving *Notice in Writing* of suspension to the *Contractor*. When such *Notice in Writing* is received by the *Contractor*, the *Contractor* will suspend all operations in respect of the *Work* or such part of the *Work* which may be identified as suspended. The *Owner* will compensate the *Contractor* for reasonable costs sustained by the *Contractor* as a result of the suspension, applying GC 6.5 – DELAYS. The *Contractor* will make every effort to mitigate these costs and expenses to the *Owner*. If the period of suspension is 90 days or less, upon notification by the *Owner*, the *Contractor* will resume the performance of the *Work* as soon as practicable and within 7 days in accordance with the terms of the *Contract*. If the period of suspension exceeds 90 days, no work will be resumed or be completed in accordance with the terms of the *Contract* prior to the parties having agreed upon the resumption and its terms and conditions. Failing agreement on the resumption and its terms and conditions, the notice of suspension will be deemed to be a notice of termination.

7.1.10 Upon a termination, the *Owner* may, but will not be obliged to, publish a notice of termination in the form and manner prescribed in the *Construction Act*. For greater certainty, a termination in accordance with this GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT will be effective whether or not a notice of termination is published."

SC34. CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT (GC 7.2)

SC34.1 Add "commits an act of bankruptcy," after the word "bankrupt" in the first line of **paragraph 7.2.1**.

SC34.2 Delete "20 *Working Days*" and replace with "60 days" in the first line of **paragraph 7.2.2.**

SC34.3 Delete **paragraph 7.2.3.1** and insert "not used,".

SC34.4 Delete **paragraph 7.2.3.2**. and insert "not used,".

SC34.5 Add the following at the end of **paragraph 7.2.4**:

"If the default cannot be corrected in the 10 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Owner* shall be in compliance with this paragraph if the *Owner*:

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

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

.3 corrects the default in accordance with the *Contract* terms and with such schedule."

SC35. AUTHORITY OF THE CONSULTANT (GC 8.1)

SC35.1 In p**aragraph 8.1.3**, in the 1st line, add the word "written" before the word "instructions".

SC36. NEGOTIATION, MEDIATION AND ARBITRATION (GC 8.3)

SC36.1 In p**aragraph 8.3.6**, in the 1st line, delete "termination of the mediated negotiations under paragraph 8.3.5," and replace with "receipt of the final adjudication award,".

SC36.2 Add the following as **paragraphs 8.2.9 and 8.2.10**:

"8.2.9 Notwithstanding anything else in this *Contract*, the parties may refer any *Adjudicable Dispute* to adjudication in accordance with the *Construction Act*. Referral of an *Adjudicable Dispute* to

adjudication is a condition precedent to either party's entitlement to refer a dispute to arbitration or litigation. The fee for the adjudicator shall be split between the parties and the adjudicator shall not be requested to make an award of fees, unless the parties agree otherwise.

8.2.10 Excluding copies of the contracts contemplated under §13.11(b) of the *Construction Act*, the documents that the party filing the statement of claim in its adjudication shall be limited to the equivalent of 10 single sided, 8.5" x 11" pages. Oral submissions from the parties shall not be permitted, unless the quantum claimed in the statement of claim exceeds $250,000, and the adjudicator shall otherwise make his or her decision on the written documents only without holding an oral hearing. The adjudicator may not meet or communicate with any party without the presence of the other party.

8.2.11 If mediation proceedings were commenced prior to the delivery of a notice of adjudication under the *Construction Act* relating to an *Adjudicable Dispute*, upon the commencement of such adjudication, to the extent the mediation proceedings relate to the *Adjudicable Dispute*, the parties shall take all steps to ensure that the mediation, proceedings will continue and not be paused, withdrawn, or discontinued, as applicable, unless the parties agree in writing."

SC37. RETENTION OF RIGHTS (GC 8.4)

SC37.1 Add the following as **paragraph 8.4.3**:

"8.4.3 Except where a lien has been filed as a result of the *Owner*'s failure to pay in accordance with the terms of the *Contract* (which for clarity shall include any circumstance in which the *Owner* or the *Consultant* has improperly refused to issue a *Change Order* or *Change Directive* in respect of a change in the *Work*), the *Contractor* and its *Subcontractor* and *Suppliers* shall give prior *Notice in Writing* to the *Owner* of their respective intention to file or assert a lien at the *Place of the Work* or against the title to the *Project* or against the holdback funds:

.1 If a lien is filed on the *Place of the Work* or against the title to the *Project* or against the holdback funds by a *Subcontractor* or *Supplier*, the *Contractor* shall, at the *Contractor's* cost, within 10 *Working Days* after the receipt of *Notice in Writing* from the *Owner* or the *Consultant*, secure or otherwise remove the lien and defend, indemnify and save harmless the *Owner* and the *Consultant* in respect of any action which may arise as a result of such lien; and

.2 if the *Contractor* fails to secure or otherwise remove such lien within the time specified and defend, indemnify and save harmless the *Owner* and the *Consultant* in respect of any action arising therefrom, then notwithstanding any other provision in the *Contract Documents*, the *Owner* shall be entitled to withhold further payment to the *Contractor* until all liens are secure or otherwise removed, and the *Owner* may secure or otherwise remove the lien by whatever means may be expedient and the *Contractor* shall pay for all associated costs and expenses incurred by the *Owner*, including legal fees on a solicitor and his own client basis. In such circumstances, the *Owner* may deduct and set off the amounts paid to secure or otherwise remove the lien and costs and expenses incurred from amounts otherwise payable to the *Contractor*."

SC38. TOXIC AND HAZARDOUS SUBSTANCES (GC 9.2)

SC38.1 Add the following as **paragraphs 9.2.10 to 9.2.13**:

"9.2.10 The *Contractor* shall ensure that it, and all of its *Subcontractors* and *Supplier*, comply with the terms, conditions and procedures set out in Schedule B – Handling of Hazardous Materials.

9.2.11 The *Contractor* shall be responsible for all toxic or hazardous substances at the *Place of the Work*, including *Product*, brought on brought to the *Place of the Work* by the *Contractor* or any *Subcontractor* or *Supplier*, and the proper handling, use, and (if applicable) installation or

incorporation into the *Work* thereof. After proper completion of the *Work,* the *Contractor* shall not be responsible for *Product* properly installed or incorporated into the *Work*."

9.2.12 Schedule C – List of Environmental Reports for the Place of the Work contains a list of environmental reports provided by the *Owner* to the *Contractor*, relating to the *Place of the Work*. The *Contractor* acknowledges and agrees that:

.1 the *Owner* provided the *Contractor* with Schedule C – List of Environmental Reports for the Place of the Work as part of the tender documents for the *Project*;

.2 the *Contractor* shall ensure that each prospective *Subcontractor* for the *Project* receives a copy of Schedule C – List of Environmental Reports for the Place of the Work before entering into a binding contract for the supply of work on the *Project*; and

.3 The *Contractor* shall handle, remove and dispose of all materials within the building footprint identified in Schedule C – List of Environmental Reports for the Place of Work in accordance with the reports within the building footprint.

9.2.13 In the event that the scope of the *Work* is altered during the course of construction to affect or incorporate new areas of an existing building / facility, the *Contractor* shall immediately request from the *Owner* any information that the *Owner* may have with respect to hazardous materials in the new areas and shall comply with the requirements of paragraph 9.2.11 with respect to any hazardous materials, including asbestos containing materials, identified or suspected to be present in the new area."

SC39. CONSTRUCTION SAFETY (GC 9.4)

SC39.1 Delete **GC 9.4 – CONSTRUCTION SAFETY** in its entirety and replace with the following:

"9.4.1 The *Contractor* represents and warrants to the *Owner* that:

(a) the *Contractor* is properly qualified and capable of performing the *Work* in a professional manner and in compliance with all *OHSA* requirements and safe practices;

(b) the *Contractor* is properly licensed, equipped, organized and financed to perform the *Work* in compliance with all *OHSA* requirements and safe practices; and

(c) the *Contractor* has fully investigated and satisfied itself as to the characteristics of the *Place of the Work* that may affect the *Work*, the performance of the *Work* and the health and safety of the workers.

9.4.2 The *Contractor* acknowledges and agrees that:

(a) the *Owner* is the "**owner**" only for the purposes of *OHSA* and that the *Owner* shall not be responsible for health and safety at the *Place of the Work*;

(b) the *Contractor* shall be solely responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work* in accordance with *OHSA* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*;

(c) the *Owner* and the *Contractor* shall comply with all health and safety precautions and programs established at the *Place of the Work* and the rules, regulations and practices required by *OHSA;*

(d) the *Contractor* shall be solely responsible for the safety of the workers, *Subcontractors* and *Suppliers*, and of all other persons who enter the *Place of the Work*, and their plant and

equipment, whether during working hours or not, and for that purpose shall install such hoardings and signs subject to owner specifications and incorporate such safety and security measures as may be necessary to ensure the safety of such persons.

9.4.3 Without limiting the generality of paragraphs 9.4.1 and 9.4.2, the *Contractor* acknowledges and agrees that it is:

(e) both the "**constructor**" and the "**employer**" within the meaning of the *OHSA* and the *Contractor* will carry out the duties and responsibilities of each of the "**constructor**" and the "**employer**" with respect to the *Work* and the *Place of the Work*;

(f) the person who directly retains a contractor or subcontractor to perform construction work within the meaning of section 141.1 of the *Workplace Safety Insurance Act* (the "**Section 141.1 Person**"); and

(g) responsible to ensure that the measures and procedures prescribed by the *OHSA* and the regulations made under the *OHSA*, including the WHIMIS regulation and the regulation for Workplace Hazardous Materials Information System (collectively the "**OSHA Regulations**").

The *Contractor* will, as the "**constructor**", the "**employer**" and the "**Section 141.1 Person**", comply with, and ensure compliance by *Subcontractors* and *Suppliers* with the *Workplace Safety Insurance Act* and its regulations, and the *OHSA* and the *OSHA Regulations*, and shall pay assessments or compensation required to be paid under applicable legislation. If the *Contractor* or any *Subcontractor* fails to pay any due assessment or compensation, the *Owner* may make such payment on behalf of the *Contractor* or any *Subcontractor*, but will not be obliged to do so. The *Contractor* shall reimburse the *Owner* the amount of such payment on demand. The *Owner* may set off any amounts paid against money otherwise owed to the *Contractor*. The *Contractor* will deliver the completed approved registration form required by Section 5 of Ontario Regulation O. Reg. 213/91, as amended by O. Reg. 145/00 (Construction Projects) to the Ministry Office located nearest to the project prior to beginning work on the *Project*.

9.4.4 The *Owner* shall cause the *Consultant*, *Other Contractors* and the *Owner's* own forces to comply with all health and safety precautions and programs established by the *Contractor* at the *Place of the Work*.

9.4.5 Nothing in this *Contract* shall affect the determination of liability under the applicable health and safety legislation."

SC40. LAWS, NOTICES, PERMITS AND FEES (GC 10.2)

SC40.1 In **paragraph 10.2.5**, in the 1st line, delete the word "The" and replace with the following: "Subject to paragraph 3.1.6 of GC 3.1 – CONTROL OF THE WORK, the".

SC41. WORKERS' COMPENSATION (GC 10.4)

SC41.1 Add the following as **paragraph 10.4.2**:

"10.4.2 Without limiting the *Contractor*'s obligations under paragraphs 5.2.2 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and paragraph 12.1.1.11 of GC 12.1 – READY-FOR-TAKEOVER, the *Contractor* shall, promptly following the expiration of any *WSIB* certificate previously provided to the *Owner*, provide the *Owner* with an updated *WSIB* certificate confirming that the *Contractor* remains in good standing with *WSIB*."

SC42. INSURANCE (GC 11.1)

SC42.1 Add the following at the beginning of **paragraph 11.1.1**: "Subject to any different insurance requirements set out in the *Owner's* procurement documents or in the *Special Conditions,*".

SC43. CONTRACT SECURITY (GC 11.2)

SC43.1 Add the following at the end of **paragraph 11.2.1**: ", as set out in the *Owner's* procurement documents, or as required under the *Construction Act*".

SC43.2 Delete **paragraph 11.2.2** in its entirety and replace with the following:

"If the *Contract Documents* or the *Construction Act* require surety bonds to be provided, such bonds shall be in the forms required under the *Construction Act*, issued by a surety company deemed acceptable by the *Owner*, and be maintained in good standing until the fulfillment of the *Contract*."

SC44. READY-FOR-TAKEOVER (GC 12.1)

SC44.1 Delete **paragraph 12.1.1** in its entirety and replace with the following:

"12.1.1 The prerequisites to attaining *Ready-for-Takeover* of the *Work* are limited to the following:

.1 The *Consultant* has certified or verified the Substantial Performance of the Work.

.2 Evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction, and certificates issued by all permit issuing authorities indicating approval of all installations, work and improvements requiring permits.

.3 Certificates and reports issued by all testing, commissioning, cleaning, inspection authorities and associations as applicable or specified in the *Contract Documents*, including reports and data from any testing.

.4 Final cleaning and waste removal at the time of applying for *Ready-for-Takeover*, as required by the *Contract Documents*.

.5 The delivery to the *Owner* of such operations and maintenance documents, maintenance and operating tools, replacement parts or materials as specified in the *Contract Documents*.

.6 All required manufacturer's inspections, certifications, guarantees, warranties as specified in the *Contract Documents*.

.7 All required record *Drawings* and as-built and as-installed documents in the form specified in the *Contract Documents*.

.8 Startup, testing required for immediate occupancy, as required by the *Contract Documents*.

.9 Ability to secure access to the *Work* has been provided to the *Owner*, if required by the *Contract Documents*.

.10 Demonstration and training, as required by the *Contract Documents*, is scheduled by the *Contractor* acting reasonably.

.11 A current clearance letter from the *WSIB* confirming that the *Contractor* is in good standing with and that all required remittances and assessments have been made to the *WSIB*.

.12 A properly executed *Contractor*'s release in the format set out in Schedule D – FORM OF RELEASE or as prescribed by the *Consultant*, releasing all claims except those for which

Notice in Writing has been given to *Owner* as contemplated in paragraph 13.2.1.1 of GC 13.2 – WAIVER OF CLAIMS.

.13 A statement compiling and reconciling all *Change Orders* and *Change Directives.*

.14 A list of all claims and demands for changes and delay, or otherwise for adjustment or reimbursement or any other claims whatsoever, under or in connection with the *Contract*.

.15 Letters of assurance for professional design and review from those professionals engaged by the *Contractor* (if any) under the provisions of the *Contract*, including applicable sealed *Shop Drawings*.

.16 All other documents to be submitted by the *Contractor* as specified in the *Contract Documents* or reasonably notified in advance to the *Contractor* by the *Consultant*."

Add the following at the end of **paragraph 12.1.2**, before the period:

", and the *Contractor* shall deliver such items within 30 days after attainment of *Ready-for-Takeover*." If the *Contractor* has not provided the documents required by the 30th day after attainment of *Ready-for-Takeover*, the *Owner*, at its discretion, shall be entitled to withhold an amount equal to up to 100% of the amount of the *Construction Holdback* as security for the *Contractor*'s delivery of the outstanding documents. In the event of a withholding under this GC 12.1.2, the *Owner* shall pay the withheld amount to the *Contractor* upon the earlier of (a) the *Contractor'*s delivery of such documents, (b) the end of the limitation related to any claim that could arise from the *Contractor*'s non-delivery, and (c) a determination by the *Consultant* that such withheld amount should be released to the *Contractor*."

Add the following at the beginning of **paragraph 12.1.3**:

"The *Contractor* shall give to the *Owner* a minimum of 5 days' advance *Notice in Writing* that it will request or apply for the certificate of *Ready-for-Takeover*.

SC44.1 Add to the end of **paragraph 12.1.3** the following:

"The list shall also indicate the time required to perform the *Work* and, for each item, the cost to complete. The *Consultant* shall determine the cost of completing the *Work* or correcting the deficiencies, and the *Owner* shall be entitled to withhold in addition to the *Construction Holdback* a deficiency holdback in an amount equal to two times the estimated cost. Payment of the deficiency holdback shall be made in accordance with GC 5.7 – FINAL PAYMENT and GC 13 – DEFICIENCIES AND UNCOMPLETED WORK."

SC44.2 Add to the end of **paragraph 12.1.4** the following (back to the margin):

The *Owner* and the *Consultant* may also prepare a supplementary list of items to be completed or deficiencies to be corrected by the *Contractor."*

SC44.3 Add the following as **paragraph 12.1.7**:

"12.1.7 If the *Contractor* fails to achieve *Ready-for-Takeover* by the date set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK, as such date may be adjusted pursuant to this *Contract*, (the "***Scheduled Ready-for-Takeover Date***") the *Contractor* shall pay daily delay liquidated damages of $ 500 per day (the "***Delay Liquidated Damages***") from the *Scheduled Ready-for-Takeover Date* until the date the *Contractor* achieves *Ready-for-Takeover* or the *Contract* is terminated, whichever first occurs. The *Contractor* agrees that the *Delay Liquidated Damages* reflect a genuine pre-estimate of the loss that may be suffered by the *Owner* arising out of the *Contractor*'s failure to achieve *Ready-for-Takeover* by the *Scheduled Ready-for-Takeover Date*, and do not constitute a penalty. If the *Contractor*'s obligation to pay *Delay Liquidated Damages* is, or becomes, void or unenforceable either in whole or in part for any reason, then the *Owner* will, to the extent of the voidness or unenforceability, be entitled to claim unliquidated damages at law in connection with

the *Contractor*'s failure to achieve *Ready-for-Takeover* by the *Scheduled Ready-for-Takeover Date*."

SC45. WARRANTY (GC 12.3)

SC45.1 In **paragraph 12.3.1,** add after "in paragraph 12.3.6" the words "or elsewhere in the *Contract*".

SC45.2 In **paragraph 12.3.3**, delete ", through the *Consultant*,", and delete "one year warranty period" and replace with "applicable warranty period, as set out in the *Contract*".

SC45.3 Delete in **paragraph 12.3.4**, "one year warranty period." and replace with "applicable warranty period, as set out in the *Contract*. The *Contractor* shall immediately take the necessary steps and measures to protect against further damage. Defects or deficiencies for the purposes of the warranties in this GC 12.3 – WARRANTY or elsewhere in the *Contract* shall include shrinkage, expansion, and movement in respect of the *Work*. The *Contractor* shall also be responsible for and bear all costs involved in removing, replacing, repairing or restoring elements of the *Work* that may be affected in the process of making the correction of defects or deficiencies, or to gain access. The *Contractor* shall reimburse the *Owner* for any related investigation costs required to identity defects or deficiencies or to delineate the affected areas and to re-test to confirm the acceptability of the repairs."

SC45.4 In **paragraph 12.3.6**, delete "one year warranty period as described in paragraph 12.3.1" and replace with "applicable warranty period, as set out in this GC 12.3 – WARRANTY". Add at the end of paragraph 12.3.6 of GC 12.3 – WARRANTY the following: "The *Contractor* shall deliver the originals plus two copies of such warranties to the *Consultant* within 60 days after *Ready-for-Takeover*."

SC45.5 Add the following as **paragraphs 12.3.7 to 12.3.10**:

"12.3.7 If the *Contractor* fails to perform warranty work, the *Owner* may have the warranty work completed and may deduct and set off against amounts (including any *Warranty Holdback*) owed or payable to the *Contractor* all related costs, damages and expenses.

12.3.8 If any particular defect, deficiency or warranty item requires only minor adjustments or repairs, then the original warranty period shall be temporarily suspended but shall resume to run from the date the adjustment or repair has been successfully completed. If the defect, deficiency or warranty item requires modification or replacement in whole or in part, then the warranty period for the portion of the *Work* or *Products* modified or replaced shall be deemed to commence anew from the date the modification or replacement work has been successfully completed.

12.3.9 The warranties set out in this GC 12.3 – WARRANTY or elsewhere in the *Contract* do not restrict the liability of the *Contractor* that would otherwise apply.

12.3.10 The *Owner* may deduct and withhold from the *Contractor* an amount reasonably considered by the *Owner* as appropriate and necessary to secure performance during the warranty period (the "***Warranty Holdback***"). Such *Warranty Holdback* may be deducted by the *Owner* from amounts otherwise owed to the *Contractor* under the *Contract* in circumstances where the *Contractor* has not provided a performance bond for the *Work* and the *Owner* reasonably determines that the *Contractor's* performance during the course of the *Work* was not satisfactory. For this purpose, "not satisfactory" may mean dissatisfaction with the quality of the work performed or dissatisfaction with the *Contractor's* level of cooperation and commitment to the *Work,* such that the *Owner* has reasonable concern that the *Contractor* would not respond in a timely fashion or at all to a claim on the warranty. The *Warranty Holdback* would stand as security for the faithful performance of the *Contractor's* warranty obligations and would be payable to the *Contractor* 30 days after the expiration of the applicable warranty period."

SC46. INDEMNIFICATION (GC 13.1)

SC46.1 In the 2nd line of **paragraph 13.1.1**, after the word "each" add the word "defend,".

SC46.2 In **paragraph 13.1.3**, add at the end of the paragraph, before the period "and shall extend to and apply of the benefit of the agents and employees of the party to be indemnified".

SC47. WAIVER OF CLAIMS (GC 13.2)

SC47.1 In **paragraph 13.2.1**, delete "the *Contractor* waives and releases the *Owner* from" and replace with "the *Contractor's* request or application for the certificate of *Ready-for-Takeover* shall constitute a waiver and release by the *Contractor* of any and".

SC47.2 In **paragraph 13.2.1.1**, delete "no later than the 5 calendar days ... whichever is later" and replace with "together with or prior to the *Contractor*'s request or application for the certificate of *Ready-for-Takeover*".

SC47.3 In **paragraph 13.2.3**, delete "Subject to any lien legislation … the *Contractor* from" and replace with "The payment by the *Owner* of the *Construction Holdback* shall constitute a waiver and release by the *Owner* of any and".

SC47.4 In **paragraph 13.2.3.1**, add after "Notice in Writing" "or a notice of non-payment", and delete "no later than 20 calendar days following the *Ready-for-Takeover* date *for* " and replace with "together with or prior to the issuance of the certificate of *Ready-for-Takeover*".

SC47.5 Add the following at the end of **paragraph 13.2.3.2**: ", or any other indemnification claim to which the *Owner* is entitled under this *Contract*."

SC47.6 In **paragraph 13.2.3.4**, add at the end "or for which the aggregate cost of repair or remedying the defects or deficiencies would be greater than $500,000 or would be greater than 10% of the original *Contract Price*".

SC47.7 In **paragraph 13.2.4**, delete "provided that any limitation statute of … Civil Code of Quebec" and replace with "or, as to any defect or deficiency or other claim of which the *Owner* is not aware at the end of the said period of six years, a period of two years after the *Owner* became aware".

SC47.8 In **paragraph 13.2.9**, add, immediately before the words "further interim" and again immediately before the words "submit a final account", the words: ", upon request,".

SC47.9 Add the following as **paragraph 13.2.11**:

"13.2.11 For greater certainty, in paragraphs 13.2.1, 13.2.2, 13.2.3 and 13.2.5 of GC 13.2 – WAIVER OF CLAIMS, "claims" includes claims based on changes and delay - e.g. under Part 6 – CHANGES IN THE WORK."

SC48. DEFICIENCIES AND UNCOMPLETED WORK (GC 14)

SC48.1 Add the following as **GC 14**:

"**GC 14 – DEFICIENCIES AND UNCOMPLETED WORK**

14.1 For all purposes of the *Contract*, the *Work* and any portion of the *Work* will not be considered to have been completed, and deficiencies and defects will not be considered to be corrected, until the following have occurred:

.1 the *Contractor* has reported in writing (by way of an application for payment or otherwise):

(a) that the *Work* or the said portion thereof has been completed and the deficiencies and defects have been corrected, as the case may be; and

(b) if required by the *Owner*, that applicable inspections, approvals, letters of assurance, manufacturer's certifications and warranties, permits, testing and commissioning have been obtained and carried out, relative thereto, and the *Contractor* has provided to the *Owner* such evidence thereof as reasonably required by the *Owner*;

.2 the requirements of the *Contract Documents* have been complied with, relative thereto;

.3 the *Consultant* has certified and reported to the *Owner* that such *Work* has been completed or deficiencies and defects corrected, as the case may be, and the *Consultant* has been afforded a reasonable opportunity, after the matters under this GC 14 have been satisfied, to do so; and

.4 for determination of *Substantial Performance of the Work*, the *Consultant* has certified and reported to the *Owner* that the value, as reasonably determined by the *Consultant*, of (in the aggregate) uncompleted *Work* and *Work* to be corrected (including all deficiencies and defects is not more than the threshold set out in section 2(1) of the *Construction Act*, and the *Consultant* has been afforded a reasonable opportunity, after the matters under this GC 14 have been satisfied, to do so.

14.2 At all times the *Owner* may withhold from payment otherwise due to the *Contractor*:

.5 twice the value, as reasonably determined by the *Owner*, of all deficiencies and defects (which includes rejected materials or deficient or defective *Work*);

.6 the value of uncompleted *Work*, according to the *Owner*'s reasonable estimate, from time to time as the *Work* progresses, of the cost to complete any uncompleted *Work*; and

.7 an amount to be reasonably determined by the *Owner* as security for timely delivery of any outstanding items described in paragraph 12.1.1.11 of GC 12.1 – READY-FOR-TAKEOVER.

For this purpose, the identification or characterization of deficiencies and defects (to which paragraph 14.1.1 applies), as opposed to uncompleted *Work* (to which paragraph14.1.4 applies) shall be determined from time to time by the *Owner* acting reasonably.

14.2 To ensure that sufficient monies are available to the *Owner* if required for the purpose of deficiencies and defects and uncompleted *Work* on the anticipated list of deficiencies / uncompleted *Work* and other holdbacks stipulated under the *Contract*, as the *Contractor* approaches *Ready-for-Takeover* the *Owner* may holdback such amounts as the *Owner* reasonably considers would be prudent therefor."

SC49. THE CONSTRUCTION ACT (GC 15)

SC49.1 Add the following as **GC 15**:

"**GC 15 – THE CONSTRUCTION ACT**

15.1 Certification by the *Contractor* in respect of release of holdback monies by the *Owner* in respect of amounts due to any such "subcontractor" in connection with such certification by the *Contractor* shall not be taken as acceptance or approval by the *Owner* of any of the *Work* of such "subcontractor".

15.2 The *Owner* shall hold back, as *Construction Holdback*, 10% (or such other percentage as may from time to time be prescribed under the *Construction Act*) of any amounts due to the *Contractor*.

15.4 The *Owner* may from time to time apply to the court under section 32(1) of the *Construction Act* in the name of the *Contractor* (and for this purpose the *Contractor* hereby irrevocably authorizes that the *Owner* to do so) for an order declaring whether the Contract or any subcontract has been completed. The *Contractor* agrees to execute such further and other documents and assurances to give effect to the foregoing.

15.5 The *Owner* may from time to time make application to court for directions and a determination as to the dealing with and disposition of the *Construction Holdback*, and the *Contractor* shall be bound by any action taken by the *Owner* in accordance with any order or direction given by the court. The *Owner* may at any time pay monies into court pursuant to section 44 of the *Construction Act*, or

pursuant to any order or direction of the court, and any such payment shall be credited against amounts due to the *Contractor* under the Contract.

15.6 The *Owner* may, in addition to other holdbacks as provided by the *Contract Documents*, hold back an amount equal to the amount any lien which has been filed (at the land title office, or by a statement of claim) with respect to the *Work*, plus a reasonable amount (for this purpose the lesser or $50,000 or 25% will be permitted) as security for costs.

15.7 Without limiting the *Owner*'s other rights and remedies hereunder, the *Contractor* agrees that if required by the *Owner*'s lender or source of funding from time to time to enable a funding advance, the *Contractor* shall upon the request of the *Owner* discharge any lien filed by the *Contractor* and then may re-file the same after the funding advance is made, so as to accommodate the making of the funding advance, and the *Contractor* shall cause any and all other lien claimants to do the same."

SC50. LABOUR AFFILIATIONS (GC 16)

SC50.1 Add the following as **GC 16**:

"**GC 16 – LABOUR AFFILIATIONS**

16.1 The *Project* is an open site project. From time to time, there may be present on the site both unionized and non-unionized workers, including the employees of the *Owner.* The *Contractor* acknowledges and agrees, and will ensure that each *Subcontractor* and *Supplier* acknowledges and agrees, that:

.1 any non-affiliation clause contained in any collective agreement that the *Contractor* or any *Subcontractor* or *Supplier* may have with their respective unions has been waived by that union, and therefore will not preclude them from working on the job site alongside non-union workers or workers of other unions nor interfering in any way with non-union workers or workers of other unions;

.2 neither the *Contractor* nor any *Subcontractor* or *Supplier* will permit any union organizing activity on site by any of their respective employees or by representatives of their respective unions;

.3 the *Contractor* shall ensure that the trade union representatives of the employees of the *Contractor* and of all *Subcontractor* and *Suppliers* abide by the site rules established by the *Consultant* regarding site visits by trade union representatives;

.4 if the *Contractor* or any *Subcontractor* and *Suppliers* is signatory or affiliated to a union or unions, the *Contractor* shall secure and ensure that *Subcontractor* and *Suppliers* shall secure a "project specific no strike agreement" between them for the full duration of the *Project*; and

.5 notwithstanding any other provisions contained in the *Contract Documents* to the contrary, if any of the foregoing provisions are contravened, the *Owner* may terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract* upon giving *Notice in Writing* of at least 5 *Working Days* to the *Contractor* and the provisions of paragraphs 7.1.5 and 7.1.6 of GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT shall apply.

16.2 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with the *Owner's* own forces which other contractor or own forces or both are or may become unionized or non-unionized."

SC51. LABOUR DISPUTES (GC 17)

SC51.1 Add the following as **GC 17**:

"**GC 17 – LABOUR DISPUTES**

17.1 If the *Contractor* or any *Subcontractor* or *Supplier* is involved in a labour dispute including without limitation, strike, lockout, work stoppage, whether legal or illegal, which in any way materially detrimentally affects the *Project,* the *Contractor* agrees to defend, indemnify and save harmless the *Owner,* the *Consultant* and the *Consultant* from and against claims, demands, losses, costs, damages, actions, suits or proceedings whatsoever that arise out of or in connection with such labour dispute, and, notwithstanding any other provisions contained in the *Contract Documents* to the contrary, in such event the *Contractor* agrees that the *Owner* may terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract* upon giving a *Notice in Writing* providing 5 *Working Days'* notice of such termination to the *Contractor* and the provisions of paragraphs 7.1.5 and 7.1.6 of GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT shall apply.

17.2 Upon a termination, the *Owner* may publish a notice of termination in the form and manner prescribed in the *Construction Act*. For greater certainty, a termination in accordance with this GC 17 – LABOUR DISPUTES will be effective whether or not a notice of termination is published."

SC52. AUDIT RIGHTS (GC A)

SC52.1 Add the following as **GC 18**:

"**GC 18 – AUDIT RIGHTS**

18.1 At any time upon request by the *Owner*, the *Contractor* will provide the *Owner* and its representatives with reasonable access to the books and records of the *Project*, the *Contractor* and any affiliate of the *Contractor* performing any part of the *Work* for the purposes of verifying compliance with this *Contract* and applicable laws, and the ability of the *Contractor* to complete the *Work*, including time sheets and back-up invoices relating to changes, corporate authorizations, and financial statements."

Schedule A
Proper Invoice

The *Contractor*'s applications for payments for the *Work* shall be made to the *Consultant* and shall be in a form, and contain such information, that may be required for the application for payment to constitute a "proper invoice" under the *Construction Act*, including the following:

1. All of the information specified to be included in a proper invoice as set out in section 6.1 of the *Construction Act*, namely:
    a. the *Contractor*'s name and address;
    b. the date of the application for payment and the period during which the *Work* was performed;
    c. information identifying the authority, whether in the *Contract* or otherwise, under which the *Work* was performed;
    d. a description, including quantity where appropriate, of the *Work* performed and *Products* supplied;
    e. the amount payable for the *Work* performed, and the payment terms; and
    f. the name, title, telephone number and mailing address of the person to whom payment is to be sent;
2. an original *Statutory Declaration* certifying that all accounts of the *Contractor* have been paid in full, less only the amounts of holdback due to them for the relevant dates, that all liabilities incurred by the *Contractor* and its subcontractors and suppliers in carrying out the *Contract* have been discharged and that all liens under the *Contract* have expired or have been satisfied, discharged or provided for by payment;
3. original statutory declarations from *Subcontractors* and *Suppliers* in the form of a CCDC 9B or such other form of subcontractor statutory declaration indicated in the procurement documents issued by the *Owner* for this *Contract* or required in this *Contract*;
4. the total amount of expenditures to date and the total estimated expenditures to be made for the remaining balance of the *Work*;
5. satisfactory evidence in the form of a Certificate of Clearance issued by the *WSIB* that the *Contractor* has made suitable provision for meeting any liability under the *Workplace Safety and Insurance Act*, *1997* prior to the release of any monthly progress payment; and
6. all inspection and testing reports, results and certificates required under the *Contract Documents* for completed portions of the *Work*;
7. updates to approved schedule of values, cash flow analyses and detailed *Project* schedules; and
8. any additional information or documents that the *Owner* or the *Consultant* may reasonably require,

all of which together are the requirements for a *Proper Invoice* under the *Contract*.

[NOTE TO USER: Add any additional documents or requirements, if any are desired, such as ongoing proof of bonding or insurance, etc.]

Schedule B
Handling of Hazardous Materials

The *Owner* is committed to maintaining a safe workplace, free of hazards. To that end, the *Owner* promotes the health and safety awareness of its employees and enforces compliance with all laws and regulations regarding occupational health and safety, the environment and transportation. The *Owner* similarly expects that all contractors that it retains, including the *Contractor* and its subcontractors and suppliers, will comply with all laws and regulations regarding occupational health and safety, the environment and transportation applicable to their work.

The *Contractor* shall ensure that any person supervising the *Work* will know, understand and competently carry out the responsibilities under applicable health and safety legislation, have an understanding of the Work and its potential hazards, and have an understanding of how occupational health and safety regulations apply to the *Work*.

To identify potential hazardous materials or conditions, the *Contractor* shall undertake regular worksite inspections.

If the *Contractor* **at any time** during construction encounters any hazardous condition or material, the *Contractor* shall:

- comply with all applicable legal and regulatory requirements regarding the handling of the hazardous condition or material, including any reporting requirements;
- immediately report the hazardous condition or material to the *Owner*;
- where asbestos-containing material is identified or suspected, immediately report the finding to its site superintendent and stop all work in the suspect area. The *Contractor* shall use methods first approved by the *Owner* for the drilling, cutting or removal of asbestos material in order to prevent contamination of the Site and any adjacent property.
- where any hazardous material, including asbestos containing material, develop and implement a Plan of Procedure as follows:
    - The *Contractor* shall provide the *Owner* with a Plan of Procedure setting out how the *Contractor* intends to handle the abatement of the hazardous in compliance with all applicable regulatory requirements, which plan must set out the following information:
        - the location(s) where the presence of a hazardous material is known or suspected;
        - a detailed description of the proposed abatement work;
        - a detailed schedule of proposed abatement work;
        - the name(s) of any consultant or subcontractor retained to advise or undertake work with respect to the abatement;
            - a description of the plan to monitor the abatement;
            - a description of the plan to report to the *Owner* on the progress and completion of the abatement;
            - obtain the *Owner*'s written approval to carry out the Plan of Procedure;
    - The *Contractor* shall undertake the abatement of asbestos in accordance with the Plan of Procedure; and
    - The *Contractor* shall, where the presence of asbestos exceeds that contemplated by the Plan of Procedure, submit an amended plan to the *Owner* and obtain the written approval of the *Owner* to the amended plan before proceeding to implement any abatement work not completed by the Plan of Procedure.

Schedule C
List of Environmental Reports for the Place of the Work

The following are a list of environmental reports provided by the *Owner* to the *Contractor* at the time of the *Contractor*'s submission in response to the *Owner*'s procurement for this *Contract*:

[Note to User: To be added, if applicable, or deleted, if not applicable.]

Schedule D
Form of Release

RELEASE AT READY-FOR-TAKEOVER

Owner: _____ **Date:** _____

Contractor: _____

Project: _____

Applicable Invoice #: _____

Context

A. The Contractor identified above (the "**Contractor**") and Wilfred Laurier University (the "**Owner**") entered into a contract dated _____ (the "**Contract**") for the Contractor to provide certain work and services in respect of the project identified above (the "**Project**").

B. Capitalized terms used but not defined in this Release have the meanings given to them in the Contract.

C. Pursuant to the Contract, the Contractor is providing this Release to the Owner in support of its application for payment of holdback upon Ready-for-Takeover.

Release

1. Except for the claims set out in Section 2, as of the date set out above, and to the maximum extent permitted by law, the Contractor on its own behalf and on behalf of its successors, assigns, Subcontractors and Suppliers hereby irrevocably waives, releases, and forever discharges the Owner and its directors, officers, representatives, employees, contractors, agents, and their respective successors and assigns (the "**Released Group**") from any and all claims, changes, disputes, complaints, liabilities, obligations, damages, causes of action, proceedings, debts, demands, losses, and expenses whatsoever, at law and in equity, which it may have had, may now have, or may have arising out of or in connection with the Contract arising on or before the date of this Release or the date of Ready-for-Takeover, whichever is later ("**Claims**"), including for changes to the Work or delays in the Work.

2. The Contractor does not release the Released Group from the following Claims:

    a. Claims arising from Work which remains to be completed by the Contractor on the Project as at the date of this Release;

    b. Claims which cannot be waived under the Construction Act (Ontario), including claims for lien; and

    c. the following Claims (including any outstanding Claims about which the Contractor has previously notified the Owner and attach additional page if necessary):

    The Contractor acknowledges and agrees that if it leaves Section 2.c blank or responds "none" in Section 2.c, or if it fails to include any Claim arising prior to the date of this Release, the Contractor is deemed not to have reserved any Claims other than those in Sections 2.a and 2.b.

    _____

    _____

    _____

    _____

3. Except for the Claims set out in Section 2.c, Contractor's managerial or senior supervisory personnel do not know, or have reason to know based on good and prudent industry practices, of any potential or actual claims that are required to be notified to Owner according to the requirements of the Contract as of the date of this Release.

4. This Release is freely and voluntarily given and the Contractor acknowledges and represents that it has fully reviewed the terms and conditions of this Release and that it is fully informed with respect to the legal effect of this Release.

General

5. No provision of this Release which may be deemed unenforceable shall in any way invalidate any other provision hereof, all of which shall remain in full force and effect.

6. This Release shall be binding upon, and shall inure to the benefit of, the Contractor, the Owner, and their respective heirs, successors, legal representatives and assigns.

7. This Release and the Contract constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements. No change or waiver shall be valid unless in writing and signed by an authorized representative of the party against whom such change or waiver is sought to be enforced.

8. This Release may be executed and delivered electronically.

Full Corporate Name of Contractor:

By: _____
Name:
Title:

I have authority to bind the corporation.

ATTACHMENT A - SPECIAL CONDITIONS

[Note to User: To be added, if applicable, or deleted, if not applicable.]