

**UNIVERSITY OF TORONTO MISSISSAUGA  
AMENDMENTS TO CCDC 2 - 2008  
SUPPLEMENTARY CONDITIONS  
AGREEMENT, DEFINITIONS AND  
SUPPLEMENTARY CONDITIONS**

**UTM VERSION - AUGUST 2014**

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The Standard Construction Document for a Stipulated Price Contract, English version, consisting of the Agreement between the Owner and the Contractor, Definitions and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing the same is made part of these Contract Documents, with the following amendments, additions and modifications:

## 1. AGREEMENT BETWEEN OWNER AND CONTRACTOR

### 1.1 ARTICLE A-5 – PAYMENT

1.1.1. Amend paragraph 5.1, line 3, by inserting “ten” in the first blank in that line. Further amend paragraph 5.1, line 3, by inserting “10” in the second blank in that line.

1.1.2. Amend paragraph 5.1.3, in the first line, by deleting the words “...the issuance of the...” and replacing them with “...receipt of the Consultant’s...”.

1.1.3. Delete paragraph 5.3.1 and replace it with the following:

“Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest shall also become due and payable on such unpaid amounts at 2% above the prime rate. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by **[name of chartered lending institution]** for prime business loans as it may change from time to time.”

### 1.2 ARTICLE A-6 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

1.2.1. Delete paragraph 6.1 (but not, for greater certainty, the names and address information of the *Owner*, the *Contractor* and the *Consultant* set out below paragraph 6.1 in Article A-6) and replace it with the following:

“6.1 *Notices in Writing* will be addressed to the recipient at the address set out below. The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by e-mail in respect of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five *Working Days* after the date on which it was mailed, provided that (a) if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working*

*Day* next following such day, and (b) if, during such period, there is an interruption of regular mail services, such *Notice in Writing* sent by mail shall not be deemed to be received until actually received, but the party giving such *Notice in Writing* may utilize any other means of delivery permitted by this Article which has not been so interrupted to deliver such *Notice in Writing*. A *Notice in Writing* sent by e-mail shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after 4:30 p.m. Toronto time on the date of its transmission, then it shall be deemed to have been received on the first *Working Day* next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.”

## 2. DEFINITIONS

### 2.1.1. Amend Definition 4 by adding the following to the end of that Definition:

“For purposes of the *Contract*, the terms “Consultant”, “Architect” and “Engineer” shall be considered synonymous.”

### 2.1.2. Amend Definition 12 by adding the following to the end of that Definition:

“For purposes of the *Contract*, the terms “Owner”, “University of Toronto Mississauga”, “UTM”, “University of Toronto” and the “University” shall be considered synonymous. For the *Project*, the *Owner’s* representative is [●] TBD

### 2.1.3. Amend Definition 16, Provide, as follows:

“‘*Provide*’ means to supply and install. *Provide* has this meaning whether or not the first letter is capitalized.”

### 2.1.4. Add a new Definition 27, Act, as follows:

“ ‘*Act*’ means the Construction Lien Act (Ontario).”

### 2.1.5. Add a new Definition 28, Base Bid, as follows:

“‘*Base Bid*’ means the price bid for the *Work* by the *Contractor*, at tender close. For greater certainty, *Base Bid* excludes *Value Added Taxes* and the value of any alternative price or prices solicited from the *Contractor* by the bid documents.”

### 2.1.6. Add a new Definition 29, by others, as follows:

“The words ‘by Others’ when used in the *Specifications* or on the *Drawings* means a person performing part of the *Project*, other than the *Contractor*. For greater certainty, the only means by which work or services shown or specified shall be indicated as not being in the *Contract* is by use of the initials ‘N/C’ or the words ‘Not In Contract’ or the words ‘by Others’ or the words ‘by *Owner*’.”

2.1.7. Add a new Definition 30, Construction Schedule, as follows:

“*Construction Schedule*’ means the schedule for the performance of the *Work* provided by the *Contractor* pursuant to GC3.5, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.”

2.1.8. Add a new Definition 31, Environmental Programs, as follows:

“*Environmental Programs*” means all of the Owner’s requirements found in the “Manual for Proponents and Bidders Respecting Designated Substances, Health and Safety, Biohazards and Other Hazards” prepared and maintained by the Owner and found at [www.ehs.utoronto.ca/services/biosafety/contractors.htm](http://www.ehs.utoronto.ca/services/biosafety/contractors.htm). The *Environmental Programs* include the Owner’s Asbestos Control Program, its mould program and a program for controlling and handling designated substances.”

2.1.9. Add a new Definition 32, Exposed, as follows:

“*Exposed*’ means visible by the *Owner* at the completion of the *Work*, unless otherwise indicated in the *Contract Documents*. *Exposed* items include all items on roof areas, mechanical and service rooms, inside of cupboards, cabinets and similar items.”

2.1.10. Add a new Definition 33, Force Majeure, as follows:

“*Force Majeure*’ means any cause, beyond the *Contractor*’s control, other than bankruptcy or insolvency, lack of funds or other financial cause, which prevents the performance by the *Contractor* of any of its obligations under the *Contract* and the event of *Force Majeure* was not caused by the *Contractor*’s default or active commission or omission and could not be avoided or mitigated by the exercise of reasonable effort or foresight by the *Contractor*. *Force Majeure* includes *Labour Disputes* (but only those which are industry-wide and not directed solely at the Contractor or a Subcontractor or solely involving the employees of the Contractor or a Subcontractor), fire, unusual delay by common carriers or unavoidable casualties, civil disturbance, acts, orders, legislation, regulations or directives of any government or other public authority, acts of a public enemy, war, riot, sabotage, blockage embargo, shortage of materials and supplies, lightning, earthquake, abnormally adverse weather conditions or acts of God. Notwithstanding the foregoing, *Force Majeure* shall not include: (i), weather conditions which (A) could be anticipated by an experienced contractor familiar with constructing projects similar to the Project and/or (B) do not exceed the fifty (50) year severity for that weather condition in the area of the Place of the Project, as determined by, or according to the records of, the Meteorological Service of Canada (or its successors), (ii) any event or circumstance arising from a weather condition described in the immediately preceding clause (i); or (iii) any mechanical, electrical or other breakdown, except where any such breakdown is caused by another event or circumstance which falls within the definition of *Force Majeure*.”

2.1.11. Add a new Definition 34, General Labour Conditions, as follows:

““*General Labour Conditions*” means the requirements for the use of union labour by the Contractor and Subcontractors as more particularly set out in GC13.1 – GENERAL LABOUR CONDITIONS.”

2.1.12. Add a new Definition 35, Install, as follows:

“*Install* means install and connect. *Install* has this meaning whether or not the first letter is capitalized.”

2.1.13. Add a new Definition 36, Labour Dispute, as follows:

“*Labour Dispute* means any lawful or unlawful labour problems, work stoppage, labour disruption, strike (including lockouts decreed or recommended for its members by a recognized contractor’s association of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), job action, slow down, picketing, refusal to work or continue to work, refusal to supply materials, cessation or work or other labour controversy, whether caused by a failure of the *Contractor* to comply with the General Labour Conditions or not, which does, or might, affect the *Work*.”

2.1.14. Add a new Definition 37, OHSA, as follows:

“*OHSA* means the Occupational Health and Safety Act (Ontario)”

2.1.15. Add a new Definition 38, Request for Information, as follows:

“*Request for Information* or *RFI* means written documentation sent by the *Contractor* to the *Owner* or to the *Owner’s* representative or to the *Consultant* requesting written clarification(s) and/or interpretation(s) of the *Drawings* and/or *Specifications*, *Contract* requirements and/or other pertinent information required to complete the *Work* of the *Contract* without applying for a change or changes to the *Work*.”

2.1.16. Add a new Definition 39, Submittals, as follows:

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

- *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 or record drawings and manuals to provide instructions to the operation and maintenance of the *Work*.”

2.1.17. Add a new Definition 40, reviewed, instructed, required, directed, permitted, inspected, ordered, as follows:

“Wherever the words ‘reviewed’, ‘instructed’, ‘required’, ‘directed’, ‘permitted’, ‘inspected’, ‘ordered’ or similar words are used they shall mean, unless the context provides otherwise, ‘reviewed by the *Consultant*’, ‘instructed by the *Consultant*’, ‘required by the *Consultant*’, ‘directed by the *Consultant*’, ‘permitted by the *Consultant*’ and ‘ordered by the *Consultant*’.”

2.1.18. Add a new Definition 41, satisfactory, as follows:

“Wherever the word ‘satisfactory’ or similar words or phrases are used in the Contract Documents, it means, unless the context provides otherwise, ‘satisfactory to the Owner and the Consultant’.”

### 3. AMENDMENTS TO THE GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

#### 3.1 GC 1.1 CONTRACT DOCUMENTS

- 3.1.1. Amend paragraph 1.1.1 by adding the following between the first and second sentences:

“In many cases, the language of the *Contract Documents* is written in the imperative for the sake of brevity. Clauses containing instructions or directions are intended for the *Contractor* and such sentences are deemed to include the words, ...”the *Contractor* shall”.”

- 3.1.2. Amend paragraph 1.1.6 by adding the following to the end of that paragraph:

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

- 3.1.3. Amend paragraph 1.1.7 by deleting paragraph 1.1.7.1 in its entirety and replacing it with the following:

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



- the General Conditions,
- Division 1 of the *Specifications*,
- technical *Specifications*,
- material and finishing schedules,
- the *Drawings*,
- the Request for Tender, including, but not limited, to all Addenda thereto,
- the *Contractor's* tender submission”

3.1.4. Further amend paragraph 1.1.7 by adding subparagraphs 1.1.7.5, 1.1.7.6, 1.1.7.7, 1.1.7.8, and 1.1.7.9 as follows:

- “.5 Annotations on the *Drawings* shall govern over the graphic representation of the *Drawings*.
- .6 Finishes in the room finish schedules shall govern over those shown on the *Drawings*.
- .7 Schedules of Division 01 – General Requirements of the *Specifications* shall form part of and be read in conjunction with the technical specification section as listed in the table of contents of the *Specifications*.
- .8 Architectural drawings shall have precedence over structural, plumbing, mechanical, electrical and landscape drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts and architectural elements of construction, it being understood that the integrity and installation of the systems designed by the *Consultant* or its sub-*Consultants* are to remain with each of the applicable drawing disciplines.
- .9 Fixturing drawing provided by the *Owner* shall have precedence over architectural drawings insofar as outlining, determining and interpreting conflicts over the required design intent of all architectural layouts.”

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

- “1.1.8 The *Contractor* may obtain, at its own cost, copies of the *Contract Documents* from the electronic plans room at the Toronto Construction Association.”

3.1.6. Add a new paragraph 1.1.11 as follows:

- “1.1.11 One set of signed and sealed *Contract Documents* shall be retained by each of the *Owner* and the *Contractor*.”

### 3.2 GC2.2 ROLE OF THE CONSULTANT

3.2.1. Amend paragraph 2.2.7 in the second and third lines by deleting the words: "...except with respect to GC5.1 — FINANCING INFORMATION REQUIRED OF THE OWNER".

3.2.2. Amend paragraph 2.2.13 by adding the following to the end of that paragraph:

"If, in the opinion of the *Contractor*, the Supplemental Instruction involves an adjustment in the *Contract Price* or in the Contract Time, it shall, within ten (10) *Working* days of receipt of a Supplemental Instruction provide the *Consultant* with a written notice to that effect. In the event that the *Contractor* needs additional information to determine whether a Supplemental Instruction involves an adjustment of the *Contract Price* or in the Contract Time, it may issue a written request to the *Consultant* seeking such additional information. Following receipt of such information, the *Contractor* shall, within ten (10) *Working* days of receipt of such additional information provide the *Consultant* with the written notice described in the first sentence of this paragraph 2.2.13. Failure to provide written notification within the time stipulated in this paragraph 2.2.13 shall be deemed an acceptance of the Supplemental Instruction by the *Contractor* without adjustment in the *Contract Price* or Contract Time."

3.2.3. Add new paragraphs 2.2.19 as follows:

"2.2.19 The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among *Subcontractors* and *Suppliers* in respect to such divisions."

3.2.4. Add a new paragraph 2.4.1.1 as follows:

"2.4.1.1 The *Contractor* shall prioritize the correction of any defective *Work* which, in the sole discretion of the Owner, adversely affects the day to day operation of the Owner."

3.2.5. Add a new paragraph 3.1.3 as follows:

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

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

- 3.3.1. Delete subparagraphs 3.2.2.1 and 3.2.2.2 in their entirety and substitute “intentionally left blank”.
- 3.3.2. Delete paragraph 3.2.3.2 and replace it with the following:  
“3.2.3.2 Co-ordinate and schedule the activities and work of other contractors and *Owner’s* own forces with the Work of the *Contractor* and connect as specified or shown in the *Contract Documents*.”
- 3.3.3. Add a new paragraph 3.2.3.4 as follows:  
“3.2.3.4 Subject to GC9.4 CONSTRUCTION SAFETY, for the *Owner’s* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable Health and Safety legislation of the *Place of the Work*, including all the responsibilities of the “constructor” under OHSA.”

### 3.4 GC3.4 DOCUMENT REVIEW

- 3.4.1. Delete the second sentence of paragraph 3.4.1 and replace it with the following two sentences:  
“Such review by the *Contractor* shall meet the standard of care described in paragraph 3.15.1 of this Contract. Except for the 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*.”
- 3.4.2. Amend paragraph 3.4.1 in the fourth line, at the beginning of the third sentence, by adding the words, “Provided it has exercised the degree of care and skill described in this paragraph 3.4.1, the *Contractor*”.
- 3.4.3. Add new paragraphs 3.4.2 and 3.4.3 as follows:  
“3.4.2 Errors, inconsistencies and/or omissions in the Drawings and/or *Specifications* which do not allow completion of the *Work* of the Contract shall be brought to the *Consultant’s* attention prior to the execution of the Contract by means of an *RFI*.  
3.4.3. Notwithstanding the foregoing, errors, inconsistencies, discrepancies and/or omissions shall not include lack of reference on the Drawings or in the *Specifications* to labour and/or *Products* that are required or normally recognized within respective trade practices as being necessary for the complete execution of the *Work*. The *Contractor* shall not use subsequent *RFIs*, issued during execution of the *Work*, to establish a change and/or changes in the *Work* pursuant to Part 6 – CHANGES IN THE *WORK*.”

### 3.5 GC3.5 CONSTRUCTION SCHEDULE

#### 3.5.1. Delete paragraph 3.5.1 and replace it with the following:

“3.5.1 The *Contractor* shall:

- .1 prior to site mobilization, prepare and submit to the *Owner* and the *Consultant* for their approval a baseline construction schedule, utilizing a scheduling program which is the most current version of MS *Project*, indicating the critical path for the *Project*, including all predecessor activities and including manpower loading expressed in man hours, demonstrating that the *Work* will be performed in conformity with the Contract Time. The *Contractor* shall provide the schedule information required by this paragraph 3.5.1.1 in both electronic format and hard copy and be accompanied by a letter or an e-mail from a senior officer of the *Contractor* certifying that the schedule was prepared in collaboration with, and is supported by, the *Subcontractors* and *Suppliers* whose activities affect the critical path;
- .2 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the construction schedule referred to in paragraph 3.5.1.1 or any successor or revised schedule approved by the *Owner* pursuant to this GC3.5;
- .3 continuously monitor the progress of the *Work* relative to the baseline construction schedule and provide to the *Owner* and the *Consultant*, on a monthly basis or as stipulated by the Contract Documents, a progress schedule covering all of the baseline activities and including the actual start, actual finish and percentage completion of those activities. Each month, the *Contractor* shall submit, for the *Owner*'s approval, any changes made to the baseline logic and activity durations in both hard copy and electronic format; and
- .4 if after applying the expertise and resources required under paragraph 3.5.1.2, the *Contractor* forms the opinion that the slippage in schedule reported in paragraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice provided under paragraph 3.5.1.3, indicate to the *Consultant* if the *Contractor* intends to apply for an extension of Contract Time as provided in PART 6 —CHANGES IN THE *WORK*.”

#### 3.5.2. Add a new paragraph 3.5.2 as follows:

“3.5.2 In addition to the requirements of paragraph 3.5.1, the *Contractor* shall submit to the *Owner* and the *Consultant* a two (2) week look-ahead schedule, to be posted on the UTM Facilities Management & Planning web site, covering the period of two weeks, commencing on a Monday, during which *Work* will be performed at the *Place of the Work*, which look-ahead schedule shall be in a format to be specified by the *Owner* and include such information as may be required by the *Owner* from time to time (for example, anticipated noise levels) and shall be submitted to the *Owner* and the *Consultant* not later than the Thursday

immediately preceding the commencement of such period. Each such look-ahead schedule shall indicate the major activities to be undertaken or constructed in such two (2) week period.”

### 3.6 GC 3.6 SUPERVISION

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

“3.6.2 The supervisor, and any project manager appointed by the *Contractor*, shall represent the *Contractor* at the Place of *Work* and shall have full authority to act on written instructions given by the *Consultant* and/or the *Owner* and the *Owner*’s representative. Instructions given to the supervisor or the project manager shall be deemed to have been given to the *Contractor* and both the supervisor and any project manager shall have full authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to this Contract.”

3.6.2. Add a new paragraph 3.6.3 as follows:

“3.6.3 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*.”

### 3.7 GC 3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1. Add a new paragraph 3.7.7 as follows:

“3.7.7 Where provided in the Contract, the *Owner* may assign to the *Contractor*, and the *Contractor* agrees to accept, any contract procured by the *Owner* for *Work* or services required on the *Project* that has been pre-tendered or pre-negotiated by the *Owner*.”

### 3.8 GC 3.8 LABOUR AND PRODUCTS

3.8.1. Delete paragraph 3.8.1 in its entirety and replace it with the following:

“Except as otherwise expressly provided in the *Contract Documents*, the *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*. The *Contractor* represents and warrants that the *Products* provided for in accordance with the Contract are not subject to any conditional sales contract and are not subject to any security rights obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*.”

3.8.2. Delete paragraph 3.8.2 and replace it with the following:

“3.8.2 *Products* provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards

Board or General Standards Board, ASTM, National Building Code, Ontario Building Code, National Fire Prevention Association, the Technical Standards and Safety Authority (also known as TSSA) and all governmental authorities having jurisdiction at the *Place of the Work*, unless otherwise specified. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*. *Products* brought on to the *Place of the Work* by the *Contractor* shall be deemed to be the property of the *Owner*, but the *Owner* shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever. The said *Product* shall be at the sole risk of the *Contractor*.”

3.8.3. Amend paragraph 3.8.3 by adding the words, “, agents, *Subcontractors* and *Suppliers*. . .” after the word “employees” toward the end of line one.

3.8.4. Also with respect to paragraph 3.8.3, add three new sentences to the end of this paragraph which read as follows:

“Without in any way limiting the generality of the foregoing, the *Contractor* shall prepare and implement the job site rules more particularly described in the tender documents. If no job site rules are described in the tender documents, the *Contractor* shall draft job site rules for the review and approval of the *Owner*. Any such job site rules prepared by the *Contractor* shall be consistent with the *Contractor’s* duties and obligations under the OHSA and shall also include provisions making smoking and the consumption of alcohol or non-prescription drugs on the *Project* site the subject of discipline proceedings and/or termination of employment.”

3.8.5. Add new paragraphs 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.8.9 and 3.8.10.as follows:

“3.8.4 Upon receipt of a written notice from the *Consultant*, the *Contractor* shall dismiss from the *Place of the Work* tradesmen and labourers whose *Work* is unsatisfactory to the *Consultant* or who are considered by the *Consultant* to be unskilled or otherwise objectionable.

3.8.5 The *Contractor* shall not employ any persons on the *Work* whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the *Work*. Any costs arising from Labour Disputes, as a result of the employ of any such person by the *Contractor*, its *Subcontractor* or *Suppliers* shall be the sole expense of the *Contractor*.

3.8.6 The *Contractor* shall comply with the General Labour Conditions and shall also cooperate with the *Owner* and its representatives and shall take all reasonable and necessary actions to maintain stable and harmonious labour relations with respect to the *Work* at the *Place of the Work*, including cooperation to attempt to avoid *Work* stoppages, trade union jurisdictional disputes and other Labour Disputes.

3.8.7 Prior to performing any work or procedure likely to result in abnormally high temperatures or utilizing open flame, a permit and approval must be obtained from

the *Owner*. To obtain such, a minimum of 7 calendar days' prior written notice is required. The *Contractor* shall make its application for such permit through the *Owner's* representative

- 3.8.8 The *Contractor* shall give the *Owner's* representative a minimum of 7 calendar days' notice in writing for service interruptions, including, but not limited to, electrical, steam, domestic water, air, and gas. A shorter notification period for minor service isolation may be arranged depending on the nature of the service, in the sole discretion of the *Owner*.
- 3.8.9 The *Contractor* acknowledges that there is no free parking on the University of Toronto Mississauga Campus. The campus is regularly patrolled and violators will be ticketed and/or towed by the City of Mississauga. *Contractors* working on campus must pay for a commercial parking permit or pay for and obtain a cash parking receipt from a dispensing machine. The *Contractor* may contact the University Parking Office, Alumni House (905-828-5254) for parking requirements and extended parking permit details
- 3.8.10 The *Contractor* must use the UTM construction key/cylinder and pay a deposit of \$75 cash only (receipt to be issued) per Construction Access Key set (3 keys) and the deposit will be returned after returning the receipt and keys. The Construction Access Key can be signed out by the *Contractor* at the Reception desk of the Facilities Management & Planning office located at Erindale Hall Residence, Room 203, in University of Toronto Mississauga Campus."

### 3.9 GC 3.9 DOCUMENTS AT THE SITE

3.9.1. Delete paragraph 3.9.1 in its entirety and replace it with the following:

- 3.9.1 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, *Contemplated Change Orders*, *Change Orders*, *Change Directives*, Cash Allowance Disbursement Authorizations, reviewed *Shop Drawings*, *Submittals*, reports and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and *Consultant*.

### 3.10 GC 3.10 SHOP DRAWINGS

- 3.10.1. Add the words "AND OTHER SUBMITTALS" to the Heading after the words "SHOP DRAWINGS".
- 3.10.2. Add the words "and other *Submittals*" after the words "*Shop Drawings*" in paragraphs 3.10.1, 3.10.2, , 3.10.3, 3.10.4, 3.10.5, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11.
- 3.10.3. Delete paragraph 3.10.12 in its entirety and replace with the following:

- "3.10.12 The *Consultant* will review and return *Shop Drawings* and *Submittals* in accordance with the Schedule agreed upon in 3.10.3, or, in the absence of such a schedule, with reasonable promptness. If, for any reason, the *Consultant* cannot process the *Shop Drawings* and/or *Submittals* within the agreed-upon

schedule or with reasonable promptness, the *Consultant* shall notify the *Contractor* and they shall meet to review and arrive at an acceptable revised schedule for processing. Changes in the *Contract Price* or *Contract Time* may be made only as provided in the *Contract*.”

3.10.4. Add new paragraphs 3.10.13, 3.10.14, 3.10.15, 3.10.16 and 3.10.17 as follows:

“3.10.13 Reviewed *Shop Drawings* or other *Submittals* shall not authorize a change in the *Contract Price* and/or the *Contract Time*.

3.10.14 The *Contractor* shall prepare a schedule for the submission of *Shop Drawings* and other *Submittals* acceptable to the *Owner* and the *Consultant* prior to the first application for payment. A draft of the proposed *Submittals* schedule shall be submitted by the *Contractor* to the *Consultant* and the *Owner* for approval. The draft schedule shall clearly indicate the phasing of *Shop Drawings* submissions.

3.10.15 Except where the parties have agreed to a different *Submittals* schedule pursuant to paragraph 3.10.3, the *Contractor* shall comply with the requirements for *Shop Drawings* and other *Submittals* submissions stated in the *Specifications*, Section 01300, *Submittals*.

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

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

### 3.11 GC 3.13 CLEANUP

3.11.1. Add new paragraph 3.13.4 and 3.13.5 as follows:

“3.13.4 Clean up during construction and the final cleaning of the *Place of the Work* is further specified in the *Specifications*, Section 01700, Execution Requirements. Without derogating from any other applicable requirements of the *Contract Documents*, the *Contractor’s* obligations under the *Contract* with respect to the removal and disposal of all waste products and debris shall be performed in an environmentally appropriate manner, in conformity with all applicable University of Toronto Mississauga, municipal, provincial and federal laws, ordinances, rules, regulations and codes.

3.13.5 In the event that the *Contractor* fails to remove waste and debris as provided in this GC 3.13, then the *Owner* or the *Consultant*, may give the *Contractor* twenty-four (24) hours’ written notice to meet its obligations respecting clean up. Should the *Contractor* fail to meet its obligations pursuant to this GC 3.13 within the twenty-four (24) hour period next following delivery of the notice, the *Owner* may remove such waste and debris and deduct from payments otherwise due to the



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*Contractor*, the Owner's costs for such clean up, including a reasonable markup for administration."

### **3.12 GC 3.14 OCCUPANCY OF THE WORK**

3.12.1. Add a new General Condition 3.14 as follows:

"3.14 OCCUPANCY OF THE WORK

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

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

### **3.13 GC 3.15 CONTRACTOR STANDARD OF CARE**

3.13.1. Add a new General Condition 3.15 as follows:

"3.15 CONTRACTOR STANDARD OF CARE

3.15.1 In performing this *Contract*, the *Contractor* shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects in a first class and expeditious manner. The *Contractor* acknowledges and agrees that, throughout this *Contract*, the *Contractor's* obligations, duties and responsibilities shall be judged, evaluated and interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of care in respect of any *Products*, personnel or procedures which it may recommend to the *Owner* or employ on the *Project*."

### **3.14 GC 3.16 CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS**

3.14.1. Add a new General Condition 3.16 as follows:

“3.16 CONTRACTOR USE OF PERMANENT EQUIPMENT OR SYSTEMS

3.16.1 With the prior written approval of the Owner, the *Contractor* may make use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the *Work* for the purpose of providing heat or power to the *Project* during the final stages of construction. In such event, and before the issuance of the certificate of Substantial Performance of the *Work*, the *Contractor* shall clean and make good, to the satisfaction of the *Consultant*, such systems and equipment as it had been permitted to use. The *Contractor* shall pay any and all costs associated with such use, cleaning and making good.”

**3.15 GC3.17 ENVIRONMENTAL PROGRAMS**

3.15.1. Add a new General Condition 3.17 as follows:

“3.17 ENVIRONMENTAL PROGRAMS

3.17.1 In carrying out the Work under this Contract, the Contractor shall comply with all the requirements of the Environmental Programs.”

**3.16 GC 4.1 CASH ALLOWANCES**

3.16.1. Delete paragraph 4.1.4 in its entirety and replace it with the following:

“4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the *Consultant's* direction to cover the shortfall.”

3.16.2. Delete paragraph 4.1.5 in its entirety and replace it with the following:

“4.1.5. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order*.”

3.16.3. Delete paragraph 4.1.7 in its entirety and replace it with the following:

“4.1.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be *Owner* purchased and installed or hooked up are required at the site to avoid delaying the progress of the *Work*.”

3.16.4. Add new paragraph 4.1.8 as follows:

“4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work*, to be paid for from cash allowances.”

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

3.17.1. Delete GC5.1 in its entirety and replace it with “Intentionally left blank.”

### 3.18 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

3.18.1. Amend paragraph 5.2.3 by adding the following to the end of that paragraph:

“No amount claimed shall include *Products* delivered to the *Place of the Work* unless the *Products* are free and clear of all security interest, liens, and other claims of third parties.”

3.18.2. Amend paragraph 5.2.4 by adding the following to the end of that paragraph:

“Such statement of values shall subdivide the *Contractor’s* allocation for “general conditions” to identify a separate line item labeled “allocation for baseline schedule required by GC3.5.” The allocation to such line item shall be calculated as follows:

- .1 where the *Contract Price* is \$2,000,000 or less, the greater of \$5,000 and 5% of the total amount allocated by the *Contractor* to “general conditions”;
- .2 where the *Contract Price* is greater than \$2,000,000, the sum of \$12,000.

In addition, the statement of values shall identify a separate line item labeled “allocation for warranty obligations described in GC12.3”. The allocation to such line item shall be \$\_\_\_\_\_.”

3.18.3. Amend paragraph 5.2.7 by adding the following new sentence at the end of that paragraph:

“Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding the title has passed to the *Owner* pursuant to GC13.1 OWNERSHIP OF MATERIALS.”

3.18.4. Add new paragraphs 5.2.8, 5.2.9 and 5.2.10 as follows:

“5.2.8 The *Contractor* shall submit, with each application for progress payment after the first, a Statutory Declaration, on an original form of CCDC Document 9A-2001, stating that all accounts for labour, subcontracts, *Products*, *Construction Equipment* and other indebtedness which may have been incurred by the *Contractor* and for which the *Owner* might in any way be held responsible have been paid in full up to the previous invoice, except for amounts properly retained as a holdback or as an identified amount in dispute.

5.2.9 The *Contractor* shall submit Workplace Safety & Insurance Board Clearance Certificate, with each application for progress payment.

5.2.10 The *Contractor* shall prepare and maintain current as-built or record Drawings which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built or record Drawings shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant* reserves the right to retain a reasonable amount for the value of the as-built or record Drawings not presented for review.”

### 3.19 GC 5.3 PROGRESS PAYMENTS

3.19.1. Delete paragraph 5.3.1.3 in its entirety and replace it with the following:

“.3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before the later of:

- 35 calendar days after the date of the application for payment, or
- 15 *Working Days* after the date of the certificate for payment issued by the *Consultant*.”

3.19.2. Add new paragraph 5.3.2 as follows:

“5.3.2 If the *Contractor* fails to provide a statutory declaration as required by paragraph 5.2.8 or the clearance certificate required by paragraph 5.2.1, the *Owner* shall be entitled to deduct from amounts otherwise payable to the *Contractor* an amount sufficient to cover any liability which it might incur as a result of the *Contractor*'s failure.”

### 3.20 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

3.20.1. Amend paragraph 5.4.3 by adding the following sentence at the end of the paragraph:

“Immediately following the issuance of a certificate of Substantial Performance of the *Work*, the *Contractor* shall publish the Certificate in the manner provided in the *Act* failing which publication, the *Owner* shall be at liberty to publish and back charge the *Contractor* for its reasonable costs for doing so.”

3.20.2. Add a new paragraph 5.4.4 as follows:

“5.4.4 The *Contractor* acknowledges that the *Submittals* described in this paragraph 5.4.4 are critical to the *Owner*'s use, occupancy and maintenance of the *Project* and agrees to make such *Submittals* to the *Owner*, before or after applying for the payment described in paragraph 5.4.1, as follows:

.1 submit to the *Consultant*, with its application for payment, all written guarantees, warranties, certificates, testing and balancing reports, distribution system diagrams, *Shop Drawings*, maintenance and operating instructions, spare parts, maintenance manuals and materials and any other materials or documentation required by the Contract, except for as-built or record drawings;

- .2 with respect to record or as-built drawings, the *Contractor* shall submit full and complete record or as-built drawings to the *Consultant* within forty-five (45) days of the issuance of the certificate of Substantial Performance of the *Work* and the *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Contractor* an amount which is equal to 2% of the *Contract Price*, provided that such amount shall in no case be less than Five Thousand Dollars (\$5,000) or more than Twenty-Five Thousand Dollars (\$50,000), such amount to serve as security for the obligation of the *Contractor* to deliver such record or as-built drawings within the time described in this paragraph 5.4.4. Should the *Contractor* fail to deliver the record or as-built drawings within such forty-five (45) day period, the *Owner* shall be at liberty to employ the funds withheld to retain a third party to prepare such record or as-built drawings.”

### **3.21 GC 5.5 PAYMENT OF HOLD BACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

- 3.21.1. Amend paragraph 5.5.2 by adding the following sentence to the end of that paragraph:

“A reserve fund may be retained by the *Owner* to secure the completion of the *Work* and correction of deficiencies (other than the delivery of as-built or record drawings, retention in respect of which is provided for in paragraph 5.4.4.2) , the amount of such reserve fund to be equal to 150% of the *Consultant’s* reasonable estimate of the cost of such completion or correction.”

- 3.21.2. Delete paragraph 5.5.3 in its entirety and substitute “Intentionally left blank”.

### **3.22 GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

- 3.22.1. Delete GC 5.6 in its entirety.

### **3.23 GC 5.7 FINAL PAYMENT**

- 3.23.1. Amend paragraph 5.7.4, delete the words “no later than 5 calendar days” and replace them with “on or before the later of 35 calendar days after the date of the application for final payment or 15 *Working Days*”.

### **3.24 GC 5.8 WITHHOLDING OF PAYMENT**

- 3.24.1. Delete paragraph 5.8.1 in its entirety and replace with the following:

“5.8.1 Without limiting any other rights or remedies of the *Owner* under the *Contract* or at law, the *Owner* may reject an application for payment or withhold payment in whole or in part of any amount applied for by the *Contractor*, including but not limited to amounts to offset a previous payment on account of the *Contract Price*

because of subsequently discovered evidence, to such extent as may be necessary to protect the *Owner*, as the case may be, from loss on account of:

- .1 defective or damaged *Work*, or damage to the *Project* caused by the *Contractor*, not remedied;
- 2 *Subcontractor*, *Supplier* and third-party claims relating to the *Work* filed against the *Owner* or reasonable evidence indicating probable filing of claims;
- 3 failure of the *Contractor* to make payments to the *Subcontractors* or *Suppliers* without justification;
- 4 failure of the *Contractor* to make payments to the Workplace Safety and Insurance Board of the Province of Ontario or similar body for which the *Owner* may be found liable;
- 5 a reasonable doubt that the *Work* can be completed by the *Contractor* for the balance of the *Contract Price* not yet claimed;
- 6 evidence of financial difficulty or prospective dissolution of the *Contractor* or of its inability to fully perform the *Work*;
- 7 failure of the *Contractor* to achieve *Substantial Performance of the Work* within the *Contract Time*; or
- .8 significant failure by the *Contractor* to prosecute the *Work* in accordance with the *Contract*."

### 3.25 GC 6.1 CHANGES

- 3.25.1. Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

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

3.25.2. Add a new paragraph 6.1.3 as follows:

“The *Contractor* agrees that changes resulting from construction coordination including but not limited to site surface conditions, site coordination, Subcontractor and Supplier coordination are included in the *Contract Price* and shall not entitle the *Contractor* to claim in addition to the *Contract Price* in relation to coordination.”

**3.26 GC 6.2 CHANGE ORDER**

3.26.1. Add new paragraph 6.2.3 as follows:

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

- .1 by estimate and acceptance of a lump sum.
- .2 by unit prices established in the Contract or subsequently agreed upon. Unit Prices shall include overhead, profit, and other reasonable charges of the *Contractor* and shall be the total cost to the Owner. Adjustment to the *Contract Price* shall be based on a net quantity difference from the original quantity.
- .3 by the amount, net of all credits, of time, materials and *Products* expended:
  - (1) by a Subcontractor applying the labour charge out rates set out in the wage schedule in the *Contract Documents* together with the actual costs, without mark-up of materials and *Products* utilized in the change, plus the Subcontractor’s mark-up disclosed in the table below which applies to material and Product costs only;
  - (2) by the *Contractor* applying the labour charge out rates set out in the wage schedule in the *Contract Documents* together with the actual costs, without mark-up, of materials and *Products* plus the mark-up disclosed in the table below which applies to material and Product costs only;
  - (3) the *Contractor* shall be entitled to the *Contractor* mark-up in the table below on the value of Subcontractor *Work* even where the Subcontractor is not entitled to a mark-up on its labour charge out rates pursuant to paragraph 6.2.3.3(1).

Change in the <i>Contract Price</i>	Subcontractor Mark-Up (%) (includes overhead and profit)	Contractor Mark-Up (%) On Subcontractor <i>Work</i> (includes overhead and profit)
\$0 to no more than \$25,000	10	10
\$0 to no more than \$50,000	10	7.5
\$0 to in excess of \$50,000	5	5

***Interpretive Note: The mark-ups disclosed in the above table are flat not graduated. For example, a Subcontractor performed change valued at \$35,000 attracts a mark-up of 10% for the Subcontractor and 7.5% for the Contractor. The table is not intended to provide one set of mark-ups for the first \$25,000 of the change and a lower set of mark-ups for the balance.***

- .4 where the *Contractor* self performs a change pursuant to paragraph 6.2.3.3(2), it shall be entitled to the mark-ups described in the “Subcontractor Mark-Up (%)” column above, subject to the limitation on the mark-up of labour costs described in paragraph 6.2.3.3(2).
- .5 the mark-ups described in paragraph 6.2.3.3 cover all general expenses, overhead costs and profit in relation to the change, including, but not limited to, all necessary supervision, project management, general account items, general clean-up, small tools, as-built and record *Drawings* and warranty. Additional bonding cost is excluded from the mark-ups but may be included as a cost, using the value declared for bonding by the *Contractor* in its bid to the *Owner*, unless otherwise agreed by the parties.”

### 3.27 GC 6.3 CHANGE DIRECTIVE

3.27.1. Further amend paragraph 6.3.6.3 by adding the following to the end of that paragraph:

“Such allowance for overhead and profit shall be as described in paragraphs 6.2.3.3 and 6.2.3.4.”

3.27.2. Delete paragraph 6.3.7.1 in its entirety and replace it with the following:



- “.1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor*, applying the labour rates set out in the wage schedule in the *Contract Documents* or as otherwise agreed in writing between the *Owner* and *Contractor*, for personnel
- (1) carrying out the *Work*, including necessary supervisory services;
  - (2) [intentionally left blank]; or
  - (3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and project record or as-built *Drawings*.”

3.27.3. Add new paragraph 6.3.14 as follows:

“6.3.14 Without limitation, the cost of performing the *Work* attributable to the Change Directive does not include and shall not be recoverable by the *Contractor*:

- .1 head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraphs 6.3.7.2;
- .2 capital expenses and interest on capital;
- .3 general clean-up, except where the performance of the *Work* in the Change Directive causes specific additional clean-up requirements;
- .4 wages paid for field supervision of *Subcontractors*;
- .5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the *Place of the Work* that are otherwise deemed unreasonable by the *Consultant*;
- .6 any costs or expenses attributable to the negligence, improper work, deficiencies, or breaches of contract by the *Contractor* or *Subcontractor*; and
- .7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the *Owner*.”

**3.28 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

3.28.1. Delete paragraph 6.4.1 and replace it with the following:

“6.4.1.1 The *Contractor* confirms that, prior to tendering the *Project*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.15.1, given the amount of time provided between the issue of tender documents and the actual closing of tenders.

6.4.1.2 If the *Contractor* has not conducted such careful investigation, it is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the *Work* which could make the *Work* more expensive or more difficult

to perform than was contemplated at the time the Contract was executed. No claim by the *Contractor* will be entertained in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence undertaken prior to the execution of the Contract.”

- 3.28.2. Amend paragraph 6.4.2 by adding a new first sentence which reads as follows:

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

- 3.28.3. Amend the existing second sentence of paragraph 6.4.2, in the second line, following the word “materially” by adding the words “or were concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.1.”

- 3.28.4. Delete paragraph 6.4.3 and substitute the following:

“6.4.3 If the *Consultant* makes a finding pursuant to paragraph 6.4.2 that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* shall report in writing the reasons for this finding to the *Owner* and the *Contractor*.”

### 3.29 GC 6.5 DELAYS

- 3.29.1. Amend paragraphs 6.5.1 by deleting all of the words in the fifth line following the word “for” and substituting the following:

“reasonable direct costs directly flowing from the delay but excluding any consequential, indirect or special damages.”

- 3.29.2. Delete paragraph 6.5.3 and replace it with the following:

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

- 3.29.3. Add new paragraphs 6.5.6 and 6.5.7 as follows:

“6.5.6 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* in the event of any suspension of construction as a result of the delay described in paragraph 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the

*Contractor* shall be reimbursed by the *Owner* for the reasonable costs incurred by the *Contractor* for such protection, but excluding the costs of the *Contractor's* head office personnel, for such care, maintenance and protection. The *Contractor's* entitlement to costs pursuant to this paragraph 6.5.6, if any, shall be in addition to amounts, if any, to which the *Contractor* is entitled pursuant to paragraph 6.5.1, 6.5.2 or 6.5.3.

- 6.5.7 Without limiting the obligations of the *Contractor* described in GC3.2 or GC9.4, the *Owner* may, by notice in writing, direct the *Contractor* to stop the *Work* where the *Owner* determines that there is an imminent risk to the safety of persons or property at the Place of *Work*. In the event that the *Contractor* receives such notice, it shall immediately stop the *Work* and secure the site. The *Contractor* shall not be entitled to an extension of the Contract Time or to an increase in the *Contract Price* unless the resulting delay, if any, would entitle the *Contractor* to an extension of the Contract Time or the reimbursement of the *Contractor's* costs as provided in paragraph 6.5.1, 6.5.2 or 6.5.3.”

### 3.30 GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK OR TERMINATE THE CONTRACT

- 3.30.1. Amend paragraph 7.1.2 by adding the words “, fails or neglects to maintain the schedule provided pursuant to GC3.5,” immediately following the word “properly” in line one.

- 3.30.2. Add new paragraph 7.1.7 as follows:

“7.1.8 Notwithstanding any other provisions relating to the *Owner's* rights to terminate this *Contract*, this *Contract* may be terminated by the *Owner* whenever the *Owner* shall determine that such termination is in the best interests of the *Owner*. Any such termination shall be effected by delivery to the *Contractor* of a notice of termination, specifying the date upon which such termination becomes effective, provided that such termination shall not become effective until 5 *Working Days* after the notice is deemed to have been received. The *Owner's* entitlement to so terminate the *Contract* shall be absolute and unconditional and exercisable by the *Owner* in its sole discretion. In the event of any such termination the *Contractor* shall only be entitled to payment of the following amounts (without duplication of any items):

- .1 that portion of the *Contract Price* relating to the *Work* performed prior to the termination date;
- .2 loss sustained upon *Products*; and
- .3 *Subcontractor* and *Supplier* cancellation costs reasonably incurred by the *Contractor* as the result of such termination provided the *Contractor* has substantiated such costs to the *Owner's* reasonable satisfaction after the *Owner* has reviewed the details thereof.

The *Contractor* shall not be entitled to any additional reimbursement on account of any such termination, notwithstanding any other provision of the *Contract Documents*, and in no event shall the *Owner* be liable to the *Contractor* for any loss of anticipated profits or loss of opportunity as a result of such termination. The *Contractor's* obligation under the *Contract* as to quality, correction, and warranty of the work performed by the *Contractor* up to the time of termination shall continue in force after such termination.”

**3.31 GC 7.2 CONTRACTOR’S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT**

3.31.1. Amend paragraph 7.2.2, in line 1, by deleting “20 *Working Days*” and replacing it with “45 days”.

3.31.2. Delete paragraph 7.2.3.1 and replace it with “Intentionally left blank”.

3.31.3. Delete paragraph 7.2.3.3 and replace it with the following:

“7.2.3.3 The *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or a Court, except where the *Owner* has a *bona fide* claim for setoff, or...”

3.31.4. Amend paragraph 7.2.3.4 by deleting the comma toward the end of the first line. Further amend paragraph 7.2.3.4 by deleting the phrase beginning with the word “except” and ending with the word “Owner”.

3.31.5. Renumber paragraph 7.2.5 as 7.2.6. Add a new paragraph 7.2.5 as follows:

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

- .1 commences correction of the default within the specified time;
- .2 provides the *Contractor* with an acceptable schedule for such correction; and
- .3 completes the correction in accordance with such schedule.

3.31.6. Delete renumbered paragraph 7.2.6 in its entirety and replace it with the following:

“7.2.6 If the *Contractor* terminates the Contract under the conditions described in this GC7.2, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, losses sustained on *Products* and construction machinery and equipment. The *Contractor* shall not be entitled to any recovery for any loss of anticipated profits

or loss of opportunity as a result of such termination or any special, indirect or consequential losses.”

### **3.32 GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

- 3.32.1. Amend paragraph 8.2.1 by adding the words “ (the “Rules”), subject to amendments to the Rules described in Appendix 2 to these Supplementary Conditions” following the term “Construction Disputes” in line 1.
- 3.32.2. Amend paragraph 8.2.4 by adding the words “...subject to any amendments to the Rules made as described in paragraph 8.2.1”, following the words “Construction Disputes” in the last line.
- 3.32.3. Delete paragraph 8.2.6 and replace it with the following:
- “8.2.6 By giving Notice in Writing to the other party, not later than 20 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules, subject to any amendments to the Rules made as described in paragraph 8.2.1. The arbitration shall be conducted pursuant to the Arbitration Act, S.O. 1991, c.17, as amended. Unless either party gives the notice contemplated by this paragraph 8.2.6, there shall be no arbitration of any such dispute.”
- 3.32.4. Amend paragraph 8.2.7 by changing the number “10” in line 1 to “20”.

### **3.33 GC 8.3 RETENTION OF RIGHTS**

- 3.33.1. Renumber paragraph 8.3.2 as paragraph 8.3.2.1 and add a new paragraph 8.3.2.2 as follows:
- “8.3.2.2 If the *Owner* gives the notice in writing described in paragraph 8.2.6 to have a dispute resolved by arbitration, the *Contractor* agrees that this paragraph 8.3.2.2 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute as otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.3.2.2 shall prevent the *Contractor* from taking the steps required by the Act to preserve and/or perfect a lien to which it may be entitled.”

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

- 3.34.1. Amend paragraph 9.1.1.1 by adding the following words at the end of that subparagraph:

“...which the *Contractor* could not reasonably have discovered applying the standard of care described in paragraph 3.14.1;”

3.34.2. Add a new paragraph 9.1.5 as follows:

“9.1.5 Without in any way limiting the *Contractor’s* obligations under this GC9.1, should the *Contractor* or any Subcontractor or Supplier cause loss or damage to trees or other plantings, whether owned by the *Owner* or third parties, the *Contractor* shall be liable for the replacement cost of the trees or other plantings damaged, including the cost of any arborist or other *Consultant*, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Contractor*.”

**3.35 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

3.35.1. Add a new paragraph 9.2.5.5 as follows:

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

3.35.2. Add the following to paragraph 9.2.6 after the word “responsible” in line two:

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

3.35.3. Amend paragraph 9.2.8 by adding the following after the word “responsible” in line two:

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

3.35.4. Add new paragraphs 9.2.10 and 9.2.11 as follows:

“9.2.10 Without limiting its other obligations under this GC9.2, the *Contractor* acknowledges that its obligations under the Contract include compliance with the Environmental Programs, including, but not limited to, the Asbestos Abatement Program. The *Contractor* acknowledges that the *Owner* may suffer loss and damage should the *Contractor* fail to comply with the Environmental Programs and agrees to indemnify and hold harmless the *Owner* with respect to any loss or damage to which the *Owner* is exposed by the *Contractor’s* failure to comply.

The *Contractor* expressly agrees that such loss and damage shall be included within the scope of the *Contractor's* indemnity described in paragraph 12.1.1 of the General Conditions. The *Contractor* acknowledges that should it fail to comply with the Environmental Programs, such failure will constitute a failure to comply with the Contract to a substantial degree within the meaning of paragraph 7.1.2.

- 9.2.11 No less than forty-eight (48) hours prior to the commencement of the Work by the Contractor or any of its Subcontractors, the Contractor shall provide to the *Owner* an "Asbestos Awareness Training Form", confirming that each worker at the *Place of the Work*, including supervisory personnel, (for purposes of this paragraph, a "Worker") has received asbestos-carrying material awareness training to enable the Contractor to meet its obligations under the Environmental Programs, including OHSA, all as set out in the Contract. The *Owner* reserves the right, by Notice in Writing, to require the Workers to attend asbestos awareness training provided by the *Owner*. The cost of such Worker training, whether provided by the *Owner* or others, shall be borne by the Contractor. "

### 3.36 GC 9.4 CONSTRUCTION SAFETY

- 3.36.1. Delete paragraph 9.4.1 in its entirety and replace it with the following:

"9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*."

- 3.36.2. Add new paragraphs 9.4.2, 9.4.3 and 9.4.4 as follows:

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

- .1 a current WSIB clearance certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation of the *Contractor's* in-house safety-related programs;
- .4 a copy of the Notice of *Project* filed with the Ministry of Labour naming itself as "constructor" under OHSA.

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, *Consultants*, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under OHSA, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such

infractions and shall not extend to any consequential, indirect or special damages.

- 9.4.4 The *Owner* undertakes to include in its contracts with other contractors and/or in its instructions to its own forces the requirement that the other contractor or own forces, as the case may be, will comply with directions and instructions from the *Contractor* with respect to occupational health and safety and related matters. The text of such instruction is attached to these Supplementary Conditions as Appendix 1.”

### 3.37 GC9.5 MOULD

- 3.37.1. Delete paragraph 9.5.3.3 in its entirety and replace it with the following:

“9.5.3.3 Extend the *Contract Time* for such reasonable time as the *Consultant* may recommend on consultation with the *Contractor* and the *Owner*. If, in the opinion of the *Consultant*, the *Contractor* has been delayed in performing the *Work* and/or has incurred additional costs under paragraph 9.5.1.2, the *Owner* shall reimburse the *Contractor* for the reasonable costs incurred as a result of the delay and as a result of taking those steps, and...”

### 3.38 GC 10.1 TAXES AND DUTIES

- 3.38.1. Amend paragraph 10.1.2 by adding the following sentence at the end of the existing paragraph:

“For greater certainty, the *Contractor* shall not be entitled to any mark up for overhead or profit on any increase in such taxes and duties and the *Owner* shall not be entitled to any credit relating to mark up for overhead or profit on any decrease in such taxes.”

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

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

10.1.4 The *Contractor* shall maintain accurate records tabulating equipment, material and component costs reflecting the taxes, customs duties, excise taxes and Value Added Taxes paid.

10.1.5 Any refund of taxes, including without limitation, any government sales tax, customs duty, excise tax or Value Added Tax, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the *Owner*. The *Contractor* agrees to cooperate with the *Owner* and to obtain from all *Subcontractors* and *Suppliers* cooperation with the



*Owner* in the application for any refund of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such refund or exemption and providing to the *Owner* copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications or exemptions or refunds. All such refunds shall either be paid to the *Owner*, or shall be a credit to the *Owner* against the *Contract Price*, in the *Owner's* discretion.

- 10.1.6 Customs duties penalties, or any other penalty, fine or assessment levied against the *Contractor* shall not be treated as a tax or customs duty for purposes of this GC 10.1”.

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

- 3.39.1. Amend paragraph 10.2.5 by adding the words, “Subject to paragraph 3.15.1” to the beginning of the paragraph.

- 3.39.2. Further amend paragraph 10.2.5 by adding the following to the end of the second sentence:

“...and no further *Work* on the affected components of the Contract shall proceed until these changes to the *Contract Documents* have been obtained by the *Contractor* from the *Consultant*.”

- 3.39.3. Further amend paragraph 10.2.5 by adding the following sentence to the end of the paragraph, as amended:

“The *Contractor* shall notify the Chief Building Official or the registered code agency where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario Building Code.”

- 3.39.4. Amend paragraph 10.2.6 by adding the following sentence at the end of that paragraph:

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

### **3.40 GC 10.4 WORKERS' COMPENSATION**

- 3.40.1. Amend paragraph 10.4.1 so that, as amended, it reads as follows:

“Prior to commencing the *Work*, and with each application for payment thereafter, the *Contractor* shall provide a Clearance Certificate from WSIB.”

### 3.41 GC 11.1 INSURANCE

3.41.1. Where the *Contractor's Base Bid* is \$2,000,000 or more, delete GC11.1 in its entirety and replace it with the following:

“11.1.1 Without restricting the generality of GC12.1 – INDEMNIFICATION, the *Owner* shall provide, maintain and pay for insurance coverage against “all risks” of physical loss or damage to the *Work* including materials and supplies on site but excluding machinery, equipment, tools and temporary structures or facilities used in carrying out the *Work*, all on a full replacement value basis and subject to normal insurance policy exclusions. Such insurance shall include the *Consultant*, the *Contractor* and all *Subcontractors* as additional insureds as their respective interests may appear and will be maintained in full force until the final certificate for payment.

Regardless of the actual deductible amount in the policy, all losses shall be adjusted as though such deductible were (\$10,000) and the *Contractor* will be solely responsible for losses below this amount. The *Contractor* may provide at its own expense such additional insurance as it may desire to protect itself with respect to damage not otherwise covered.

11.1.2 The *Owner* shall provide and pay for Comprehensive General Liability insurance (known as “Wrap Up Liability”) in form and terms satisfactory to the *Owner* with a limit of not less than \$10 million per occurrence for bodily injury, death and damage to property, including loss of use thereof. Such policy shall include provisions for blanket contractual liability, cross liability and products and completed operations liability. The policy shall be maintained continuously in full force until the date of issuance of the final certificate of payment, except for the coverage referred to above as products and completed operations liability which shall run for a further 24 months from the date of issuance of Substantial Performance of the *Work*. Such insurances will include the *Consultant* (but not with respect to professional liability), the *Contractor* and all *Subcontractors* as additional insureds and shall include a waiver of subrogation rights by the insurer against any insured.

11.1.3 The *Contractor* shall provide “all risks” *Contractors'* equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, including boiler insurance on temporary boilers and pressure vessels, and such insurance shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. The Policies shall be endorsed to provide the *Owner* with not less than fifteen (15) days' written notice in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* agrees to waive the equipment insurance requirement.

11.1.4 The *Contractor* will be responsible for arranging satisfactory liability insurance covering owned or non-owned licensed vehicles, aircraft or watercraft used directly or indirectly in the performance of the *Work* in form and limits acceptable to the *Owner* and shall provide satisfactory evidence of coverage to the *Owner* prior to commencement of the *Work*.

- 11.1.5 In the event of a loss, the *Contractor* shall immediately proceed to restore the *Work* without awaiting the determination of the amount recoverable or the payment of any monies under the policy of insurance. The *Contractor* shall be entitled to a reasonable extension of time for Substantial Performance of the *Work* to the extent that the critical path of the construction schedule is affected, but damage to the *Work* shall not otherwise diminish its obligations under the Contract.
- 11.1.6 All occurrences and claims shall be reported immediately in writing to the *Owner* providing at least the following particulars:
- .1 date, time and location of occurrence;
  - .2 cause and description of circumstances;
  - .3 estimate of loss or damage;
  - .4 names and telephone numbers of persons to contact.”

### **3.42 GC 11.2 CONTRACT SECURITY**

- 3.42.1. Delete paragraphs 11.2.1 and 11.2.2 in their entirety and replace them with the following:

- “11.2.1 Subject to paragraph 11.2.4, the *Contractor* shall furnish a performance bond in favour of the *Owner*, covering the faithful performance of the Contract, including the payment obligations arising thereunder, made upon the contract bond form of the *Owner* and issued by such surety company(ies) as the *Owner* may approve. The bond shall be for fifty per cent (50%) of the *Contract Price* or such other amount as may be specified in the *Contract Documents*.
- 11.2.2 The *Contractor* shall furnish a labour and material payment bond in favour of the *Owner* in a form satisfactory to the *Owner* and issued by such surety company(ies) the *Owner* may approve. The bond shall be for fifty per cent (50%) of the *Contract Price*.
- 11.2.3 It is the intention of the Contract that the performance bond shall be applicable to all of the *Contractor's* obligations under this Contract and, wherever a performance bond is provided with language which conflicts with this intention, it shall be deemed to be amended to comply. The *Contractor* represents and warrants that it has provided its surety with a copy of the Contract prior to the issuance of such bonds.
- 11.2.4 Where the *Contract Price*, arising from the *Owner's* award of the Contract, includes Subcontractor default insurance in lieu of a performance bond, the *Contractor* shall deliver to the *Owner* a certified copy of the policy of Subcontractor default insurance. Such policy shall have an aggregate loss limit of not less than 50% of the *Contract Price* and a claim limit of not less than 50% of such *Contract Price*. Such policy of insurance shall be subject to the approval of the *Owner*, acting reasonably, as to the terms and conditions of the

Subcontractor default insurance, including those described in this paragraph 11.2.4.”

### 3.43 GC 12.1 INDEMNIFICATION

3.43.1. Delete paragraphs 12.1.1 through 12.1.6 in their entirety and replace them with the following:

“12.1.1 The *Contractor* shall indemnify and hold harmless the *Owner* and the *Consultant*, their agents, employees and assigns from and against all claims, demands, damages, losses, expenses, costs, including legal fees, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to the *Contractor's* or any Subcontractor's performance or non-performance of the Contract, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Contractor* will save harmless the *Owner* from all claims made by any party other than the *Contractor* itself, financial or otherwise, relating to labour and materials furnished by the *Contractor* or by others for the *Work*.

12.1.2 It is the intention of the parties that the *Consultant*, its officers, agents, partners, employees, directors and insurers, as well as any *Subconsultants*, or other *Consultants* retained with respect to the *Project*, and their officers, agents, partners, employees, directors and insurers, is to benefit from the indemnification and hold harmless provisions of paragraph 12.1.1.

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

12.1.4 Notwithstanding the provisions of GC1.1 - *CONTRACT DOCUMENTS*, paragraph 1.1.7, GC12.1 - *INDEMNIFICATION* shall govern over the provisions of paragraph 1.3.1 of GC1.3 – *RIGHTS AND REMEDIES*.”

### 3.44 GC 12.2 WAIVER OF CLAIMS

3.44.1. Delete paragraphs 12.2.1 through 12.2.10 and replace them with the following:

“12.2.1 As of the date of the final certificate for payment, the *Owner* expressly waives and releases the *Contractor* from all claims against the *Contractor* including without limitation those that might arise from negligence or breach of contract by the *Contractor* except for one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those for which a right of indemnity could be asserted by the *Owner* against the *Contractor* pursuant to the provisions of the *Contract*,

including, but not limited to, GC 9.2.10, GC 9.4.3, GC 10.2.6, GC 13.6 and GC 12.1 – INDEMNIFICATION, or arising from the provisions of GC 12.3 – WARRANTY;

- .3 those arising from GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS and arising from the *Contractor* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Contractor* commences the *Work*;
- .4 those made by Notice in Writing within a period of six years from the date of *Substantial Performance of the Work* as set out in the certificate of substantial performance, or within such shorter period as may be prescribed in any limitation statute of the province or territory of the *Place of the Work* and arising from any liability of the *Contractor* for damages resulting from the *Contractor's* performance of the *Contract* with respect to substantial defects or deficiencies in the *Work* for which the *Contractor* is proven responsible. As used herein, “substantial defects or deficiencies” means those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:
  - .1 for a *Contract Price* of \$2,000,000 or less, the sum of \$50,000, before GST;
  - .2 for a *Contract Price* of \$2,000,000 or more, the sum of \$100,000, before GST.

12.2.2 As of the date of certificate of *Substantial Performance of the Work*, the *Contractor* expressly waives and releases the *Owner* from all claims which it has or reasonably ought to have knowledge of that could be advanced against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing prior to the *Contractor's* application for final payment and still unsettled; and
- .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or GC 10.3 – PATENT FEES.”

### 3.45 GC 12.3 WARRANTY

3.45.1. Amend paragraph 12.3.1 by adding the following sentence at the end of that paragraph:

“Where the *Contractor* has been permitted to make use of permanent equipment or systems, as provided in GC3.16, prior to the issuance of the certificate of Substantial Performance of the *Work*, such permanent equipment or system shall be subject to the same warranty as described in this GC12.3 and shall be judged, for purposes of assessing compliance with the warranty, as though the equipment or system was new, clean and unused by the *Contractor*, except for normal commissioning and startup activities, prior to the date of Substantial Performance of the *Work*.”

3.45.2. Amend paragraph 12.3.2 by deleting the word “The” at the beginning of that paragraph and replacing it with the words, “Subject to paragraph 3.15.1,”.

3.45.3. Add a new paragraph 12.3.7 as follows:

“12.3.7 Where required by the *Contract Documents*, provide a maintenance bond as security for the performance of the *Contractor’s* obligations as set out in GC 12.3-Warranty.”

3.45.4. Add a new paragraph 12.3.7 as follows:

“12.3.8 The *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work*, services or *Products* performed or supplied by any Subcontractor, Supplier or other person in connection with the *Work* and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party’s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*. Until the expiry of the relevant warranty periods enforceable against the *Contractor*, the *Owner* shall have in its custody all warranties, guarantees and other obligations to third parties respecting the *Work*.”

### 3.46 PART 13 - OTHER PROVISIONS

3.46.1. Add a heading for a new Part 13, “**PART 13 OTHER PROVISIONS**”.

3.46.2. Add GC 13.1 GENERAL LABOUR CONDITIONS as follows:

“13.1.1 Any part of the Work performed by the Contractor on behalf of the Owner that falls under the provisions of any collective agreements by which the Owner is bound, or which the Owner is contractually required to apply to the Project, shall in each case be performed by employees covered by the applicable collective agreement. Without limiting the generality of the foregoing, such collective agreements include:

.1 Where applicable, the current provincial agreement covering construction work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario between the Electrical Trade Bargaining Agency of the Electrical Contractors’ Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario, Local 353;

.2 Where applicable, the current provincial agreement covering construction work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario between the Mechanical Contractors Association of Ontario and the Ontario Pipe Trades Council;

- .3 Where applicable, the current provincial agreement covering construction work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario between the Canadian Automatic Sprinkler Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 and UA Local 46;
- .4 Where applicable, the current provincial agreement covering construction work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario between a council of employers' associations consisting of the Ontario Painting Contractors Association, the Acoustical Association of Ontario and the Interior Systems Contractors Association of Ontario and the International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades, District Council 46, Local 557; and
- .5 Where applicable, the current provincial agreement covering construction work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, Local 27 and Local 675.

13.1.2 These General Labour Conditions shall apply to each Subcontractor and the Contractor shall include these General Labour Conditions, with necessary changes, in each of its contracts with Subcontractors for any part of the Project.

13.1.3 The Contractor shall indemnify and save the Client harmless from and against all loss, claim, expense or damage suffered by the Owner arising from the failure of the Contractor or any Subcontractor to comply with the requirements of these General Labour Conditions. This indemnity is in addition to, and not limited by, the indemnity of the Contractor in GC12.1 – INDEMNIFICATION.”

3.46.3. Add GC 13.2 OWNERSHIP OF MATERIALS as follows:

“13.2 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the Contract shall remain the property of the Owner. All *Work, Products* and materials delivered by the *Contractor* which form part of the *Work* shall be considered the property of the *Owner* but the *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*.”

3.46.4. Add GC13.3 CONTRACTOR DISCHARGE OF LIABILITIES as follows:

“13.3.1 In addition to the obligations assumed by the *Contractor* pursuant to GC3.7, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in

the performance of the *Work*, on the date upon which each such liability becomes due.

13.3.2 The *Contractor* shall cause every Subcontractor and Supplier engaged in the performance of the *Work* to discharge all liabilities incurred by them for labour, materials, services and *Products* used or reasonably required for use in the performance of the *Work*. *Workmen* employed by a Subcontractor or Supplier shall be paid in full at intervals not less frequently than required by the governing law and all liabilities of the *Subcontractors* and *Suppliers* shall be discharged on the date upon which each becomes due. At the request of the Owner, the *Contractor* shall furnish the Owner with satisfactory evidence that its liabilities and those of its *Subcontractors* and *Suppliers* have been discharged.”

3.46.5. Add GC 13.4 AS-BUILT OR RECORD DRAWINGS as follows:

“13.4 Unless otherwise provided in the *Contract Documents*, the *Contractor* shall prepare as-built or record drawings and provide them to the *Consultant* for review.”

3.46.6. Add GC 13.5 DAILY REPORTS/DAILY LOGS as follows:

“13.5.1 The *Contractor* shall cause its supervisor, or such competent person as he or she may delegate, to prepare a daily log or diary reporting on weather conditions, *work force* of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

13.5.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC3.5.

13.5.3 Upon request by the Owner or the *Consultant*, the *Contractor* shall make available for inspection and copying all of the records generated pursuant to this GC13.5 along with any other routine *Project* records ordinarily maintained by the *Contractor*.”

3.46.7. Add GC 13.6 CONSTRUCTION LIENS as follows:

“13.6 In the event that any construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the Owner has paid all amounts properly due under the *Contract*, the *Contractor* shall, at its own expense, post the security necessary to vacate or discharge such lien, as the case may be. In the event that a lien action is commenced and a Statement of Claim is issued and served, the *Contractor* shall take all reasonable steps to remove the Owner from the main action and shall indemnify the Owner and hold the Owner harmless in such action, except where the Statement of Claim makes



substantial claims against the *Owner* beyond the recovery of holdback under the *Act*.”

3.46.8. Add GC13.7 NEUTRAL APPOINTING AUTHORITY

“13.7.1 For purposes of the Rules for Mediation and Arbitration of Construction Disputes CCDC 40, the term “neutral appointing authority”, as used in both the Rules for Mediation of CCDC 2 Construction Disputes and the Rules for Arbitration of CCDC 2 Construction Disputes shall mean the “Appointing Committee” at ADR Chambers presiding at the time notice of the dispute is given pursuant to the *Contract*.”

3.46.9. Add GC13.8 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT:

“13.8.1 Throughout the term of this *Contract*, and for a period of seven years thereafter, the *Owner* and the *Contractor* will protect the confidentiality of all proprietary and confidential information of the other that is disclosed to it and will protect such information with the same standard of care as such party would use to protect the confidentiality of its own proprietary and confidential information which shall be, at a minimum, a reasonable standard, and, in any event, each party shall protect the confidentiality of all such proprietary and confidential information as may be required by law, including, without limitation, as may be required under the *Freedom of Information and Protection of Privacy Act*.

13.8.2 Notwithstanding the obligations of the *Owner* described in paragraph 13.8.1, the *Contractor* acknowledges that the *Owner* is subject to the *Freedom of Information and Protection of Privacy Act*, as amended, and may be required to release, in whole or in part, this *Contract* and any other documents or information in the *Owner*’s possession or control that relate to this *Contract*.”

**END OF SUPPLEMENTARY CONDITIONS**

## APPENDIX 1

### **LANGUAGE FOR U OF T PERSONNEL OR FOR THIRD PARTY CONTRACTORS ENTERING A PROJECT SITE WHERE THE *Contractor* HAS ASSUMED OVERALL RESPONSIBILITY – IN CONTRACT – FOR OCCUPATIONAL HEALTH AND SAFETY**

“The (trade or employee) acknowledges that the work it will perform on behalf of the University of Toronto requires it to enter a job site which is under the total control of a general contractor which has a contract with the University of Toronto. The (trade or employee) acknowledges that [name of contractor] has assumed overall responsibility for compliance with all aspects of the health and safety legislation of Ontario, including all the responsibilities of the “constructor” under the Occupational Health and Safety Act (Ontario). Further, (trade or employee) acknowledges that [name of contractor] is also responsible to the University of Toronto to co-ordinate and schedule the activities of our work with the work of the general contractor.

We agree to comply with [name of contractor] directions and instructions with respect to occupational health and safety and coordination. We acknowledge that it will be cause for termination under our contract with the University of Toronto should (I/we) fail or refuse to accept the direction and instruction of the general contractor with respect to matters of occupational health and safety or matters related to coordination of work.”

## APPENDIX 2

### Amendment to Rules for Mediation and Arbitration of Construction Disputes (CCDC-40, 1994) (the “Rules”)

The Rules assume the use of the Standard Construction Documents CCDC 2-2008 for a Stipulated Price Contract, including the Agreement, Definitions, General Conditions and any amendments or supplementary conditions, if there are any. This Amendment supersedes, replaces or amends the Rules, as the case may be, as outlined below.

#### 1. RULES FOR MEDIATION OF CCDC 2 CONSTRUCTION DISPUTES

##### 1.1 Interpretation. Amend clause 1.1(a) so that it reads as follows:

“(a) The “Contract” means CCDC 2 - 2008, where such contract document contains an agreement to refer disputes to mediation under these Rules.”

##### 1.2 By Agreement. Delete clause 5.1 and replace it with the following:

“5.1 By Agreement . Where a party desires the appointment of a *Project* Mediator and gives a notice in writing to that effect, such notice shall include the names of two qualified individuals who are prepared to act as mediator, ranked in order of preference. Within five *Working* days of receiving such a notice, the other party shall deliver a responding notice including the names of two qualified individuals who are prepared to act as mediator, ranked in order of preference. From the names submitted by the parties, the parties shall unanimously appoint a mediator.”

##### 1.3 Appointment of *Project* Mediator. Add a new clause 5.5 which reads as follows:

“5.5 Formal Agreement. When the *Project* Mediator has been appointed, whether pursuant to clause 5.1 or clause 5.2, the parties and the mediator shall enter into an agreement in writing pursuant to which the terms and conditions of the engagement of the *Project* Mediator shall be set out. Such agreement shall include an undertaking by the *Project* Mediator to carry out the mediation pursuant to these Rules and such agreement shall specifically set out the undertaking of the *Project* Mediator and the parties as to “Confidentiality” (Section 4) “Costs of the Mediation” (Section 12) and “Privileged Process” (Section 13).”

##### 1.4 Representation. Amend clause 8.1 by deleting the last six words of that clause.

##### 1.5 Right To Withdraw. Amend clause 11.1 by deleting the words “of GC8.2.5” toward the end of line 3.

##### 1.6 Not Compellable. Amend clause 14.2(a) by replacing the word “Contractor” with the word “Contract”.

## 2. RULES FOR ARBITRATION OF CCDC 2 CONSTRUCTION DISPUTES

### 2.1 Interpretation. Amend clause 1.1(b) so that it reads as follows:

“(b) The “Contract” means CCDC 2 - 2008, where such contract document contains an agreement to refer disputes to mediation under these Rules.”

### 2.2 Interpretation. Amend clause 1.1(d) so that, as amended, it reads as follows:

“(d) The parties means the parties to the Contract and any other persons who may join in an arbitration involving the *Owner* and the *Contractor* or the Construction Manager and/or a Trade *Contractor*, as the case may be.”

### 2.3 Location of Arbitration. Add the following as a second sentence to clause 5.1:

“Failing agreement by the parties, the arbitrator may select a location for the arbitration within the jurisdiction of the Place of *Work*, which is convenient to both parties”.

### 2.4 Appointment Of Arbitrator. Amend clause 8.2 by replacing “\$250,000” with “\$500,000”.

### 2.5 Appointment of Arbitrator. Add a new clause 8.13 which reads as follows:

“8.13 Whether a single arbitrator or a panel of 3 arbitrators has been appointed, pursuant to this Section 8, the parties and the arbitrator shall enter an agreement in writing setting out, at minimum, the name of the arbitrator, the undertaking of the arbitrator and the parties to conduct the arbitration pursuant to these Rules and the terms and conditions of engagement of the arbitrator including the fees to be paid and expenses to be reimbursed and any arrangements required to provide for interim payment of fees and/or expenses to the arbitrator.”

### 2.6 Procedural Meeting. Add the following new sentence to clause 9.2:

“Such written record shall be deemed to be the procedural code for the conduct of the arbitration, subject to any further orders of the arbitrator or of the Court of competent jurisdiction.”

### 2.7 Powers of the Arbitrator. Delete clause 10.1 and substitute the following:

“Subject to these Rules and subject to the written record described in clause 9.2, the arbitrator may conduct the arbitration in such manner as the arbitrator, acting reasonably, considers appropriate provided that in all events each party shall be treated fairly and given a full opportunity to present its case and respond to the case presented by the other party.”

### 2.8 Exchange of Statements. Delete clause 11.3(a) and replace it with the following:

“(a) which are relevant to the issues in dispute, and”

2.9 Disclosure. Delete clause 12.1 and replace it with the following:

“12.1 Production of Documents - The arbitrator may order one or both parties to prepare an affidavit, within a specified time, in which such party deposes under oath that it has made a full and complete listing of documents pursuant to clause 11.3(a) where the arbitrator has reason to believe that one or both parties may not have made full and complete disclosure of the documents relevant to the issues in the arbitration.”

2.10 Add a new clause 12.6 as follows:

“12.6 In the event that a party provides the statement or report of an expert witness pursuant to clause 12.4, the provisions of clauses 15.3 and 15.4 shall apply, with necessary modifications.”

2.11 Hearings and Meetings. Amend clause 13.3 by adding the following language to the end of that clause after the words “until completion”:

“unless otherwise agreed by both parties or directed by the arbitrator.”

2.12 Arbitrator Retained Experts. Add clause 15.3(c) as follows:

“(c) provide the party with a written summary of any other information, beyond that described in clauses 13.2(a) and (b), upon which the expert relied in preparing the expert’s report.”

2.13 Consolidation. Amend clause 21.1(a) by adding the following wording to the end of that clause after the words “one arbitration”:

“on the same *Project*”