

**Part 1           GENERAL CONDITIONS**

**GC 1.1           CONTRACT DOCUMENTS**

*Replace GC 1.1.5.1 with the following:*

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

- (a) Addenda and Appendices, if any;
- (b) Supplementary Conditions;
- (c) Agreement between Owner and the Contractor;
- (d) Definitions;
- (e) General Conditions;
- (f) Specifications;
- (g) Schedules; and
- (h) Drawings.

*Add the following:*

1.1.12 For brevity, the language of the specifications is, in many instances, written in the imperative mood. Provisions that contain instructions or directions in the imperative mood are directed to the Contractor and, in case of conflict, such provisions are deemed to include the expression “the Contractor must”.

1.1.13 If any article, section or subsection of this Contract or any portion thereof is determined to be indefinite, invalid, illegal or otherwise void, voidable or unenforceable, then it shall automatically be severed from this Contract and the balance of this Contract shall continue in full force and effect.

**GC 1.4           ASSIGNMENT**

*Replace GC 1.4.1 with the following:*

1.4.1 The Contractor shall not assign the Contract without the Owner’s written consent, which consent may be unreasonably withheld. The Contractor, when requesting the Owner’s consent to an assignment, shall provide evidence satisfactory to the Owner of the ability of the proposed assignee to complete the Contract in respect of its technical and financial competence, its workforce and its equipment along with any other information requested by the Owner.

*Add the following:*

1.4.2 The Owner acting reasonably, may assign the Contract without the consent of the Contractor upon 30 days written notice to the Contractor.

1.4.3 The Contractor shall supply a list of Subcontractors to the Owner and shall not replace any Subcontractors without the prior written consent of the Owner.

1.4.4 The Contractor shall not engage any Subcontractors with contract prices exceeding \$100,000 without the prior written consent of the Owner, acting reasonably.

**GC 1.5 CONFIDENTIALITY**

*Add the following:*

1.5.1 The Contractor acknowledges, confirms and agrees that all unpublished business and technical information, papers and records of the Project, whether produced by the Contractor or otherwise, computer programs, drawings and specifications, tender calls and other information prepared for or in relation to the Project are and shall remain confidential, unless such unpublished business and technical information, papers and records of the Project, computer programs, drawings and specifications, tender calls and other information:

- .1 have become a part of the public domain through the actions of the Owner (through no act or failure to act on the part of the Contractor);
- .2 have been disclosed to the Contractor by a third party without a covenant of confidentiality and constitute information or procedures which are widely known, the disclosure of which would not otherwise constitute a breach hereof;
- .3 are required by law to be disclosed;
- .4 are required to be disclosed in an arbitration hearing or litigation matter; or
- .5 have been released from the provisions of this paragraph 1.5.1 by the written authorization of the Owner.

The Contractor covenants and agrees that its employees and other persons employed or retained by the Contractor shall be bound by such confidentiality and that it shall be liable to the Owner for any breach by them. For a period ending five (5) years after the date of Substantial Performance of the Work, the Contractor shall take all reasonable precautions to ensure compliance with this clause by any such persons and directors, officers and employees.

1.5.2 The Contractor hereby agrees not to use any logos or names used by the Owner, or materials which depict or refer to the Work or the Project in connection with any of the Contractor's business promotion activities without the prior written consent of the Owner. The Contractor acknowledges that the Owner has complete control over the use of its logos or names, and that it is within the sole discretion of the Owner how such logos or names may be used.

1.5.3 The Contractor shall be entitled to sign the Work, provided that all signage to be erected by the Contractor at the Place of the Work must be approved in writing by the Owner, acting reasonably. If the Contractor wishes to obtain approval of any proposed signage it must provide details satisfactory to the Owner as to size, format and location of the proposed signage with its request for approval.

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**GC 1.6 OWNER'S REPRESENTATIVE**

*Add the following:*

- 1.6.1 The Contractor acknowledges and agrees that the Owner may, by written notice to the Contractor, appoint a representative to act on its behalf as the Owner's Representative with respect to the Contract.
- 1.6.2 The Contractor agrees to provide the Owner's Representative with all notices, changes, orders, applications and other documents required or permitted to be delivered under the Contract and further agrees to accept the directions issued by the Owner's Representative.
- 1.6.3 The Contractor represents covenants and warrants to the Owner that:
- .1 it has the necessary high degree of experience and expertise required to perform the Work and it will in the performance of the Work exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent Contractor providing similar services for projects of a similar nature;
  - .2 the personnel it assigns to the Project are experienced and it has a sufficient staff of qualified and competent personnel to replace its designated personnel subject to the Owner's approval, in the event of death, incapacity, termination or resignation;
  - .3 there are no pending, threatened or anticipated claims or litigation involving the Contractor that would have a material adverse effect on the financial ability of the Contractor to perform the Work; and
  - .4 it will achieve Substantial Performance of the Work by the date set out in Article A-1, paragraph 1.3.
  - .5 the Contractor is fully familiar with the Work, the requirements of applicable law and shall perform the Work in a good, professional and prompt manner.

**Part 2 ADMINISTRATION OF THE CONTRACT**

**GC 2.2 ROLE OF THE CONSULTANT**

*Amend GC 2.2.6 as follows:*

- 2.2.6 Delete reference to GC5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER

*Replace GC 2.2.13 with the following:*

- 2.2.13 The Contractor shall be responsible for requesting any additional instructions or clarifications that may be required from the Consultant which are needed for the performance of the Work, and shall request such instructions or clarifications in time to avoid any delay of the Work.

*Add the following:*

2.2.19 The Consultant or the Owner, acting reasonably, may from time to time require the Contractor to remove from the Project any personnel including project managers, superintendents or Subcontractors. Such persons shall be replaced by the Contractor in a timely fashion to the satisfaction of the Consultant or the Owner, as the case may be, at no cost to the Owner.

2.2.20 The parties hereby agree that such person as the Owner may designate shall be the Payment Certifier. The Owner agrees that it will include in its contract with the Payment Certifier that the Payment Certifier will act neutrally. The Payment Certifier shall be responsible for those portions of the Consultant's role that relate to reviewing and processing progress payments (GC 2.2.4 and all of Part 5), Change Orders (GC 6.2.1), Change Directives (GC 6.3.4 and 6.3.6), and Construction Schedule (GC 3.5), and the referenced clauses shall be amended by replacing "Consultant" with "Payment Certifier". The Contractor hereby agrees that the Contractor will be the payment certifier responsible for issuance of Certificates of Completion under all of its subcontracts.

**GC 2.3 REVIEW AND INSPECTION OF THE WORK**

*Amend GC 2.3.2 as follows:*

2.3.2 Replace the words "...the Contractor shall give the Consultant reasonable notification of when the work will be ready..." with "the Contractor shall give the Consultant at least seventy-two (72) hours prior notice (or such shorter period as the Consultant agrees) of when the work will be ready..."

*Amend GC 2.3.5 as follows:*

2.3.5 Add the following to the end of GC 2.3.5 "Where it is necessary to correct any portion or portions of the Work, the corrected work shall, if required by the Consultant, be retested or re-inspected, at the Contractor's sole cost and expense."

*Add the following:*

2.3.8 The Consultant, the Owner and their representatives shall at all times have access to the Project and be permitted to examine the Work and materials used or to be used for the Work, and the Contractor agrees to provide reasonable facilities for such inspection.

*Add the following:*

2.3.9 Should the Consultant be required to make more than one review of rejected work or should the Consultant perform additional reviews due to failure of the Work to comply with the application for status of completion made by the Contractor, the Contractor is required to compensate the Owner for such additional Consultant services including expenses incurred.

*Add the following:*

2.3.10 The Contractor shall cooperate with the Owner in establishing a deficiency list before

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Substantial Performance and shall complete or materially begin performance of the work noted on the deficiency list promptly after the date of Substantial Performance.

*Add the following:*

- 2.3.11 The inspection and testing described in this section do not relieve the Contractor of his obligation to perform the Work in strict conformance with the requirements of the Contract Documents. The Contractor remains responsible for the proper performance of the Work. The Contractor also remains responsible for safety in and about the Place of the Work and for the adequacy of any construction equipment, scaffold, shoring or any other work aide used by him, his employees or his Subcontractors. The Contractor shall in the first instance undertake all necessary quality control measures including reviews of sub-trade work in order to satisfy himself that the Work is being performed in conformance with the Contract Documents. When requested by the Consultant, the Contractor shall furnish reasonable evidence that such reviews are being performed.

#### **GC 2.4 DEFECTIVE WORK**

*Amend GC 2.4.1 as follows:*

- 2.4.1 Insert “, Owner and/or its agent” in the first sentence following “rejected by the Consultant” and add the following to the end of GC 2.4.1: “If the Contractor fails to promptly remove from the Place of the Work and replace or re-execute any defective work, the Owner may, but shall not be required to, remove such defective work and replace or re-execute any such defective work and the Contractor shall reimburse the Owner for any such removal (including any storage of materials removed by the Owner), replacement or re-execution upon demand.”

*Add the following:*

- 2.4.4 Defective Work remedied shall be covered by warranties as per GC 12.3 WARRANTY, except that the time for such warranties shall not begin until the later of the time identified in GC 12.3 or the time that the defective Work is remedied to the satisfaction of the Consultant, Owner and/or its agent.
- 2.4.5 Neither acceptance of the Work by the Consultant, Payment Certifier or the Owner nor any failure by the Consultant or the Owner to identify, observe or warn of defective Work or any deficiency in the Work shall relieve the Contractor from the sole responsibility for rectifying such defect or deficiency at the Contractor’s sole cost, even where such failure to identify, observe or warn is negligent.

### **Part 3 EXECUTION OF THE WORK**

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

- 3.2.2 *Delete G.C. 3.2.2.1 and G.C. 3.2.2.2.*

*Replace G.C. 3.2.3.3 with the following:*

- 3.2.3.3 Report to the Consultant any apparent deficiencies in such work within two (2) Working Days after the apparent deficiencies were, or ought reasonably to have been, observed

by the Contractor, and in any event, prior to proceeding with that part of the Work.

*Add the following:*

- 3.2.7 If the Place of the Work is an “open site” where both unionized and non-unionized labour may be employed at the same time, the Owner reserves the right to award separate contracts in connection with other parts of the Project to other contractors and to perform work with its own forces where other contractors or its own forces or both are or may become unionized or non-unionized.

*Add the following:*

- 3.2.8 Any disruptions or delays caused by industrial relations disputes including jurisdictional disputes involving union, non-union workers or both on or related to the Place of the Work shall be the responsibility of the Contractor, and any costs arising out of any such disputes shall be deemed to be included in the Contract Price.

### **GC 3.3 TEMPORARY WORK**

*Add the following:*

- 3.3.4 The Contractor shall, upon request, provide confirmation, satisfactory to the Owner, that any cranes and other lift equipment being used at the Place of the Work, or in connection with the performance of the Work, in its intended configuration, is in compliance with all Safety Regulations.

### **GC 3.4 CONSTRUCTION SCHEDULE**

*Amend GC 3.4.1.1 as follows:*

- 3.4.1.1 Replace the words “prior to the first application for payment” with the words “within 10 days after execution of the Contract”.

*Amend GC 3.4.1.2 as follows:*

- 3.4.1.2 Replace the words “on a monthly basis or as stipulated by the Contract Documents” with “on a monthly basis, as stipulated by the Contract Documents, or as reasonably requested by the Owner or the Consultant.”

*Add the following:*

- 3.4.1.4 The Contractor agrees to perform the Work generally in accordance with the Construction Schedule and the Schedule Narrative.

- 3.4.4 Upon becoming aware of any facts or conditions which may affect the Contractor’s ability to maintain the Construction Schedule and the Schedule Narrative or to complete the Milestones on schedule, the Contractor shall notify the Owner and the Consultant as soon as practicable in writing of such facts or condition.

- 3.4.5 The Contractor will update the progress of the Work in relation to the Milestones and
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the anticipated completion dates for the Milestones, and provide such to the Owner concurrently with each application for payment pursuant to GC 5.2. The Schedule Narrative will be updated if there is a material change in the sequencing of the Work.

**GC 3.5 SUPERVISION**

3.5.1 *Amend GC 3.5.1 as follows:*

Add after the last sentence:

The appointed Contractor representative shall not be changed without consultation with and the written acceptance of the Owner. This acceptance shall not be unreasonably withheld.

*Add the following:*

- 3.5.3 The superintendence of the Project may be deemed unsatisfactory and the Owner may demand changes or additions to the superintendence if the Owner or the Consultant, acting reasonably, deems that:
- .1 the control, general safety, organization or coordination of the Work are unsatisfactory;
  - .2 the quality of the Work performed does not meet the requirements of the Contract Documents;
  - .3 the directions provided by the Consultant in accordance with the Contract Documents are not implemented; or
  - .4 the progress of the Work is not in accordance with the Construction Schedule.

3.5.4 In the event that the Owner makes a demand in accordance with GC 3.6.3, the Contractor must make changes or additions to the superintendence of the Project to correct the unsatisfactory conditions that gave rise to the Owner's demand at the Contractor's sole expense.

**GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

*Add the following to G.C. 3.6.1:*

- 3.6.1.4 Living Wage: It is a condition of this Agreement that, for the duration of this Agreement:
- (a) the Contractor pays all employees who are employed by the Contractor to perform services pursuant to this agreement not less than the Living Wage, as set annually by the Living Wage for Families Campaign; and
  - (b) notwithstanding 3.6.1.4 (a), the contractor has up to 6 months from the date on which any increase in the Living Wage is adjusted by Living Wage for Families Campaign, to increase any or all wages such that the Contracted Employees continue to be paid not less than the Living Wage.

If the Contractor sub-contracts all or part of the provision of the Services to a sub-contractor, the Contractor shall ensure that any sub-contractor adheres to clause 3.6.1.4 as though it were the contractor.

Termination of Contract: A breach by the Contractor of its obligations pursuant to clause 3.6.1.4 shall constitute a material breach by the Contractor of this Agreement which shall entitle the client to terminate this Agreement.

*Replace G.C. 3.6.2 with the following:*

- 3.6.2 The Contractor shall employ those Subcontractors and Suppliers proposed by the Contractor and agreed in writing, prior to the execution of this Contract, by the Owner. The Contractor acknowledges and agrees that it shall not be permitted to change any Subcontractor or Supplier without cause and the prior written consent of the Owner.

*Add the following:*

- 3.6.7 The Contractor shall coordinate the work of all trades and other contractors including those engaged by the Owner directly and determine to what extent work specified in each section of the specifications is affected by work indicated elsewhere and make all necessary allowances for their integration. All additional work resulting from failure to make such determination shall be done at no cost to the Owner.
- 3.6.8 The Contractor and its Subcontractors shall pay all of their respective Subcontractors, Suppliers, and workers that they employ such sums as are due to them. The Contractor shall take all necessary steps to ensure that the Subcontractors and Suppliers do likewise. All payments shall be made promptly when due.
- 3.6.9 The Contractor agrees that the Owner may, at any time, review its project payment records and make reasonable inquiries of the Contractor's Subcontractors and Suppliers in order to verify the status of invoices or payments claimed by the Subcontractors and Suppliers of the Contractor.
- 3.6.10 The Contractor shall ensure that all agreements, arrangements and contracts entered into with Subcontractors, Suppliers, consultants and any other entity regarding the performance of the Work, are assignable to the Owner, without the need to obtain consent of such Subcontractor, Supplier, consultant or other entity.
- 3.6.11 The Contractor shall comply and be responsible for ensuring that its Subcontractors and Suppliers comply with Schedule "B" – Code of Conduct.

**GC 3.7 LABOUR AND PRODUCTS**

*Replace G.C. 3.7.2 with the following:*

- 3.7.2 Unless otherwise stipulated in the Specifications, the reviewed Shop Drawings or otherwise instructed by the Owner, Products provided shall be new, free of defects, fit for their intended purpose and shall conform to current applicable specifications of the Canadian Standards Association, National Building Code, Canadian General Standards Board, American Society for Testing and Materials, applicable trade associations and all government authorities having jurisdiction in relation to the Place of the Work.

*Add the following:*

- 3.7.4 The Contractor and its Subcontractors shall pay all wages in accordance with applicable laws including, without limitation, labour, income tax, unemployment insurance, Canadian pension plan, holiday pay and W.C.B. legislation.
- 3.7.5 All Products shall be used strictly according to manufacturers' printed directions or
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recommendations unless specifically stated otherwise in the Contract Documents. All Products shall be stored as recommended by the manufacturer and kept dry at the recommended temperature where applicable. Any damaged Products shall be rejected and the Contractor shall remove such material from the Place of the Work at the Contractor's sole expense.

3.7.6 The Contractor shall ensure that only Products specified or authorized in writing by the Owner or the Consultant, or approved for substitution by the Consultant, are used or incorporated into the Work. Unspecified Products and rejected substitutions used or incorporated into the Work shall be removed and replaced with specified Products or approved substitutions at the Contractor's sole expense.

3.7.7 Manufactured Products which are specified by their proprietary names or by part or catalogue number must be provided. Where a list of acceptable proprietary Products is specified the Contractor may select any of the listed Products. The Contractor shall be solely responsible for coordinating the selection of Products to ensure that the entire Project functions correctly.

#### **GC 3.8 SHOP DRAWINGS**

*Replace GC 3.8.1 with the following:*

3.8.1 The Contractor shall be responsible for providing all Shop Drawings necessary for the performance of the Work.

#### **Part 4 ALLOWANCES**

##### **GC 4.1 CASH ALLOWANCES**

*Add the following to the end of GC 4.1.2:*

4.1.2 The net cost of any cash allowance work shall be summarized with the competitive bids and all associated supporting backup documents for review by the Consultant and the Owner. The Contractor shall not proceed with any cash allowance work without prior written consent from the Owner.

*Add the following:*

4.1.8 The Contractor shall keep accurate records, as reasonably required by the Payment Certifier, of costs under cash allowances and present them in support of the value of the cash allowances, where applicable.

#### **Part 5 PAYMENT**

*Replace "Consultant" with "Payment Certifier" throughout Part 5 – Payment, except in GC 5.6 where "Consultant" is replaced with "Contractor".*

*Replace GC 5.1 with the following:*

##### **GC 5.1 BUILDERS LIEN ACT**

5.1.1 Notwithstanding any other provision contained in this Contract, the Owner shall deduct and withhold from each payment otherwise due to the Contractor ten percent (10%) of

each payment, or such other amount as may be required by the *Builders Lien Act* (the “**Owner’s Holdback**”). The Contractor agrees not to advance more than 90% of each progress draw for its Subcontractors, excluding Suppliers and consultants

5.1.2 The Owner shall establish, where required by the *Builders Lien Act*, a holdback account (the “**Holdback Account**”) with respect to the Contract at a savings institution selected by the Owner in its sole discretion (the “**Savings Institution**”). By written notice to the Contractor and to the Savings Institution, the Owner may add to or delete names from the list of its authorized signatories for the Holdback Account. The Holdback Account shall be:

- .1 an account in the name of the Owner only;
- .2 identified as a trust account;
- .3 an interest bearing savings account; and
- .4 non-accessible by automatic teller machine.

5.1.3 The Owner shall deposit into the Holdback Account amounts the Owner is required to retain in the Holdback Account pursuant to the *Builders Lien Act*, which amounts shall be retained from any payment to be made on the account of the Contract Price. Interest on the funds held in the Holdback Account shall accrue to the benefit of the Owner until expiry of the applicable holdback period, at which time interest, if any, shall accrue to the benefit of the Contractor.

5.1.4 If either the Owner or the Contractor is of the opinion that circumstances exist under which the *Builders Lien Act* authorizes payment out of the Holdback Account, it shall request agreement from the other party in writing, and

- .1 within five (5) Working Days, if both parties agree that such circumstances exist, the Owner shall sign the required cheque or instrument of withdrawal. Alternatively, the parties may jointly elect to refer the issue to the Consultant, in which case they agree to act promptly in accordance with the Consultant’s decision on the issue; or
- .2 if five (5) Working Days elapse and:
  - (i) the parties are unable to agree that such circumstances exist or are unable to agree that the issue should be referred to the Consultant, then either the Owner or the Contractor may apply to the Supreme Court of British Columbia for directions and, if the resulting court order is not appealed within the time limited for so doing, or having been appealed has been upheld, the parties agree to act promptly in accordance with the court’s direction; or
  - (ii) the Contractor has not responded to a request by the Owner, then the Contractor shall be deemed to have agreed to the request and the Owner is authorized to make such payment.

5.1.5 Upon the reasonable written request of the Contractor, the Owner shall promptly furnish

copies of all account agreements, statements of account and other records which deal with the establishment, maintenance and operation of the Holdback Account. The Owners shall promptly provide to the Contractor a copy of its response to any lien holder who makes a written request for particulars with respect to the Holdback Account.

5.1.6 Subject to GC 5.6, the Contractor shall not pay any holdback from its Subcontractors until all of the conditions for release set forth in this Contract and in the *Builders Lien Act* have been fulfilled including, without limitation, attainment of Substantial Performance of the Work and a Certificate of Completion (or termination or abandonment of the Contract) together with expiry of the fifty-five (55) day holdback period.

5.1.7 The Contractor's application for payment of the funds held back in compliance with the Builder's Lien Act shall include:

- .1 a notarized Statutory Declaration in the form known as CCDC document 9B; and
- .2 a letter from the W.C.B. confirming the Contractor is in good standing;
- .3 a Final Release and Indemnity in accordance with Schedule "A"; and
- .4 a complete set of "As Built" drawings showing all changes to the Work.

5.1.8 If a claim of builder's lien is filed against the Project in respect of the Work by any Subcontractor, sub-Subcontractor, Supplier, worker or other person claiming through, by or under the Contractor or any of its Subcontractors, Sub-Subcontractors, Suppliers or workers, the Owner may, at its option, instruct the Contractor to cause the said claim of builders lien to be removed from the title to the Project within five (5) Working Days from the date of such notice by direct payment, furnishing of a bond, payment into court or otherwise.

If the claim of builders lien is not removed from the title to the Project within such time or such further time as may be subsequently agreed upon, the Owner, without prejudice to any other right or remedy it may have, may take such steps or proceedings, including payments, settlements or compromise of the claim or payment into court, as the Owner reasonably determines is necessary to procure release of the lien, and all payments and costs, including legal fees and disbursements incurred by the Owner shall be paid by the Contractor to the Owner or may be deducted from any amount then due or thereafter becoming due to the Contractor.

The Contractor shall, if requested by the Owner, defend and shall in any event indemnify and save the Owner harmless from the amount of all such claims and the costs of defending any and all actions commenced against the Owner pursuant to the *Builders Lien Act* including the legal costs of the Owner.

**GC 5.2 APPLICATIONS FOR PAYMENT**

*Add the following to the end of GC 5.2.2:*

5.2.2 Applications for progress payments shall be made in a mutually acceptable form or, if the parties are not then in agreement on a mutually acceptable form, in a form chosen by the Consultant.

*Replace GC 5.2.5 with the following:*

5.2.5 The schedule of values shall be updated at the same time as each application for payment is submitted to include all approved changes and each application for payment shall include the value proportionate to the amount of the Work performed and materials delivered to the Place of the Work as at the date of the application for payment.

*Add the following:*

5.2.9 The Contractor shall ensure that:

- .1 each application for payment includes all original invoices;
- .2 each application for payment quotes the applicable Project;
- .3 a copy of each application for payment, including all supporting documentation, is emailed to the Project Manager; and
- .4 such further or other information as may be reasonably requested by the Owner or the Consultant in order to establish the Contractor's compliance with the Contract Documents is provided to the Owner and the Consultant promptly after receipt of a request.

5.2.10 The Contractor shall submit with the second and subsequent applications for payments, a statutory declaration on CCDC Form 9B stating that all wages, Subcontractors and Suppliers have been paid toward the performance of the Work, together with satisfactory evidence of compliance with the W.C.B. regulations.

5.2.11 Products that are delivered to the Place of the Work, or to another storage site approved in writing by the Owner or the Consultant, prematurely prior to installation or consumption shall not be pre-paid for unless agreed upon in writing by the Consultant or the Owner. On the making of such payment, the Owner shall take title to such Products.

5.2.12 No payment shall be made by the Owner for Products fabricated for the Work but that are not stored at the Place of the Work, or at another storage site approved in writing by the Owner or the Consultant, nor for any engineering services or shop drawings pertaining to such Products.

5.2.13 All mechanical and electrical equipment and systems, required to be in operation for the occupancy permit, shall be operating on automatic controls and shall be fully operational at the date of Substantial Performance of the Work.

5.2.14 The Contractor shall be responsible for the protection and security of the Products stored at the Place of the Work and replace any material damaged or stolen from the Place of the Work at no cost to the Owner.

### **GC 5.3 PAYMENT**

*Add the following:*

5.3.2 The Owner shall make payment to the Contractor on account as provided in Article A-5 of the Contract - PAYMENT no later than 30 days from the end of the month in the

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amount approved by the Payment Certifier.

- 5.3.3 The Payment Certifier shall not certify any payment until the Construction Schedule required in GC 3.5, the evidence of insurance required by GC 11.1, and the bonds called for in GC 11.2 have been received by the Payment Certifier.

**GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK**

*Add the following to the end of GC 5.4.1:*

- 5.4.1 The Payment Certifier shall, in evaluating whether Substantial Performance of the Work has been achieved, determine the amount of Work that has been performed by determining the total value of the Work by adding all approved Changes to the Contract Price (the “**Amended Contract Price**”) and then subtracting the value of the Work that is incomplete or deficient with the net amount being the “Work Performed”. The percent performed shall be the ratio of the Work Performed to the Amended Contract Price multiplied by 100.

*Add the following to the end of GC 5.4.2:*

- 5.4.2 When the Payment Certifier finds that Substantial Performance of the Work has been reached, the Payment Certifier shall issue a Certificate of Completion. If the Payment Certifier determines that Substantial Performance of the Work has not been achieved, the Contractor shall perform the work required to achieve Substantial Performance of the Work and thereafter provide the Payment Certifier with another application for a Certificate of Completion. This process shall be repeated until a Certificate of Completion is issued in accordance with this paragraph 5.4.2. Additional costs, if any, incurred by the Owner for processing any second or subsequent application shall be borne by the Contractor, shall be due on demand, and may be deducted and retained by the Owner from any payment then or thereafter due to the Contractor under this Contract.

*Add the following:*

- 5.4.7 Concurrently with the issuance of the Certificate of Completion, the Payment Certifier shall prepare a written list of items of the Work to be corrected and/or completed that were apparent to him in his inspection and assessment of the Work. The issuance of this list does not relieve the Contractor from its obligation to correct and/or complete all deficiencies in the performance of the Contract as provided for in GC 2.4 - DEFECTIVE WORK. In addition to the monies to be held back in accordance with the *Builders Lien Act*, the Owner may hold back monies, as estimated by the Payment Certifier at equal to two (2) times the cost to correct and/or complete the items appearing in the said list, from the net payment to be made following the issuance of the Certificate of Completion. As defects and deficiencies on the Payment Certifier’s list are remedied, the holdback monies corresponding to such defects and deficiencies shall be released to the Contractor. If the Contractor should fail to complete and/or correct such items within a reasonable time, the Owner may use the monies held back for defects and deficiencies to complete and/or correct such items.

5.4.8 When the Contractor considers that it is entitled to a Certificate of Readiness for the Work or for any unit, the Contractor shall notify the Consultant. The Consultant shall promptly, and in any event, no later than 20 calendar days after receipt of the Contractor's application, conduct any inspection he deems necessary and, if he agrees with the Contractor, issue and deliver to the Contractor and the Owner a Certificate of Readiness for the Work or for any specific unit as applicable.

*Add the following:*

5.4.9 The Contractor shall submit three (3) full and complete digital records and 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 not to exceed one (1) percent of the Contract Price as security for the obligation of the Contractor to deliver such digital record and as built drawings.

*Add the following:*

5.4.10 The Owner reserves the right to take possession of and use completed or partially completed portions of the Work, in addition to occupancy conditions included in the Contract, providing:

- .1 the portion of the Work is ready to be used for the purpose intended, to the satisfaction of the Consultant and authorities having jurisdiction;
- .2 the Owner's possession and use do not interfere with the Contractor's Work;
- .3 the Consultant conducts a review prior to possession by the Owner, and
- .4 any extra costs are borne by the Owner, subject to the provisions of GC 6.5 DELAYS.

#### **GC 5.5 FINAL PAYMENT**

*Add the following to the end of GC 5.5.1*

5.5.1 The Contractor shall include a Final Release and Indemnity in accordance with Schedule "A" with its application for final payment.

*Replace GC 5.5.4 with the following:*

5.5.4 Subject to the provision of GC 10.4 - WORKERS' COMPENSATION, the *Builders Lien Act*, and the provisions of this Contract, the Owner shall, no later than thirty (30) days after the issuance of a final certificate of payment, pay the Contractor as provided in Article A-5 of the Contract – PAYMENT.

*Add the following:*

5.5.5 Prior to the release of the final certificate of payment, the Contractor must submit the occupancy permit, all inspection certificates, all test reports, close out documents, required as-built drawings, required spare stock, warranties, a reconciliation statement of all change orders and W.C.B. clearance release documents.

5.5.6 Neither the final payment nor any part thereof shall become due until the Contractor obtains and delivers to the Owner a complete release of any liens arising out of this

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Contract (other than his own), but the Contractor, may, if any Subcontractor or Supplier refuses to furnish a release of such lien, take all steps necessary to have such lien removed expeditiously.

- 5.5.7 The issuance of final certificate of payment in no way relieves the Contractor from correcting deficiencies or defects not readily apparent at the time of issuance of this certificate.

## **Part 6 CHANGES IN THE WORK**

### **GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

*Add the following:*

- 6.1.14 No Changes in or additions to the Work shall be undertaken without written authorization of the Owner.
- 6.1.15 Where additional instructions provided by the Owner or the Consultant to the Contractor result in increased costs, the Contractor shall not be entitled to any reimbursement by the Owner for such costs unless the Contractor provides the Consultant with written notice of the increased costs within fifteen (15) Working Days of receiving the above instructions, in which case GC 6.1.1 and GC 6.1.2 shall apply.
- 6.1.16 The valuation of any Changes shall be determined, at the Owner's discretion, by one or more of the following methods:
- .1 Estimate of the cost to perform the change in the Work, including a mark-up which is generally consistent with the mark-up permitted under GC 6.1.6, supported by back-up documentation sufficient to permit verification by the Consultant, and acceptance by the Owner or the Consultant in a lump sum;
  - .2 By the cost and a fixed or percentage fee; or
  - .3 Unit prices, where unit prices have been specifically quoted.
- 6.1.17 Where Changes are to be paid for under GC 6.1.5.2, the cost to the Owner shall be the actual cost of the Work plus a percentage covering overhead and profit on additional work only, after all credits included in the Change have been deducted, as follows:
- .1 for work to be completed by the Contractor's own forces, a mark-up on the actual cost of 10% (5% for overhead and 5% for profit);
  - .2 for work to be completed by the forces of a Subcontractor or Supplier, a mark-up on the actual cost of 5% for the Contractor and 10% (5% for overhead and 5% for profit) for the Subcontractor or Supplier;
  - .3 for the purpose of GC 6.1.6, the "actual cost" of labour shall be calculated using either:
    - (i) 150% of each worker's hourly wage; or

- (ii) 150% of each worker's annual salary divided by 2,000 hours per year.
- .4 for deleted work, no sums added or deleted for overhead and profit, and credit is to be for the actual cost of the deletion;
- .5 all Changes shall not include the (GST) Goods and Services Tax. The applicable GST shall be listed separately on all change order quotations.
- 6.1.18 Where Changes are to be paid for under GC 6.1.5.2, the Contractor shall be required to have all time-sheets signed off daily by a representative of the Owner who shall be reasonably available at the Place of the Work on days when the Contractor is working on such Changes.
- 6.1.19 The Contractor shall supply all necessary backup including labour and materials breakdowns to substantiate a claim for a Change.
- 6.1.20 The balance of the Work of the Contractor shall not be delayed pending agreement on resolution of the valuation of Changes.
- 6.1.21 The costs and effect on the Contract Time of each Change shall be dealt with separately and shall be deemed to include all direct, indirect and consequential costs associated with that Change, including, without limitation all impact costs, overhead and profits. No other claim or later claim for additional costs or schedule extensions shall be considered or paid by the Owner.
- 6.1.22 The Contractor acknowledges that the Owner at all times desires to reduce the *Contract Price* and to improve the overall quality of the Project. The Contractor agrees to cooperate with the Owner and to make reasonable efforts to reduce the *Contract Price* through value engineering and other cost saving initiatives.

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

*Add the following:*

- 6.4.5 The Contractor acknowledges that it has inspected the Place of the Work for the physical conditions described in GC 6.4.1 and has disclosed its findings to the Owner. The Contractor shall not be entitled to, and shall not claim, any additional compensation, or extension of Contract Time as a result of any conditions that were or ought to have been discovered upon reasonable inspection by the Contractor prior to the date of the Contract.
- 6.4.6 No claims for additional compensation, or for an extension of Contract Time, shall be allowed if the Contractor fails to give notice to the Owner, as required by GC 6.4.1.

#### **GC 6.5 DELAYS**

*Replace GC 6.5 with the following:*

- 6.5.1 If the Contractor is delayed or impacted in the performance of the Work by an event outside its reasonable control other than a lack of funds (an "**Excusable Event**"), and provided always that the said event is not one for which, pursuant to other terms of the Contract, no extension of Contract Time is to be granted, then the Contract Time shall



be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and the Owner. The Contractor waives any claim for compensation for costs incurred as a result of an Excusable Event. In no case will an act or omission of the Contractor or any person employed or engaged by the Contractor either directly or indirectly constitute an Excusable Event. In addition, the occurrence of any weather related event, or any consequence thereof, shall not be an Excusable Event unless such weather related event is proven to be more severe than a 25 year weather related event as recorded by Environment Canada.

- 6.5.2 The Contractor waives any claim for an extension of Contract Time or compensation for costs incurred where the Contractor is delayed or impacted in the performance of the Work by an event caused by the Contractor or any person or party employed or engaged by the Contractor either directly or indirectly (a "**Contractor Caused Event**"). All Contractor Caused Events shall be events of default under the Contract.
- 6.5.3 If the Contractor is delayed or impacted in the performance of the Work by an event of default or neglect caused solely by the Owner or the Consultant or any subconsultant (an "Owner Caused Event"), and provided always that the said event is not one for which, pursuant to other terms of the Contract, no extension of Contract Time or compensation is to be granted, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and the Owner. The Contractor shall only be reimbursed for the reasonable out-of-pocket expenses (including extended general conditions costs), incurred by the Contractor that are established to have been caused by the Owner Caused Event, including any salaries actually paid to employees of the Contractor in respect of services that are established to have been made necessary by reason of the Owner Caused Event. The Contractor must provide supporting documentation for such costs, as required by the Consultant or the Owner, before compensation for any delays or impacts will be considered. The documentation must be presented promptly, and in any event, no later than ten (10) Working Days after Substantial Performance of the Work.
- 6.5.4 The Contractor waives any claim for extension of Contract Time or compensation for costs incurred as the result of an Excusable or Owner Caused Event unless the Contractor provides a notice in writing of the claim to the Consultant within ten (10) Working Days after the commencement of the delay or impact. A notice in writing shall describe the event, the date the delay or impact commenced, the anticipated duration of the delay or impact, the effect on the Contract Time and all steps taken or available to mitigate the delay or impact.
- 6.5.5 Any disruption or delay caused by one or more construction labour disputes, strikes and lock-outs, including, but not limited to, financial and jurisdictional disputes involving unionised and non unionised workers, on or related to the Place of the Work, shall be deemed to be an Excusable Events.
- 6.5.6 In the event of an Excusable Event or an Owner Caused Event, the Owner may, at its option, request the Contractor, in writing, to take steps to accelerate the Work rather than allow the Contractor an extension of the Contract Time. In this case, the Owner's request shall be dealt with in accordance with G.C. 6.2 - CHANGE ORDER or 6.3 - CHANGE DIRECTIVE. In any event, the Contractor shall only be entitled to receive compensation for its actual out-of-pocket costs required to accelerate the Work,

including any salaries actually paid to employees of the Contractor for work performed in connection with the acceleration of the Work.

6.5.7 Where there are concurrent delays or impacts, some of which are caused by Owner Caused Events and some of which are not, the Contractor shall not be entitled to an extension of the Contract Time or compensation for costs. Concurrent delays or impacts are those that are caused by two or more independent events, irrespective of whether such delays or impacts are on the critical path or are contemporaneous.

6.5.8 The Contractor waives any claim for extension of Contract Time or compensation for costs incurred as the result of any Excusable or Owner Caused Event, unless, at the time of the commencement of the delay or impact, the Contractor has submitted and updated the Construction Schedule as required by GC 3.5.

6.5.9 In the event that the Contractor is delayed or impacted in the execution of the Work for any reason other than one for which an extension is permitted under GC 6.5 or if the Contractor fails to submit a notice in writing as required by GC 6.5.4, fails to submit and update a Construction Schedule as required by GC 3.5 or fails to perform the Work substantially in accordance with the agreed Construction Schedule, the Contractor shall, at its own expense, take whatever measures are necessary to ensure the completion of the Work by the date stated in Article A-1 (1.3) of the Contract.

6.5.10 The entitlement of the Contractor to claim an extension of the Contract Time or reimbursement of costs, under GC 6.5, shall be subject to the condition that the Contractor shall have exercised all reasonable efforts to avoid, or minimize the duration, cost and impact of any delay or impact in respect of which a claim for extension of the Contract Time or compensation is made. The Contractor waives any claim for extension of Contract Time or compensation for delays or impacts, which do not adversely affect the critical path for achieving Substantial Performance of the Work, or which could have been avoided, minimized or mitigated by the Contractor using reasonable efforts.

6.5.11 Each claim under GC 6.5 based, in whole or in part, on a particular event or circumstance must be submitted, and shall be considered, separately. No claim shall be allowed under this GC 6.5, or otherwise under the Contract, for an extension of the Contract Time or compensation as a result thereof based upon the cumulative impact of two or more particular events causing delay or impact.

## **GC 6.6 CLAIMS FOR CHANGE IN CONTRACT PRICE**

*Replace GC 6.6 with the following:*

6.6.1 Except where a different notice period is expressly set out in the Contract, the Contractor waives any claim for an extension of the Contract Time, change in the Contract Price, adjustment or interpretation of the Contract Documents, any other relief with respect to the terms of the Contract Documents or any other claim for loss, damage, cost or expense arising from or in any way related to the Project, unless the Contractor provides a notice in writing of the claim to the Owner and the Consultant within twenty (20) Working Days after occurrence of the event giving rise to such claim or twenty (20) Working Days after the Contractor first recognized, or ought reasonably to have recognized, the

conditions giving rise to the claim, whichever is later.

**GC 6.7 NO CHANGE ORDER COMMITMENT CLAUSE**

Add the following:

6.7.1 The Owner and Contractor each acknowledge and agree that it is their intention to achieve total completion of the Work at a cost to the Owner that does not exceed the Contract Price. In furtherance of this intention, the Contractor has worked closely with the Owner and the Consultant during the design, tender, and costing of the Work to ensure that the Contract Price accurately reflects the cost of the Work. Accordingly, and notwithstanding anything to the contrary in the Contract, the Contractor shall not be entitled to an increase in the Contract Price or the Contract Time unless the increase is due to:

- .1 an unforeseeable event;
- .2 a change in the design or scope of the Project initiated by the Owner; or
- .3 a concealed or unknown condition pursuant to GC 6.4.

**Part 7 DEFAULT NOTICE**

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

*Replace GC 7.1.2 with the following:*

7.1.2 If the Contractor should neglect to prosecute the Work in accordance with the Contract, the Owner may, without prejudice to any other right or remedy the Owner may have, notify or have the Consultant notify the Contractor in writing that the Contractor is in default of the Contractor's contractual obligations and instruct the Contractor to correct the default in the two (2) Working Days immediately following receipt of such notice.

*Amend GC 7.1.3 as follows:*

7.1.3 Replace the words "5 Working Days" with the words "two (2) Working Days".

*Amend GC 7.1.4.1 as follows:*

7.1.4.1 Delete the words "provided the Consultant has certified such cost to the Owner and the Contractor".

*Amend GC 7.1.5.3 as follows:*

7.1.5.3 Delete the words "as certified by the Consultant"

*Add the following:*

7.1.7 The Owner may terminate this Contract for its convenience at any time and without cause, upon giving not less than thirty (30) days prior notice to the Contractor. In this event, the Owner shall pay to the Contractor all amounts due to the Contractor on account of the Contract Price earned to that date together with reasonable and properly documented costs incurred by the Contractor in demobilizing and terminating its contracts with Subcontractors and Suppliers.

7.1.8 Where the Owner has exercised its right to terminate the Contract pursuant to the provisions of GC 7.1.1 or 7.1.4, the Contractor shall forthwith upon notification of the exercise of such right, make available to the Owner, its authorized agents and representatives, all books and records of the Contractor relating to the Work. Upon the Owner exercising such right to stop the Work or terminate the Contract, the Contractor shall be deemed, without further formality, to have sold, assigned and set over unto the Owner, without further consideration, those agreements, arrangements and contracts with Subcontractors, Suppliers, engineers and others to which the Contractor is a party with respect to the performance of the Work which the Owner designates in writing to the Contractor after the giving of notice to stop the Work or terminate the Contract. The remaining such contracts shall continue to be the property and responsibility of the Contractor. The Contractor shall, upon written request by the Owner and in form reasonably satisfactory to the Owner, execute such further assignments to give effect to the foregoing as the Owner shall reasonably require.

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

7.2.3.1 *Delete GC 7.2.3.1.*

*Amend GC 7.2.3.4 as follows:*

7.2.3.4 Delete the words "except for GC 5.1 – FINANCING INFORMATION REQUIRED BY THE OWNER"

*Amend GC 7.2.4 as follows:*

7.2.4 After the words "within five (5) Working Days" in the second line add the words ", or such longer period as may reasonably be required to correct any default of the type described in subparagraph 7.2.3 (provided that in no event will there be an extension for payment defaults)".

*Replace GC 7.2.5 with the following:*

7.2.5 If the Contractor terminates the Contract under the conditions set out above, the Owner shall pay to the Contractor all amounts due to the Contractor on account of the Contract Price earned to that date together with reasonable and properly documented costs incurred by the Contractor in demobilizing and terminating its contracts with Subcontractors and Suppliers.

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## **PART 8 DISPUTE RESOLUTION**

*Delete GC 8.1 and substitute the following:*

### **GC 8.1 AUTHORITY OF THE PAYMENT CERTIFIER**

8.1.1 The parties wish to ensure that the performance of the Work will proceed without disruption caused by delays in finalizing matters affecting the Contract Price and Scope

of the Work and further wish to make every effort to conclude the Work to the extent possible without having outstanding, unresolved claims and disputes. To that end this Dispute Resolution process is intended to ensure that smaller disputes commonly arising in construction projects during the course of the Work are resolved immediately and in a final and binding way.

8.1.2 The Payment Certifier will be the first instance determiner in respect of the following:

- (a) issues regarding whether something constitutes a Change for the purpose of issuance of Change Orders or Change Directives,
- (b) valuation of Change Orders and Change Directives,
- (c) determination of deficiencies,
- (d) quantification or allocation of deficiency holdbacks; and
- (e) valuation of applications for payment.

8.1.3 If the Payment Certifier makes a determination in respect of any of the items listed in GC 8.1.2 that has a claimed value of \$100,000 or less (excluding Value Added Taxes), this determination will be final and binding on the parties. Any determination by the Payment Certifier shall be without prejudice to any subsequent claim or claims involving the same issue. If a party anticipates that an issue requiring determination by the Payment Certifier may impact the legitimacy or value of more than one Change Order or Change Directive, that party may, at its sole option, advise the Payment Certifier of an intent to defer determination and have those matters bundled for presentation to and determination by the Payment Certifier at the same time, in which case the claimed value for the purposes of whether the determination will be final and binding, will be the total aggregated value of all bundled claims requiring determination.

*Delete GC 8.3 in its entirety and substitute the following:*

### **GC 8.3 NEGOTIATION, MEDIATIONS AND ARBITRATION**

8.3.1 In respect of a determination by the Payment Certifier of any matter listed in GC 8.1.2 or any bundled claim, with a claimed value in excess of \$100,000 (excluding Value Added Taxes), a party shall be conclusively deemed to have accepted the determination of the Payment Certifier and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that determination unless, within 20 Working Days of being advised of the Payment

Certifier's determination, the disputing party sends to the other a Notice in Writing, notifying the other writing that it disputes the Payment Certifier's determination. A Subcontractor's Notice in Writing of dispute will be forwarded to the Owner by and through the Contractor.

- 8.3.2 If either party, or a Subcontractor, disputes a determination by the Payment Certifier:
- (a) The Owner shall nonetheless pay the amount determined by the Payment Certifier;
  - (b) The parties shall continue with the Work;
  - (c) The parties shall make all reasonable efforts to resolve disputes by amicable negotiations and agree to provide frank, candid and timely disclosure of relevant facts, information and documentation to facilitate these negotiations. If the parties consider that it might assist the negotiation process, they will appoint a mediator and engage in these discussions with the assistance of such third party mediator.
- 8.3.3 If the parties are unable to resolve their dispute through such negotiations in a reasonable time, then the dispute will be determined by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing or, if the parties so agree in writing, through litigation. The parties agree that the law of the Contract is the law of British Columbia and, in the event of litigation, the parties attorn to the jurisdiction of the courts of British Columbia. Any litigation shall be commenced in a court in Vancouver, British Columbia.

**Part 9 PROTECTION OF PERSON AND PROPERTY**

**GC 9.1 PROTECTION OF WORK AND PROPERTY**

*Replace GC 9.1.2 with the following:*

- 9.1.2 The Contractor is solely responsible for determining, protecting or relocating all underground utilities and structures that may be impacted by the performance of the Work.

*Add the following:*

- 9.1.5 Construction safety measures shall be undertaken to the standards of good practice and the requirements of the Canada Labour Code, Part II, Regulations Respecting Occupational Safety and Health thereto and any applicable Provincial or Municipal statute, code, by-law or practice, but in no case shall these measures be less onerous than those provided in Part 8, "Construction Safety Measures", National Building Code of Canada.
- 9.1.6 The Contractor shall take all precautions necessary to minimize the spread of dust, dirt and noise from the project site on to adjacent properties including streets and be responsible for all cleaning operations necessary through failure to exercise such precautions.
- 9.1.7 The Contractor shall provide all barricades, doors, gates, locks, scaffold, barriers, fences, warning signs, lights and personnel necessary for the protection of persons and property on and adjacent to the Place of the Work.
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**GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

*Replace GC 9.2 through 9.2.9 with the following:*

- 9.2.1 The Contractor shall be responsible for ensuring that all persons present at the Place of the Work comply with all requirements of the Workplace Hazardous Materials Information System (WHIMIS), and the Contractor shall, at a minimum:
- .1 maintain a library of Material Safety Data Sheets (MSDS) at the Place of the Work;
  - .2 make MSDS labels available, along with workplace labels (where available), for all Hazardous Substances;
  - .3 ensure that all goods designated as hazardous or dangerous are shipped in accordance with the requirements of the *Shipment of Dangerous Goods Act*;
  - .4 obtain and maintain a copy of all shipping documents for goods designated as hazardous or dangerous, in accordance with the requirements of the *Shipment of Dangerous Goods Act*; and
  - .5 ensure that only asbestos free materials are used in connection with and incorporated into the Work, unless such is required by the Specifications.

**GC 9.3 ARTIFACTS AND FOSSILS**

*Replace GC 9.3.1 with the following:*

- GC 9.3.1 The following items, if discovered at the Place of the Work, shall be deemed to be the absolute property of the Owner:
- (a) fossils;
  - (b) coins;
  - (c) articles of value or antiquity;
  - (d) structures;
  - (e) remains or things of scientific or historic interest

**GC 9.4 CONSTRUCTION SAFETY**

*Replace GC 9.4.1 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 Owner's applicable safety requirements and guidelines and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

*Add the following:*

- 9.4.6 The Contractor is responsible for all site safety and shall be deemed to be the "Prime Contractor" for the purposes of all occupational health and safety regulations from the effective date of this Contract until such time as the Owner delivers to the Contractor written notice that another contractor has been appointed "Prime Contractor".

- 9.4.7 If the Owner is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of GC 9.4.1, the Owner may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the Work, and the Owner may use the employees of itself, the Contractor, any Subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Owner's applicable safety requirements and guidelines shall constitute a default pursuant to G.C. 7.1.2.
- 9.4.8 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Contract or the Safety Regulations. This duty of the Contractor will be considered to be included in the Work and no separate payment therefore will be made to the Contractor.
- 9.4.9 Where the Contractor is not the Prime Contractor, or during any period of time when the Contractor is not the Prime Contractor, the Contractor:
- .1 shall follow all reasonable directions issued by the Prime Contractor regarding compliance with the Safety Regulations; and
  - .2 the Contractor waives any claim for an extension of Contract Time or compensation for costs incurred as a result of the Contractor's compliance with any directions referred to in paragraph 9.4.5.1.
- 9.4.10 Notwithstanding any agreement by the Owner or the Consultant to undertake some of the duties that would normally be undertaken by the Prime Contractor pursuant to the Safety Regulations, neither the Owner nor the Consultant will be the Prime Contractor unless otherwise specifically agreed to in writing by the Owner or the Consultant.
- 9.4.11 Unless otherwise provided in the Contract Documents, the Contractor shall develop, maintain and supervise for the duration of the Work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the Owner's applicable safety requirements and guidelines and any Workers' Compensation or Occupational Health and Safety statutes or regulations that may be applicable (e.g. WHMIS).
- 9.4.12 The Contractor shall provide a copy of its Certificate of Recognition in jurisdictions where this is applicable or otherwise provide a copy of the safety program described in paragraph 9.4.7 hereof to the Consultant for delivery to the Owner prior to the commencement of the Work and shall, at all times during which the Contractor is the Prime Contractor, require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the Project complies with such program.
- 9.4.13 While the Contractor is the Prime Contractor, the Contractor shall arrange regular safety meetings at its expense. Such meetings shall occur no less frequently than once per week. The Contractor shall record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
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- 9.4.14 At all times during which the Contractor is the Prime Contractor, the Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the job site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 9.4.15 Except as otherwise agreed to in the Contract, at all times during which the Contractor is the Prime Contractor, the Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the job site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 9.4.16 The Contractor shall promptly report in writing to the Prime Contractor (with copies to the Owner and the Consultant) all accidents of any sort arising out of or in connection with the performance of the Work whether on or adjacent to the Place of the Work, giving full details and statements of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the Contractor to Prime Contractor by telephone or messenger (with written notice to the Owner and the Consultant) in addition to any reporting required under the Safety Regulations or the Owner's applicable safety requirements and guidelines.

**GC 9.5 MOULD**

*Delete GC 9.5*

**Part 10 GOVERNING REGULATIONS**

**GC 10.1 TAXES AND DUTIES**

*Add the following:*

- 10.1.3 When an exemption or recovery of government sales taxes is applicable to the Contract, the Contractor shall, at the Owner's expense, apply 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.
- 10.1.4 The Contractor shall compute and disclose separately on each invoice the amount of Value Added Taxes in respect of that invoice.
- 10.1.5 The Contractor shall remit to the appropriate taxing authority all taxes and Value Added Taxes and shall provide to the Owner appropriate documentary evidence of such remittance.

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

*Replace GC 10.2.7 with the following:*

- 10.2.7 If, subsequent to execution of the Agreement, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which directly increase or decrease the cost of performing the Work and were not reasonably foreseeable at the time of execution of the Agreement (excepting Value Added Taxes), either party may submit a claim for adjusting the Contract Price.

*Add the following:*

- 10.2.8 The Contractor shall comply and require that all Subcontractors comply with all Laws which apply to the Contractor's or Subcontractor's operations in respect of the Work and shall provide the Owner with evidence of such compliance on request.

**GC 10.4 WORKERS' COMPENSATION**

Add the following:

- 10.4.2 The Contractor shall be formally designated as the "Prime Contractor", "Constructor" or equivalent designation under the applicable Workers' Compensation and/or Occupational Health and Safety legislation applicable to the jurisdiction of the Place of Work.

**Part 11 INSURANCE**

**GC 11.1 INSURANCE**

*Replace GC 11.1 with the following:*

- 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the Contractor shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC Insurance Requirements in effect at the time of bid closing with the exception that the Owner shall provide the insurance required in clauses 11.1.1.1 General Liability Insurance, 11.1.1.4 "Broad Form" Property Insurance and 11.1.1.5 Boiler & Machinery Insurance and shall promptly provide the Contractor with confirmation of such coverages and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

- 11.1.1.1 "Wrap-up" General liability insurance shall be in the joint names of the Owner, the Contractor, and the Consultant, with limits of not less than \$10,000,000 per occurrence and with a property damage deductible not exceeding \$25,000. Coverage shall include:

- 24 months Products and Completed operations
- Cross liability
- Owners/Contractors protective liability
- Non-owned automobile liability

The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work. Where the Owner maintains a single, blanket policy, the addition of the Contractor and the Consultant is limited to liability arising out of the Project and all operations necessary or incidental thereto. The policy shall be endorsed to provide the

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Contractor with not less than 30 days notice in writing in advance of any cancellation, and of change or amendment restricting coverage.

11.1.1.2 Automobile Liability Insurance from the date of commencement of the Work until one year after the date of Substantial Performance of the Work. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the Contractor. Where the policy has been issued pursuant to a government-operated automobile insurance system, the Contractor shall provide the

Owner with confirmation of automobile insurance coverage for all automobiles registered in the name of the Contractor.

11.1.1.3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the Work. Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the Work), including use of additional premises, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$1,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner.

11.1.1.4 "Broad form" property insurance in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as insureds all Subcontractors. The "Broad form" property insurance shall be provided from the date of commencement of the Work until the 10 calendar days after the date of Substantial Performance of the Work. The insurance shall cover all risks of physical loss or damage to the Project, with deductible amounts of no more than the following:

- fifty thousand dollars (\$50,000) for Water Damage
- fifty thousand dollars (\$50,000) for Testing
- twenty-five thousand dollars (\$25,000) for All Other Perils (excluding Earthquake and Flood)

covering not less than 100% of the total contract price on a replacement cost basis;

11.1.1.5 Boiler and machinery insurance in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as insureds all Subcontractors. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of Substantial Performance of the Work.

11.1.1.6 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. In the event of loss or damage:

- (1) the Owner shall act on behalf of the Contractor for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the

Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the Contractor;

- (2) the Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds in accordance with the progress payment provisions. In addition the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work; and
- (3) to the Work arising from the work of the Owner, the Owner's own forces or another contractor, the Owner shall, in accordance with the Owner's obligations under the provisions relating to construction by Owner or other contractors, pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and as in accordance with the progress payment provisions.

11.1.1.7 Contractors' Equipment Insurance from the date of commencement of the Work until one year after the date of Substantial Performance of the Work.

11.1.1.8 Any other insurance and with whatever higher limits that the Owner may reasonably require from time to time.

11.1.1.9 In addition to the above noted insurance the Contractor and Subcontractors shall also maintain (at their own cost) General liability insurance, naming the Owner as additional insured, with limits of not less than \$5,000,000 per occurrence, and an aggregate limit of not less than \$5,000,000 within any policy year, with respect to offsite exposures and completed operations, and a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the Contractor, the Owner may agree to increase the deductible amounts.

11.1.2 Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the Owner with evidence of coverage satisfactory to the Owner and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Work.

11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the Contract.

11.1.4 If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence to the Contractor and the Consultant. The Contractor shall pay the cost thereof to the Owner on demand or the Owner may deduct the cost from the amount

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which is due or may become due to the Contractor.

If the Owner fails to provide or maintain insurance as required by the Contract Documents, then the Contractor shall have the right to provide and maintain such insurance and give evidence to the Owner and the Consultant. The Owner shall pay the cost thereof to the Contractor on demand.

- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the Contractor’s insurance policy becoming due for renewal, and record any agreement in a Change Order.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the Owner may request the increased coverage from the Contractor by way of a Change Order.
- 11.1.8 A Change Directive shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.
- 11.1.9 All of the required insurance policies shall be written as primary insurance and shall not call into contribution any other insurance that may be held or placed at any time by the Owner, which insurance, if held, shall be deemed to be excess of the required insurance and for the sole benefit of the Owner.
- 11.1.10 All of the required insurance policies shall contain an endorsement prohibiting cancellation or material change in coverage without 30 (thirty) days prior notice in writing to the Owner or the Contractor by registered mail.
- 11.1.11 Any contractors providing work on-site (including but not limited to remediation, demolition or blasting), prior to the placement of, or that may not be covered by Owner’s Insurance, shall be required to provide evidence of insurance satisfactory to the Owner prior to commencement of the any such work.
- 11.1.12 The Contractor and everyone engaged by the Contractor, its Subcontractors and Suppliers, shall obtain, maintain and pay for any insurance that they deem necessary or that they are required to provide by law.

**GC 12.3 WARRANTY**

12.3.2 *Amend GC 12.3.2 as follows:*

Delete the following from GC 12.3.2 “to the extent that the design and Contract Documents permit such performance.”

12.3.4 *Amend GC 12.3.4 as follows:*

In the first line of GC 12.3.4, delete reference to GC 12.3.2.

*Add the following:*

- 12.3.7 All warranties including, without limitation, the roofing warranty and those for mechanical or electrical equipment and systems in use by the Contractor before the date of Substantial Performance of the Work shall commence on the date of the Certificate of Readiness for a specific unit that is being handed over to the Owner and, for the balance, when the Certificate of Readiness is issued for the Work.
- 12.3.8 The Contractor shall assign to the Owner the benefit of all guarantees and warranties for all Products and Work used or incorporated in the Work and shall ensure that such assignment is also effected by all Subcontractors, Suppliers or consultants from whom the same have been obtained. Thereafter, as reasonably required by the Owner, the Contractor shall make, do, execute and deliver such instruments in writing as may be necessary or desirable to assure the enforceability of such guarantees and warranties.
- 12.3.9 The Owner shall have the right to assign all guarantees and warranties to a new owner or owners and the Contractor shall make, do, execute and deliver such instruments in writing as may be necessary or desirable to assure the enforceability of such assignment. The Contractor shall make all reasonable efforts to promptly remedy any deficiencies in the Work and fulfil its warranty obligations in order to ensure that the Owner's reputation is not adversely affected.
- 12.3.10 Subject to any other provisions in the Contract Documents, the Contractor shall remedy all defects due to faulty products and/or workmanship appearing within the Warranty Period and shall pay for all damage to other work arising from such defects within the Warranty Period. No certificate issued pursuant to the Contract shall relieve the Contractor from this responsibility.
- 12.3.11 The issuance of any certificate in no way relieves the Contractor from correcting deficiencies or defects not readily apparent at the time of issuance of this certificate.
- 12.3.12 The Owner shall give notice of any defect within a reasonable time of observing such defect. The Contractor shall remedy all defective products and/or workmanship:
- .1 immediately in the case of defects affecting health or safety and any other critical defects;
  - .2 as quickly as possible and in no event more than thirty (30) calendar days after receipt of written notice from the Owner or such time as the Consultant determines is reasonable in the case of defects causing further damage to the Project or affecting the usability of the Work; and
  - .3 prior to the expiry of the Warranty Period for the remediation of all other defects.
- 12.3.13 Completion and/or correction of incomplete and/or deficient products and/or material items noted at Substantial Performance of the Work shall be done promptly and within a reasonable time. When such items have not been completed within a reasonable time, especially within the Warranty Period, the Warranty Period shall be extended, at no
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additional cost to the Owner, so as to commence at such time when such incomplete and/or deficient work is completed.

12.3.14 The carrying out of replacement work and making good of all defects shall be executed at such time as is convenient to the Owner. This may entail overtime work on the part of the Contractor. Additional charges for overtime work in this regard shall be borne by the Contractor. Prior to the expiry of the Warranty Period, the Owner reserves the right to carry out a detailed and exhaustive inspection of the Work. The Contractor shall be required to make good the defective or unsatisfactory materials and/or workmanship identified by the Owner.

12.3.15 Nothing in this Contract shall be deemed to limit any rights of the Owner to sue the Contractor either at law or in equity on any cause of action arising out of its performance or failure to perform the terms of this Contract, or to claim damages, contribution or indemnity from the Contractor or any other person under the terms of this Contract.

### **Part 13 INDEMNIFICATION AND WAIVER**

#### **GC 13.1 INDEMNIFICATION**

*Replace GC 13.1.1 with the following:*

13.1.1 Each party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other party, its employees, officers and directors, from and against claims, demands, losses, costs (including, without limitation, legal costs on a solicitor and own client basis), damages, actions, suits, or proceedings by third parties arising out of or attributable to the Indemnifying Party’s (or anyone for whose acts the Indemnifying Party may be liable) failure to perform under the Contract Documents, breach of any term contained in this Contract (including, without limitation, the warranties), wrongful intentional act or negligence

13.1.2 *Replace GC 13.1.2 with the following:*

The provisions of this GC 13.1 shall survive the termination of this Contract howsoever caused and no payment or partial payment, no issuance of a final certificate of payment and no occupancy in whole or in part of the Work, shall constitute a waiver or release of any of the provisions of this GC 13.1.

#### **GC 13.2 WAIVER OF CLAIMS**

*Delete GC 13.2.*

#### **GC 14 MISCELLANEOUS -**

*Add the following:*

13.1 Title to the Work and all portions thereof during and after construction, together with all Products on the Place of the Work, are vested in the Owner.

13.2 The Contractor shall use its best efforts to check all Contract Documents before starting

- the Project to ensure all issues related to dimensions, Municipal, Provincial and/or National codes, regulations and detailing are correct and understandable.
- 13.3 The Contractor agrees that all notes appearing on the Contract Documents shall be included in the Contract.
- 13.4 The Contractor confirms that it is an expert in this field of work and is fully knowledgeable and experienced in all aspects of required procedures, methods, regulations, codes and municipal requirements and understands that the Owner is relying on this expertise, knowledge and experience.
- 13.5 The Contractor is to ensure that a competent supervisor is at the Place of the Work whenever the Work is being performed and is available during site inspections and/or sitemeetings to answer questions and carry out instructions as issued by Consultant or the Owner.
- 13.6 The Contractor shall exercise due care not to damage work or Products of other contractors, Subcontractors or Suppliers. All claims to rectify damages shall, at the discretion of the Owner, be back-charged to the Contractor responsible for such damage.
- 13.7 The Contractor shall ensure that all rights and privileges presently accorded adjacent properties are maintained.
- 13.8 The Contract Price includes Workers Compensation Board coverage for all of the Contractor's labour, all Provincial Sales taxes for Products supplied by the Contractor and all business licensing fees.
- 13.9 The Contractor shall take all reasonable steps to ensure that all Products that are delivered to the Place of the Work are stored securely and adequately so as to protect against damage to or loss of such Products including, without limitation, damage or loss resulting from theft, vandalism, accident or the effects of the elements and the Owner is not responsible for theft, loss and/or vandalism of any of the Contractor's Products and/or work.
- 13.10 Notwithstanding any provisions of the Contract Documents to the contrary, no approval, review or inspection by the Consultant or the Owner or any person acting on their behalf, of the Work or any submittals by the Contractor shall relieve the Contractor of its obligation to perform and complete the Work in accordance with the Contract Documents.
- 13.11 To provide for occupancy by one or more occupants or the Owner prior to substantial occupancy of the entire Work, the Contractor shall make available the use of such services reasonably required for occupant or Owner's occupancy including, but not limited to, elevators, heating, ventilation, cooling, water, lighting, security, power, and telephone for the space or spaces to be occupied. The occupancy or use of such space or spaces shall not constitute the Owner's acceptance of any work, materials, or equipment which are not in accordance with the requirements of the Contract Documents, nor relieve the Contractor from its obligations to complete the Work, or from any other unfulfilled obligations or responsibilities under the Contract Documents. To the extent that there will be portions of the building that are occupied but not separately metered, the utilities will be proportionately paid for by the Owner and the Contractor.



- 13.12 The Contractor shall, after partial occupancy, permit no disruption to any necessary utilities or other services to such occupied areas and shall schedule and organize its work to minimize any disruptions or unpleasant conditions that might affect access to, or the comfort of persons occupying such space.
- 13.13 Industry reference standards, whether or not bound in the Contract Documents, shall apply to relevant sections of the Work.
- 13.14 The Contractor is responsible for the coordination of metric and imperial dimensions as shown on the drawings and as specified.
- 13.15 The Contractor is responsible to coordinate all drawings to totally complete the Work.
- 13.16 The drawings are a diagrammatic view of the Work required but do not limit the extent of the work required to totally complete the details and work intended. It is the Contractor's responsibility to apply their expertise to execute the intended work shown on the details and drawings. The Contractor shall coordinate all drawings with the sizes and dimensions of services, fixtures and equipment in the locations shown on the plans or as job conditions permit. Any changes required to facilitate and complete the installation of such services, fixtures or equipment shall be made at no additional cost to the Owner, unless a Change Order has been issued or there has been a negligent error or omission by the Consultant or the subconsultants.