

Supplementary General Conditions to CCDC 2, 2008

SUPPLEMENTARY GENERAL CONDITIONS

to CCDC 2, 2008 Stipulated Price Contract for [REDACTED] Catholic [REDACTED] School

SC1 GENERAL

- 1.0 Where a General Condition or paragraph of the General Conditions of the *Contract* is deleted by the Supplementary General Conditions, the numbering of the remaining General Conditions or paragraph shall remain unchanged, unless stated otherwise herein, and the numbering of the deleted item will be retained, unused.
- 1.1 The General Conditions for Canadian Standard Construction Document, CCDC No. 2, 2008 edition for the construction of the [REDACTED] CATHOLIC [REDACTED] SCHOOL project, in [REDACTED], Ontario are hereby amended, including Articles A-1 through A-8, the Definitions and the General Conditions GC 1.1 to GC 12.3 inclusive. These Supplementary General Conditions supersede, replace or amend the *Contract Document* clauses, as noted in each item. Supplementary General Conditions are indicated in this Document 00810 as "SC 1" (for Supplementary Condition No. 1), "SC 2", etc. General Conditions stated in the *Contract Document* are referred to in this Document 00810 as "GC 1.1" (for General Condition No. 1.1 of CCDC No. 2, 2008), "GC 2.1", etc.
- 1.2 Throughout the Contract Documents references to the "General Conditions of the Contract" or "General Conditions" shall include the Supplementary General Conditions listed in this Document 00810.
- 1.3 These Supplementary General Conditions shall apply to all Work.
- 1.4 Where any article, paragraph or sub-paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such article, paragraph or sub-paragraph shall remain in effect and the supplemental provisions shall be considered as added thereto.
- 1.5 Where any article, paragraph, or sub-paragraph in the General Conditions is amended, voided, or superseded by any of the following paragraphs, the provisions of such article, paragraph, or sub-paragraph not so amended, voided or superseded shall remain in effect.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC2 ARTICLE A-3 – CONTRACT DOCUMENTS

- SC 2.1 Add the following to the list of *Contract Documents* in paragraph 3.1:
- Supplementary General Conditions to CCDC 2 – 2008 (this Document)
 - *Drawings and Specifications*
 - Bid Documents, including Instructions to Bidders, Form of Tender, and Tender addenda, if applicable
 - Performance Bond
 - Labour and Material Payment Bond"

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SC3 **ARTICLE A-5 – PAYMENT**

SC 3.1 Amend the first sentence of paragraph 5.1, to read:

“5.1 Subject to the provisions of the *Contract Documents* and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation does not exist or apply, subject to a lien holdback of Ten percent (10%) PLUS a Reserve Fund of One percent (1%), the *Board* shall:”

SC 3.2 Delete paragraph 5.3.1 in its entirety and replace it with the following:

“5.3 Interest

.1 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 the Bank of Canada for prime business loans, as it may change from time to time.”

SC4 **ARTICLE A-9 – CONFLICT OF INTEREST**

SC 4.1 Add new Article A-9 – CONFLICT OF INTEREST as follows:

“ARTICLE A-9 CONFLICT OF INTEREST

9.1 The *Contractor*, all of the *Subcontractors* and *Suppliers* and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially, in the sole opinion of the *Owner*) with the provision of the *Work* pursuant to the *Contract*. The *Contractor* acknowledges and agrees that a conflict of interest, as described in this Article A-9, includes, but is not limited to, the use of *Confidential Information* where the *Owner* has not specifically authorized such use.

9.2 The *Contractor* shall disclose to the *Owner*, in writing, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, including the retention of any *Subcontractor* or *Supplier* that is directly or indirectly affiliated with or related to the *Contractor*.

9.3 The *Contractor* covenants and agrees that it will not hire or retain the services of any employee or previous employee of the *Owner* where to do so constitutes a breach by such employee or previous employee of the *Owner's* conflict of interest policy, as it may be amended from time to time, until after completion of the *Work* under the *Contract*.

9.4 It is of the essence of the *Contract* that the *Owner* shall not have direct or indirect liability to any *Subcontractor* or *Supplier*, and that the *Owner* relies on the maintenance of an arm's-length relationship between the *Contractor* and its *Subcontractors* and *Suppliers*. Consistent with this fundamental term of the

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Contract, the *Contractor* will not enter into any agreement or understanding with any *Subcontractor* or *Supplier*, whether as part of any contract or any written or oral collateral agreement, pursuant to which the parties thereto agree to cooperate in the presentation of a claim for payment against the *Owner*, directly or through the *Contractor*, where such claim is, in whole or in part, in respect of a disputed claim by the *Subcontractor* or *Supplier* against the *Contractor*, where the payment to the *Subcontractor* or *Supplier* by the *Contractor* is agreed to be conditional or contingent on the ability to recover those amounts or a portion thereof from the *Owner*, failing which the *Contractor* shall be saved harmless from all or a portion of those claims. The *Contractor* acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a conflict of interest. For greater certainty, the *Contractor* shall only be entitled to advance claims against the *Owner* for amounts pertaining to *Subcontractor* or *Supplier* claims where the *Contractor* has actually paid or unconditionally acknowledged liability for those claims or where those claims are the subject of litigation or binding arbitration between the *Subcontractor* or *Supplier* and the *Contractor* has been found liable for those claims.

- 9.5 Notwithstanding paragraph 7.1.2 of GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT, a breach of this Article by the *Contractor*, any of the Subcontractors, or any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall entitle the *Owner* to terminate the *Contract*, in addition to any other rights and remedies that the *Owner* has in the *Contract*, in law, or in equity."

SC5 ARTICLE A-10 CONSTRUCTION SAFETY

- SC5.1 Add new Article A-10 – CONSTRUCTION SAFETY as follows:

"ARTICLE A-10 CONSTRUCTION SAFETY

- 10.1 The *Contractor* represents and warrants that in tendering for the *Work*, and in entering into a *Contract* with the *Owner* for the performance of the *Work* that the *Contractor* will comply with all applicable statutory obligations, including without limitation, the obligations imposed by the Occupational Health and Safety Act (Ontario) and all Regulations thereto, and all amending and successor legislation, including without limitation, Bill 208 (the "Act"), in connection with all *Work* performed by either the *Contractor*, *Subcontractors*, or any other contractor on, or in connection with the *Project*."
- 10.2 The *Contractor* further declares and agrees that if awarded the *Contract*, the undersigned shall abide by all of the items identified under Construction Safety in the General Instructions of the *Contract Documents* and, for the purposes of the *Project*, the undersigned specifically agrees to be the "constructor" of the *Project* within the meaning of the Act, and as such, shall assume all the obligations and responsibilities, and observe all construction safety requirements and procedures and duties of inspection imposed by the Act on the "constructor", as defined in the General Instructions of the *Contract*

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Documents, for all work and services performed by the undersigned, the *Subcontractors* or other contractors on or in connection with the *Project*.”

SC6 ARTICLE A-11 DECLARATION OF NO CONFLICT

SC6.1 Add new Article A-11 – DECLARATION OF NO CONFLICT as follows:

“ARTICLE A-11 DECLARATION OF NO CONFLICT

11.1 “The *Contractor* represents and warrants that in tendering for the *Work*, and in entering into a *Contract* with the *Owner* for the performance of the *Work* that the *Contractor’s* Tender submission was made in good faith and without any connection, knowledge, comparison of figures, or arrangements with any other company, firm, or person making a Tender for the same *Work* and is, in all respects, fair and without collusion with any other bidder for this *Contract*, and without fraud. The undersigned also represents and warrants that, to the best of the undersigned’s knowledge and belief, no actual or potential conflict of interest exists with respect to the submission of the Tender or performance of the *Contract* other than those disclosed hereunder. The undersigned confirms that, where the *Board* discovers that the undersigned has failed to disclose all actual or potential conflicts of interest, the *Board* may disqualify the undersigned or terminate any *Contract* awarded to the undersigned pursuant to this Tender process. The undersigned understands that, for the purposes hereof, “conflict of interest” also includes:

- .1 in relation to the Tender process, the undersigned has an unfair advantage or engages in conduct, directly or indirectly, that may give the undersigned an unfair advantage, including:
 - .1 having or having access to information in the preparation of the undersigned’s proposal that is confidential to the *Board* and not available to other bidders;
 - .2 communicating with any person with a view to influencing preferred treatment in the Tender process; or,
 - .3 engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive process and render that process non-competitive and unfair; or,
- .2 in relation to the performance of its contractual obligations in a *Board* contract, the undersigned’s other commitments, relationships or financial interests:
 - .1 could or could be perceived to exercise an improper influence over the objective, unbiased and impartial exercise of the *Board’s* independent judgment; or,
 - .2 could or could be perceived to compromise, impair or be incompatible with the effective performance of the undersigned’s contractual obligations.”

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SC7 DEFINITIONS

- SC 7.1 Amend Definition 4 (*Consultant*) by adding the following to the end of the Definition:
“For the purposes of the *Contract*, the terms “*Consultant*”, “*Architect*” and “*Engineer*” shall be considered synonymous.”
- SC 7.2 Amend Definition 6 (Contract Documents) by adding “in writing” to the end of the Definition.
- SC 7.3 Amend Definition 12 (*Owner*) by adding the following to the end of the Definition:
“The words “*Owner*” and “*Board*” shall be considered synonymous.”
- SC 7.4 Delete Definition 16 (*Provide*) in its entirety and replace with the following:
“*Provide*, when used in conjunction with *Products*, means to supply, *install* and put into service. *Provide* has this meaning whether or not the first letter is capitalized.”
- SC 7.4 Add the following **new** definitions 27 through 34:

27. Confidential Information

Confidential Information means all the information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description (such as drawings and move-lists) which is communicated to or comes into the possession or control of the *Contractor* at any time, but *Confidential Information* shall not include information that:

- 1) is or becomes generally available to the public without fault or breach on the part of the *Contractor*, including without limitation breach of any duty of confidentiality owed by the *Contractor* to the *Owner* or to any third party, but only after that information becomes generally available to the public;
- 2) the *Contractor* can demonstrate to have been rightfully obtained by the *Contractor* from a third party who had the right to transfer or disclose it to the *Contractor* free of any obligation of confidence;
- 3) the *Contractor* can demonstrate to have been rightfully known to or in the possession of the *Contractor* at the time of disclosure, free of any obligation of confidence; or
- 4) is independently developed by the *Contractor* without use of any *Confidential Information*.

28. Construction Schedule

Construction Schedule means the schedule for the performance of the *Work* provided by the *Contractor* pursuant to GC 3.5, including any amendments to the *Construction Schedule* made pursuant to the *Contract Documents*.

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29. Force Majeure

Force Majeure means any cause, beyond the *Contractor's* control, other than a lack of funds, 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*, 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, lightning, earthquake, or acts of God.

30. Install

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

31. Labour Dispute

Labour Dispute means any lawful or unlawful labour problems, work stoppage, labour disruption, strike, job action, slow down, lock-outs, picketing, refusal to work or continue to work, refusal to supply materials, cessation of work or other labour controversy which does, or might, affect the *Work*.

32. Overhead

Overhead means all site and head office operations and facilities, all site and head office administration and supervision; all duties and taxes for permits and licenses required by the authorities having jurisdiction at the *Place of the Work*; all requirements of Division 1, including but not limited to *Submittals*, warranty, quality control, insurance and bonding; calculations, testing and inspections; meals and accommodations; and, tools, expendables and clean-up costs.

33. Request for Information (RFI)

Request for Information or *RFI* means written documentation sent by the *Contractor* to the *Owner* or to the *Owner's* representative or 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*.

34. Submittals

Submittals are 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 drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

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SC8 GC 1.1 CONTRACT DOCUMENTS

SC8.1 Add the following sub-paragraphs to the end of paragraph 1.1.6:

- .1 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 *Owner* or the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions.
- .2 The *Drawings* are divided into groups, types and sets for convenience but shall be read as a whole and neither such grouping, nor separation of information from *Drawing* to *Drawing* nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Owner* or the *Consultant* to divide or control the *Work*, nor to settle disputes among the *Subcontractors* and *Suppliers* with respect to such divisions.
- .3 The *Drawings* are, in part, diagrammatic and are intended to convey the scope of the *Work* and indicate general and appropriate locations, arrangements and sizes of fixtures, equipment and outlets. The *Contractor* shall obtain more accurate information about the locations, arrangements and sizes from study and coordination of the *Drawings*, including *Shop Drawings*, and shall become familiar with conditions and spaces affecting those matters before proceeding with the *Work*.
- .4 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*.
- .5 The *Contractor* shall arrange and *install* fixtures and equipment in such a way as to conserve as much headroom and space as possible.
- .6 The Schedules are those portions of the *Contract Documents*, wherever located and whenever issued, which compile information of similar content and may consist of drawings, tables, charts and/or lists."

SC8.2 Add new paragraphs 1.1.7.5, 1.1.7.6, 1.1.7.7, 1.1.7.8 and 1.1.7.9 as follows:

- "1.1.7.5 Noted materials and annotations on the *Drawings* shall govern over the graphic representation of the *Drawings*.
- 1.1.7.6 Finishes in the Room Finish Schedules shall govern over those shown on the *Drawings*.
- 1.1.7.7 Items, Procedures and Requirements as specified in the Sections of Division 01 – General Requirements of the *Specifications* shall form part of and be read in conjunction with the technical specification Sections found elsewhere in the (overall) *Specifications*.

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- 1.1.7.8 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.
- 1.1.7.9 Should reference standards and *Specifications* conflict with each other or if certain requirements of the *Specifications* conflict with other requirements of the *Specifications*, the more stringent requirements shall govern.”

SC9 GC 1.4 ASSIGNMENT

SC9.1 Delete paragraph 1.4.1 in its entirety and replace with the following:

- “1.4.1 The *Contractor* shall not assign the *Contract* or any portion thereof, without the prior written consent of the *Owner*, which consent may be unreasonably withheld. The *Owner* shall be entitled to assign the *Contract* to a corporation, partnership or other entity (the “Assignee”). Upon the assumption by the Assignee of the *Owner’s* obligations under the *Contract*, the *Owner* shall be released from its obligations under the *Contract*”.

SC10 GC 1.5 EXAMINATION OF DOCUMENTS AND SITE

SC10.1 Add new GC 1.5 – EXAMINATION OF DOCUMENTS AND SITE as follows:

“GC1.5 EXAMINATION OF DOCUMENTS AND SITE

- 1.5.1 The *Contractor* declares and represents that in tendering for the *Work*, and in entering into a *Contract* with the *Owner* for the performance of the *Work*, it has either investigated for itself the character of the *Work* to be done and all local conditions, including the location of any utility which can be determined from the records or other information available at the offices of any person, partnership, corporation, including a municipal corporation and any *Board* or commission thereof having jurisdiction or control over the utility that might affect its tender or its acceptance of the *Work*, or that, not having so investigated, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* which might or could make the *Work*, or any items thereof more expensive in character, or more onerous to fulfil, than was contemplated or known when the tender was made or the *Contract* signed.
- 1.5.2 “The *Contractor* also declares that in tendering for the *Work* and in entering into this *Contract*, the *Contractor* did not and does not rely upon information furnished by the *Owner* or any of its agents or servants respecting the nature or confirmation of the ground at the site of the *Work*, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of *Work*, or the character of the construction machinery and equipment or facilities needed to perform the *Work*, or the general and local performance of the *Work* under the *Contract* and expressly waives and

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releases the *Owner* from all claims with respect to the said information with respect to the *Work*.”

SC11 GC 2.2 ROLE OF THE CONSULTANT

SC11.1 In paragraph 2.2.7, delete the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER”.

SC11.2 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 notice in writing to that effect. 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 any adjustment in the *Contract Price* or *Contract Time*.”

SC11.3 Add new paragraph 2.2.19 as follows:

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

SC12 GC 2.3 REVIEW AND INSPECTION OF THE WORK

SC12.1 Amend paragraph 2.3.2 by adding the words “and *Owner*” after the words “*Consultant*” in the second and third lines.

SC12.2 In the first and second lines of paragraph 2.3.4. insert the word “review” after the word “inspections”.

SC12.3 Paragraph 2.3.5: In the first line after “*Consultant*”, add “or the *Owner*”.

SC12.4 Add a new paragraph 2.3.8 as follows:

“2.3.8 The *Owner* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe, and proper facilities at all time for the review of the *Work* by the *Owner* and the inspection of the *Work* by authorized agencies.”

SC13 GC 2.4 DEFECTIVE WORK

SC13.1 Amend GC 2.4.1 by inserting “or the *Owner*” in the first sentence following “rejected by the *Consultant*”.

SC13.2 Add new paragraphs 2.4.1.1 and 2.4.1.2 as follows:

“2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies discovered throughout the *Work*, whether or not they are specifically identified by the *Consultant*.”

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2.4.1.2 The *Contractor* shall prioritize the correction of any defective work, which, in the sole discretion of the *Owner*, adversely affects the day to day operations of the *Owner* or which, in the sole discretion of the *Consultant*, adversely affects the progress of the *Work*.”

SC13.3 Add new paragraph 2.4.4 as follows:

“2.4.4 Neither acceptance of the *Work* by the *Consultant* 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 *Contractor’s* responsibility for rectifying such defects or deficiencies at the *Contractor’s* sole cost.”

SC14 GC 3.1 CONTROL OF THE WORK

SC14.1 Add a new paragraph 3.1.3 as follows:

“3.1.3 Prior to or concurrent with 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 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, and the *Contractor* requires additional information in order to proceed with *Work*, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with the affected *Work*.”

SC15 GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

SC15.1 Delete paragraphs 3.2.2.1, 3.2.2.2 and 3.2.2.4 in their entirety.

SC15.2 Add new paragraph 3.2.3.4 as follows:

“3.2.3.4 Subject to GC 9.4 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 in force at the *Place of the Work*, including all of the responsibilities of the “Constructor”, pursuant to the Occupational Health and Safety Act (Ontario).”

SC16 GC 3.5 CONSTRUCTION SCHEDULE

SC16.1 Delete paragraph 3.5.1 in its entirety and replace with the following:

“3.5.1 The *Contractor* shall:
.1 Within five (5) calendar days of receiving written confirmation of the award of the *Contract*, prepare and submit to the *Owner* and the *Consultant* for their review and acceptance, a construction schedule in the format indicated below that indicates the timing of the activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in

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conformity with the *Contract Time* and in accordance with the *Contract Documents*.

- .1 Such schedule is to include a delivery schedule for *Products* whose delivery is critical to the schedule for the *Work* or are required by the *Contract* to be included in a *Products* delivery schedule; and,
 - .2 The *Contractor* shall employ construction scheduling software, being the latest version of "Microsoft Project", that permits the progress of the *Work* to be monitored in relation to the critical path established in the schedule; and,
 - .3 The *Contractor* shall provide the schedule and any successor or revised schedules in both electronic format and hard copy; and,
 - .4 Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule.
- .2 Monitor the progress of the *Work* and report to the *Consultant* and *Owner* in writing on a weekly basis relative to the baseline construction schedule, or any revised schedule previously accepted by the *Owner*. Report on any variation from the baseline or slippage in the schedule.
 - .3 Update and submit to the *Consultant* and *Owner* the electronic and hard copy schedule on a monthly basis, at a minimum, or as required by the *Consultant*."

SC16.2 Add new paragraphs 3.5.2 and 3.5.3 as follows:

"3.5.2 If, at any time, it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to subparagraph 3.5.1.3, the *Contractor* shall, either at the request of the *Owner* or the *Consultant*, or following giving notice pursuant to subparagraph 3.5.1.3, take appropriate steps to cause the actual progress of the *Work* to conform to the schedule or minimize the resulting delay. Within five (5) calendar days of the request by the *Owner* or the *Consultant* or the notice being given pursuant to subparagraph 3.5.1.3, the *Contractor* shall produce and present to the *Owner* and the *Consultant* a plan demonstrating how the *Contractor* will achieve the recovery of the last accepted schedule.

3.5.3 The *Contractor* is responsible for performing the *Work* within the *Contract Time*. Any schedule submissions revised from the accepted baseline construction schedule or revised schedule accepted by the *Owner* pursuant to GC 3.5 CONSTRUCTION SCHEDULE, during construction are not deemed to be approved extensions to the *Contract Time*. All extensions to the *Contract Time* must be made in accordance with the *Contract Documents*."

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SC17 GC 3.6 SUPERVISION

SC17.1 In paragraphs 3.6.1 and 3.6.2 replace the word “representative” with “superintendent”.

SC17.2 Add new paragraph 3.6.3, 3.6.4, 3.6.5 and 3.6.6 as follows:

“3.6.3 The superintendent for the *Project* shall be acceptable to the *Owner* and *Consultant*, and shall be in full time attendance at the *Place of Work* while the *Work* is being performed. The *Contractor* shall provide the *Owner* and the *Consultant* with the names, addresses and telephone numbers of the superintendent referred to in this paragraph 3.6.1 and other responsible persons who may be contacted for emergency and other reasons during non-working hours.

3.6.4 The superintendent shall not be changed by the *Contractor* without valid reason, which reason shall be provided in writing. The superintendent shall not be changed without prior consultation with an agreement by the *Owner* and the *Consultant*.

3.6.5 The *Contractor* shall replace the superintendent within 7 *Working Days* of the *Owner’s* written notification, if the superintendent’s performance is not acceptable to the *Owner*.

3.6.6 The superintendent must remain assigned to the *Project* and present at the *Place of the Work* from the start of the *Work*, through the lien period, and shall remain at the *Place of the Work* until all deficiencies are completed and accepted, unless otherwise authorized by the *Consultant* or the *Owner*.”

SC18 GC 3.7 SUBCONTRACTORS AND SUPPLIERS

SC18.1 In paragraph 3.7.1.1 add to the end of the second line “including any warranties and service agreements which extend beyond the term of the *Contract*.”

SC18.2 In subparagraph 3.7.1.2 after the words “the *Contract Documents*” insert the words “including any required surety bonding”.

SC18.3 Add to the end of paragraph 3.7.2 the following sentences:

“Substitution of any *Subcontractor* and/or *Suppliers* after submission of the *Contractor’s* bid will not be accepted unless a valid reason is given in writing to and approved by the *Owner*, whose approval may be arbitrarily withheld. The reason for substitution must be provided to the *Owner* and to the original *Subcontractor* and/or *Supplier* and the *Subcontractor* and/or *Supplier* shall be given the opportunity to reply to the *Contractor* and *Owner*. The *Contractor* shall be fully aware of the capability of each *Subcontractor* and/or *Supplier* included in its bid, including but not limited to technical ability, financial stability and ability to maintain the proposed construction schedule.”

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SC18.4 In paragraph 3.7.4, change the word “shall” to “may” in the second line.

SC18.5 Add new paragraphs 3.7.7 and 3.7.8 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*.

3.7.8 The *Contractor* covenants that each subcontract or supply contract which the *Contractor* enters into for the purpose of performing the *Work* shall expressly provide for the assignment thereof to the *Owner* (at the option of the *Owner*) and the assumption by the *Owner* of the obligations of the *Contractor* thereunder, upon the termination of the *Contract* and upon written notice by the *Owner* to the other parties to such subcontracts or supply contracts, without the imposition of further terms or conditions; provided, however, that until the *Owner* has given such notice, nothing herein contained shall be deemed to create any contractual or other liability upon the *Owner* for the performance of obligations under such subcontracts or supply contracts.”

SC19 GC 3.8 LABOUR AND PRODUCTS

SC19.1 Add new paragraphs 3.8.4 and 3.8.5 as follows:

“3.8.4 All manufactured *Products* which are identified by their proprietary names or by part or catalogue number in the *Specifications* shall be used by the *Contractor*. No substitutes for such specified *Products* shall be used without the written approval of the *Owner* and the *Consultant*. Substitutes will only be considered by the *Consultant* when submitted in sufficient time to permit proper review and investigation. When requesting approval for the use of substitutes, the *Contractor* shall include in its submission any proposed change in the *Contract Price*. The *Contractor* shall use all proprietary *Products* in strict accordance with the manufacturer’s directions.

3.8.5 Materials, appliances, equipment and other *Products* are sometimes specified by reference to brand names, proprietary names, trademarks or symbols. In such cases, the name of a manufacturer, distributor, *Supplier* or dealer is sometimes given to assist the *Contractor* to find a source *Supplier*. This shall not relieve the *Contractor* from its responsibility from finding its own source of supply even if the source names no longer supplies the *Product* specified. If the *Contractor* is unable to obtain the specified *Product*, the *Contractor* shall supply a substitute product equivalent to or better than the specified *Product*, as approved by the *Consultant*, with no extra compensation. Should the *Contractor* be unable to obtain a substitute *Product* equivalent to or superior to the specified *Product* and the *Owner* accepts a different *Product*, the *Contract Price* shall be adjusted accordingly, as approved by the *Consultant*.”

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SC20 GC 3.10 SHOP DRAWINGS

SC20.1 Add new paragraph 3.10.13 as follows:

“3.10.13 Reviewed *Shop Drawings*, including comments and/or instructions marked thereon, shall not authorize a change in the *Contract Price* and/or the *Contract Time*.”

SC21 GC 3.13 CLEAN UP

SC21.1 Add new paragraph 3.13.4 as follows:

“3.13.4 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 *Contractor*, the *Owner’s* costs for such clean up, including a reasonable mark-up for administration costs.”

SC22 GC 3.14 BOARD OCCUPANCY

SC22.1 Add a new General Condition 3.14 – *BOARD OCCUPANCY* as follows:

“GC 3.14 *BOARD OCCUPANCY*

3.14.1 The *Board* and other contractors as assigned by the *Board* shall have the right to enter, use and occupy the *Place of the Work*, in whole or in part, and place fittings and equipment at or within the *Work* before completion of the *Contract*. The *Contractor* shall observe and protect the right of other contractors and persons authorized by the *Board* or *Consultant* to use the *Place of the Work*.

3.14.2 The *Contractor* shall provide free and safe access to the building should the *Board* require occupation prior to completion of the *Contract*. The *Contractor* shall not be entitled to an indemnity for any interference with the *Contractor’s* operations and any *Work* still to be performed by the *Contractor* shall be performed at times other than when the building is occupied. *Board* costs for *Board* staff required to be present during *Work* being carried out by the *Contractor* and/or by any of the *Subcontractors* on weekends and after hours shall be paid by the *Contractor*.

3.14.3 Such entry and occupancy by the *Board* shall not be considered as acceptance of the *Work* or relieve the *Contractor* of the *Contractor’s* responsibility to complete the *Project* in an acceptable manner, to an acceptable level of quality, within the agreed Construction Schedule.”

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SC23 GC 4.1 CASH ALLOWANCES

- SC23.1 Delete and replace the last sentence in paragraph 4.1.4 with the following sentence:
- “4.1.4 Multiple cash allowances, if more than one exists, may be combined for the purpose of calculating the foregoing.”
- SC23.2 Delete and replace paragraph 4.1.5 with the following sentence:
- “4.1.5 Where costs exceed the total amount of all Cash Allowances, the *Contract Price* shall be adjusted by Change Order. *Overhead* and Profit charges may only be charged to overruns on the sum total of the Cash Allowances. The maximum mark up on the authorized overrun on Cash Allowances shall be 5%.”
- SC23.3 Add new paragraphs 4.1.8 and 4.1.9 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*, which are to be paid for from cash allowances.”
- 4.1.9 Cash allowances cover the net cost to the *Contractor* of services, *Products*, Construction Equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing any *Work* stipulated under the cash allowances but does not include any *Value Added Taxes* payable by the *Owner* and the *Contractor*.”

SC24 GC 4.2 CONTINGENCY ALLOWANCE

- SC24.1 Delete existing paragraph 4.2.1 and replace with the following:
- “4.2.1 No contingency allowance is included in the *Contract*.”
- SC24.2 Delete existing paragraphs 4.2.2, 4.2.3 and 4.2.4 in their entirety.

SC25 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- SC25.1 Delete GC 5.1, including paragraphs 5.1.1 and 5.1.2 in their entirety.

SC26 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- SC26.1 Delete and replace paragraph 5.2.3 with the following:
- “5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered and incorporated into the *Work* as of the last day of the payment period. No amount claimed shall include *Products* not incorporated into the *Work* (whether delivered to the *Place of the Work* or not) except when prior financial and/or security arrangements are made and agreed to by the *Contractor*, *Owner* and *Consultant*. “

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SC26.2 Add the following additional sentence to the end of paragraph 5.2.7:

“Such *Products* not incorporated shall, prior to any such consideration for payment, be free and clear of all security interests, liens and other claims of third parties.”

SC26.3 Add new paragraph 5.2.8 as follows:

“5.2.8 Each application for payment, except the first, shall include a statutory declaration, in the CCDC 9A – 2001 form, up to the date of the application for payment, in a form approved by the *Consultant*. Each application for payment (including the first), shall also include:

- .1 A certificate, issued by an agency or firm providing workers' compensation insurance to the *Contractor*, verifying that coverage is in force at the time of making the application for payment, and that coverage will remain in force for at least sixty (60) days thereafter.
- .2 A declaration by the *Contractor*, in a form approved by the *Consultant*, verifying that the performance of the *Work* is in compliance with all applicable regulatory requirements respecting environmental protection, fire safety, public safety and occupational health and safety.
- .3 A pre-approved schedule of values, supplied by the *Contractor*, for Divisions 1 through 14 of the *Work*, aggregating the total amount of the *Contract Price*.
- .4 A separate pre-approved schedule of values, supplied by each *Subcontractor*, for each of Division 15 (Mechanical) and 16 (Electrical) of the *Work*, aggregating the total amount of the *Contract Price* for those divisions of *Work*.
- .5 Invoices to support all claims against the cash allowance.
- .6 An acceptable construction schedule pursuant to GC 3.5.”

SC27 GC 5.3 PROGRESS PAYMENT

SC27.1 In the first sentence, after the words “after the receipt by the *Consultant*” add the word “complete”.

SC27.2 Delete subparagraph 5.3.1.3 in its entirety and substitute as follows:

“.3 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 30 calendar days after the date of a complete certificate of payment is issued by the *Consultant*”

SC27.3 Add new paragraphs 5.3.4 and 5.3.5 as follows:

“5.3.4 The schedule of values required by paragraph 5.2.4, shall provide for the establishment of a Reserve Fund equivalent to the value of One percent (1%) of the *Work* performed, which fund shall be held in an interest-bearing trust account in the name of the *Owner* and paid to the *Contractor* at the time of final completion of the *Work*. This Reserve Fund shall be in addition to any required Construction Lien Holdback. The funds shall be subject to claims by the *Owner* and others as provided for under the terms of the *Contract Documents*.

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5.3.5 In the event of construction lien action affecting the *Project*, the *Contractor* agrees to indemnify and compensate the *Owner* for any expenses incurred. The *Owner* reserves the right to secure the possible cost of construction liens by retaining from the amount of the next payment certificate a sum equal to the amount of any lien claim plus an additional amount of 25% of any such lien amount. Funds so retained and not so expended, shall be released to the *Contractor* upon the full discharge of all liens and dismissal of all actions against the *Owner*.”

SC28 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

SC28.1 Add new paragraphs 5.4.4, 5.4.5 and 5.4.6 as follows:

- “5.4.4 Following the issuance of a certificate of *Substantial Performance of the Work*, the *Consultant* will review the *Work* and prepare a list of deficiencies and incomplete *Work* items.
- .1 The *Consultant* will assign a monetary value to each item.
 - .2 Values assigned shall be those estimated to be required to have deficiencies corrected by an outside contractor, not currently engaged in the *Work* of the *Contract*.
 - .3 The total of such amounts will be withheld from payments form a portion of the Deficiency Holdback, conditions for which are listed in GC 5.10 – DEFICIENCY HOLDBACK.
 - .4 Re-review of deficiencies and incomplete *Work* items shall be in accordance with provisions and procedures as detailed in the *Specifications*, including payment and/or withholding of payment provisions and procedures.
- 5.4.5 Within the time prescribed by the construction/builder’s lien legislation in force at the *Place of the Work*, or where there is no legislation or no time prescribed, within a reasonable time of receiving a copy of the certificate of *Substantial Performance of the Work* signed by the *Consultant*, the *Contractor* shall take whatever steps are required to publish or post a signed copy of the certificate, as is required by such legislation. If the *Contractor* fails to comply with this provision, the *Owner* may take the required steps pursuant to the legislation and charge the *Contractor* for any costs so incurred.
- 5.4.6 Following the issuance of the certificate of *Substantial Performance of the Work*, the following shall apply to completing the *Work*:
- .1 *Contractor* is to complete the *Work* within sixty (60) calendar days, or such shorter time period as is established under paragraph 5.4.3.
 - .2 No payments will be processed following *Substantial Performance of the Work* and prior to the *Work* being classified as *Total Performance*.
 - .3 The *Owner* reserves the right to contract out any or all unfinished *Work* if it has not been completed within sixty (60) days of *Substantial Performance of the Work* without prejudice to any other right or remedy and without affecting the warranty period. The cost of completing the *Work* shall be deducted from the *Contract Price*.

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SC29 GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

SC29.1 Amend paragraph 5.5.2 by adding the following sentence to the end of that paragraph:

“In addition to a Reserve Fund noted in SC27.3, paragraph 5.3.4, a Deficiency Holdback may also be retained by the *Owner* to secure the correction of deficiencies and/or warranty claims. Included in these amounts would be all *Consultant* and *Owner* costs related to the correction of deficiencies and/or warranty claims.”

SC29.2 Delete paragraphs 5.5.3 and 5.5.5 in their entirety.

SC29.3 Add new replacement subparagraph 5.5.3 as follows:

“5.5.3 Failure by the *Contractor* to publish the certificate of *Substantial Performance of the Work* places no onus on the *Consultant* or *Owner* to do so. If the Certificate is not published, the *Owner* shall release the holdback to the *Contractor* 45 days after the contract is deemed complete, again having satisfied themselves as above.”

SC30 GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

SC30.1 Delete paragraphs 5.6.1, 5.6.2 and 5.6.3 in their entirety and replace with the following paragraph 5.6.1:

“5.6.1 No progressive release of holdback on separate sub-contracts will be made. After *Substantial Performance of the Work* and until Deemed Complete, no payments will be made on the *Contract* with the exception of release of holdback.”

SC31 GC 5.7 FINAL PAYMENT

SC31.1 Add to the end of paragraph 5.7.2 the following:

“The *Work* shall be deemed not to be completed until all of the documents listed in the *Contract Documents* have been delivered and confirmed as being satisfactory. The *Owner* may withhold payment in respect of the delivery of any documents in an amount determined by the *Consultant* in accordance with the provisions of GC 5.8 - WITHHOLDING OF PAYMENT.”

SC31.2 Delete from the second line of paragraph 5.7.4 the words, “5 calendar days after the issuance” and substitute the words “30 calendar days after receipt of”.

SC32 GC 5.10 DEFICIENCY HOLDBACK

SC32.1 Add a new General Condition 5.10 – DEFICIENCY HOLDBACK as follows:

“GC 5.10 DEFICIENCY HOLDBACK

5.10.1 Notwithstanding any provisions contained in the *Contract Documents* concerning certification and release of monies to the *Contractor*, the *Owner* reserves the right to establish a Deficiency Holdback, in addition

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to a Reserve Fund, at the time of the review for *Substantial Performance of the Work*.

- 5.10.2 Amount of the Deficiency Holdback shall be based upon one or more of the following:
- .1 The total of the values assigned to Deficiency List items, as described in GC 5.4, Item 5.4.4.1;
 - .2 A premium to be determined, based upon individual *Project* completion circumstances present at the time of the deficiency review, up to a total of 100% of the dollar value of the deficiencies listed by the *Consultant*.
- 5.10.3 The *Owner* shall retain the entire Deficiency Holdback amount until completion of all of the deficiencies listed by the *Consultant* to the satisfaction of the *Consultant* and *Owner*.”

SC33 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

SC33.1 Add new paragraphs 6.1.3 and 6.1.4 as follows:

- “6.1.3 The *Contractor* agrees that changes resulting from construction coordination, including but not limited to, site surface conditions, site coordination, and *Subcontractor* and *Supplier* coordination are included in the *Contract Price* and the *Contractor* shall be precluded from making any claim for a change in the *Contract Price* as a result of such changes.
- 6.1.4 Labour costs shall be actual, prevailing rates at the *Place of the Work* paid to workers, plus statutory charges on labour including WSIB, unemployment insurance, Canada pension, vacation pay, hospitalization and medical insurance. The *Contractor* shall provide proof of these rates, when requested by the *Consultant*, for review and/or agreement.”

SC34 GC 6.2 CHANGE ORDER

SC34.1 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 *Consultant*:
- .1 by estimate and acceptance of a lump sum, such estimate including a detailed breakdown of all labour and materials involved in executing the change to the *Work*;
 - .2 by negotiated unit prices which include the *Contractor’s overhead* and profit, as noted in paragraph 6.2.4, or;
 - .3 by negotiated and accepted lump sum amount, including the *Contractor’s overhead* and profit, as noted in paragraph 6.2.4.”

SC34.2 Add new paragraph 6.2.4 as follows:

- “6.2.4 *Overhead* and profit charged on Changes, resulting in extra costs, shall be calculated as follows:

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- .1 Combined *overhead* and profit mark up on *Work* performed by the *Contractor's* own forces shall not exceed 10%.
- .2 *Overhead* and profit shall not be charged on credits to the *Contract*. Where a change includes both credits and extras, *overhead* and profit shall apply only to the net extra amount.
- .3 *Contractor's* combined *overhead* and profit mark up on subcontract *Work* shall not exceed 5%.
- .4 Combined *overhead* and profit mark-up charged by *Subcontractors* on their own *Work*, shall not exceed 10%."
- .5 *Subcontractor's* combined *overhead* and profit mark up on subcontract *Work* shall not exceed 5%".

SC34.3 Add new paragraph 6.2.5 as follows:

- "6.2.5 All quotations will be submitted in a complete manner listing:
- .1 quantity of each material,
 - .2 unit cost of each material,
 - .3 man hours involved for each type of labour,
 - .4 cost per hour for each type of labour,
 - .5 *overhead* and profit (markup),
 - .6 *Subcontractor* quotations submitted listing items .1 to .5 above."

SC34.4 Add new paragraph 6.2.6 as follows:

- "6.2.6 Allowances for *overhead* and profit shall cover all of the *Contractor's* and *Subcontractor's* administrative and incidental costs relating to a change including, without limitation, costs relating to project managers, superintendents, assistants, watchpersons and administrative personnel, *Shop Drawing* production, head office and site office expenses, worker tools, temporary facilities, bonds, insurance, transportation, record drawings, cleanup and disposal of waste materials".

SC35 GC 6.3 CHANGE DIRECTIVE

SC35.1 Delete and replace paragraph 6.3.6.1 with the following:

- "6.3.6.1 *Overhead* and profit charged on Change Directive items shall be calculated as follows:
- .1 Combined *overhead* and profit mark up on *Work* performed by the *Contractor's* own forces shall not exceed 10%.
 - .2 *Overhead* and profit shall not be charged on credits to the *Contract*. Where a change includes both credits and extras, *overhead* and profit shall apply only to the net extra amount.
 - .3 *Contractor's* combined *overhead* and profit mark up on subcontract *Work* shall not exceed 5%.
 - .4 Combined *overhead* and profit mark-up charged by *Subcontractors* on their own *Work*, shall not exceed 10%."
 - .5 *Subcontractor's* combined *overhead* and profit mark up on subcontract *Work* shall not exceed 5%.

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SC35.2 In subparagraph 6.3.7.1 insert “while directly engaged in the *Work* attributable to the change” after the words “in the direct employ of the *Contractor*”.

SC36 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

SC36.1 Add new paragraph 6.4.5 as follows:

“6.4.5 Prior to the submission of the bid on which the *Contract* was awarded, the *Contractor* confirms that it carefully investigated the *Place of the Work* and carried out such tests as it deemed appropriate and, in doing so, applied to that investigation an appropriate degree of care and skill.

.1 The *Contractor* 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 considered by the *Owner* or the *Consultant* 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*.”

SC36.2 Add new paragraph 6.4.6 as follows:

“6.4.6 Having regard to paragraph 6.4.5, if the *Contractor* believes that the conditions of the *Place of the Work* differ materially from those indicated in the *Contract Documents*, from those reasonably anticipated, or conditions which were reasonably concealed from discovery notwithstanding the conduct of the investigation described in paragraph 6.4.5, it shall provide the *Owner* and the *Consultant* with *Notice in Writing* no later than five (5) *Working Days* after the first observation of such conditions.” If the *Contractor* does not provide *Notice in Writing* within five (5) *Working Days*, it will be understood by the *Owner* and *Contractor* that the conditions at the *Place of the Work* are as per *Contract Drawings and Specifications*.”

SC37 GC 6.5 DELAYS

SC37.1 Delete paragraph 6.5.3 in its entirety and replace 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*.”

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SC37.2 Add new paragraphs 6.5.6, 6.5.7 and 6.5.8 as follows:

“6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, or by any cause within the *Contractor’s* control, then the *Contract Time* may be extended for such reasonable time as the *Owner* may decide in consultation with the *Consultant* and the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including, but not limited to, the cost of all additional services required by the *Owner* from the *Consultant* or any sub-*Consultants*, project managers, or others employed or engaged by the *Owner*, and in particular, the costs of the *Consultant’s* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein, as the same may be extended through the provision of these General Conditions, and any later or actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

6.5.7 No claim for delay shall be made and the *Contract Time* shall not be extended due to climatic conditions which are within normal or expected statistical maximums and minimums, within a ten year time period, or arising from the *Contractor’s* efforts to maintain the Construction Schedule.

6.5.8 The parties acknowledge the construction of the *Work* is designed to accommodate the requirements of the *Owner* and failure to attain *Substantial Performance of the Work* by the date stipulated in the Agreement shall result in inconvenience and expense to the *Owner* and its teachers, students, and others – the exact extent of which is virtually impossible to calculate. Consequently, the parties agree that their best estimate of costs involved in delay beyond the stipulated date for *Substantial Performance of the Work* is \$ [REDACTED] ([REDACTED] Thousand Dollars) per day and said sum shall be paid by the *Contractor* to the *Owner* for each *Working Day* of the delay, and shall be deemed for all purposes as reasonable compensation to the *Owner* for delay costs only. This amount is not, and shall not be deemed to be a penalty, but is a fair estimate of the actual costs resulting from the delay, and shall be charged in addition to all other cost provided for in the *Contract Documents*.

SC38 GC 6.6 CLAIMS FOR A CHANGE IN THE CONTRACT PRICE

SC38.1 Delete GC 6.6 in its entirety.

SC39 GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

SC39.1 Add a new subparagraph 7.1.3.4 as follows:

“7.1.3.4 An “acceptable schedule” as referred to in subparagraph 7.1.3.2. means a schedule approved by the *Consultant* and the *Owner* wherein the

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default can be corrected within the balance of the *Contract Time* and shall not cause delay to any other aspect of the *Work* or the *Work* of other contractors, and in no event shall it be deemed to give a right to extend the *Contract Time*.”

SC39.2 Add new paragraph 7.1.7 as follows:

“7.1.7 In addition to any changes certified by the *Consultant*, pursuant to the provisions of item 7.1.5.3 of the General Conditions, the *Contractor* shall:

- .1 pay an allowance for the additional time and services required by the *Board’s* representative and other employees equivalent to the relevant payroll costs, plus 150%.
- .2 be responsible for all legal costs incurred by the *Board* with respect to liens arising out of this *Contract*. This includes all costs to perform more than one search per payment such that it includes the costs of all searches discovering liens registered against the *Board’s* property, arising out of the *Contract*.”

SC40 GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

SC40.1 Delete paragraph 7.2.2, in its entirety.

SC40.2 Delete subparagraphs 7.2.3.1, 7.2.3.2 and 7.2.3.3 in their entirety.

SC40.3 In subparagraph 7.2.3.4, delete the words "except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER".

SC40.4 Renumber paragraph 7.2.5 as paragraph 7.2.6. Add a new paragraph 7.2.5 as follows:

“7.2.5 If the default cannot be corrected within the 5 *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.”

SC40.5 Delete paragraph 7.2.6 (previous 7.2.5) entirely and replace with the following:

“7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in GC 7.2 – CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT, the *Contractor* shall be entitled to be paid for all *Work* performed to the date of termination, as determined by the *Consultant*. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization and losses sustained on *Products* and *Construction Equipment*. The *Contractor* shall not be entitled to any recovery for any special, indirect or consequential losses, including loss of profit.”

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SC40.6 Add new paragraph 7.2.7 as follows:

- “7.2.7 The *Contractor* shall not be entitled to give *Notice in Writing* of the *Owner’s* default or terminate the *Contract* in the event the *Owner* withholds certificates or payment or both in accordance with the *Contract* because of:
- .1 the *Contractor’s* failure to pay all legitimate claims promptly, or
 - .2 the *Contractor’s* failure to correct deficiencies and incomplete *Work* in accordance with timelines set out elsewhere in the *Contract Documents*, or
 - .3 the failure of the *Contractor* to discharge construction liens which are registered against the title to the *Place of the Work*.”

SC41 GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

SC41.1 Delete paragraph 8.2.1 and substitute the following therefor:

- “8.2.1 Subject to the consent of each of the *Owner* and *Contractor*, the parties may appoint a Project Mediator in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, within 20 *Working Days* after *Notice in Writing* is given by one party to another of a dispute which the parties have been unable to resolve amicably with the assistance of the *Consultant*”.

SC41.2 Amend paragraph 8.2.4 by changing part of the second line from “the parties shall request the Project Mediator” to “and subject to paragraph 8.2.1 the parties may request the Project Mediator”.

SC41.3 Delete paragraphs 8.2.6, 8.2.7 and 8.2.8 in their entirety.

SC41.4 Add new paragraph 8.2.6 as follows:

- “8.2.6 The dispute may be finally resolved by arbitration under the Rules of Arbitration of Construction Disputes, as provided in CCDC 40 in effect at the time of bid closing, provided that both the *Contractor* and the *Owner* agree. If the *Contractor* and the *Owner* agree to resolve the dispute by arbitration, the arbitration shall be conducted in the jurisdiction of the *Place of the Work*.”

SC42 GC 9.1 PROTECTION OF WORK AND PROPERTY

SC42.1 Delete subparagraph 9.1.1.1 in its entirety and substitute the following therefor:

- “.1 Errors in the *Contract Documents* which the *Contractor* could not reasonably have discovered applying the proper level of care and diligence;”

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SC43 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

SC43.1 Add a new subparagraph 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.”

SC43.2 Add new paragraphs 9.2.10, 9.2.11 and 9.2.12 as follows:

“9.2.10 The *Contractor*, *Subcontractors* and *Suppliers* shall not bring on to the *Place of the Work* any toxic or hazardous substances and materials except as required in order to perform the *Work*. If such toxic or hazardous substances or materials are required, storage in quantities sufficient to allow *Work* to proceed to the end of any current *Work* week only shall be permitted. All such toxic and hazardous materials and substances shall be handled and disposed of only in accordance with all laws and regulations that are applicable at the *Place of the Work*.

9.2.11 The *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant* and their respective directors, officers, trustees, agents and employees, from and against any and all liabilities, costs, expenses, and claims resulting from bodily injury, including death, and damage to property of any person, corporation or other body politic, that arises from the use by the *Contractor*, *Subcontractors* and *Suppliers* of any toxic or hazardous substances or materials at the *Place of the Work*.

9.2.12 Renovation and/or Alterations Projects: Asbestos containing materials may have been used during the original construction or previous alteration of School Board facilities. If asbestos containing materials are discovered during the course of the *Project*, stop *Work* and immediately notify the *Owner* and the *Consultant*. Do not remove existing material containing asbestos fibres.”

SC44 GC 9.4 CONSTRUCTION HEALTH AND SAFETY

SC44.1 Rename General Condition 9.4 to read: CONSTRUCTION HEALTH AND SAFETY

SC44.2 Delete paragraph 9.4.1 in its entirety and substitute as follows:

“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*.”

SC44.3 Add new paragraphs 9.4.2 to 9.4.14 as follows:

“9.4.2 Observe and enforce construction safety measures required by the National Building Code (2010) Division B, Part 8; the Provincial Government; Workplace Safety and Insurance Board; and, Municipal

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authorities. In particular, the Occupational Health and Safety Act (Ont. Reg. 213/91), the Ontario Construction Safety Act, WHMIS, the regulations of the Ontario Ministry of Labour and Ontario Hydro Safety Requirements shall be strictly enforced.

- 9.4.3 The *Board* reserves the right to engage in separate contracts, beyond those of the *Contractor*, as part of the total construction of the Project. These separate contracts shall include, but need not be limited to, the supply and installation of plug-in/plug-out units; supply and installation of draperies, stage equipment, projection equipment and storage shelving units; the supply and installation of telephone, communication, computer and surveillance systems, equipment, wiring and components; the supply and placement of furnishings; and graphic art services.
- 9.4.4 The *Contractor*, hereafter called the "Constructor" as defined by the Occupational Health and Safety Act of Ontario, shall be responsible for supervising and directing any such contractors as the *Board* may choose to perform work at the *Place of the Work*. The "Constructor" shall ensure that all contractors conform to the requirements of Health and Safety legislation and site policies while performing their work at the *Place of the Work*.
- 9.4.5 "Constructor" shall ensure that copies of all applicable construction safety regulations, codes and standards are available at the *Place of the Work* throughout the period of construction. All workers are to be informed that these documents are available for reference at any time.
- 9.4.6 The "Constructor" shall ensure that all supervisory personnel at the *Place of the Work* are fully aware of the contents of the Occupational Health and Safety Act (Ontario Regulation 213/91 - Construction Projects), as amended, and the "Workers' Compensation Act" and that they comply with all requirements and procedures prescribed therein including, but not limited to, the following construction safety requirements:
- .1 "Constructor" to file "Registration of Constructors and Employers Engaged in Construction" (Form 1000) with the Director of the Occupational Health and Safety Division prior to commencement of *Work* on the *Project*, and (O. Reg. 213/91, sec 5).
 - .2 File a "Notice of Project" (Form 1075) with the Ontario Ministry of Labour, (O. Reg. 213/91, sec 6).
 - .3 Notification prior to trenching deeper than 1.2 m, (O. Reg. 213/91, sec 7).
 - .4 Establish a Joint Health and Safety and/or Worker Trades Committee, as required.
 - .5 Ensure that all activities arising out of the above are recorded and that minutes are available to an inspector of the Ontario Ministry of Labour.
 - .6 The *Contractor* shall be considered as the "Constructor" in consideration of the rights and responsibilities for all construction safety requirements, procedures, facilities and inspection of all *Work* performed by the *Contractor*, *Subcontractors*/sub-trades and other contractors engaged on this *Project*.

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- .7 In the event of a conflict between any of the provisions of the above authorities, **the most stringent provisions are to be applied.**"
- 9.4.7 Material Safety Data Sheets (MSDS) must be available at the at the *Place of the Work* for any *Product* **designated hazardous** or containing **hazardous ingredients** prior to being used, installed or applied inside the building.
- 9.4.8 The "Constructor" must provide a job introduction or safety indoctrination session for all personnel and trades working, inspecting and/or supervising at the *Place of the Work*.
- 9.4.9 The "Constructor" will be responsible for taking all necessary steps to protect personnel (Workers, visitors, general public, etc.) and property from any harm throughout the duration of the *Contract*.
- 9.4.10 The "Constructor" shall supply **competent personnel** to implement the Health and Safety program and ensure compliance with the company's standards and those of the Occupational Health and Safety Act of Ontario.
- 9.4.11 The "Constructor" will include these provisions in any agreement with *Subcontractors* or trades and *Suppliers* and shall monitor compliance.
- 9.4.12 The "Constructor" is responsible for any delays in the progress of *Work* due to an infraction of legislated or site Health and Safety requirements.
- .1 If, in the opinion of the *Consultant*, additional *Work* and steps to recover such delays are necessary to meet dates set in the *Contract*, the "Constructor" shall provide all such services without any additional cost to the *Board*.

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- 9.4.13 During the course of the *Project*, if the Health and Safety policies of the “Constructor” are found to be deficient and/or the CAD-7 rating by the WSIB has changed adversely, additional full-time **accredited safety personnel** must be appointed without extra cost to the *Board*.
- 9.4.14 The *Contractor* shall promptly report in writing 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 statement of witnesses. If death or serious injuries or damages are caused, the accident shall be promptly reported by the *Contractor* to the *Owner* and the *Consultant* by telephone or messenger in addition to any reporting required under the applicable safety regulations.”

SC45 GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

SC45.1 Amend paragraph 10.2.2 by deleting the words “building permit”.

SC45.2 Delete and replace paragraph 10.2.3 to read:

“10.2.3 The *Contractor* shall be responsible for the procurement of permits, licenses, inspections, and certificates, which are necessary for the performance of the *Work*, except those as noted in paragraph 10.2.2 and as described in the *Specifications*, Section 01001 – Summary of Work and Special Conditions, Item 1.14.3 – Construction Related Fees, Permits, Building Permit.”

SC45.3 Add new paragraph 10.2.8 as follows:

“10.2.8 “The *Contractor* shall furnish all certificates that are required or given by the appropriate governmental authorities as evidence that the *Work* as installed conforms with the laws and regulations of authorities having jurisdiction, including certificates of compliance for the *Owner’s* occupancy or partial occupancy. The certificates are to be final certificates giving complete clearance of the *Work*, in the event that such governmental authorities furnish such certificates.”

SC46 GC 10.4 WORKERS’ COMPENSATION

SC46.1 Revise paragraph 10.4.1 to read as follows:

“10.4.1 Prior to commencing the *Work*, and with each and every application for payment thereafter, including the *Contractor’s* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor’s* application for final payment, the *Contractor* shall provide evidence of compliance with workers’ compensation legislation in force at the *Place of the Work*, including payments due thereunder.”

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SC47 GC 12.1 INDEMNIFICATION

SC47.1 Inclusion of indemnification of *Consultant* by other parties:

Replace the words "*Owner and the Contractor*" with the words "*Owner, the Contractor and the Consultant*" in paragraphs 12.1.1, 12.1.2.1, 12.1.2.2, 12.1.4 and 12.1.6.

SC47.2 The provisions of GC 12.1 - INDEMNIFICATION shall survive the termination of the *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 GC 12.1.

SC48 GC 12.2 WAIVER OF CLAIMS

SC48.1 Delete GC 12.2 – WAIVER OF CLAIMS, in its entirety.

SC49 GC 12.3 WARRANTY

SC49.1 Add new paragraphs 12.3.7 to 12.3.10 as follows:

"12..3.7 Where required by the *Contract Documents*, the *Contractor* shall provide a maintenance bond as security for the performance of the *Contractor's* obligations as set out in GC 12.3 WARRANTY.

12.3.8 The *Contractor* shall provide fully and properly completed and signed copies of all warranties and guarantees required by the *Contract Documents*, containing:

- .1 the proper name of the *Owner*,
- .2 the proper name and address of the *Project*,
- .3 the date the warranty commences, which shall be at the "date of *Substantial Performance of the Work*" unless otherwise directed by the *Consultant* in writing.
- .4 a clear definition of what is being warranted and/or guaranteed as required by the *Contract Documents*; and
- .5 the signature and seal (if required by the governing law of the *Contract*) of the company issuing the warranty, countersigned by the *Contractor*.

12.3.9 Should any *Work* be repaired or replaced during the time period for which it is covered by the specified warranty, a new warranty shall be provided under the same conditions and for the same period as specified herein before. The new warranty shall commence at the completion of the repair or replacement.

12.3.10 The *Contractor* shall ensure that its Subcontractors are bound to the requirements of GC 12.3 – WARRANTY for the *Subcontractor's* portion of the *Work*."

SC50 PART 13 OTHER PROVISIONS

SC50.1 Add new Part 13 OTHER PROVISIONS, including GC13.1 as follows:

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SC51 GC 13.1 CONSTRUCTION LIENS

SC51.1 Add new GC 13.1 – CONSTRUCTION LIENS, as follows:

“GC13.1 CONSTRUCTION LIENS

- 13.1.1 In the event that a claim for lien is registered against the *Project* by a *Subcontractor*, sub-*Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:
- .1 within 10 calendar days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and
 - .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.
- 13.1.2 In the event that the *Contractor* fails to conform with the requirements of paragraph 13.1.1, the *Owner* may fulfil those requirements and set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.”

End of Document _____ Supplementary General Conditions to CCDC 2, 2008

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