

## **SUPPLEMENTARY CONDITIONS TO CCDC 14 (2013) DESIGN-BUILD STIPULATED PRICE CONTRACT**

### **GENERAL**

These Supplementary Conditions shall modify, delete and/or add to the Agreement between the *Owner* and the *Design-Builder*, the *Definitions* and the *General Conditions* to the Design-Build Stipulated Price Contract, CCDC 14 – 2013. Where any article, paragraph or subparagraph is supplemented by any of the following, the provisions of such article, paragraph or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any article, paragraph or subparagraph is amended, deleted or superseded by any of the following, the provisions of such article, paragraph or subparagraph not so amended, deleted or superseded shall remain in effect and the numbering shall be considered to have been adjusted appropriately.

### **ARTICLE A-3 CONTRACT DOCUMENTS**

Add the following new paragraph 3.2 as follows:

“3.2 In the event of any conflict or inconsistency between the *Contract Documents*, they shall be interpreted in the order listed, from highest priority to lowest, subject to the supplementary conditions having priority over all other documents.”

### **ARTICLE A-4 CONTRACT PRICE**

Add new paragraph 4.6 as follows:

“4.6 The *Contract Price* shall be the complete price for the *Work* and includes all contingency and other amounts that the *Design-Builder* believes are necessary to complete the *Design Services* and the *Work* in accordance with the *Contract Documents*. Without limiting the generality of the foregoing, the *Contract Price* includes all design, construction, labour, *Products*, *Construction Equipment* and other services necessary, for the design, performance and completion of the *Design Services* and the *Work* by the *Design-Builder* in accordance with the *Contract Documents*.”

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

Add new paragraph 6.6 as follows:

“6.6 Construction Act Notices

.1 The parties agree that all *Construction Act Notices* shall be given in writing only by a means or method permitted for under the *Construction Act* or such means or methods as provided for in the *Contract*.

- 2 For the purposes of this *Contract* and the *Rules*, the parties agree that *Construction Act Notices* may be given by electronic email or such other electronic means or method as the parties may agree. The means, method, names and addresses for the giving of *Construction Act Notices* shall be specified by the *Design-Builder* and the *Owner* within ten (10) Days of the execution of the *Contract*, including the name and telephone number of a person at the sender to contact in the event of a problem with electronic transmission. For clarity, in the event if a problem with an electronic transmission (including if the intended recipient is “out of office”), the sender shall deliver the *Construction Act Notice* to such alternate person. At a minimum the parties shall specify the means, method, names and addresses for the delivery of:
  - .1 *Notice of Adjudication*;
  - .2 the copy of the contract and any other document pursuant to GC 8.3.6 to the party that received the *Notice of Adjudication*;
  - .3 notices in writing to the *Owner* pursuant to GC 8.3.15;
  - .4 *Proper Invoices*; and
  - .5 notices of non-payment pursuant to GC 5.3.1.2.
- 3 For the purposes of this *Contract*:
  - .6 a *Construction Act Notice* sent by electronic mail or other electronic means or method as agreed to by the parties which is transmitted prior to 4:00 p.m. on a *Working Day*, shall be deemed to have been received by that party on that *Day*, or on the next *Working Day*, if delivered after 4:00 p.m. or on a *Day* which is not a *Working Day*; provided that during the transmission of which no indication of failure of receipt is communicated to the sender;
  - .7 a *Construction Act Notice* delivered by hand or courier prior to 4:00 p.m. on a *Working Day*, shall be deemed to have been received by that party on such *Day* of delivery, or on the next *Working Day*, if delivered after 4:00 p.m. or on a *Day* which is not a *Working Day*;
  - .8 a *Construction Act Notice* which is sent by registered mail is deemed to be received by the party to whom the *Construction Act Notice* is addressed on the fifth (5th) *Working Day* after the date of mailing, where the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing.

#### **ADD NEW ARTICLE A-9 GENERAL**

#### **“ARTICLE A-9 GENERAL**

- 9.1 Where used in the *Contract*, the words “includes” or “including” means “including, without limitation”.
- 9.2 Where used in the *Contract*, any reference to month means a calendar month.
- 9.3 All dollar amounts in the *Contract* are in Canadian currency, unless expressly provided otherwise.”

## **DEFINITIONS**

Add the following definitions:

### **“Abnormally Adverse Weather Conditions**

*Abnormally Adverse Weather Conditions* means unusually severe adverse weather conditions at the *Place of the Work* which: (i) are different from those normally and customarily experienced at the *Place of the Work* (as documented by weather data from Environment Canada) over the past fifteen (15) years taking into consideration severity, duration and time of year conditions; or (ii) preclude the safe performance of the *Work* in accordance with the *Contract Time*.

### **Adjudication**

*Adjudication* means a construction dispute interim adjudication under Part II.1 of the *Construction Act* with respect to a matter referred to in section 13.5 of the *Construction Act*.

### **Adjudicator**

*Adjudicator* means a person who is qualified by the Authority as an adjudicator.

### **Authority**

*Authority* means the Ontario Dispute Adjudication for Construction Contracts which is the Authorized Nominating Authority designated under the *Construction Act*.

### **Commissioning**

*Commissioning*, which forms part of the *Work*, means the process by which the *Design-Builder* puts the *Work* or any part thereof into operation or a state of completion which allows for its use as set out in the *Owner’s Statement of Requirements* and includes start-up and testing as described in the *Contract Documents*.

### **Commissioning Agent**

The *Commissioning Agent* is the Person engaged by the *Owner* to witness, inspect and report to the *Owner* regarding the completion of *Commissioning* and the conformance by the *Design-Builder* to the *Owner’s Statement of Requirements*.

## **Confidential Information**

*Confidential Information* has the meaning given to it in GC 1.5.

## **Construction Act**

*Construction Act* means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, repealed, superseded or replaced from time to time and the corresponding regulations. For clarity, all references to “lien legislation applicable in the Province” and other similar language shall mean the Construction Act.

## **Construction Act Notices**

*Construction Act Notices* means, in relation to the *Contract*, those documents and notices required to be given or that may be given under the *Construction Act* between the *Design-Builder* and the *Owner*, including *Proper Invoices*, notices of non-payment, *Notice of Adjudication* and documents provided to a party to an *Adjudication* or to the *Adjudicator*.

## **Constructor**

*Constructor* means the “constructor” within the meaning of the OHSA.

## **Day**

*Day* means a calendar day.

## **Design Documents**

*Design Documents* has the meaning given to it in GC 14.1.

## **Design-Builder Caused Delay Event**

*Design-Builder Caused Delay Event* has the meaning given to it in GC 6.5.6.

## **Design-Builder Parties**

*Design-Builder Parties* means the *Design-Builder*, the *Consultant*, *Other Consultants*, the *Subcontractors*, the *Suppliers* and the *sub-subcontractors* and their respective advisors, appointees, partners, directors, officers, employees, agents and volunteers and successors and assigns, and any other *Person* performing any parts of the *Work* or the *Design Services*.

## **Dispute**

*Dispute* means all disputes between the parties arising out of or in connection with the *Contract* including as to

- (a) the interpretation, application or administration of the *Contract*;
- (b) findings or determinations under the *Contract*; or

(c) the performance of the Work.

### **Employer**

*Employer* means the “employer” within the meaning of the *OHSA*.

### **Hazardous Material**

*Hazardous Material* means, collectively, any contaminant, waste or subject waste as defined in the *Environmental Protection Act*, as amended from time to time (the “EPA”), toxic substance (as defined in the *Canadian Environmental Protection Act*, as amended from time to time (the “CEPA”)), dangerous goods (as defined in the *Transportation of Dangerous Goods Act (Canada)* as amended from time to time (“TDGA”)) or pollutant (as defined in the EPA), or any other substance which when released to the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation to the natural environment or material risk or harm to human health, including asbestos, “PCBs”, arsenic, silica and any other contaminant. Whenever the terms “toxic and hazardous substances” is used in the Contract, it shall be deemed amended to read “Hazardous Material.”

### **Indemnified Parties**

*Indemnified Parties* has the meaning given to it in GC 12.2.

### **Lender**

*Lender* means any Person providing financing to *Owner* for the *Project* from time to time.

### **Lien Holdback**

*Lien Holdback* means the ten (10%) percent holdback stipulated to be *retained* pursuant to Part IV of the *Construction Act*. All references in the Agreement, Definitions, the General Conditions and the Supplementary Conditions to “holdback” shall mean the Lien Holdback.

### **Notice of Adjudication**

*Notice of Adjudication* means a written notice of *Adjudication*, which complies with section 13.7(1) of the *Construction Act*, including the submission of all applicable attachments.

## ***OHSA***

*OHSA* means the *Occupational Health and Safety Act*, R.S.O (1990), c.O.1, (or any successor legislation) and all regulations thereunder, as amended.

## ***Person***

*Person* means any individual, partnership, limited partnership, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or legal personal representative, governmental authority or other entity however designated or constituted.

## ***Proper Invoice***

*Proper Invoice* means an *application* for payment from the *Design-Builder* to the *Owner* on account as provided in Article A-5 of the Agreement – PAYMENT, which is in compliance with the requirements of GC 5.2.4.

## ***Rules***

*Rules* means the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

## ***Standard of Care***

*Standard of Care* means the degree of care, skill and diligence of a prudent, knowledgeable and experienced design-builder electrical engineer and contractor ordinarily used in similar circumstances for a project which is similar in size, magnitude and complexity to the *Project*.

## ***Substantial Performance Date***

The *Substantial Performance Date* shall be that date set out in the Construction Schedule for which the *Design-Builder* is to achieve Substantial Performance, *subject* to adjustment as provided for in the Contract Documents.

## ***Supplier Code of Conduct***

The *Supplier Code of Conduct* means the *Owner's* supplier code of conduct, as amended, and available at <https://dream.ca/wp-content/uploads/2023/07/DIR-Supplier-Code-2024.pdf>.

## ***Warranty Period***

The *Warranty Period* has the *meaning* given to it in GC 12.5.1.”

## GC 1.1 - CONTRACT DOCUMENTS

Amend paragraph 1.1.8 by adding the following sentence at the end: “This GC 1.1.8 is subject to GC 14 - COPYRIGHT AND USE OF DOCUMENTS.”

Amend paragraph 1.1.6 to insert “Design-Builder’s Proposal” in priority after the “the Owner’s Statement of Requirements”.

## GC 1.4 - ASSIGNMENT

Delete paragraph 1.4.1 and replace it with the following:

“1.4.1 The *Owner* shall have the right, without the consent of the *Design-Builder*, to assign the *Contract* and/or the benefits of the warranty in GC 12.5 and the indemnity in GC 12.2 to any affiliate or subsidiary of the *Owner* and to any *Lender* as collateral security for loans to the *Owner*; provided however, that the *Owner* shall not be released or discharged from any of the *Owner*’s covenants and obligations in this Agreement in the event of any such assignment. Subject to the foregoing, neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably conditioned, delayed or withheld.”

## GC 1.5 - CONFIDENTIALITY

Delete paragraph 1.5.1 and add new GC 1.5 - CONFIDENTIALITY as follows:

### “GC 1.5 - CONFIDENTIALITY

15.1 The *Design-Builder* shall not, except as is required to carry out its obligations, duties, responsibilities or liabilities under the *Contract*, divulge any confidential information communicated to or acquired by it in the course of carrying out its obligations, duties, responsibilities or liabilities under the *Contract*. No *Confidential Information* shall be used by the *Design-Builder* on any other project without the prior written approval of the *Owner* (which approval may be arbitrarily withheld). The *Design-Builder* shall not have any proprietary rights to or interest in the confidential information, nor shall the *Design-Builder* have any right to license such information to any *Subcontractor*, *Supplier* or other third party. The term “*Confidential Information*” as used herein shall mean all information in writing and marked or identified as confidential which the *Design-Builder* receives, either directly or indirectly, from the *Owner*, except:

- .1 information which the *Design-Builder* can demonstrate is, at the time of disclosure, already known to the *Design-Builder*;
- .2 information which, at the time of disclosure, is or thereafter becomes a part of the public domain through no act or omission on the part of the *Design-Builder*; and

- .3 information which is disclosed to the *Design-Builder* by a third party without a covenant of confidentiality in favour of the *Owner*.
- 152 The *Design-Builder* may disclose the *Confidential Information* to those *Design-Builder* personnel or any *Subcontractor* or *Supplier* to whom disclosure is required for the performance of their respective responsibilities, duties, obligations and liabilities under the *Contract*. The *Design-Builder* shall require such *Design-Builder* personnel to treat such information as confidential and not to disclose such information to any Person other than in accordance with the terms of the *Contract*.
- 153 The *Design-Builder* covenants and agrees that the confidentiality covenant contained herein shall survive the termination or discharge of the *Contract* and extend for a period of five (5) years following the date of such termination or discharge.”

#### **ADD NEW GC 1.6 – EXAMINATION OF PLACE OF THE WORK**

##### **“GC 1.6 – EXAMINATION OF PLACE OF THE WORK**

- 1.6.1 The *Design-Builder* represents and warrants that, using the *Standard of Care*, it has examined the *Place of the Work* and surrounding area (the “**Site Inspection**”) and it has satisfied itself as to the scope and character of the *Design Services* and the *Work*, all conditions and information affecting the *Design Services* and the *Work* (including the nature and location of the *Work*, access to the site and weather conditions). As a result of the site or other visit, the *Design-Builder* acknowledges and agrees that it has had adequate time and opportunity to conduct sufficient investigations at the *Place of the Work* and has satisfied itself as to the scope and character of the *Work* and all conditions and information affecting the *Work*, to determine accurate scope, pricing, and scheduling for the *Project*. As a result, the *Design-Builder* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Design Services* and *Work* that might or could make the *Work* more expensive or more onerous to fulfil and which a design-builder, electrical engineer or contractor using the *Standard of Care* would have reasonably discovered during the Site Inspection. The costs, expenses and time of all conditions referred to in this paragraph 1.6.1 form part of the *Contract Price* and the *Contract Time* and shall not be the basis for an increase in the *Contract Price* or an extension in the *Contract Time*.”

#### **GC 2.5 – OWNER’S REVIEW OF THE DESIGN AND THE WORK**

Amend paragraph 2.5.1 by adding the words “or *Owner*’s designated representative or any other consultant designated by the *Owner* in writing” after the word “*Owner*”.

Amend paragraph 2.5.2 by adding the words “or *Owner*’s designated representative or any other consultant designated by the *Owner* in writing” after the word “*Owner*”.

Amend paragraph 2.5.3 by adding the words “or *Owner*’s designated representative or any other consultant designated by the *Owner* in writing” after the first instance of the word “*Owner*” in the first line and the second instance of the word “*Owner*” located in the second line.

Amend paragraph 2.5.4 by adding the words “or *Owner*’s designated representative or any other consultant designated by the *Owner* in writing” after the first instance of the word “*Owner*” located in the first line, the third instance of the word “*Owner*” located in the second line, and the fourth instance of the word “*Owner*” located in the fourth line.

Amend paragraph 2.5.5 by adding the words “or *Owner*’s designated representative or any other consultant designated by the *Owner* in writing” after the word “*Owner*” in the first line only.

## **GC 2.6 – WORK BY OWNER OR OTHER CONTRACTORS**

Delete paragraph 2.6.2.2 and replace with “INTENTIONALLY DELETED.”

Add new paragraph 2.6.2.6 as follows:

“2.6.2.6 shall contractually require other contractors directly engaged by the *Owner* and the *Owner*’s own forces to comply with the *Design-Builder*’s safety program and safety instructions, and the *Design-Builder* in fulfilling the role of constructor, will have the right to remove the other contractors from the *Place of the Work* should they not comply with the *Design-Builder*’s safety program and safety instructions.”

## **GC 3.1 – CONTROL OF THE DESIGN SERVICES AND THE WORK**

Delete paragraph 3.1.4 and replace it with the following:

“3.1.4 The *Design-Builder* agrees to engage as the *Consultant* such *Person* that is approved by *Owner*, acting reasonably, for the *Design Services* (except as relates to the site plan approval), and shall be responsible to the *Owner* for the performance of the *Design Services*.”

## **GC 3.4 – OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS**

Delete paragraph 3.4.1.2 and replace it with the following:

“.2 incorporate the material terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors*, *Suppliers*, *Consultants* and *Other Consultants*, including *Owner*’s right to take an assignment as set forth in GC 7.2.10 and a provision requiring the applicable party provide adequate notice to the *Design-Builder* in order for the *Design-Builder* to fulfill its obligations under GC 8.3.15. For clarity, the obligation relating to GC 8.3.15 shall include a requirement that each *Subcontractor*

or the *Supplier* include a similar provision in all its subcontracts with sub-subcontractors and so on within every tier of the construction pyramid;”

## GC 3.6 – DESIGN SERVICES AND WORK SCHEDULE

Amend paragraph 3.6.1 as follows:

- (a) In sub-paragraph 3.6.1.2 delete the word “and”.
- (b) In sub-paragraph 3.6.1.3 delete the period and replace with “; and”.
- (c) add new sub-paragraph 3.6.1.4 as follows:

“.4 account for the labour and other resources in the *Work* schedule provided under GC 3.6.1.1.”

## GC 3.7 – SUPERVISION

Add new paragraphs 3.7.3 as follows:

### “3.7.3 Key Personnel

- .1 Without limiting the generality of any other provision in the *Contract Documents*, the *Design-Builder* agrees to commit experienced and qualified personnel (“**Key Personnel**”) to the *Project* until completion of the *Work* subject to the *Owner’s* approval which shall not be unreasonably withheld.
- .2 The *Design-Builder* shall not, for the duration of the *Work*, require or request the Site Superintendent to be involved in any other project if, in the opinion of the *Owner*, acting reasonably, such involvement would have a material adverse effect on the *Work*.
- .3 The *Design-Builder* shall provide the *Owner* with the telephone numbers of the Key Personnel and other persons who may be contacted for emergency and other reasons during non-working hours.
- .4 The Key Personnel may not be changed without the *Owner’s* prior written acceptance which acceptance may not be unreasonably withheld. If any of the Key Personnel becomes unavailable to perform services, then the *Design-Builder*, subject to the prior written acceptance of the *Owner*, shall promptly appoint a replacement. The *Design-Builder* shall replace Key Personnel, at any time or times, as instructed by the *Owner* for reasonable cause (including where the grounds for the request involves conduct which jeopardizes the safety and security of the *Place of the Work* or the *Owner’s* operations), within ten (10) *Working Days* of receiving such instruction with a replacement acceptable to the *Owner* acting reasonably.

- .5 If a Key Personnel is unavailable for the performance of the Work and a replacement with equal or better qualifications and experience pre-accepted by the Owner in writing has not been added to the Key Personnel by the *Design-Builder* in accordance with the timing set out in GC 3.7.3.4, the Owner may terminate the Contract in accordance with GC 7.2.4.3.

## GC 3.8 – LABOUR AND PRODUCTS

Amend paragraph 3.8.1 by adding at the end of the sentence “Notwithstanding the foregoing, the *Owner* shall provide any needed water, light, or power for the *Work* to the extent available from *Existing Facility*.”

Amend paragraph 3.8.2 by adding at the end of the sentence “Within fourteen (14) Days after the execution of this *Contract* (or such longer period as is agreed by the Parties), the *Design-Builder* shall provide *Owner* with a procurement plan for purchasing all required *Products*, for *Owner*’s review and approval, not to be unreasonably withheld.”

## GC 5.1 – FINANCIAL INFORMATION REQUIRED OF THE OWNER

Delete paragraphs 5.1.1 and 5.1.2 in their entirety and replace with “INTENTIONALLY DELETED.”

## GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT

Delete paragraphs 5.2.1 through 5.2.8 in their entirety and replace with the following:

“5.2.1 *Proper Invoices* shall be submitted by the *Design-Builder* to the *Owner* with copies to the *Payment Certifier* on account of the *Contract Price* as provided in Article A-5 of the *Agreement – PAYMENT* for amounts other than *Lien Holdback* and shall be made no more than once per calendar month as the *Design Services* and the *Work* progress.

5.2.2 The *Design-Builder* shall submit to both the *Owner* and the *Payment Certifier*, a breakdown of the amount claimed which shall be based on the *Design Services* and *Work* performed in such month and based on a schedule of values for the parts of the *Design Services* and of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment (the “**Schedule of**

**Values”**). Such breakdown shall be provided in such form and supported by such evidence as the *Owner* or the *Payment Certifier* may reasonably require. The *Payment Certifier* shall review the proposed amount set forth and accept such amount or provide feedback for re-submission.

- 5.2.3 The amount applied for in each *Proper Invoice* in respect of the Contract shall be the value, as set out in the Schedule of Values, of the *Design Services* and of the *Work* performed as of the last *Day* of the calendar month to which the *Proper Invoice*, less the value of the amount certified as performed in respect of all prior *Proper Invoices*. For clarity, the amount applied for in each *Proper Invoice* shall not include any amounts included in any claim notice under GC 6.6 unless and until the matter has been settled in accordance with GC 6.6.5.
- 5.2.4 The *Proper Invoice* shall be in the form agreed to by the *Owner* and the *Design-Builder* and shall, to the extent applicable:
  - .1 include the following information, to the extent such information is not included in the Schedule of Values:
    - .1 the *Design-Builder*’s name, telephone number and mailing address;
    - .2 remittance payment information;
    - .3 *Design-Builder*’s invoice number;
    - .4 the date of the *Proper Invoice* and the period during which the *Design Services* and the *Work* was performed;
    - .5 *Proper Invoice* number, including purchase order number and *Owner*’s project number;
    - .6 the *Owner*’s contract number under which the *Design Services* and the *Work* was performed, as applicable;
    - .7 contact information of the *Owner*’s representative;
    - .8 a description of the *Project*;
    - .9 percentage of the *Design Services* and the *Work* completed to date with supporting documents to substantiate such percentages;
    - .10 a description of the *Design Services* and the *Work* performed during the payment period and a specific itemizations of the *Design Services* and the *Work* with quantities (and supporting documents to substantiate such quantities) where appropriate;

- .11 the total Contract Price and the amount of the Contract Price previously certified;
  - .12 the value of the *Design Services* and of the *Work* and changes in the *Design Services* and the *Work* performed to date itemized by *Change Orders* and *Change Directives*;
  - .13 the amount payable for the *Design Services* and for the *Work* and changes in the *Design Services* and the *Work* performed during the payment period;
  - .14 an accurate accounting of the *Design Services* and of the *Work* completed to date, indicating percentage complete, percentage requested and cumulative percentage; and
  - .15 an accurate accounting of *Change Orders* or any other increases to the *Contract Price*.
- 2 include the Schedule of Values along with the corresponding cash flow which ties to the *Work* schedule;
  - 3 include a detailed description of expenditures under any cash allowances;
  - 4 copies of WSIB clearance certificates for the *Design-Builder*;
  - 5 include a notarized or commissioned statutory declaration on the CCDC 9A form confirming that all accounts for labour, subcontracts, *Products*, purchase orders, services, Construction Equipment and amounts owing to the *Subcontractors* and the *Suppliers* in connection with the *Project* have been paid in full up to and including the latest progress payment received, except for lawfully retained holdbacks. For amounts which are in dispute and which are listed on a schedule to such statutory declaration, when submitting the statutory declaration, the *Design-Builder* shall amend the CCDC 9A form accordingly to reflect the foregoing;
  - .6 for advance payment for *Products* committed to by the *Design-Builder* as agreed by the *Owner*, which *Products* shall include but are not limited to long lead items such as structural steel, precast and roofing materials, or delivered to the *Place of the Work* but not yet incorporated into the *Work*, subject to the *Owner's* written approval and any reasonable conditions as set out by the *Owner*:
    - .1 list such *Products* (and the advance payment calculations in respect thereof) as a separate line item; and

- .2 be supported by invoices and such other evidence as the *Payment Certifier* and the *Owner* may reasonably request to establish the value and delivery of such *Products*;
- .7 list the Lien Holdback and any other holdbacks provided for under this *Contract* each as a separate line item;
- .8 include evidence satisfactory to the *Owner* that there are no construction liens registered against or otherwise claimed in respect of any portion of the *Project*;
- .9 include the *Design-Builder's* registration number for Value Added Taxes and list the total amount of Value Added Taxes separate from the total amount payable during the payment period; and
- .10 include such other information and documents: (1) identified elsewhere in the *Contract*; or (2) as required under the *Construction Act*.

Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* and included in a *Proper Invoice* shall not be removed from the *Place of the Work*.

**5.2.5 A *Proper Invoice* may be revised by the *Design-Builder* after it has submitted the *Proper Invoice* to the *Owner*, if:**

- .1 the *Owner* agrees in advance to the revision;
- .2 the date of the *Proper Invoice* is not changed; and
- .3 the *Proper Invoice* continues to be in compliance with the requirements of GC 5.2.4.”

### **GC 5.3 – PROGRESS PAYMENT**

Delete paragraph 5.3.1 in its entirety and replace with the language as follows:

“5.3.1 After receipt by the *Owner* and the *Payment Certifier* of a *Proper Invoice* submitted by the *Design-Builder* in accordance with GC 5.2:

- .1 the *Payment Certifier* shall promptly confirm the date of receipt of the *Proper Invoice* with the *Owner*; and
- .2 if the *Payment Certifier*, or the *Owner* independent of the *Payment Certifier*, disputes all or any portion of the amount applied for in such *Proper Invoice*, the *Owner* shall promptly, but no later than fourteen (14) Days after the receipt of the *Proper Invoice* from the *Design-Builder*, provide the *Design-Builder* a notice of non- payment in the form and manner prescribed by the

*Construction Act* specifying the amount that is not being paid and detailing all of the reasons for such non-payment. If the *Owner* has reasonable grounds for believing that any amount included in preceding *Proper Invoices* has not been paid the *Owner* may withhold payment in respect of such amount from the current *Proper Invoice* until satisfactory evidence of payment is given by the *Design-Builder*.

- 532 The *Owner* shall, no later than twenty-eight (28) Calendar Days after the receipt of the *Proper Invoice*, make payment to the *Design-Builder* of the amount set out in the *Proper Invoice* less the amount disputed by the *Payment Certifier* or the *Owner* independent of the *Payment Certifier*, as applicable, that is set out in the notice of non-payment issued pursuant to GC 5.3.1.2. The *Owner* shall retain from such payment the *Lien Holdback* and any other holdbacks provided for under this *Contract*. Unless otherwise specified in the *Contract Documents*, no letter of credit or demand-worded holdback will be accepted or used to retain any part of the *Lien Holdback*.
- 533 For clarity, if the *Design-Builder* fails to submit a *Proper Invoice* to the *Owner* which is in compliance with the requirements of GC 5.2.4, the *Owner* shall not be required to make payment to the *Design-Builder* within the twenty-eight (28) Day period set out in GC 5.3.2. Such twenty-eight (28) Day period shall not commence until such time as the *Owner* has received from the *Design-Builder* a *Proper Invoice* in compliance with the requirements of GC 5.2.4.”

#### **GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK**

Delete paragraph 5.4.1 in its entirety and replace with the language as follows:

“5.4.1 When the *Design-Builder* considers that the *Work* is substantially performed, the *Design-Builder* shall prepare and submit to the *Payment Certifier* appropriate documents as required by the *Contract Documents* together with a written application for a review by the *Payment Certifier* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include this information does not alter the responsibility of the *Design-Builder* to complete the *Contract*.

Add the following at the end of paragraph 5.4.5

“Upon the issuance of a certificate of *Substantial Performance of the Work* or any designated portion thereof, the *Design-Builder* shall forthwith, as required by section 32(1) of the *Construction Act*, publish a copy of such certificate of *Substantial Performance of the Work* in the manner set out in the regulations. If the *Design-Builder* fails to publish a copy of such certificate of *Substantial Performance of the Work* within seven (7) Days after receiving a copy of the such certificate, the *Owner* may publish a copy of such certificate at the *Design-Builder*’s cost. Within thirty (30) Days following the issuance of a certificate of *Substantial*

*Performance of the Work or any designated portion thereof, the Design-Builder shall provide a list of items to be completed or corrected delivered to the Payment Certifier and the Owner and include an action list with respect to each such item.”*

Add new paragraphs 5.4.6, 5.4.7 and 5.4.8 as follows:

“5.4.6 The *Design-Builder* acknowledges and agrees that the *Work* will not be considered substantially performed until all of the items listed below in GC 5.4.6.1, 5.4.6.2 and 5.4.6.3 have been completed or provided. The *Design-Builder* further agrees that its failure to complete or to provide any of the following items will constitute sufficient grounds for the *Consultant* or the *Payment Certifier*, as applicable, to refuse to issue a certificate of *Substantial Performance of the Work*:

5.4.6.1 completion of all *Commissioning* to the reasonable satisfaction of the *Commissioning Agent*;

5.4.6.2 evidence that all life safety systems have been completed in accordance with the *Contract Documents*; and

5.4.6.3 evidence of approval to occupy the completed *Work*, certificates of compliance or other similar certificates from authorities having jurisdiction, if such authorities issue such approvals and certificates or their equivalent.

5.4.7 Prior to *Substantial Performance of the Work*, *Owner*, *Owner's designated representative or any other consultant designated by the Owner in writing* and *Design-Builder* shall schedule a walk-through of the *Work* to create a punch-list of any remaining items to be completed. Both *Owner*, *Owner's designated representative or any other consultant designated by the Owner in writing* and *Design-Builder* shall act reasonably in confirming such punch-list and *Owner's* acceptance of the *Work* at such time.

5.4.8 The *Design-Builder* agrees to use best efforts to provide to the *Owner*, coincident with *Substantial Performance of the Work* or as soon as reasonably possible thereafter, warranties, manuals and as-built records, in reasonably acceptable form. As-built records shall be provided in CAD format. The *Design-Builder* acknowledges and agrees that the final payment to be made by the *Owner* to the *Design-Builder* pursuant to GC 5.7.4 shall be subject to a holdback of fifty thousand dollars (\$50,000) until such items have been provided to the *Owner*.”

## **GC 5.5 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

Delete paragraphs 5.5.1 to 5.5.5 in their entirety and replace with the following:

“5.5.1 Thirty (30) Days prior to the date on which all liens that may be claimed against the *Lien Holdback* have expired or been satisfied, discharged or otherwise provided for under the *Construction Act* and provided the certificate of *Substantial*

*Performance of the Work* has been published in accordance with GC 5.4, the *Design-Builder* shall submit to the *Payment Certifier*, with a copy to the *Owner*, a *Proper Invoice* for the *Lien Holdback*, which shall, in addition to complying with the requirements of GC 5.2.4, include the following items in order to be considered a “*Proper Invoice*” for the purposes of GC 5.5.2:

- .1 the value of outstanding or incomplete *Design Services* or *Work*;
  - .2 a representation and warranty from the *Design-Builder* that, as of the date of the *Proper Invoice*, the only *Adjudications* in respect of disputes as described in GC 8.3.15 are *Adjudications* which the *Design-Builder* has provided *Notice in Writing* of to the *Owner* in accordance with GC 8.4.15.
- 552 After the receipt of a *Proper Invoice* from the *Design-Builder* in compliance with the requirements of GC 5.5.1, the *Payment Certifier* shall issue a certificate for payment of the *Lien Holdback* within ten (10) *Days* of receipt of the *Proper Invoice* for the *Lien Holdback*.
- 553 Subject to GC 5.5.4 and the *Construction Act*, the *Owner* shall, no later than the next *Working Day* after the date on which all liens that may be claimed against the *Lien Holdback* have expired or been satisfied, discharged or otherwise provided for under the *Construction Act*, make payment to the *Design-Builder* of the amount of the *Lien Holdback* set out in the *Proper Invoice*. Subject to the *Construction Act*, the *Owner* may retain out of the *Lien Holdback* any sums required by law to satisfy any liens against the *Design Services* and the *Work* and any other amount pursuant to GC 5.9.
- 554 The *Owner* may refuse to pay some or all of the *Lien Holdback* the *Owner* is required to pay to the *Design-Builder* pursuant to GC 5.5.3 if:
- .1 no later than forty (40) *Working Days* after publication of the certificate of *Substantial Performance of the Work* the *Owner* publishes, in the manner set out in the *Construction Act*, a notice in the form prescribed by the *Construction Act*, specifying the amount of the *Lien Holdback* that the *Owner* refuses to pay; and
  - .2 the *Owner* notifies the *Design-Builder*, in accordance with the *Construction Act*, of the publication of such notice.
- 555 For clarity, if the *Design-Builder* fails to submit a *Proper Invoice* to the *Payment Certifier* which is in compliance with the requirements of GC 5.5.1, the *Owner* shall not be required to make payment to the *Design-Builder* as set out in GC 5.5.3.

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

Delete paragraphs 5.6.1, 5.6.2 and 5.6.3 in their entirety and replace with “INTENTIONALLY DELETED.”

## GC 5.7 - FINAL PAYMENT

Delete paragraph 5.7.1 to 5.7.4 and replace with the following:

- “5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* is completed, the *Design-Builder* shall submit an application for final payment to the *Owner* and *Payment Certifier*.
- 5.7.2 The *Design-Builder*’s application for final payment submitted in accordance with GC 5.7.1 shall comply with the applicable requirements of GC 5.2.4 in order to be considered a “*Proper Invoice*” for the purposes of GC 5.7.5.
- 5.7.3 The *Payment Certifier* shall, no later than ten (10) *Days* after the receipt of the *Proper Invoice* from the *Design-Builder* submitted in accordance with GC 5.7.1, verify the validity of such Proper Invoice. If the *Payment Certifier* finds the *Proper Invoice* submitted in accordance with GC 5.7.1 is valid and in compliance with the requirements of GC 5.7.5, the *Payment Certifier* shall promptly issue a certificate for payment.
- 5.7.4 Subject to GC 5.7.5 and the *Construction Act*, the *Owner* shall make payment to the *Design-Builder* of the amount set out in the *Proper Invoice* in accordance with the *Construction Act*.
- 5.7.5 The *Owner* may refuse to pay some or all of the finishing portion of the *Lien Holdback* the *Owner* is required to pay to the *Design-Builder* pursuant to GC 5.7.4 if:
  - .1 no later than forty (40) *Days* after the date the contract is completed, abandoned or terminated, as applicable, the *Owner* publishes, in the manner set out in the *Construction Act*, a notice in the form prescribed by the *Construction Act*, specifying the amount of the finishing portion of the *Lien Holdback* that the *Owner* refuses to pay; and
  - 2 the *Owner* notifies the *Design-Builder*, in accordance with the *Construction Act*, of the publication of such notice.”

## GC 5.8 – DEFERRED WORK

Add new paragraphs 5.8.2 and 5.8.3 as follows:

- “5.8.2 Subject to the terms of GC 7.2 regarding default notices, and notwithstanding the provisions of GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK and GC 5.7 FINAL PAYMENT, the *Owner* may, subject to the *Construction Act*, withhold from the payment of a progress payment or the final payment an amount to the extent as may be necessary in the opinion of the *Owner*, acting reasonably, to protect it from loss because of:

- .1 defective portions of the *Work* which are known to exist and not rectified by the *Design-Builder* in accordance with this *Contract*;
  - .2 errors and/or omissions in the *Design Services* which are known to exist and not rectified by the *Design-Builder* in accordance with this *Contract*; or
- 5.8.3 Where the *Owner* has withheld payment of any portion of the *Contract Price* pursuant to the provisions of this *Contract*, the *Owner*, subject to the provisions of this Contract, shall apply such portion of the *Contract Price* withheld towards the cost of any required remedial work to correct known defects or deficiencies in the *Work* or to offset amounts due and payable to the *Owner*, as the case may be.”

## **GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES**

Add new GC 6.1.3 as follows:

“6.1.3 For all changes in the *Work*, the parties, acting in good faith, will make reasonable efforts to agree on a lump-sum price for all such changes in the *Work*. In the event that the parties do not reach agreement on a lump-sum price for any change prior to the *Owner* requiring the *Design-Builder* to proceed with the change as a *Change Directive* pursuant to GC 6.3.4, the cost of expenditures to perform the *Work* attributable to the change shall be determined as set out in GC 6.3.7 and, in addition to the cost of such expenditures, the *Owner* shall pay the *Design-Builder* a percentage for overhead and profit equal to:

- (i) for changes in the *Work* performed by the *Design-Builder*, five percent (5%) of the aggregate amount of the cost of all such expenditures as overhead and five percent (5%) of the aggregate amount of the cost of all such expenditures as profit; and
- (ii) for changes in the *Work* performed by a *Subcontractor* or a sub-subcontractor, five percent (5%) of the amount of such *Work* performed by the *Subcontractor* or sub-subcontractor, as applicable, as profit.

For clarity, the noted mark-ups include the mark-up of all *Subcontractors* and others performing work in respect of a particular change. The *Design-Builder* shall provide to the *Owner* full documentary back-up information evidencing the actual labour, material and other costs incurred by or on behalf of the *Design-Builder* in performing the change.”

## **GC 6.5 - DELAYS**

Amend paragraph GC 6.5.3 by:

- (a) replacing the words “abnormally adverse weather conditions” with the words “*Abnormally Adverse Weather Conditions*”.
- (b) adding the below language as the final sentence:

“Further, if instructed by the *Owner* in such circumstances, *Design-Builder* will employ commercially reasonable acceleration measures as may be necessary in order to recapture any delay, such as overtime, double shifts, or the use of additional labour and/or equipment, and the costs of such acceleration measures shall be dealt with as a change in accordance with GC 6.1.”

Add new paragraphs GC 6.5.6 and 6.5.7 as follows:

“6.5.6 Subject to GC 6.5.1, 6.5.2 and 6.5.3, the *Design-Builder* acknowledges and agrees that time is of the essence with respect to the *Work* and with respect to the *Project*, as a whole, and the *Design-Builder* waives any claim for an extension of the *Contract Time* or compensation for costs incurred to the extent that the *Design-Builder* is delayed or negatively impacted in the performance of the *Work* by an event caused by an action or omission of the *Design-Builder* or any persons for whom the *Design-Builder* is, in law, responsible, including its *Subcontractors* and *Suppliers* (a “*Design-Builder Caused Delay Event*”). If requested by the *Owner*, the *Design-Builder* shall immediately make best efforts by taking the necessary corrective actions to recoup any delay to the extent caused by a *Design-Builder Caused Delay Event*, such as using additional labour and equipment and working additional shifts and/or overtime, and the costs of such measures shall be to the account of the *Design-Builder*.”

## **GC 7.2 – OWNER’S RIGHT TO TERMINATE THE DESIGN-BUILDER’S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT**

Add new paragraphs GC 7.2.7 to GC 7.2.11 as follows:

“7.2.7 Notwithstanding any other provision in the *Contract Documents*, the *Contract* may be terminated by the *Owner* without cause. Any such termination shall be effected by delivery to the *Design-Builder* of a notice of termination, specifying the date upon which such termination becomes effective. The *Owner’s* entitlement to so terminate the *Contract* shall be absolute and unconditional and exercisable by the *Owner* in its sole and absolute discretion.

In the event of any termination by the *Owner* pursuant to paragraph 7.2.7, the *Design-Builder* shall only be entitled to payment of the following amounts:

that portion of the *Contract Price* relating to *Work* performed prior to the termination date, as certified by the *Payment Certifier*; plus

- .1 Subject to GC 7.2.10, *Subcontractor* and sub-subcontractor cancellation costs (which costs shall not include loss of profit claims) reasonably incurred by the *Design-Builder* as the result of such termination; provided the *Design-Builder* has substantiated such costs to the *Owner's* reasonable satisfaction and after the *Owner* has reviewed the details thereof; plus
  - .2 subject in all cases to the *Owner* being informed of all details relating thereto and the prior written approval of the *Owner* being obtained (which approval may not be unreasonably withheld), reasonable demobilization costs defined to include equipment and office dismantling, transportation to *Design-Builder's* storage facility, lease or rental cancellation costs, transportation of the *Design-Builder's* employees to their home offices, provided each such demobilization cost shall be reasonable and substantiated (to the *Owner's* reasonable satisfaction) by the *Design-Builder*.
- 72.9 Except as described in paragraph 7.2.8, the *Design-Builder* shall not be entitled to any additional reimbursement on account of any such termination including indirect, special, consequential or other damages, including loss of profits, loss of opportunity or loss of productivity, notwithstanding any other provision of the *Contract Documents*.
- 72.10 In the event of any termination by the *Owner*, *Owner* shall upon notice to *Design-Builder* and the applicable *Subcontractor*, *Supplier*, *Consultant* or Other Consultant, have the right to take an assignment of any or all contracts with *Subcontractors*, *Suppliers*, *Consultant* or Other Consultants.

If *Owner* purports to terminate the *Contract* pursuant to paragraphs 7.2.1 or 7.2.4 but it is later determined by a court of competent jurisdiction or arbitrator that such termination was not valid, such termination shall be deemed to be a termination pursuant to paragraph 7.2.7 and *Design-Builder's* sole remedy shall be as set out in paragraph 7.2.8.

- 72.11 The terms of the *Contract*, which expressly or by their nature are intended to survive the termination or discharge of the *Contract*, shall survive such termination or discharge including GC 12.5 - WARRANTY.”

#### **ADD NEW GC 7.4 – TERMINATION NOTICE**

“GC 7.4 Termination Notice

- 7.4.1 If the *Contract* is terminated, by the *Owner* or the *Design-Builder*, as the case may be, the party terminating the *Contract* shall publish, in the manner set out in the *Construction Act*, a notice of the termination in the form prescribed by the *Construction Act* and, for the purposes of this section, the date on which the

*Contract* is terminated is the termination date specified in the *Notice in Writing* delivered by such party to the other party pursuant to the *Contract*.”

## **GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION**

The words “Working Days” in the whole GC 8.1 are replaced by the word “Days”.

Amend paragraph 8.1.5 by replacing “Rules of Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposed closing or bid closing” with “*Rules of Mediation and Arbitration*, as applicable”

Amend paragraph 8.1.5.2 by replacing the words “either party by *Notice in Writing* requests” with “both parties agree”

Amend paragraph 8.1.6 by replacing “Rules of Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposed closing or bid closing” with “*Rules of Mediation and Arbitration*, as applicable”

Amend paragraph 8.1.7 by adding “or the *Payment Certifier*, as applicable” at the end of the paragraph.

Amend paragraph 8.1.8 by replacing “Rules of Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of proposed closing or bid closing” with “*Rules of Mediation and Arbitration*, as applicable”

## **GC 8.3 – ADJUDICATION**

Add new paragraph 8.3 as follows:

“8.3.1 At any time prior to the completion of the *Contract* either party may, by providing a *Notice of Adjudication* to the other party, refer a *Dispute* to *Adjudication* by an *Adjudicator*, provided such *Dispute* is in respect of the subject matter described in section 13.5(1) of the *Construction Act*.

8.3.2 All *Adjudications* shall proceed in accordance with the provisions of the *Construction Act* and the additional procedures set out in this GC 8.3, subject to the exercise of the powers provided to the *Adjudicator* under section 13.12 of the *Construction Act*.

8.3.3 The seat of the *Adjudication* shall be in Toronto, Ontario.

8.3.4 In addition to the requirements of section 13.8 of the *Construction Act*, if the subject matter of a *Dispute* between the *Owner* and the *Design-Builder* is the same or includes the subject matter of disputes between:

.1 the *Design-Builder* and the *Subcontractors* and/or *Suppliers* that are to be adjudicated in separate *Adjudications*, if a *Subcontractor* and/or *Supplier*

does not agree to a consolidated *Adjudication*, the *Owner* shall be entitled, in its sole and absolute discretion, to direct the *Design-Builder* to, and the *Design-Builder* shall, require the consolidation of the *Adjudication* through the exercise of the *Design-Builder's* right pursuant to section 13.8(2) of the *Construction Act*; and

- .2 the *Owner* and other contractors engaged by the *Owner* to perform work on the improvement that are to be adjudicated in separate *Adjudications*, the *Design-Builder* hereby acknowledges and agrees to the consolidation of the separate *Adjudications* if the *Owner* requires the consolidation of the separate *Adjudications* and such other contractor have also agreed to the consolidation of the separate *Adjudications*.

83.5 The *Adjudicator* nominated by the party issuing the *Notice of Adjudication* shall:

- .1 have relevant qualifications and experience with respect to the *Project* or *Projects* of a similar nature and magnitude, to the *Project*;
- .2 be independent of and at arm's length to the *Design-Builder*, the *Owner* and any other Person having an interest in the *Project* or any of the *Contract Documents*; and
- .3 have no conflict of interest relating to the parties or the *Dispute*.

83.6 The party issuing the *Notice of Adjudication* shall ensure that in addition to the requirements of section 13.11 of the *Construction Act*, the copy of the *Contract* and any other documents delivered to the party that received the *Notice of Adjudication* pursuant to section 13.11 of the *Construction Act* shall satisfy the following requirements:

- .1 include a written statement of such party's case including reasons why it is entitled to the redress sought;
- .2 be delivered to the other party in the manner as required by the *Adjudicator*;
- .3 if the contract and such documents have an aggregate file size in excess of twenty (20) MB, be delivered to the other party on a USB flash drive or using a secure electronic document exchange service in a searchable format; and
- .4 include an index of documents with identifying information (for example, date, document description, author/recipient).

83.7 The *Design-Builder* and the *Owner* hereby acknowledge and agree that:

- .1 they shall, immediately after the appointment of the *Adjudicator*, either through the agreement of the parties or by the *Authority*, deliver a written

agreement requesting that the *Adjudicator* provide the party that received the *Notice of Adjudication* no less than fourteen (14) *Days* from the date of receipt of the documents pursuant to section 13.11 of the *Construction Act* to respond;

- 2 if the documents delivered pursuant to section 13.11 of the *Construction Act*:
  - .1 other than the *Contract Documents*, exceed 20 documents or 200 single sided pages in the aggregate; or
  - .2 seek monetary relief in excess of two hundred fifty thousand dollars (\$250,000) exclusive of Value Added Taxes. they shall, immediately after the receipt of such documents, deliver to the *Adjudicator* a written agreement requesting that the *Adjudicator* provide the party that received the *Notice of Adjudication* no less than thirty (30) *Days* from the date of receipt of such documents to respond and extend the deadline for the *Adjudicator* to make its determination to no less than thirty (30) *Days* after the deadline for the delivery of the response by such party; and
  - .3 if the documents delivered pursuant to section 13.11 of the *Construction Act* are delivered at any time between the period of December 24th to January 2nd they shall, immediately after the receipt of such documents, deliver to the *Adjudicator* a written agreement requesting that the *Adjudicator* exclude the period between the date of delivery of such documents and January 2nd from the counting of *Days* for the purposes of the *Adjudication* and, as necessary to give effect to such exclusion, extend the deadline for the party that received the *Notice of Adjudication* to respond and the deadline for the *Adjudicator* to make its determination.
- 8.3.8 The *Adjudicator* shall be entitled to grant any remedy or relief which is consistent with the intentions of the parties expressed under the *Contract* but shall not be entitled to exercise the power of prerogative writs.
- 8.3.9 In addition to the requirements of section 13.19(1) of the *Construction Act*, a requirement to pay an amount in accordance with section 13.19 of the *Construction Act* is subject to GC 13.
- 8.3.10 Other than in accordance with the *Construction Act*, any determination and reasons of an *Adjudicator* on the *Project* shall not be relied on by any upon by thirdparties and shall not be relied on by either party on any other projects. The determinations of any adjudicators on any other projects shall not be relied on by the parties in any *Adjudication* on the *Project*.

- 83.11 If a *Dispute* is referred to *Adjudication* and such *Dispute* is already the subject of a court proceeding or other form of dispute resolution process agreed by the parties pursuant to the *Contract*, but which has not been finally determined, the party responding to the *Notice of Adjudication* shall be entitled, in its sole and absolute discretion, to choose to:
- .1 terminate, suspend or proceed with such mediation or arbitration, as applicable, and if the responding party elects to terminate such mediation or arbitration, as applicable, the party referring the *Dispute* to *Adjudication* shall be responsible for all costs of the mediator or arbitrator, as applicable, up to the date of receipt of the *Notice of Adjudication*; or
  - 2 stay or proceed with such court proceeding, and if the responding party elects to stay such court proceeding, the party referring the *Dispute* to *Adjudication* shall execute all further documents and do all other lawful things necessary to give full effect to such stay, and after the *Adjudicator* makes its determination, either party may move to lift such stay, which the other party shall consent to.
- 83.12 Unless the parties to the *Contract* agree, the *Adjudicator* shall not be appointed arbitrator in any subsequent arbitration between such parties in respect of the *Dispute*.
- 84.13 The *Adjudicator* is appointed to determine the *Dispute* or *Disputes* between the parties to the *Adjudication* and such determination may not be relied upon by third parties to such *Adjudication*, to whom the *Adjudicator* shall owe no duty of care.
- 84.14 The parties agree to keep confidential all materials in the *Adjudication* created for the purpose of the *Adjudication* and all other documents produced by the other party in the *Adjudication* not otherwise in the public domain, and not to disclose or use such material for any purpose other than in connection with the *Adjudication*, except and to the extent that disclosure may be required:
- .1 of a party pursuant to applicable laws or any governmental authority; or
  - .2 by the *Owner* to its legal, financial and other advisors in connection with the *Project*.
- 84.15 The *Design-Builder* shall, in respect of any dispute between:
- .1 the *Design-Builder* and a *Subcontractor*, *Supplier*, *Consultant*, or *Other Consultant*; or
  - 2 a *Subcontractor* or *Supplier* (at any tier) and another *Subcontractor* or *Supplier* (at any tier), no later than five (5) *Working Days* after:

- 3 the provision of a *Notice of Adjudication*, deliver a notice in writing to the *Owner* setting out the date which such *Notice of Adjudication* was provided; and
- 4 the receipt by the *Adjudicator* of the documents under section 13.11 of the *Construction Act* in respect of such dispute, deliver a notice in writing to the *Owner* setting out the date which such *Adjudicator* received such documents.”

## GC 9.1 – PROTECTION OF WORK AND PROPERTY

Amend paragraph 9.1.1 and 9.1.3 by replacing “the Owner’s property and property adjacent to the Place of the Work” with “the Owner’s property and property adjacent to, in the vicinity of or proximate to the Place of the Work”.

Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1 as follows:

9.1.1.1 errors in the *Contract Documents* which the *Design-Builder* could not have discovered applying reasonable Standard of Care.

Add at the end of paragraph 9.1.3 the words “or for paying the cost of making good such damage if such damage is made good by another contractor as a result of the *Design Builder*’s failure to make good such damage.”.

Add new paragraph 9.1.5 as follows:

“9.1.5 The *Design-Builder* acknowledges that the *Work* will be carried on in or adjacent to an operating facility (the “**Existing Facility**”) and, as a result, the *Design-Builder* agrees to carry out the *Work* in a way that does not unnecessarily interfere with the operation of the *Existing Facility*. The *Design-Builder* also acknowledges that the *Work* may entail carrying out tie-ins and interconnections to the *Existing Facility* which will require the *Design-Builder* to perform certain *Work* within the *Existing Facility*. The *Design-Builder* acknowledges that all major utility tie-ins or any process that might impact normal operation, as determined by the Parties acting reasonably, at the *Existing Facility* must be completed during non-operational times, and that the *Design-Builder* has carried an allowance for premium time. All shut-offs and any necessary interference must be coordinated with the *Owner* in a three-week look ahead schedule, unless in the case of an emergency. The *Design-Builder* further acknowledges that it shall, with respect to such work, be required to comply with *Owner*’s health and safety policies for the *Existing Facility*, provided that the *Owner*, its employees, contractors, agents, invitees, and tenants must comply with any safety rules or guidelines set by *Design-Builder* pursuant to GC 9.4.”

## GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

Add in paragraph 9.2.6 “or if such toxic or hazardous substances should have been discovered by the Design-Builder through the fulfillment of its responsibilities pursuant to GC 1.6,” after the words “Design-Builder is responsible”.

Add in paragraph 9.2.7 “and such toxic or hazardous substances would not have been discovered by the Design-Builder through the fulfillment of its responsibilities pursuant to GC 1.6,” after the words “Design-Builder is responsible”.

Add in paragraph 9.2.8 “or such toxic or hazardous substances should have been discovered by the Design-Builder through the fulfillment of its responsibilities pursuant to GC 1.6,” after the words “Design-Builder is responsible”.

Add new paragraphs 9.2.10 and 9.2.11 as follows:

92.10 The *Design-Builder* shall be familiar with, and comply with, the workplace hazardous materials information system. The *Design-Builder* shall ensure that all employees and *Subcontractors* and anyone for whom they are responsible who work with or in proximity to hazardous material fully understand all potential hazards and have been thoroughly trained to deal with any emergencies. Without limiting the generality of the foregoing, all employees and *Subcontractors* and anyone for whom they are responsible shall be able to:

- .1 Recognize and understand the labelling on hazardous materials; and
- .2 Understand material safety data sheets and are knowledgeable on how to safely use, store, handle and dispose of hazardous materials.

The *Design-Builder* shall ensure all material safety data sheets pertinent to the completion of the *Work* are at the *Place of the Work*.

92.11 The *Design-Builder* shall not allow within the Place of the Work, any toxic or hazardous materials in excess of those permitted under environmental laws, and that should it be shown that the Place of the Work (other than by the actions of the *Owner* or those for whom *Owner* is in law responsible for) contain any toxic or hazardous materials in excess of those permitted under environmental laws, *Design-Builder* shall forthwith remove same, or deal with same in accordance with all applicable laws, in good and proper manner, in accordance with all proper procedures, and certify via independent environmental engineers as to completion of same, all such work to be carried out by *Design-Builder* at its sole cost.”

## GC 9.4 - CONSTRUCTION SAFETY

Delete paragraph 9.4.1 and replace with the following:

“9.4.1 The *Design-Builder* shall assume overall responsibility for, and shall be solely responsible for, construction health and safety at the *Project* and the *Place of the Work* (including for the *Work* and the *Design Services* and any other work or other activities conducted or performed at the *Project* or *Place of the Work* by any person whatsoever including the *Design-Builder*, the *Consultant*, *Other Consultants*, the *Subcontractors*, the *Suppliers*, the sub-subcontractors, *Owner*’s own forces, other contractors, or any other person employed by any of them, and each of their respective employees, directors, officers, agents, and invitees, and whether or not any contractual relationship exists between the *Design-Builder* and such person (collectively the “**Project Work**”)) and for compliance with the rules, regulations, and practices required by, and other requirements of, the *OHSA*. ”

Add new paragraphs 9.4.2, 9.4.3, 9.4.4, 9.4.5, 9.4.6 and 9.4.7 as follows:

9.4.2 Without limiting the generality of paragraph 9.4.1,

- .1 the *Design-Builder* acknowledges and agrees that the *Design-Builder* is the *Constructor* in respect of the *Project*, the *Project Work*, and the *Place of the Work* and shall carry out and fulfill the duties and responsibilities of the *Constructor* and *Employer*, and those obligations set out in paragraph 9.4.1, from the date of commencement of the *Work* until completion of the *Work*;
- .2 the *Design-Builder*’s duties, obligations, and responsibilities shall also include carrying out and fulfilling the *Owner*’s duties and responsibilities as an *Employer*, in relation to workplace safety in respect of the *Project*, the *Project Work*, and the *Place of the Work*;
- .3 the *Design-Builder* acknowledges and agrees that the *Design-Builder* has provided and will continue to provide the appropriate health and construction safety instruction and training to the *Design-Builder*’s employees, *Subcontractors*, *Consultant*, *Other Consultants* and *Suppliers* attending at the *Place of the Work*;
- .4 the *Design-Builder* shall prepare and submit the health and safety precautions, policies, plans and programs with respect to the *Project*, the *Project Work*, and the *Place of the Work* for *Owner*’s review within ten (10) *Working Days* following the date of the Agreement. The *Design-Builder* shall incorporate any comments of the *Owner* into all health and safety precautions, policies, plans and programs prior to the commencement of the *Work* (such precautions, policies, plans and programs are, collectively, the “**Safety Plans and Programs**”). Such review by the *Owner* (and any comments of the *Owner*) shall not in any way limit or reduce any of the *Design-Builder*’s obligations or responsibilities as the *Constructor*. Without limiting the generality of the foregoing, the *Safety Plans and Programs* shall be specific to the *Project*, the *Project Work*, and the *Place of the Work* and the *Safety Plans and Programs* shall address anticipated potential hazards and the measures to address them;

- .5 the *Design-Builder* shall maintain, implement, supervise and comply with, and shall cause the *Design-Builder's* employees, *Subcontractors, Consultant, Other Consultants and Suppliers* to comply with, all *Safety Plans and Programs*;
  - .6 the *Design-Builder* shall report to the *Owner* all health and safety violations of the *Design-Builder's* health and safety program and plan and any violations of the *OHSA* and any orders or charges from the Ontario Ministry of Labour, Immigration, Training and Skills Development that are related to the *Work* and the *Design Services*, including *Design-Builder's* response and remedial actions, no later than five (5) *Working Day(s)* after such incident; and
  - .7 the *Design-Builder* shall carry out and perform regular audits to confirm that the *Project*, the *Project Work*, and the *Place of the Work* comply with all *Safety Plans and Programs* and *OHSA*. Without limiting the generality of the foregoing, the *Design-Builder* shall report any non-compliance to the *Owner* and the action required to correct any such non-compliance and the *Design-Builder* shall implement the corrective action to correct such non-compliance; and
  - .8 the *Design-Builder* shall promptly report to the *Owner* any accident or emergency that relates to the *Work*. The *Design-Builder* shall cooperate fully with the *Owner* with respect to dealing with any claim resulting from an accident or emergency. In the event of an accident or emergency threatening health, life or property, the *Design-Builder*, without instruction or authorization from the *Owner's Advisor* or *Owner*, shall take such action as may be necessary to save lives and protect persons from injury, and, this being done, to protect and preserve property.
- 9.4.3 Prior to the commencement of the *Design Services* or upon request by the *Owner*, the *Design-Builder* shall submit to the *Owner*:
- .1 documentation setting out the *Design-Builder's* in-house safety programs; and
  - .2 a copy of the "Notice of Project" filed with the Ministry of Labour, Training, and Skills Development naming itself as the *Constructor*.
- 9.4.4 The *Owner* has authority to stop the progress of the *Work* whenever in the reasonable opinion of the *Owner* such stoppage is necessary to ensure the safety of life, or of the Existing Facility, if the *Design-Builder* has not resolved the safety or life issue within a 24-hour period following a written notice by the *Owner* to that effect. However, and for greater certainty, any such action by the *Owner* is a temporary, emergency measure which the *Owner* and *Design-Builder* agree, does not derogate from, limit, relieve or otherwise alter the *Design-Builder's* obligations as constructor for the *Project*.

- 9.4.5 The *Design-Builder* represents and warrants that the *Design-Builder* and any *Subcontractors, Consultant, Other Consultants* and *Suppliers* have not received any charges or violations issued by the Ministry of Labour, Training, and Skills Development, or equivalent, and have not been convicted of such charges and violations, in the current year and in the prior 5 years.
- 9.4.6 The *Design-Builder* acknowledges and agrees that the *Design-Builder* was selected by the *Owner* based on a number of key factors including: (i) the *Design-Builder's* skill, knowledge, experience, qualifications and expertise relating to workplace safety in respect of similar projects in Ontario; (ii) *Design-Builder's* record of orders, charges, convictions, and violations issued by the Ontario Ministry of Labour, Immigration, Training and Skills Development; and (iii) the *Design-Builder's* ability to fulfill its obligations and responsibilities set forth in GC 9.4 of the *Contract*, on which skill, knowledge, experience, and expertise the *Owner* expressly relies. The *Design-Builder* shall implement a pre-selection process with respect to any permitted *Subcontractors* that includes consideration of the key factors above.
- 9.4.7 The *Owner* shall indemnify and save harmless the *Design-Builder* from and against any and all liability, cost, damage or loss, including legal fees and fines, related to or arising out of any and all acts or omissions of the *Owner* or others for whom they are responsible which contravene the *Design-Builder's* health and safety program.”

## **GC 10.1 – TAXES AND DUTIES**

Amend paragraph 10.1.1 by deleting the following words: “in effect at the time of the proposal closing or bid closing”.

Amend paragraph 10.1.2 by replacing the words “after the time of the proposal closing or bid closing shall” with “shall not”.

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

Delete paragraph 10.2.3 in its entirety and replace with the following:

“10.2.3 Without limiting the generality of any other provision in the *Contract*, but subject to GC 3.12.3, GC 3.12.4 and GC 10.2.9, the *Design-Builder* shall obtain and pay for, at its sole expense and cost, all approvals, licences, certificates, including building permits, other utilities and telecommunication companies, curb cut and road cut permits, hydro approvals, Ministry of Labour approval for the performance of the *Work* and the use and occupation of the *Work* by the *Owner* in accordance with the *Contract Documents*. Notwithstanding the foregoing, the *Owner* acknowledges that the Contract Price includes the cost of a utility connection assessment, but does not include any additional utility-related costs or connection costs, which will be additional costs payable by the *Owner*”

Delete paragraph 10.2.4 in its entirety and replace with the following:

“10.2.4 The *Design-Builder* shall give the required notices and comply, and shall require its employees, agents, *Subcontractors*, *Suppliers* and anyone for whom they are responsible to comply, with all laws, ordinances, guidelines, standards, permits,

statutes, by-laws, rules, regulations, or codes and all of the *Owner's* policies and procedures which are or become in force and are applicable to the performance of the *Work* including all those relating to the Supplier Code of Conduct, preservation of the public health, occupational health and safety and to construction safety.”

Delete paragraph 10.2.6 in its entirety and replace with the following:

“10.2.6 If the *Design-Builder* fails to notify the *Owner* and the *Consultant* in writing, fails to obtain direction as required in GC 10.2.5, and/or performs work that it knows or ought to have known, acting reasonably, that contravenes any laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes, the *Design-Builder* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, guidelines, standards, permits, statutes, by-laws, rules, regulations, or codes.”

Amend paragraph 10.2.7 as follows:

- (a) replace “If” with “Subject to GC 10.1, if”; and
- (b) replace “time of proposal closing or bid closing” with “date of the Agreement”.

Add new paragraph 10.2.8 and 10.2.9 as follows:

“10.2.8 The *Owner* and the *Design-Builder* intend that the *Contract* be governed by and interpreted in accordance with Ontario law.

10.2.9 The *Design-Builder* will be responsible and pay for obtaining any and all of the permits and fees typically obtained by a Design-Builder or general contractor, including any permits from authorities have jurisdiction that are required in the normal course of the performance of the *Work* or otherwise as set forth in the Contract Documents.

## **GC 11.1 - INSURANCE**

Delete paragraph 11.1 in its entirety and replace with the following:

### **“GC 11.1 INSURANCE BY DESIGN-BUILDER**

11.1.1 Commercial General Liability: The *Design-Builder* shall obtain, maintain and pay for commercial general liability insurance with limits of \$5,000,000 per occurrence and in the aggregate with a deductible amount not more than \$10,000. The policy shall provide off-site liability coverage and Difference in Conditions (DIC) / Difference in Limit (DIL). The commercial general liability insurance shall provide products / completed operations coverage for two (2) years following completion of the *Work* under this *Contract*. The policy shall include the *Owner* as additional insured but only for liability

arising out of the *Design Services* and *Work* of the *Design-Builder* under this *Contract*.

- 11.1.2 Automobile Liability: The *Design-Builder* shall provide, maintain and pay for automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy shall have limits of \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property covering all vehicles owned or leased by the *Design-Builder*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Design-Builder* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Design-Builder*.
- 11.1.3 All risk contractor's equipment insurance covering the full replacement value of all equipment used by the *Design-Builder* in the performance of the *Work*. Such policy shall include a waiver of subrogation in favour of *Owner*.
- 11.1.4 Excess Liability: The limits of liability insurance required in GC 11.1 may be achieved through any combination of primary and excess liability insurance policies provided, however, that excess liability insurance policies are 'following- form' to the underlying primary coverage.
- 11.1.5 Evidence of Insurance: The *Design-Builder* shall provide *Owner* with certificate(s) of insurance, satisfactory to *Owner*, acting reasonably, evidencing all insurance required herein.
- 11.1.6 Failure to Provide: If the *Design-Builder* fails to provide or maintain insurance to be taken out by the *Design-Builder* as required by the Contract Documents, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Design-Builder* and the Consultant. The *Design-Builder* shall pay the cost thereof to the *Owner* on demand or the *owner* may deduct the cost from the amount which is due or may become due to the *Design-Builder*.
- 11.1.7 Jurisdiction: All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the place of the Project."

## GC 11.2 – CONTRACT SECURITY

Delete paragraph 11.2.1 in its entirety and replace with the following:

- “11.2.1 If required by the *Owner*, on the date of execution of this *Contract*, the *Design-Builder* shall provide to the *Owner* a performance bond and a labour and material payment bond, each in an amount equal to fifty percent (50%) of the *Contract Price*, covering the performance of the *Contract*, including

the *Design-Builder's* requirements with respect to the correction of deficiencies and the fulfillment of all warranties.”

Add new paragraph 11.2.3 as follows:

“11.2.3 The *Design-Builder's* out-of-pocket cost of the bonding referred to in GC 11.2.1 shall be reimbursable by *Owner* (without mark-up).”

## GC 12.2 – INDEMNIFICATION

Delete paragraph 12.2.1 in its entirety and replace with the following:

“12.2.1 The *Design-Builder* shall indemnify the *Owner*, the *Consultant*, the *Payment Certifier*, any tenants and their respective officers, directors, partners, agents, employees, servants, insurers, advisors, consultants, contractors, successors and assigns (collectively the “**Indemnified Parties**”), and save them harmless from and against any and all claims, demands, losses, costs, damages, actions, causes of action, suits or proceedings and all other liabilities, losses and expenses including bodily injury or death to any person or loss or damage to property, court costs, interest, legal fees, adjusting fees and disbursements made against or suffered or incurred by the *Indemnified Parties*, to the extent caused by:

- .1 the failure by the *Design-Builder* to perform any of the *Design-Builder's* obligations under the *Contract Documents*;
- .2 the infringement or an alleged infringement of any intellectual property right (including copyright and patents) of any *Person* by a *Design-Builder Party* in connection with the *Design Services* and the *Work* including the *Products*;
- .3 any defective or hazardous goods that were not in compliance with any law or contemplated in the *Contract Documents* used by the *Design-Builder Parties*;
- .4 any form of theft, fraud, or illegal activity by a *Design-Builder Party*;
- .5 any deliberate act of wrongdoing or criminal or other wilful misconduct (including intentional misrepresentation) or fraud of the *Design-Builder Parties*;
- .6 any negligence by a *Design-Builder Party* directly or indirectly arising or contributing to or alleged to arise out of the performance of or the failure to perform the *Work*, or out of the conditions of the work, the job site, Existing Facility used in connection with the performance of the *Work* and under the control of the *Design-Builder* under this *Contract*;

- .7 any negligence, errors or omissions, or monies owing to the Owner for claims payable under this indemnity due to failure of any insurance required of Subcontractors, Suppliers or sub-subcontractors thereof as retained by Design-Builder;
- .8 any failure or alleged failure by the *Design-Builder*, or others for whom the *Design-Builder* is responsible, to comply with the health and safety requirements at the *Project*, for the *Project Work*, and at the *Place of the Work* as set out in GC 9.4 – CONSTRUCTION SAFETY; and
- .9 any discharge, escape, emission, leak, deposit, dispersion, or migration into the environment (“**Release**”), or threatened Release, of any toxic or hazardous substances or material, which has or may have an adverse effect upon the environment or human health or safety and which is connected, in any way, with the performance of the *Work* in any of the following circumstances:
  - .1 where the *Release* or threatened *Release* is due to the *Design-Builder*’s failure to comply with the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES; or
  - .2 where the *Release*, or threatened *Release*, is in relation to any other such substances or materials which have been created, brought or introduced to the *Place of the Work* by anyone performing the *Work*.
- .9 the failure by the *Design-Builder* to perform any of the *Design-Builder*’s obligations under GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES or GC 9.5 – MOULD,

but shall not include any claims arising solely from the negligence of the party asking to be defended, indemnified or saved harmless. Paragraph 12.2.1 in no way limits any other liability or obligation of the *Design-Builder* in respect of the *Contract*.”

Delete paragraphs 12.2.2 and 12.2.3 in their entirety and replace each with “INTENTIONALLY DELETED.”

#### **GC 12.4 – WAIVER OF CLAIMS**

Delete paragraph 12.4 in its entirety and replace with the following:

#### **“12.4 WAIVER OF CLAIMS**

- 12.4.1 Subject to any rights or remedies provided by the *Construction Act*, as of the date of the final payment, the *Design-Builder* expressly waives and releases the *Owner* from all claims against the *Owner* including those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing in compliance with the *Contract Documents* prior to the *Design-Builder's* application for final payment and still unsettled;
  - .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or GC 10.3 PATENT FEES;
  - .3 indemnification for claims advanced against the *Design-Builder* by third parties for which a right of indemnification may be asserted by the *Design-Builder* against the *Owner* pursuant to the provisions of this *Contract*;
  - .4 claims for which a right of indemnity could be asserted by the *Design-Builder* pursuant to the provisions of paragraphs 12.2.4 or 12.2.5 of GC 12.2 – INDEMNIFICATION; and
  - .5 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.2 Subject to any rights or remedies provided by the Construction Act, as of the date of the final payment, the Owner expressly waives and releases the Design-Builder from all claims against the Design-Builder including those that might arise from the negligence or breach of contract by the Design-Builder except:
- .1 those made in writing in compliance with the Contract Documents prior to final payment and still unsettled;
  - .2 those arising from the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or GC 10.3 PATENT FEES;
  - .3 indemnification for claims advanced against the Owner by third parties for which a right of indemnification may be asserted by the Owner against the Design-Builder pursuant to the provisions of this Contract;
  - .4 claims for which a right of indemnity could be asserted by the Owner pursuant to the provisions of GC 12.2 – INDEMNIFICATION;
  - .5 damages arising from the Design-Builder's actions or omissions which result in defects or deficiencies in the Work;
  - .6 claims arising pursuant to GC 12.5 – WARRANTY; and
  - .7 claims resulting from acts or omissions which occur or which the *Owner* became aware of after the date of Substantial Performance of the Work.”

## **GC 12.5 - WARRANTY**

Delete paragraph 12.5.1 in its entirety and replace it with the following:

“12.5.1 The *Design-Builder* agrees to remedy, at its costs, any defects in materials and workmanship which are identified by the *Owner* within a period of 12 months (except where otherwise noted for a longer period of time in the *Contract Documents*) from the date of *Substantial Performance of the Work* (the “*Warranty Period*”). This warranty shall cover labour and material, including the costs of removal and replacement of covering materials. This warranty shall not limit extended warranties on any items of equipment or material called for elsewhere in the specifications or otherwise provided by any manufacturer of such equipment or material.”.

Amend paragraph 12.5.2 by adding below language as the final sentence:

“All construction materials to be used in the *Project* are to be new and free of defects. All of the *Work* will be performed with the use of competent trades people with the expressed intention of providing quality construction. For the first year immediately after activation of the *Project*, *Design-Builder* warrants and guarantees that the annual energy production from the fully energized, continuously operated and properly serviced and maintained *Project* will result in annual energy production at a maximum level which is at least ninety percent (90%) of the adjusted estimate of annual energy production provided by *Design-Builder* to *Owner*, where the estimate of annual energy production is adjusted to reflect any deviations from the initial estimate that were beyond the control of the *Design-Builder*. ”

Amend paragraph 12.5.5 by adding below language as the final sentence:

“The carrying out of the replacement work and making good of defects shall be executed at such times as convenient with the *Owner* which may entail overtime work on the part of the *Design-Builder*. Additional charges for overtime work in this regard must be borne by the *Design-Builder*. ”

Delete paragraphs 12.5.6, 12.5.7 and 12.5.8 in their entirety and replace it with the following:

“12.5.6 Any material or equipment requiring excessive servicing during the *Warranty Period* (or free maintenance period, if applicable) shall be considered defective and the warranty (or free maintenance period) shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to terminate.

12.5.7 The final payment certificate shall not relieve the *Design-Builder* from its responsibility under this GC 12.5 - WARRANTY.”

12.5.8 The *Design-Builder* itself is contractually responsible to the *Owner* for, and will enforce, the warranty obligations of the *Subcontractors*, *Suppliers*, and anyone for whom a *Subcontractor* or *Supplier* may be responsible and those of its manufacturers and suppliers and ensure that *Subcontractors*, *Suppliers*, and anyone for whom a *Subcontractor* or *Supplier* may be responsible correct promptly, at their

own expense, defects or deficiencies which appear in their work during the *Warranty Period*. Costs incurred by the *Design-Builder* with respect to administering this warranty and any miscellaneous costs incurred on site during the warranty period will be at the *Design-Builder's* expense and shall not form part of the *Contract Price*.”

Add the new paragraphs 12.5.9 to 12.5.12 as follows:

“12.5.9 Immediately following the expiration of the *Warranty Period* the *Design-Builder* shall assign to the *Owner*, to the extent assignable, the benefit of all warranties and guarantees relating to the *Work*. The assignment shall expressly reserve the right of the *Design-Builder* to make any claims under such warranties and guarantees and such assignment shall in no way prejudice any rights of or benefits accruing to the *Design-Builder* pursuant to such warranties and guarantees. For clarity, the *Design-Builder* to the extent permitted by law, agrees to assign to the *Owner* applicable pass-through warranties from the *Design-Builder's* manufacturers, which shall, for the photovoltaic modules, not be less than 20 years and for inverters, shall be not less than 10 years.

12.5.10 The provisions of this GC 12.5 – WARRANTY shall not deprive the *Owner* of any action, right or remedy otherwise available to the *Owner* for the *Design-Builder's* failure to fulfill its obligations or responsibilities under the *Contract* and shall not be construed as a waiver of claims in favour of the *Design-Builder* or as a limitation on the time in which the *Owner* may pursue such other action, right or remedy. The warranties set out in the *Contract* are not supplemental to and do not limit or preclude the application of any other conditions and warranties, express or implied, by law or trade usage.

12.5.11 To the extent any warranties have not been issued to the *Owner*, the *Design-Builder* shall assign the benefit of such warranties to the *Owner*. The *Design-Builder* shall ensure that the benefit of all such warranties shall be assignable by the *Design-Builder* to the *Owner* or shall name the *Owner* as a dual obligee and shall be assignable by the *Owner* to the *Lender*.

12.5.12 The *Design-Builder* does not warrant against:

- .1 alterations or repairs made to the *Work*, or to any part thereof without the *Design-Builder's* or *Owner's* prior written approval, as applicable, which shall not be unreasonably withheld or delayed;
- .2 failure caused by events set out in GC 6.5.3; or
- .3 use of the *Work* beyond the scope contemplated in its operating manuals or technical specifications.”

## **ADD NEW GC 13 – LIENS**

## “GC 13 LIENS

- 13.1 Notwithstanding any other term or condition in the *Contract Documents*, but provided that the *Owner* is not in default of its payment obligations hereunder, the *Owner* shall not be obligated to make payment to the *Design-Builder*, if at any time such certificate or payment was otherwise due:
  - .1 a claim for lien arising from the performance of the *Work* has been registered against the *Place of the Work*, or
  - .2 the *Owner* or mortgagee of the *Place of the Work* has received a written notice of lien arising from the performance of the *Work*.
- 13.2 In the event that a construction lien arising from the performance of the *Work* is registered against the *Place of the Work*, or given to the *Owner*, the *Design-Builder* shall, within 10 calendar days, at its sole expense, vacate or discharge the lien from title to the premises. If the lien is merely vacated, the *Design-Builder* shall, if requested, undertake the *Owner*'s defence of any subsequent lawsuit commenced in respect of the lien at the *Design-Builder*'s sole expense.
- 13.3 In the event that the *Design-Builder* fails or refuses to vacate or discharge a construction lien within the time prescribed above, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs and expenses incurred by the *Owner* in so doing (including legal fees on a full indemnity basis, disbursements, the cost of any security to vacate the lien and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the *Design-Builder*, and the *Owner* may deduct such amounts from amounts otherwise due or owing to the *Design-Builder*. If the *Owner* vacates the lien, it shall be entitled to retain all amounts it would be required to retain pursuant to the *Construction Act* (Ontario) if the lien had not been vacated.
- 13.4 Without limiting any of the foregoing, the *Design-Builder* shall indemnify the *Owner* for all costs (including legal fees on a full indemnity basis) it may incur in connection with the claim for lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the *Owner* by any person that provided services or materials to the *Place of the Work* which constituted a part of the *Work*.
- 13.5 This GC 13 does not apply to construction liens claimed by the *Design-Builder*.”

## ADD NEW GC 14 - COPYRIGHT AND USE OF DOCUMENTS

## “GC 14 COPYRIGHT AND USE OF DOCUMENTS

- 14.1 The *Owner* may retain copies, including electronic, digital and other reproducible copies of the drawings and specifications prepared by or on

behalf of the *Design-Builder* (the “**Design Documents**”) for information and reference in connection with the *Project*. In consideration for payment by the *Owner* to the *Design-Builder* in accordance with the terms of this *Contract*, the *Design-Builder* shall obtain from the *Consultant* the grant to the *Owner* of a perpetual, irrevocable, non-exclusive, royalty-free license to use and reproduce the *Design Documents* for any matter related to the *Work* or the *Project*, including for reference purposes in respect of any additions, renovations or alterations to the *Project*. The license shall be transferable by the *Owner* to a subsequent owner of the *Project*. In the event that the *Design-Builder* or the *Consultant* is not involved in any addition, renovation or alteration to the *Project*, the *Owner* agrees to indemnify and hold harmless the *Design-Builder* or the *Consultant*, as applicable, for all claims or expenses that the *Design-Builder* or the *Consultant*, as the case may be, may incur arising out of such use or reference.

- 14.2 In the event of the termination of this *Contract* for default by the *Design-Builder* under GC 7.1, the *Design-Builder* agrees to promptly deliver to the *Owner* a complete up-to-date set of the *Design Documents*.
- 14.3 The retention and use of the *Design Documents* by the *Owner* in accordance with the terms of this GC 14 will not be a breach or infringement of the *Consultant*’s copyright. In the event of either party’s failure to comply with its obligations hereunder, the parties agree that the other party shall be entitled to appropriate equitable relief.”

## **ADD NEW GC 15 – ITC LABOUR REQUIREMENTS**

### **“GC 15      ITC LABOUR REQUIREMENTS**

- 15.1 The *Design-Builder* shall, and shall cause its *Subcontractors* and *Suppliers* to, take all such actions or cause all such actions to be taken in respect of the *Work* as are reasonably required to satisfy the wage and apprenticeship requirements prescribed under section 127.46 of the *Income Tax Act* (Canada) in respect of the Clean Technology Investment Tax Credit (as amended, modified, supplemented or succeeded from time to time) (the “**Labour Requirements**”).
- 15.2 The *Design-Builder* shall engage an experienced, reputable, third-party compliance auditing firm to collect and maintain documented payroll records and all other documentation necessary to document compliance with the *Labour Requirements*, to be available in the event of any audit, disallowance or reassessment by the Canada Revenue Agency (or its agents) in relation to the *Labour Requirements*. Such records and other documentation shall be available electronically in the form reasonably required by the *Owner* only in the event of any such audit, disallowance or reassessment. The *Owner* acknowledges that the contents of any such report(s) are *Confidential Information* hereunder, contain personal information and are highly commercially sensitive.

- 15.3 The *Design-Builder* shall cause the third-party *Labour Requirements* compliance auditing firm to provide summary reporting to the *Owner* (or its representatives) with respect to compliance with the *Labour Requirements* as and to the extent reasonably required by the *Owner*.
- 15.4 In the event that any governmental authority makes a final determination that the *Labour Requirements* have not been satisfied as a result of any act or omission of the *Design-Builder*, the *Design-Builder* shall pay to the *Owner*, as liquidated damages and not as a penalty, and as the sole and exclusive remedy for any failure to satisfy the *Labour Requirements*, any additional tax or penalties set out in section 127.46 of the *Income Tax Act* (Canada) or any other payments, that are imposed upon the *Owner* as a result thereof, with such damages not to exceed 10% of the value of the Contract Price.
- 15.5 The *Design-Builder* represents and warrants that to the best of its knowledge, the equipment being installed as part of the *Project* meets the definition of “Clean Technology Property” as set out in section 127.45 of the *Income Tax Act* (Canada). The *Design-Builder* covenants to, within 60 days of the execution of this Agreement, provide to the owner a breakdown of the proportion of the *Contract Price* that is, to the best of its knowledge, directly associated with the installation of the *Clean Technology Property*.