AMENDMENTS TO THE STIPULATED PRICE CONTRACT, CCDC2-2008

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

1 AGREEMENT BETWEEN OWNER AND CONTRACTOR

SC 1 ARTICLE A-5 PAYMENT

1.1 Amend paragraph 5.1.3, in the first line, by deleting the words "the issuance of the" and replacing them with "receipt of the Consultant's";

1.2 Delete paragraph 5.3.1 and replace it with the following:

"Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or a court, interest shall also become due and payable on such unpaid amounts at 1% above the prime rate. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by Toronto Community Housing for prime business loans as it may change from time to time."

SC 2 ARTICLE A-6 RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

2.1 Paragraph 6.1 delete and replace it with the following:

"6.1 Notices in Writing between the parties or between them and the Consultant shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or if sent during normal business hours by fax and addressed as set out below. Such Notices in Writing will be deemed to be received by the addressee on the next business day if sent by fax after normal business hours or if sent by overnight commercial courier. Such Notices in Writing will be deemed to be received by the addressee on the fifth Working Day following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article."

SC 3 DEFINITIONS

3.1 Amend Definition 1, "Change Directive", by adding the following to the end of that definition:

"The Consultant's standard form document shall be used."

3.2 Amend Definition 2, "Change Order", by adding the following to the end of that definition:

"The Consultant's standard form documents for a proposed change notice and for a Change Order shall be used."
3.3 Amend Definition 9, “Contractor” by adding the following to the end of that definition:

“The Contractor acknowledges acting strictly as an independent contractor under the law, and not as an employee of the Owner. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose. The Contractor, nor any employee, Subcontractor, Supplier or agent of the Contractor, shall hold themselves out as being or shall be construed to be employees or agents of the Owner. The Contractor, its Subcontractors, its Suppliers and their respective employees will not be entitled to any benefits, policy, programme or practice, including, but not limited to, vacation pay, holiday pay, health insurance, unemployment insurance, workers’ compensation insurance, and fringe benefit plan made available to employees of the Owner.”

3.4 Amend Definition 12, “Owner”, by adding the following to the end of that definition:

“The Owner is hereby identified as: Toronto Community Housing Corporation.”

3.5 Add a new Definition 28, "Act," as follows:

“28. Act

'Act' means the Construction Lien Act R.S.O. 1990, CHAPTER C.30 Add a new Definition 29, "Hazardous Material", as follows:

“29. Hazardous Materials

'Hazardous Material' means, collectively, any contaminant, waste or subject waste (as defined in the Environmental Protection Act ("based on the respective provincial legislation or authority having jurisdiction "), 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. Whenever the terms "toxic and hazardous substances" is used in the Contract, it shall be deemed amended to read "Hazardous Material".

3.6 Add a new Definition 30, "OHSA", as follows:

“30. OHSA

'OHSA' means the Occupational Health and Safety Act (based on the respective provincial legislation or authority having jurisdiction where the work is being conducted).”

3.7 Add a new Definition 31, "Submittals", as follows:

“31. Submittals
Submittals are documents or items required by the Contract Documents to be provided by the Contractor, such as:

- Shop Drawings, samples, models, mock-ups to indicate details or characteristics, before the portion of the Work that they represent can be incorporated into the Work; and

- Record Drawings and manuals to provide instructions to the operation and maintenance of the Work."

3.8 Add a new Definition 32, “Total Performance of the Work”, as follows:

“32. Total Performance of the Work

‘Total Performance of the Work’ means when the entire Work has been performed to the requirements of the Contract Documents and the Consultant has issued a written certificate to the Owner confirming that the Work has been completed in accordance with the requirements of the applicable lien legislation in the jurisdiction of the Place of the Work.”

3.9 Add a new Definition 33, "WSIB", as follows:

“33. WSIB

‘WSIB’ means the Workplace Safety & Insurance Board for Ontario or the Workplace Safety Agencies in the respective provinces and territories of Canada.”

2 GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

SC 4 GC 1.1 - CONTRACT DOCUMENTS

4.1 Amend paragraph 1.1.1 by replacing the first sentence of the paragraph with the following:

“The intent of the Contract Documents is to include the construction, labour, Products, Construction Equipment and other services necessary, complementary or ancillary, for the performance and completion of the Work by the Contractor in accordance with the Contract Documents or properly inferable from them.”
4.2 Add the following to the end of paragraph 1.1.6:

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

4.3 Amend paragraph 1.1.7.1, with respect to Division 1, so that, as amended, it reads:

"Division 01 shall govern over any general requirements of other divisions of the Specifications in the project manual,"

4.4 Add new paragraph 1.1.7.5:

"1.1.7.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the Contract Documents."

4.5 Add new paragraph 1.5 “EXAMINATION OF THE PLACE OF THE WORK” as follows:

"1.5.1 The Contractor represents and warrants that, using the GC3.14 STANDARD OF CARE, it has examined the Place of the Work and surrounding area and the Contract Documents and other documents provided by the Owner and it has satisfied itself as to the scope and character of the Work, all conditions and information affecting the Work, or that, not having used the Standard of Care, the Contractor has assumed and does hereby assume all risk of conditions now existing or arising in the course of the Work and which a contractor using the Standard of Care would have discovered. The costs, expenses and time of all conditions referred to in this paragraph 1.5.1 form part of the Contract Price and the Contract Time."
SC 5  GC 2.2 - ROLE OF THE CONSULTANT

5.1 Amend paragraph 2.2.7 by deleting the words "Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER."

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

"If, in the opinion of the Contractor, the Supplemental Instruction involves an adjustment in the Contract Price or the Contract Time, the Contractor shall, within five (5) Working Days of receipt of a Supplemental Instruction provide the Consultant with a written notice to that effect. In the event that the Contractor needs additional information to determine whether a Supplemental Instruction involves an adjustment of the Contract Price or the Contract Time, the Contractor may issue a written request to the Consultant seeking such additional information. The Contractor shall, within five (5) Working Days of receipt of such additional information, provide the Consultant with a written notice if, in the opinion of the Contractor, the Supplemental Instruction involves an adjustment in the Contract Price or the Contract Time. Failure to provide written notification within the time stipulated in this paragraph 2.2.13 shall be deemed an acceptance of the Supplemental Instruction by the Contractor without adjustment in the Contract Price or Contract Time."

5.3 Add new paragraph 2.2.19 as follows:

"2.2.19 Neither the Contractor nor any Subcontractor, Supplier or other third party shall have any claim against the Consultant as a result of the performance or non-performance of the Consultant's services. The Contractor shall include this provision in any contracts it makes with its Subcontractors, Suppliers and others and shall require such Subcontractors, Suppliers and others to include the same term in their contracts with sub-subcontractors, sub-suppliers and others."

SC 6  GC 2.3 - REVIEW AND INSPECTION OF THE WORK

6.1 Amend paragraph 2.3.3 by adding the words "and the Owner" after the word Consultant" in line one. Further amend the paragraph by deleting the word "two" in line one.

6.2 Add a new paragraph 2.3.8 as follows:

"2.3.8 Where the Contractor is not prepared for a review or inspection by the Consultant after notification to the Consultant requesting a review or inspection and the Consultant is required to make a subsequent visit, the cost of any such unnecessary visit by the Consultant may be deducted from amounts payable to the Contractor."
SC 7  GC 2.4 - DEFECTIVE WORK

7.1 Add new paragraphs 2.4.1.1 and 2.4.1.2:

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

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

7.2 Amend paragraph 2.4.3 by adding the words "and the Owner" after the word "Consultant" in the first line.

SC 8  GC 3.1 - CONTROL OF THE WORK

8.1 Add new paragraphs 3.1.3 to 3.1.6:

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

3.1.4 The Contractor agrees that the Owner shall not be liable for any loss of, or damage to, the Contractor’s materials or equipment located at the Place of the Work or any associated lands, properties, facilities or buildings belonging to or managed by the Owner.

3.1.5 The Contractor, its Subcontractors and Suppliers and their respective employees and agents are required to comply with all applicable legislated or company rules, regulations, codes or other similar requirements, including policies of the Owner while engaged with or acting on behalf of the Owner, which can be provided to the Contractor upon request.

3.1.6 The Contractor represents and warrants that, on behalf of the Contractor and each of its agents, employees, Subcontractors and representatives, that it has all training licenses and certifications required or necessary with respect to providing the Work."
SC 9  GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

9.1  Paragraph 3.2.2.1, delete in its entirety and substitute “intentionally left blank”.

9.2  Paragraph 3.2.2.2, delete in its entirety and substitute “intentionally left blank”.

9.3  Delete paragraph 3.2.3.2 and replace it with the following:

"3.2.3.2 Coordinate and schedule the activities and work of other contractors and Owner's own forces with the Work of the Contractor and connect as specified or shown in the Contract Documents;"

9.4  Amend paragraph 3.2.3.3 by adding the following to the end of that paragraph:

"Failure by the Contractor to report shall invalidate any claims against the Owner by reason of the deficiencies in the work of other contractors or Owner's own forces except for those deficiencies not then reasonably discoverable; and"

9.5  Add new paragraphs 3.2.3.4 to 3.2.3.6:

"3.2.3.4 Subject to GC 9.4 CONSTRUCTION SAFETY, for the Owner's own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the Place of the Work, including all of the responsibilities of “constructor”, “prime contractor”, “principal contractor”, or similar applicable term in the province or territory of the Project as well as the duties and responsibilities of the “employer” or similar applicable term in the province or territory of the Project all of which is within the meaning of the occupational health and safety legislation applicable to the Project, with respect to the Project, until the Project is completed Furthermore, be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work until Total Performance of the Work.

3.2.3.5 Until Total Performance of the Work, the Contractor shall stop any unsafe work and instruct the party responsible to cure the condition. Furthermore the Contractor and shall remove any person failing to comply from the Place of the Work.

3.2.3.6 Where the Contractor believes that the work of other contractors or of the Owner's own forces may compromise any of the warranties to be provided pursuant to this Contract, it shall promptly give Notice in Writing to the Consultant and the Owner and include in such notice the reasons why the Contractor believes a warranty or a warranties will be compromised together with the Contractor's recommendation for avoiding such result."
9.6 Amend paragraph 3.2.4 by adding the following to the end of that paragraph:

“For other contractors and the Owner's own forces, the Contractor shall assume overall responsibility for compliance with OHSA and all other aspects of the applicable health and safety legislation of the Place of the Work, including the responsibilities of the "constructor" under OHSA.”

SC 10 GC 3.4 - DOCUMENT REVIEW

10.1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

“3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall comply with the standard of care described in GC3.14 STANDARD OF CARE. Except for its obligation to make such review and report the result, the Contractor does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Contractor could not reasonably have discovered. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the Work affected until the Contractor has received corrected or missing information from the Consultant.”

10.2 Add new paragraph 3.4.2:

“3.4.2 If the Contractor finds discrepancies in and/or omissions from the Contract Documents or has any doubt as to the meaning or intent of any part thereof, the Contractor must immediately notify the Consultant, who will provide written instructions or explanations. Neither the Owner nor the Consultant will be held liable for instructions that are not written.”

SC 11 GC 3.5 - CONSTRUCTION SCHEDULE

11.1 Delete paragraph 3.5.1.1 and replace it with the following:

“3.5.1.1 Seven (7) calendar days prior to site mobilization, submit to the Owner and the Consultant for their approval a Construction Schedule indicating critical milestone dates for the Project using a scheduling program which is the most current version of MS Project or Primavera, to demonstrate that the Work will be performed in conformity with the Contract Time. The Contractor shall provide the schedule information required by this paragraph 3.5.1.1 in both electronic format and hard copy;”

11.2 Delete paragraph 3.5.1.2 and replace it with the following:

“3.5.1.2 provide the expertise and resources, including manpower and Construction Equipment, as are necessary to maintain progress under the Construction Schedule or any successor or revised schedule approved by the Owner;”
3.5.1 Delete paragraph 3.5.1.3 and replace it with the following:

"3.5.1.3 monitor the progress of the Work relative to the construction schedule, or any successor or revised schedule approved by the Owner, update the schedule on a monthly basis, and advise the Consultant by Notice in Writing of any slippage in the construction schedule or any other schedule; and"

11.3 Add a new paragraph 3.5.1.4 as follows:

"3.5.1.4 If after applying the expertise and resources required under paragraph 3.5.1.2, the Contractor forms the opinion that the slippage in the construction schedule or any other schedule cannot be recovered by the Contractor, it shall, in the same notice provided under paragraph 3.5.1.3, indicate to the Consultant if the Contractor intends to apply for an extension of Contract Time."

11.4 Add a new paragraph 3.5.2 as follows:

"3.5.2 Without limiting the other obligations of the Contractor under GC 3.5, the Contractor shall not amend the construction schedule without the prior written consent of the Owner. In addition, at each site construction meeting, the Contractor shall provide to the Owner and the Consultant a two (2) week look-ahead schedule indicating the major activities to be undertaken or constructed in such two (2) week period."

11.5 Add new paragraph 3.5.3:

"3.5.3 If at any time it should appear to the Owner or the Consultant that the actual progress of the Work is behind schedule or is likely to become behind schedule, based on critical path methodology, or if the Contractor has given notice of such to the Owner or the Consultant pursuant to 3.5.1.3, the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the schedule and shall produce and present to the Owner and the Consultant a recovery plan demonstrating how the Contractor will achieve the recovery of the schedule. If the Contractor intends to apply for a change in the Contract Price in relation to a schedule recovery plan, the Contractor shall proceed pursuant to PART 6 – CHANGES IN THE WORK."

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**GC 3.6 - SUPERVISION**

12.1 Delete paragraph 3.6.1 in its entirety and substitute new paragraph 3.6.1:

"3.6.1 The Contractor shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the Place or Places of the Work while Work is being performed. The Contractor’s appointed representative(s) shall not be changed except for valid reasons, and then only where the Contractor has obtained the written consent of the Consultant (the Consultant in acting reasonably) and the Consultant has agreed to the proposed successor representative."
12.2 Add new paragraph 3.6.3:

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

SC 13 GC 3.7 - SUBCONTRACTORS AND SUPPLIERS

13.1 Delete paragraph 3.7.2 in its entirety and substitute new paragraph 3.7.2:

"3.7.2 The Contractor agrees not to change Subcontractors without prior written approval of the Owner, which approval will not be unreasonably withheld."

13.2 Add a new paragraph 3.7.7 and 3.7.8 as follows:

"3.7.7 The Owner may assign to the Contractor, and the Contractor agrees to accept, any contract procured by the Owner for work or services or Products required on the Project that has been pre-tendered or pre-negotiated by the Owner. As part of its acceptance for any contract procured by the Owner, the Contractor shall be entitled to apply a mark-up of no more than ten percent (10%) to the value of the assigned contract.

3.7.8 The Contractor agrees and confirms that all Contractor agents, employees, Subcontractors and representatives will carry the required Owner identification badges and properly displayed them at all times while on the Owner’s property. When required, the Contractor will also ensure Contractor vehicles will be appropriately branded and carry the correct markings including the Contractor’s name and registration numbers (e.g., TSSA number). All Owner provided badges will be returned to the Owner immediately upon completion of the Contract. The Contractor shall be financially responsible for all lost or unreturned badges."

SC 14 GC 3.8 - LABOUR AND PRODUCTS

14.1 Amend paragraph 3.8.1 by adding the words "Unless otherwise specified in the Contract, the..." at the beginning of the paragraph. Further amend paragraph 3.8.1 by adding the following sentence at the end of that paragraph:

"The Contractor represents and warrants that the Products provided in accordance with the Contract Documents are not subject to any conditional sales contracts and are not subject to any security rights claimed or obtained by any third party which may subject any of the Products to seizure and/or removal from the Place of the Work."

14.2 Delete paragraph 3.8.2 and replace it with the following:
“3.8.2 Products provided shall be new and shall conform to all current applicable specifications of the Canadian Standards Association, Canadian Standards Board or General Standards Board, ASTM, National Building Code, (based on the respective provincial legislation or authority having jurisdiction ”) Building Code and all governmental authorities having jurisdiction at the Place of the Work, unless otherwise specified. Products which are not specified shall be of a quality consistent with those specified and their use acceptable to the Consultant. Products brought on to the Place of the Work by the Contractor shall be deemed to be the property of the Owner, but the Owner shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever, and such Products shall be at the sole risk of the Contractor.”

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

14.4 Add new paragraphs 3.8.4 to 3.8.7 as follows:

“3.8.4 The Contractor is responsible for the safe on-site storage of Products and their protection (including Products supplied by the Owner and other Contractors to be installed under the Contract) in such ways as to avoid dangerous conditions or contamination to the Products or other persons or property and in locations at the Place of the Work to the satisfaction of the Owner and the Consultant. The Owner shall provide all relevant information on the Products to be supplied by the Owner.

3.8.5 The Contractor shall not employ any persons on the Work whose labour affiliation, or lack thereof, is incompatible with other labour employed in connection with the Work. Any costs arising from labour disputes as a result of the employment of any such person by the Contractor, its Subcontractors or Suppliers, shall be the sole expense of the Contractor. Any part of the Work that is the work of union members represented by the union Locals under the provisions of any collective agreements by which the Owner is bound, shall in each such case be performed only by an employer also bound by such agreement.
3.8.6 The Contractor shall give due consideration to the environment in the discharge of its duties under and pursuant to this agreement, including, without limitation, using environmentally friendly materials and/or processes consistent with prudent industry practices. The Contractor shall consider the energy intensity of its products and services, in the event that the Owner requests such information related to the carbon footprint of this aspect of their business. The Contractor will comply with all applicable environmental laws and regulations, including without limitation any waste, recycling, electric and electronic equipment regulations. The Contractor shall use Eco-logo or green products whenever commercially available. To the extent required by the Owner, the Contractor shall provide the Work in accordance with the Owner’s environmental policy, and abide by LEED or BOMA building requirements if the Contractor is providing Work to a LEED or BOMA certified property.

SC 15 GC 3.9 - DOCUMENTS AT THE SITE

15.1 Delete paragraph 3.9.1 in its entirety and substitute new paragraph 3.9.1:

"3.9.1 The Contractor shall keep one copy of the current Contract Documents, Supplemental Instructions, Contemplated Change Orders, Change Orders, Change Directives, Cash Allowance Disbursement Authorizations, reviewed Shop Drawings, Submittals, reports (including any reports or orders by authorities having jurisdiction) and records of meetings at the Place of the Work, in good order and available to the Owner and Consultant."

SC 16 GC 3.10 - SHOP DRAWINGS

16.1 Add the words "AND OTHER SUBMITTALS" to the Title after SHOP DRAWINGS.

16.2 Add "and Submittals" after the words "Shop Drawings" in clauses 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, and 3.10.11.

16.3 Delete paragraph 3.10.3 in its entirety and substitute new paragraph 3.10.3:

"3.10.3 Prior to the first application for payment, the Contractor and the Consultant shall jointly prepare a schedule of the dates for submission and return of Shop Drawings and any Submittals."

16.4 Delete subparagraph 3.10.8.1 in its entirety and substitute new subparagraph 3.10.8.1:

"3.10.8.1 the Contractor has determined and correlated the field measurements with the Shop Drawings and any Submittals and field construction conditions, Product requirements, catalogue numbers and similar data, or will do so if not possible at that time, and"
16.5 Delete paragraph 3.10.12 in its entirety and substitute new paragraph 3.10.12:

"3.10.12 The Consultant will review and return Shop Drawings and Submittals in accordance with the schedule agreed upon in 3.10.3, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the Consultant cannot process them within the agreed-upon schedule or with reasonable promptness, the Consultant shall notify the Contractor and they shall meet to review and arrive at an acceptable revised schedule for processing. The Contractor shall update the Shop Drawings and Submittals schedule to correspond to changes in the construction schedule. Changes in the Contract Price or Contract Time may be made only as provided in the Contract."

SC 17 GC 3.13 – CLEANUP

17.1 Add new paragraph 3.13.4 and 3.13.5 as follows:

"3.13.4 From the commencement of the Work until the Total Performance of the Work the Contractor shall in accordance with accepted industry practices and using reasonable efforts maximum waste diversion from landfill for any and all waste generated by the Work.

3.13.5 Upon completion of the Work, the Contractor shall remove from the Place of the Work products, tools, construction machinery, and equipment brought onto the Place of the Work by Contractor or its Subcontractors. If the Contractor fails to comply with its obligations under this paragraph, the Owner may remove the debris and other items and charge the Contractor the full cost of such removal including an overhead charge of 15%.

SC 18 GC 3.14 – STANDARD OF CARE

18.1 Add new General Condition 3.14 as follows:

"GC 3.14 STANDARD OF CARE

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

3.14.2 The Contractor further represents, covenants and warrants to the Owner that:

.1 The personnel it assigns to the Project are appropriately experienced;
.2 It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the Owner's approval, in the event of death, incapacity, removal or resignation; and

.3 There are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the Contractor to perform its Work under the Contract."

SC 19  **GC 3.15 - OCCUPANCY OF THE WORK**

19.1 Add a new General Condition 3.15 as follows:

"**GC 3.15 OCCUPANCY OF THE WORK:**

3.15.1 Where the Project contemplates Work by way of renovations in buildings which will be in use or be occupied during the course of the Work, or where the Project involves Work that is adjacent to a structure which is in use or is occupied, the Contractor, without in any way limiting its responsibilities under this Contract, shall take all reasonable steps to avoid interference with fire exits, building access and egress, continuity of electric power and all other utilities, to suppress dust and noise, to avoid conditions likely to propagate mould or fungus of any kind, and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures. Without Owner's prior approval, the Contractor shall not permit any Worker or Subcontractors to use any existing facilities including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner."
SC 20 GC 3.16 – CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS

20.1 Add a new General Condition 3.16 as follows:

“GC 3.16  CONTRACTOR’S USE OF PERMANENT EQUIPMENT OR SYSTEMS

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

3.16.2 Where the Contractor has made use of elements of the mechanical and electrical systems or equipment comprising a permanent part of the Work, as described in paragraph 3.16.1 above, the Contractor shall obtain, from the manufacturer or Supplier of the systems or equipment used, a confirmation from such manufacturer or Supplier that the warranty on such systems or equipment begins on the date of Substantial Performance of the Work and is not impaired in scope or reduced in time by virtue of the Contractor's use of such systems or equipment.”

SC 21 GC 4.1 - CASH ALLOWANCES

21.1 Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

"4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the Consultant’s direction to cover the shortfall. Any payment draw from Cash Allowance will need Owner’s written approval or reimbursement supporting document with no mark up.

21.2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

"4.1.5 The unexpended total cash allowance amount shall be deducted from the Contract Price by Change Order.”

21.3 Add new paragraph 4.1.8:

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

SC 22 GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER

22.1 Delete GC 5.1 in its entirety and replace it with "Intentionally left blank."
SC 23  GC5.2 - APPLICATIONS FOR PROGRESS PAYMENT

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

"No amount claimed shall include Products delivered to the Place of the Work unless the Products are free and clear of all security interests, liens, and other claims of third parties. Applications for payment shall include a detailed, itemized statement of all charges for which payment is sought, and must include the Purchase Order number. If requested, the Contractor will provide invoices in an electronic format, either scanned or in a data file suitable for the Owner’s use."

23.2 Add to the end of paragraph 5.2.5 the following new sentences:

"Detailed backup documentation to support amounts claimed on applications for payment may be requested by the Owner at any time. Failure to provide sufficient backup documentation may result in a delay or refusal to make payments for applications for payment received by the Owner until such time as the Contractor is able to furnish valid backup supporting documentation."

23.3 Add to the end of paragraph 5.2.7 the following new sentence:

"Any Products delivered to the Place of the Work but not yet incorporated into the Work shall remain at the risk of the Contractor notwithstanding that title has passed to the Owner pursuant to GC 13.1 OWNERSHIP OF MATERIALS."

23.4 Add new paragraphs 5.2.8 to 5.2.12:

"5.2.8 The Contractor shall submit, with each application for progress payment after the first, a Statutory Declaration, on an original form of CCDC Document 9A-2001, stating that payments in connection with the Work, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application.

5.2.9 The Contractor shall submit WSIB Clearance Certificate, with each application for progress payment.

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

5.2.11 The Contractor assumes liability for any and all taxes, fees, duties, withholdings or similar charges, whether domestic or foreign, including, without limitation federal, provincial and local taxes, value-added-taxes, goods and services taxes, property taxes or other governmental charges. Taxes must be separately stated on the related application for payment."
SC 24  GC 5.3 - PROGRESS PAYMENT

24.1 Delete paragraph 5.3.1.3 in its entirety and substitute new subparagraph 5.3.1.3:

"5.3.1.3 The Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement – PAYMENT no later than 60 days after the date of a certificate of payment issued by the Consultant. Absolutely no payments will be issued for applications submitted more than 180 days after the date the Work was delivered."

24.2 Add a new paragraphs 5.3.2 to 5.3.4 as follows:

"5.3.2 If the Contractor fails to provide a statutory declaration as required by paragraph 5.2.8, or if the Contractor fails to demonstrate compliance with GC 10.4 – WORKERS’ COMPENSATION, the Owner shall be entitled to deduct from amounts otherwise payable to the Contractor an amount sufficient to cover any liability which it might incur as a result of the Contractor’s failure to provide a statutory declaration or to demonstrate compliance with GC 10.4. Notwithstanding the foregoing, the Contractor acknowledges that payment of its WSIB premiums is the Contractor’s responsibility alone and Vendor hereby agrees to indemnify the Owner for any losses, costs, claims or damages incurred by the Owner resulting in whole or in part from the Contractor’s non-payment of its WSIB premiums.

5.3.3 Upon the mutual agreement of the Contractor and the Owner, the Owner may make payments to the Contractor using electronic funds transfer (EFT).

5.3.4 The Owner may deduct from any amounts due or to become due to the Contractor, any sum or sums owing by Contractor to the Owner, including compensation for any breach by the Contractor of any part of this Agreement, or to the Owner discharging any liens by the Contractor or by any Subcontractor."

SC 25  GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK

25.1 Delete paragraph 5.4.3 in its entirety and substitute new paragraph 5.4.3:

"5.4.3 Immediately following the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the Consultant, shall establish reasonable dates for finishing the Work and correcting deficient Work."

25.2 Add new paragraphs 5.4.4, 5.4.5 and 5.4.6:

"5.4.4 The Contractor shall conform to all requirements of the Act in force in the jurisdiction of the Place of the Work with respect to publishing a copy of the Certificate of Substantial Performance. As applicable the Contractor shall provide suitable evidence of the publication to the Consultant and Owner. If the Contractor fails to publish such notice and the publication of the notice is a requirement of the Act in the Place of the Work, the Owner shall
be at liberty to publish and back charge the Contractor its reasonable costs for doing so.

5.4.5 As part of the Contractors application for Substantial performance of the Work, the Owner, the Consultant and the Contractor shall agree to a final schedule for the provision of the following items. Where possible the Contractor shall submit these items prior to the submission of its application for Substantial Performance of the Work:

.1 guarantees,
.2 warranties,
.3 certificates,
.4 testing and balancing reports,
.5 distribution system diagrams,
.6 spare parts,
.7 maintenance manuals,
.8 commissioning documents and manuals,
.9 waste audit reporting,
.10 logs and reports related to compliance with the Federal Halocarbon Regulation (2003),
.11 equipment lists,
.12 List of outstanding work and deficiency list.

and other materials or documentation required to be submitted under the Contract, together with written proof acceptable to the Owner and the Consultant that the Work has been substantially performed in conformance with the requirements of municipal, government and utilities authorities having jurisdiction.

5.4.6 Failure to submit all the foregoing material and documentation in conformance with the Contract shall be grounds for the Consultant to reject the Contractor’s application for Substantial Performance of the Work.”

SC 26 GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

26.1 Add new paragraphs 5.5.1.3, 5.5.1.4 and 5.5.1.5:

"5.5.1.3 Submit a written request for release of holdback including a declaration that no written notices of lien have been received by it."
5.5.1.4 Submit a Statutory Declaration CCDC 9A-2001.

5.5.1.5 Submit WSIB Clearance Certificate."

26.2 Delete from line 1 of paragraph 5.5.2, the words, "the statement" and substitute the words "the documents".

26.3 Delete paragraph 5.5.3 in its entirety.

SC 27 ** GC 5.6 - PROGRESSIVE RELEASE OF HOLDBACK**

27.1 Delete GC 5.6 in its entirety

SC 28 ** GC 5.7 - FINAL PAYMENT**

28.1 Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1:

"5.7.1 When the Contractor considers that the Work is completed, the Contractor shall submit an application for final payment. The Contractor's application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5 together with complete as-built Drawings. Should the Contractor fail to deliver any of the foregoing documents, the Owner shall be at liberty to withhold from amounts otherwise payable to the Contractor, the sum of Ten Thousand Dollars ($10,000) as security for the obligation of the Contractor to deliver the undelivered documents."

28.2 Delete from the first line of paragraph 5.7.2 the words, "calendar days" and substitute the words "Working Days".

28.3 Amend paragraph 5.7.4, in the second line, by removing the number "5" and substitute the number "30".

28.4 Add new paragraph 5.7.5:

"5.7.5 As additional requirements for release of finishing construction lien holdback, the Contractor shall submit the following documentation:

1. Contractor's written request for release of holdback, including a declaration that no written notices of lien have been received by it.


3. Contractor's WSIB Clearance Certificate."
SC 29  **GC6.1 – OWNER’S RIGHT TO MAKE CHANGES**

29.1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“This requirement is of the essence and it is the express intention of the parties that any claims by the Contractor for a change in the Contract Price and/or Contract Time shall be barred unless there has been strict compliance with PART 6 – CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the Work, and no claims that the Owner has been unjustly enriched by any alteration or addition to the Work, whether in fact there has been any such unjust enrichment or not, shall be the basis of a claim for additional payment under this Contract or a claim for any extension of the Contract Time.”

SC 30  **GC 6.2 - CHANGE ORDER**

30.1 Add new paragraphs 6.2.3, and 6.2.4 as follows:

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

1. by estimate and acceptance of a lump sum.

2. by unit prices established in the Contract or subsequently agreed upon. Unit Prices shall include overhead, profit, and other reasonable charges of the Contractor and shall be the total cost to the Owner. Adjustment to the Contract Price shall be based on a net quantity difference from the original quantity.

3. by actual credits and cost to the Owner. Where additional work is required, the cost to the Owner shall be the actual cost plus the following percentage fee for overhead and profit, percentage covering overhead and profit, after all credits, included in the change, have been deducted; (Note: overhead is also deemed to include supervision, bonds, insurance, clean-up, and temporary facilities):

   (a) On Work performed by the Contractor’s own forces, the Contractor may charge a maximum of 5% combined percentage for overhead and profit;

   (b) On Work performed by Subcontractors, the subcontractors may charge a maximum of 10% combined percentage for overhead and profit. The Contractor may charge a maximum of 5% combined percentage for overhead and profit of work performed by the Subcontractors.
.4 mark-ups may be subject to further negotiation.

6.2.4 The mark-ups described in paragraph 6.2.3.3 include all necessary supervision, general account items, general clean-up, small tools, as-built drawings and job safety necessary to perform the change. Additional bonding cost is excluded from the mark-ups but may be included as a cost, using the value declared for bonding by the Contractor in its bid to the Owner, unless otherwise agreed by the parties.”

SC 31 GC 6.3 - CHANGE DIRECTIVE

31.1 Delete paragraph 6.3.6.3 and replace it with the following:

"The Contractor’s mark-up shall be as described in paragraphs 6.2.3 and 6.2.4."

31.2 Delete paragraph 6.3.7.1 the introductory language and replace it with the following:

"1 salaries, wages and benefits paid to personnel in the direct employ of the Contractor, applying the labour rates set out in the wage schedule in the Contract Documents or as otherwise agreed between the Owner and Contractor for personnel…”

31.3 Delete paragraphs 6.3.7.1(1), (2), (3) and (4) and replace them with the following:

"(1) carrying out the Work, including necessary supervisory services;

(2) intentionally left blank;

(3) engaged in the preparation of Shop Drawings, fabrication drawings, coordination drawings and Project record drawings: or…

(4) including clerical staff engaged in processing changes in the Work.”

31.4 Add new paragraph 6.3.14 as follows:

"6.3.14 Without limitation, the cost of performing the work attributable to the Change Directive will not include:

1. head office salaries and benefits and all other overhead or general expenses, except only for the salaries, wages and benefits of personnel described in paragraph 6.3.7.1 and the contributions, assessments or taxes referred to in paragraphs 6.3.7.2;

2. capital expenses and interest on capital;

3. general clean-up, except where the performance of the work in the Change Directive causes specific additional clean-up requirements;"
.4 wages paid for field supervision of Subcontractors;

.5 wages, salaries, rentals, or other expenses that exceed the rates that are standard in the locality of the Place of the Work that are otherwise deemed unreasonable by the Consultant;

.6 any costs or expenses attributable to the negligence, improper work, deficiencies, or breaches of Contract by the Contractor or Subcontractor; and

.7 any cost of quality assurance, such as inspection and testing services, charges levied by authorities, and any legal fees unless any such costs or fees are pre-approved in writing by the Owner.”

SC 32  **GC 6.4 - CONCEALED OR UNKNOWN CONDITIONS**

32.1 Delete paragraph 6.4.1 and replace it with the following:

"6.4.1.1 The Contractor confirms that, prior to tendering for the Project, it fully investigated the Place of the Work. In that investigation, the Contractor applied the degree of care and skill described in paragraph 3.14.1. To the extent that such investigation permits, the Contractor has satisfied itself as to:

.1 the nature and location of the Work;

.2 the character and content of the Work to be done;

.3 the results and improvements once the Work is completed;

.4 the nature and confirmation of all conditions of the Place of the Work, including soil conditions and the location of utility which might affect the Work;

.5 the character and content of the scope of the Work to be done by other Contractors and the Owner;

.6 the proximity and special arrangement of all existing equipment and facilities which may affect the execution of the Work;

.7 the equipment and facilities needed for the on-time execution and completion of the Work;

.8 all labour restrictions including availability of skilled trades;

.9 safety hazards and labour contract negotiations which may have an impact on the execution of the Work;

.10 the location of any required utility or service;
without limiting the generality of the foregoing, any condition or circumstance which may affect the conduct of the Work.

6.4.1.2 If the Contractor has not conducted such careful investigation, it is deemed to assume all risk of conditions or circumstances now existing or arising in the course of the Work which could make the Work more expensive or more difficult to perform than was contemplated at the time the Contract was executed. No claim by the Contractor will be entertained in connection with conditions which could reasonably have been ascertained by an investigation or other due diligence undertaken prior to execution of the Contract."

32.2 Amend paragraph 6.4.2 by adding a new first sentence which reads as follows:

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

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

32.4 Delete paragraph 6.4.3 and substitute the following:

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

SC 33 GC 6.5 - DELAYS

33.1 Delete the period at the end of paragraphs 6.5.1 and 6.5.2 and substitute the following words in each case ", but excluding any consequential, indirect or special damages."

33.2 Amend paragraph 6.5.3.1 by adding the words "which the Contractor could not have avoided or mitigated through reasonable diligence" immediately after the word "lock-outs" in line one. Further amend paragraph 6.5.3 by adding the following to the end of that paragraph:

", in which case the Contractor shall be reimbursed by the Owner for reasonable direct costs directly flowing from the delay but excluding any consequential, indirect or special damages, and any claims for loss of profit or opportunity."
33.3 Add new paragraphs 6.5.6, 6.5.7, 6.5.8 and 6.5.9:

*6.5.6 If the Contractor is delayed in the performance of the Work by an act or omission of the Contractor or anyone employed or engaged by the Contractor directly or indirectly, or by any cause within the Contractor's control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Contractor. The Owner shall be reimbursed by the Contractor for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Contractor and, in particular, the cost of the Consultant's services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Contractor.

6.5.7 The Contractor shall be responsible for the care, maintenance and protection of the Work in the event of any suspension of construction as a result of the delay described in paragraphs 6.5.1, 6.5.2 or 6.5.3. In the event of such suspension, the Contractor shall be reimbursed by the Owner for the reasonable costs incurred by the Contractor for such care, maintenance and protection, but excluding the costs of the Contractor's head office personnel. The Contractor's entitlement to costs pursuant to this paragraph 6.5.7, if any, shall be in addition to amounts, if any, to which the Contractor is entitled pursuant to paragraphs 6.5.1, 6.5.2 or 6.5.3.
6.5.8 Without limiting the obligations of the Contractor described in GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS and GC 9.4 – CONSTRUCTION SAFETY, the Owner may, by Notice in Writing, direct the Contractor to stop the Work where the Owner determines that there is an imminent risk to the safety of persons or property at the Place of the Work. In the event that the Contractor receives such notice, it shall immediately stop the Work and secure the Project site. The Contractor shall not be entitled to an extension of the Contract Time or to an increase in the Contract Price unless the resulting delay, if any, would entitle the Contractor to an extension of the Contract Time or the reimbursement of the Contractor's costs as provided in paragraphs 6.5.1, 6.5.2 or 6.5.3.

6.5.9 If the Contractor is delayed in the performance of the Work by a labour dispute, civil disobedience, riot, sabotage, acts of God or any of the events described in paragraphs 6.5.3.1 through 6.5.3.4 for a period of thirty calendar days or longer, the Owner may terminate the Contract by giving Notice in Writing to that effect. In such event, the Owner shall pay for the Work performed up to the effective date of termination, including mobilization and demobilization costs, and for such additional costs, if any, directly flowing from such termination which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, and any claims for loss of profit of opportunity. The Owner shall not be liable to the Contractor for any other claims, costs or damages whatsoever arising from such termination of the Contract."

SC 34 GC 7.1 - OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

34.1 Amend paragraph 7.1.2 by adding the words "or fails or neglects to maintain the latest construction schedule" immediately following the word "properly" in the first line.

34.2 Add new paragraphs 7.1.8 to 7.1.11:

7.1.8 The terms of the Contract, which expressly or by their nature are intended to survive the termination or discharge of the Contract (including all indemnities, representations and warranties of the Contractor) shall survive such termination or discharge.

7.1.9.1 Notwithstanding any other term or condition in this Contract, the Owner may exercise the right to terminate the Contract without cause by giving 10 days written notice to the Contractor, specifying the date upon which such termination becomes effective.
7.1.9.2 In the event of termination pursuant to paragraph 7.1.9.1, the Owner shall be entitled to take possession of the Place of the Work, the Work, and the Products and, at the option of the Owner, and upon agreement on mutually acceptable rental rates to be paid the Contractor, utilize the Construction Equipment to the extent the Owner deems necessary to complete the Work, and the Contractor shall be paid, within sixty (60) days of the date that an invoice is received by the Owner, for the following, without duplication, but subject to ARTICLE A-5, PAYMENT and the other requirements in the Contract Documents dealing with payment (including the submission of statutory declarations and evidence of compliance with worker’s compensation legislation), as applicable:

.1 the value proportionate to the Contract Price, of the applicable Work performed up to the effective date of termination; plus

.2 reasonable demobilization costs paid by the Contractor which have been pre-approved by the Owner in writing; plus

.3 Subcontractor and Supplier cancellation costs reasonably paid by the Contractor as a result of such termination which have been pre-approved by the Owner in writing.

Except for the amounts referred to in this paragraph 7.1.9.2, the Contractor shall not be entitled to any additional reimbursement, remuneration or damages resulting from the termination in accordance with paragraph 7.1.9.1 including indirect, consequential, special, incidental or other damages of any nature whatsoever such as, without limitation, loss of opportunity, goodwill, profit or revenue."

7.1.10 In the event of termination due to default by the Contractor as set out in GC 7.1 above, the Owner shall withhold further payment to the Contractor for the portion of the Contract Price properly incurred by the Contractor prior to such termination, until the Work is completed; provided, however, that, without prejudice to any other right or remedy, any payment by the Owner shall be reduced by an amount deemed by the Owner as appropriate compensation for damages suffered by reason of such default.
7.1.11 If the Owner terminates this Contract in accordance with the provisions of this Contract, the Contractor shall immediately cease the Work, place no additional orders and if requested by the Owner, the Contractor shall use best efforts to cancel any existing orders, subcontracts and contracts specified by the Owner upon terms satisfactory to the Owner. Notwithstanding any termination pursuant to this Contract, the Contractor shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, supplies, plant and equipment at the Place of the Work or in transit, pending the Owner’s instructions, and the Contractor shall dispose of same in accordance with the Owner’s instructions. Should this Contract be terminated by the Owner for convenience in accordance with paragraph 7.1.9.1, the Contractor shall be reimbursed for any costs it may incur in connection with the preservation or protection of the Work."

SC 35  **GC 7.2 - CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

35.1 Amend paragraph 7.2.2, in line 1, by deleting "20" and replacing it with "35".

35.2 Delete subparagraph 7.2.3.1 in its entirety.

35.3 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

"7.2.3.3 the Owner fails to pay the Contractor when due the amount certified by the Consultant or awarded by arbitration or a Court, except where the Owner has a bona fide claim for set off, or"

35.4 Delete from line 2 of subparagraph 7.2.3.4, the words, "except for GC5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, ".

35.5 Delete paragraph 7.2.5 and replace it with the following:

"7.2.5 If the default cannot be corrected within the 5 Working Days specified in paragraph 7.2.4, the Owner shall be deemed to have cured the default if it

1. commences the correction of the default within the specified time; and

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

3. completes the correction in accordance with such schedule."
35.6 Add new paragraph 7.2.6:

"7.2.6 If the Contractor terminates the Contract under the conditions described in this GC 7.2, the Contractor shall be entitled to be paid for all Work performed to the date of termination. The Contractor shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, losses sustained on Products and construction machinery and equipment. The Contractor shall not be entitled to any recovery for consequential, indirect or special damages and any claims for loss of profit or opportunity."

SC 36 GC 8.1 - AUTHORITY OF THE CONSULTANT

36.1 Delete last sentence of 8.1.3 and substitute the following sentence:

"If it is subsequently determined that such instructions were at variance with the Contract Documents, the Owner shall pay the Contractor costs incurred by the Contractor in carrying out such instructions which the Contractor was required to do beyond the requirements of the Contract Documents, including costs resulting from interruption of the Work."

SC 37 GC 8.2 - NEGOTIATION, MEDIATION, AND ARBITRATION

37.1 Amend paragraph 8.2.1 by adding the words "...(the "Rules"), subject to amendments to the Rules attached to these Supplementary Conditions as Appendix 1..." following the term "Construction Disputes" in line 1.

37.2 Amend paragraph 8.2.4 by adding the words "...subject to the amendments to the Rules made as described in paragraph 8.2.1", following the words "Construction Disputes" in the last line.

37.3 Delete paragraph 8.2.6 and replace it with the following:

"8.2.6. By giving Notice in Writing to the other party, not later than 20 Working Days after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest addition of the Rules, subject to any amendments to the Rules made as described in paragraph 8.2.1. The arbitration shall be conducted pursuant to the Arbitration Act, S.O. 1991, c. 17, as amended. Unless either party gives the notice contemplated by this paragraph 8.2.6, there shall be no arbitration of any such dispute."

37.4 Add new paragraphs 8.2.9 through 8.2.14 as follows:

"8.2.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.2.6, the Owner and the Contractor shall give the Consultant a written notice containing:

.1 a copy of the notice of arbitration

.2 a copy of supplementary conditions 8.2.9 to 8.2.15 of the Contract, and;"
any claims or issues which the Contractor or the Owner, as the case may be, wishes to raise in relation to the Consultant arising out of the issues in dispute in the arbitration.

8.2.10 The Owner and the Contractor agree that the Consultant may elect, within ten days of receipt of the notice under paragraph 8.2.9, to become a full party to the arbitration under paragraph 8.2.6 if the Consultant:

.1 has a vested or contingent financial interest in the outcome of the arbitration;

.2 gives the notice of election to the Owner and the Contractor before the arbitrator is appointed;

.3 agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6; and,

.4 agrees to be bound by the arbitral award made in the arbitration.

8.2.11 If an election is made under paragraph 8.2.10, the Consultant may participate in the appointment of the arbitrator and notwithstanding the rules referred to in paragraph 8.2.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the Owner receives a copy of the notice of arbitration.

8.2.12 The arbitrator in the arbitration in which the Consultant has elected under paragraph 8.2.10 to become a full party may:

.1 on application of the Owner or the Contractor, determine whether the Consultant has satisfied the requirements of paragraph 8.2.10; and

.2 make any procedural order considered necessary to facilitate the addition of the Consultant as a party to the arbitration.

8.2.13 The provisions of paragraph 8.2.9 shall apply mutatis mutandis to written notice to be given by the Consultant to any sub-consultant.

8.2.14 In the event of notice of arbitration given by a Consultant to a sub-consultant, the sub-consultant is not entitled to any election with respect to the proceeding as outlined in 8.2.10, and is deemed to be bound by the arbitration proceeding."
SC 38  GC 8.3 - RETENTION OF RIGHTS

38.1 Add new paragraph 8.3.3:

"8.3.3 If the Owner gives the Notice in Writing described in paragraph 8.2.6 to have a dispute resolved by arbitration, the Contractor agrees that this paragraph 8.3.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. Provided any award in favour of the Contractor against the Owner is satisfied in full by the Owner, or, an award is made in favour of the Owner which dismisses entirely the substantive dispute of the Contractor, this paragraph shall be construed as a formal consent to an order disposing entirely of the lien proceedings, without costs, including, as applicable, a dismissal of any action, vacation or discharge of the lien and vacation of the Certificate of Action. In no event shall the Contractor be deprived of its right to enforce its lien against the Project should the Owner fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.3.3 shall prevent the Contractor from taking the steps required by the Act to preserve and/or perfect a lien to which it may be entitled."

SC 39  GC 9.1 - PROTECTION OF WORK AND PROPERTY

39.1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

"9.1.1.1 errors in the Contract Documents which the Contractor could not have discovered applying the standard of care described in GC 3.14 STANDARD OF CARE."

39.2 Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

"9.1.2 Before commencing any Work, the Contractor shall determine the locations of all underground utilities and structures indicated in the Contract Documents or that are discoverable by applying to an inspection of the Place of the Work the degree of care and skill described in GC 3.14 STANDARD OF CARE."

39.3 Add a new paragraph 9.1.5 as follows:

"9.1.5 Without in any way limiting the Contractor's obligations under this GC 9.1, should the Contractor or any Subcontractor or Supplier cause loss or damage to trees or other plantings, whether owned by the Owner or third parties, the Contractor shall be liable for the replacement cost of the trees or other plantings damaged, including the cost of any arborist or other consultant, and such costs may be deducted by the Owner from amounts otherwise owing to the Contractor."
39.4 Add new paragraph 9.1.6:

"9.1.6 The Contractor shall neither undertake to repair and/or replace any damage whatsoever to the Work of other Contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the Contractor, without first consulting the Owner and receiving written instructions as to the course of action to be followed from either the Owner or the Consultant. However, where there is danger to life or public safety, the Contractor shall take such emergency action as it deems necessary to remove the danger."

SC 40 GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES

40.1 Amend paragraph 9.2.5.3 by asserting the following words after the words "place of the work" in line two of that paragraph:

"and no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Material,"

40.2 Add a new paragraph 9.2.5.5 as follows:

"9.2.5.5 take any further steps it deems necessary to mitigate or stabilize any conditions resulting from encountering Hazardous Material."

40.3 Add to paragraph 9.2.6 after the word "responsible", the following new words:

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

40.4 Amend paragraph 9.2.7.3 by inserting the following words after the word "delay" in line two of that paragraph:

"", but excluding any consequential, indirect or special damages, and any claims for loss of profits or opportunity."

40.5 Add to paragraph 9.2.8 after the word "responsible", the following new words:

"or that any Hazardous Material already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Contractor or anyone for whom the Contractor is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others;".
Add new paragraphs 9.2.10 and 9.2.11 as follows:

9.2.10 Without limiting its other obligations under this GC 9.2, the Contractor acknowledges that its obligations under the Contract include compliance with EPA, CEPA and TGDA. The Contractor acknowledges that the Owner may suffer loss and damage should the Contractor fail to comply with EPA, CEPA and TGDA and agrees to indemnify and hold harmless the Owner with respect to any loss or damage to which the Owner is exposed by the Contractor's failure to comply. The Contractor expressly agrees that such loss and damage shall be included within the scope of the Contractor's indemnity described in paragraph 12.1.1. The Contractor acknowledges that should it fail to comply with EPA, CEPA and TGDA, such failure will constitute a failure to comply with the Contract to a substantial degree within the meaning of paragraph 7.1.2.

9.2.11 The Contractor shall comply with all requirements of the Federal Halocarbon Regulations (2003) (FHR) and all subsequent amendments thereto insofar as these Regulations are applicable to the Work. The Contractor shall submit all required logs and documentation to the Owner prior to making his application for Substantial Performance of the Work.

SC 41 GC 9.4 - CONSTRUCTION SAFETY

Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1:

9.4.1 The Contractor and not the Owner shall, for the duration of the Project, be solely responsible, and have overall responsibility, for construction health and safety at the Place of the Work and for compliance with the codes, laws, ordinances, rules, regulations and practices (collectively, “Codes”) which relate to construction health and safety and shall be responsible for initiating, maintaining, enforcing and supervising all health and safety precautions and programs in connection with the performance of the Work and the other work performed by Owner and Owner’s other contractors (“Owner’s Other Contractors”) at the Place of the Work (collectively, the “Other Work”), until Total Performance of the Work. The Contractor shall erect and maintain, as required by the Owner’s insurer, acting reasonably, codes, and ordinance or by existing conditions and progress of the Work, safeguards necessary for health, safety and protection, including providing barriers, safety nets, scaffolding, barricades, fences, flagmen, fire prevention equipment and other measures, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and properties. The Contractor shall supervise and implement compliance of such health and safety requirements by:

1. Owner and Owner’s other contractors during the performance of Other Work by Owner and Owner's other contractors; and
.2 The Subcontractors, Suppliers and Sub-subcontractors during their performance of the Work.

41.2 Add new paragraphs 9.4.2 to 9.4.11:

*9.4.2 The Contractor shall take all reasonable steps to prevent interference with adjacent properties. The Contractor shall not close or obstruct streets, sidewalks, alleys, or other public thoroughfares unless all permits required by Codes have been obtained. Any damage to public property, private property, or to utilities, including business interruption losses resulting from the negligent acts or omissions or default of the Contractor shall be paid, corrected or remedied by Contractor in a manner approved by the Owner and the party whose property has been damaged, all at no additional cost to Owner and not as a cost to the project.

9.4.3 The Contractor shall prepare a program of supervision and shall initiate, maintain, enforce and supervise health and safety precautions and programs to assure that the Subcontractors, Suppliers and sub-subcontractors comply with all legal requirements, all health and safety and insurance requirements and other standards and requirements applicable to construction of the Project. Owner shall use commercially reasonable efforts to place in its contracts with Owner’s Other Contractors performing Other Work a requirement that (i) Owner’s Other Contractors comply with the health and safety policies and programs of the Contractor, in the Contractor’s role as Constructor; and (ii) Owner’s Other Contractors comply with laws relating to construction safety. Until Total Performance of the Work, Contractor’s safety precautions and programs under this Section, with respect to health and safety, shall also apply to the other Work performed by Owner and Owner’s other contractors and Contractor shall supervise and enforce compliance by Owner and Owner’s other contractors with such safety precautions and programs.

9.4.4 The Contractor, before commencement of any part of the Work, shall give any notices required to be given to the Owner’s property manager, tenants or adjoining landowners and other parties.

9.4.5 Until Total Performance of the Work, the Contractor shall notify the Owner’s other contractors, and the Owner and Consultant, if the Contractor believes that work of the Owner’s other contractors may be unsafe and the Contractor shall stop the unsafe work and instruct the Owner’s other contractors to cure the condition and shall order removal of any non-complying person from the Place of the Work. If the Contractor is required by the Owner in writing, or in the event of an emergency threatening health, life or property, to cure the unsafe condition, it shall be entitled to a reasonable increase in the Contract Price and equitable extension of the Contract Time for all costs and time incurred as a result of curing such unsafe condition.
Without restricting the generality of any other provision in the Contract Documents, for the duration of the Project, until Total Performance of the Work, the Contractor is the Constructor and the Contractor undertakes to carry out the duties and responsibilities of the Constructor with respect to the Project (including the Work of the Subcontractors and the work of contractors engaged by the Owner under separate contract) including the following:

.1 undertake the Project for the Owner pursuant to the health and safety requirements of OHSA carry out the measures and procedures prescribed by OHSA for the Project;

.2 ensure that every employer and worker at the Project complies with OHSA and receives appropriate health and safety instruction and training;

.3 protect the health and safety of workers on the Project;

.4 prepare and implement an overall work safety program and review the safety programs of each of the Subcontractors and any other contractors at the Place of the Work and enforce compliance at the Place of the Work by Subcontractors with such work safety program;

.5 as applicable in the jurisdiction of the Place of the Work file the Notice of Project, naming itself as Constructor, and file all other applicable registrations required by OHSA (including Section 5 of the construction regulations);

.6 report to the Owner and the Consultant all health and safety incidents at the Place of the Work that the Contractor becomes aware of, including the Contractor’s response to such incidents; and

.7 inform all Subcontractors and all other contractors or persons at the Place of the Work of the Contractor’s safety program and require Contractor’s Subcontractors to have their own safety programs including established training programs that at a minimum meet Contractor’s safety programs and training programs. The Contractor shall review such safety programs for compliance with Contractor’s safety programs.

.8 provide timely notice of any unsafe work to any Subcontractor, Supplier, sub-subcontractor, Owner or Owner’s other contractors or any other contractor or person on the Place of the Work and the Contractor shall stop the unsafe work and instruct them to cure the condition and shall order the immediate removal of any non-complying person from the Place of the Work.
9.4.7 For greater certainty, the Contractor shall fulfill the role and responsibilities of the Constructor in accordance with OHSA until Total Performance of the Work.

9.4.8 The Contractor shall indemnify and hold harmless the Owner from any liability for claims, damages or penalties, including legal fees and costs to defend any offences, arising from the Contractor’s failure to comply with the duties, responsibilities and obligations of the Constructor and Employer under OHSA.

9.4.9 The terms “Constructor” and “Employer” mean the “constructor” and “employer”, as the case may be, within the meaning of the OHSA.

9.4.10 Without limiting the generality of any other provision that is contained in the contract or supplementary conditions, the Contractor shall be, and shall carry out the duties and responsibilities of, the “constructor”, “prime contractor”, “principal contractor”, or similar applicable term in the province or territory of the project as well as the duties and responsibilities of the “employer” or similar applicable term in the province or territory of the project all of which is within the meaning of the occupational health and safety legislation applicable to the project, with respect to the project, until the project is completed.

9.4.11 The Contractors’ obligations to fulfill the duties of “constructor”, “prime contractor”, “principal contractor”, or “employer” shall extend and include any and all contractors engaged by the Owner under separate contract.”

SC 42 GC 9.5 - MOULD

42.1 Delete paragraph 9.5.3.3 in its entirety and substitute new paragraph 9.5.3.3:

"9.5.3.3 extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor. If, in the opinion of the Consultant, the Contractor has been delayed in performing the Work and / or has incurred additional costs under paragraph 9.5.1.2, the Owner shall reimburse the Contractor for reasonable costs incurred as a result of the delay and as a result of taking those steps, but excluding any consequential, indirect or special damages, and any claims for loss of profit or opportunity, and "
SC 43  GC 10.1 - TAXES AND DUTIES

43.1 Amend paragraph 10.1.2 by adding the following sentence at the end of that paragraph:

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

43.2 Add new paragraphs 10.1.3, 10.1.4, 10.1.5 and 10.1.6 as follows:

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

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

10.1.5 Any refund of taxes including, without limitation, any government sales tax, customs duty, excise tax or Value Added Tax, whether or not paid, which is found to be inapplicable or for which exemption may be obtained, is the sole and exclusive property of the Owner. The Contractor agrees to cooperate with the Owner and to obtain from all Subcontractors and Suppliers cooperation with the Owner in the application for any refund of any taxes, which cooperation shall include, but not be limited to, making or concurring in the making of an application for any such refund or exemption and providing to the Owner copies, or where required, originals of records, invoices, purchase orders and other documentation necessary to support such applications or exemptions or refunds. All such refunds shall either be paid to the Owner, or shall be a credit to the Owner against the Contract Price, in the Owner's discretion.

10.1.6 Customs duties penalties, or any other penalty, fine or assessment levied against the Contractor shall not be treated as a tax or customs duty for purposes of this GC 10.1."
SC 44  GC 10.2 - LAWS, NOTICES, PERMITS, AND FEES

44.1  Add to the end of paragraph 10.2.4, the following words:

"The Contractor shall notify the Chief Building Official or the registered code agency where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Building Code (based on the respective provincial legislation or authority having jurisdiction). The Contractor shall be present at each site inspection by an inspector or registered code agency as applicable under the Building Code (based on the respective provincial legislation or authority having jurisdiction)."

44.2  Delete from the first line of paragraph 10.2.5 the word, "The" and substitute the words:

"Subject to paragraph 3.4.1, the".

SC 45  GC 11.1 – INSURANCE

45.1  Amend paragraph 11.1.1.1 by adding the following sentence to the end of that paragraph:

"Such policy shall endorsed with coverage against the theft of monies or personal property by the Contractor's employees or anyone for whom the Contractor is responsible at law with a sub limit of not less than $1,000,000 per claim and in the aggregate."

45.2  Add the following as new paragraph 11.1.9:

"11.1.9  If so noted in the Contract Documents then the Contractor shall provide Employee Dishonesty / Crime Insurance, which includes third party coverage in the amount of one million dollars ($1,000,000)."

45.3  Add the following as new paragraph 11.1.10:

"11.1.10  As additional insureds, the certificate(s) must specifically refer to "Toronto Community Housing Corporation, as well as its respective subsidiaries, related entities, affiliates, partners, members, managers, directors, officers, employees, agents and representatives." All of the above-identified policies of insurance shall provide for a waiver of any right of subrogation of the insurers against Toronto Community Housing Corporation. The required insurance may not be cancelled without thirty (30) days prior written notice to the Owner. With respect to WSIB coverage, the Contractor must give immediate notice to the Owner of loss or suspension of any applicable coverage. All insurance policies shall constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to the Owner and shall contain cross-liability and severability of interest provisions. All certificates, evidencing all of the stated, requested and required insurance coverage must be provided to the Owner or its designated agent in advance of any work beginning. Expired certificates will be cause for the Owner to immediately cease all transactions with the Contractor, and
withhold any amounts necessary to pay workers’ compensation premiums directly to the appropriate authorities. The Contractor must ensure that its Subcontractors have the benefit of or effect and maintain equal insurance coverage as required to be effected by the Contractor and that its subcontractors meet all of the stated requirements, including insurance, licenses, and training. The Owner reserves the right to reject any proposed Subcontractor at its sole and absolute discretion."

SC 46  GC 11.2 – CONTRACT SECURITY

46.1 Amend paragraph 11.2.1 by adding the following to that paragraph:

"Where the Contract Documents give the Owner the discretion to require the Contractor to provide Contract security in the form of a performance bond or a labour and material payment bond, the Owner may, prior to the commencement of the Work, require the Contractor to provide such Contract security, and the cost of such Contract security shall be added to the Contract Price at cost without any mark-up by the Contractor."

SC 47  GC 12.1 - INDEMNIFICATION

47.1 Delete paragraphs 12.1.1 through 12.1.6 and replace them with the following:

"12.1.1 The Contractor shall indemnify and hold harmless the Owner and the Consultant, their agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "claims"), by third parties that arise out of, or are attributable to, the Contractor's performance of the Contract provided such claims are:

.1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and

.2 caused by negligent acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable, and

.3 made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of Work.

Except as otherwise provided in this Contract, the Owner expressly waives the right to indemnity for claims other than those stated above.
SC 48  GC 12.2 - WAIVER OF CLAIMS

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

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

.1  those made in writing prior to the date of final payment and still unsettled;

.2  those arising from the provisions of GC12.1 – INDEMNIFICATION or GC12.3 – WARRANTY;

.3  those arising from GC9.2 – TOXIC AND HAZARDOUS SUBSTANCES and arising from the Contractor bringing or introducing any toxic or hazardous substances and materials to the Place of the Work after the Contractor commences the Work;

.4  those made by Notice in Writing within a period of six years from the date of Substantial Performance of the Work as set out in the certificate of substantial performance, or within such shorter period as may be prescribed in any limitation statute of the province or territory of the Place of the Work and arising from any liability of the Contractor for damages resulting from the Contractor’s performance of the Contract with respect to substantial defects or deficiencies in the Work for which the Contractor is proven responsible. As used herein, "substantial defects or deficiencies" means any defect or deficiency in the Work where the reasonable cost of repair of such defect or deficiency exceeds:

.1  for a Contract Price of $2,000,000 or less, the sum of $50,000, before applicable taxes;

.2  for a Contract Price of $2,000,000 or more, the sum of $100,000, before applicable taxes.

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

.1  those for which Notice in Writing was given prior to the Contractor's application for final payment and still unsettled; and
SC 49  GC 12.3 - WARRANTY

49.1 Delete from the first line of paragraph 12.3.2 the word, "The" and substitute the words:

"Subject to paragraph 3.4.1, the...".

49.2 Delete the words "one year" on paragraph 12.3.1, and substitute the words "two years".

49.3 Delete the word "one" on paragraph 12.3.3, and substitute the word "two".

49.4 Delete the word "one" on paragraph 12.3.4, and substitute the word "two".

49.5 Delete the word "one" on paragraph 12.3.6, and substitute the word "two".

49.6 Add new paragraph 12.3.7 and 12.3.8 as follows:

"12.3.7 Warranty work shall be executed at times reasonably convenient to the Owner, including outside normal working hours.

12.3.8 Where required by the Owner, the Contractor shall provide to the Owner, a maintenance bond as security for the performance of its obligations under this GC12.3 – WARRANTY. The cost of such bond will be added to the contract price." Where required by the Contract, the Contractor shall provide, at no additional cost to the Owner, a maintenance bond as security for the performance of its obligations under this GC 12.3 WARRANTY."

PART 13 - OTHER PROVISIONS

"Add new PART 13 as follows:

SC 50  GC 13.1 - OWNERSHIP OF MATERIALS

50.1 General Condition 13.1, add new title and paragraphs:

"13.1.1 Unless otherwise specified, all materials existing at the Place of the Work at the time of execution of the Contract shall remain the property of the Owner. All Work and Products delivered to the Place of the Work by the Contractor shall be the property of the Owner. The Contractor shall remove all surplus or rejected materials as its property when notified in writing to do so by the Consultant."

SC 51  GC 13.2 - CONSTRUCTION LIENS

51.1 General Condition 13.2, add new title and paragraphs:

"13.2.1 In the event that a construction lien is registered against the Project by or through a Subcontractor or Supplier, and provided
the Owner has paid all amounts properly owing under the Contract, the Contractor shall, at its own expense:

.1 within ten (10) days, ensure that any and all construction liens and certificates of action are discharged, released or vacated by the posting of security; and

.2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

13.2.2 In the event that the Contractor fails to conform with the requirements of 13.2.1, the Owner may set off and deduct from any amount owing to the Contractor, all costs and associated expenses, including those related to borrowing/posting cash, a letter of credit or a bond as security together with all legal fees and disbursements. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and associated expenses."

SC 52 GC 13.3 - CONTRACTOR DISCHARGE OF LIABILITIES

52.1 General Condition 13.3, add new title and paragraphs:

"13.3.1 In addition to the obligations assumed by the Contractor pursuant to GC 3.7, the Contractor agrees to discharge all liabilities incurred by it for labour, materials, services, Subcontractors and Products, used or reasonably required for use in the performance of the Work, except for amounts withheld by reason of legitimate dispute and which have been identified to the party or parties, from whom payment has been withheld. As provided in paragraph 3.7.1, the Contractor shall cause every Subcontractor and Supplier engaged in the performance of the Work to meet the requirements of this GC13.1 – CONTRACTOR DISCHARGE OF LIABILITIES."

SC 53 GC 13.4 - AS-BUILT DRAWINGS

53.1 General Condition 13.4, add new title and paragraphs:

"13.4.1 Unless otherwise provided in the Contract, the Contractor shall provide the Consultant with complete as-built drawings."

SC 54 GC 13.5 - DAILY REPORTS/DAILY LOGS

54.1 General Condition 13.5, add new title and paragraphs:

"13.5.1 The Contractor shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, Work force of the Contractor, Subcontractors, Suppliers and any other forces on site and also record the general nature of Project activities. Such log or diary shall also include any extraordinary or emergency events which may occur and also the identities of any persons who visit the site who are not part of the day-to-day Work force."
13.5.2 The Contractor shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the Project, including records which document the activities of the Contractor in connection with GC 3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5.

13.5.3 Upon the requests of the Owner or the Consultant, the Contractor shall make available for inspection and copying all of the records generated pursuant to this GC13.5 – daily reports/daily logs, along with other routine Project records ordinarily maintained by the Contractor.”

SC 55 GC 13.6 - NEUTRAL APPOINTING AUTHORITY

55.1 General Condition 13.6, add new title and paragraphs:

“13.6.1 For purposes of the Rules the term "neutral appointing authority", shall mean the "Appointing Committee" at ADR Chambers presiding at the time notice of the dispute is given pursuant to the Contract.”

SC 56 GC 13.7 - CONFIDENTIALITY

56.1 General Condition 13.7, add new title and paragraphs:

“13.7.1 The parties will each take reasonable precautions to protect the confidential information of the other and will not disclose the confidential information of the other to any third party except, in the case of the Contractor to its employees, Subcontractors and Suppliers, and then only on a need to know basis. For purposes of the Contract, "confidential information" shall mean any business or financial information about either party, including information about their customers, suppliers, finances or place of business, but shall exclude any information in the public domain not resulting from a breach of this Contract or information a party gets from a source other than the other party without a breach of this Contract. Before granting access to any confidential information of the other to any third party, other than as provided in this paragraph, a party will undertake to have such third party sign an agreement causing them to be bound by terms substantially the same as those in this paragraph. In addition to the foregoing, the Contractor agrees, when dealing with confidential information of the Owner, to comply with any applicable policies of the Owner upon reasonable request by the Owner.

13.7.2 At either party's request, the other will promptly return to the requesting party any confidential information of that party then in its possession or under its control, except for information necessary to perform duties under the Contract.

13.7.3 If any unauthorized disclosure of, loss of, or inability to account for, confidential information of the party occurs which it is in the possession of the other, such party will notify the other party immediately by Notice in Writing.
13.7.4 If any confidential information contains information received in confidence from a third party, the party receiving that information will, on request, enter into any non-disclosure agreement that the third party may reasonably require on terms no more onerous than those in this Contract”.

SC 57  GC 13.8 - AUDIT

57.1 General Condition 13.8, add new title and paragraphs:

“13.8.1 The Contractor will maintain and retain complete and accurate records and documents pertaining to this Agreement and the furnishing of the Work. The Owner will have access to (a) the records of the Contractor, including all support documentation for the purpose of verifying any and all charges billed to the Owner under this Agreement; and (b) the records of the Contractor relating to the Work. The Contractor will cooperate with the Owner by providing the Owner with access to the Contractor’s records promptly (within 10 Working Days) following the Owner’s written request. The examination of such records will be conducted at the Contractor’s place of business, or such other mutually agreeable location, at expense borne by the Owner. Should a material discrepancy in pricing or invoicing arise (greater than 10% variance), all costs of the audit shall be borne by the Contractor and the amount of the discrepancy shall be refunded to the Owner within thirty (30) days. The Contractor will retain such records for a period of five (5) years from the date of completion of the Work.”

END OF SUPPLEMENTARY CONDITIONS
Amendment to Rules for Mediation and Arbitration of Construction Disputes (CCDC-40, 2005) (the "Rules")

The Rules assume the use of the Standard Construction Documents CCDC2-2008 for a Stipulated Price Contract, including the Agreement, Definitions, General Conditions and any amendments or supplementary conditions, if there are any. This Amendment supersedes, replaces or amends the Rules, as the case may be, as outlined below.

1. RULES FOR MEDIATION OF CCDC 2 CONSTRUCTION DISPUTES

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

"(a) The "Contract" means CCDC2-2008, where such Contract document contains an agreement to refer disputes to mediation under these Rules."

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

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

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

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

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

2. RULES FOR ARBITRATION OF CCDC 2 CONSTRUCTIONS DISPUTES

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

"(b) The "Contract" means CCDC2-2008, where such Contract document contains an agreement to refer disputes to mediation under these Rules."

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

"(d) The parties means the parties to the Contract and any other persons who may join in an arbitration involving the Owner and the Contractor."
2.3 **Location of Arbitration.** Add the following as a second sentence to clause 5.1:

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

2.4 **Single Arbitrator.** Delete clause 8.1 and replace it with the following:

"8.1 The arbitration shall be conducted before a single arbitrator who possesses the qualifications specified in Clause 8.5."

2.5 **Appointment Of Arbitrator.** Delete Clause 8.2 in its entirety and replace it with the words, "intentionally left blank".

2.6 **Appointment of 3 Arbitrators.** Delete Clause 8.4 in its entirety and replace it with, "intentionally left blank".

2.7 **Appointment of Arbitrator.** Add a new clause 8.13 which reads as follows:

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

2.8 **Procedural Meeting.** Add the following new sentence to clause 9.2:

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

2.9 **Powers of the Arbitrator.** Delete clause 10.1 and substitute the following:

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

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

"(a) which are relevant to the issues in dispute, and..".

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

"12.1 Production of Documents - The arbitrator may order one or both parties to prepare an affidavit, within a specified time, in which such party deposes under oath that it has made a full and complete listing of documents pursuant to clause 11.3(a) where the arbitrator has reason to believe that one or both parties may not have made full and complete disclosure of the documents relevant to the issues in the arbitration."
2.12 Add a new clause 12.6 as follows:

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

2.13 **Hearings and Meetings.** Amend clause 13.3 by adding the following language to that clause:

"..unless otherwise agreed by both parties or directed by the arbitrator."

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

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

2.15 **Consolidation.** Amend clause 21.1(a) by adding the following wording to that clause:

"...on the same Project,...".

**END OF APPENDIX 2**